

**Problems and Policies of Dispute
Settlement and Wage Stabilization
During World War II**

Bulletin No. 1009

UNITED STATES DEPARTMENT OF LABOR

Maurice J. Tobin, *Secretary*

BUREAU OF LABOR STATISTICS

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The SECRETARY OF LABOR :

This volume was prepared for the National Security Resources Board as an analysis of the Nation's experience during World War II in the settlement of labor disputes and the stabilization of wages. It is published under the sponsorship of the Bureau. The opinions expressed herein represent those of the editors and authors and do not necessarily reflect the thinking of any agency of the Federal Government. The analysis provides a critical and realistic appraisal of the policies formulated and applied to meet the basic problems of the World War II period. The report also serves to relate the differences as well as similarities between that period and the current emergency.

The editors and authors of the volume are well qualified to make such a study. They combine an intimate knowledge of wartime experience, obtained through extensive service in key administrative positions in the National War Labor Board, with an objective and public-minded attitude. Since the end of World War II they have continued to fill important positions in the labor relations field. They are :

W. Ellison Chalmers, Director, Institute of Labor and Industrial Relations, University of Illinois; formerly Chairman, NWLB War Shipping Panel, Executive Head, War Production Drive Division of the War Production Board, and Chief of Program Division, U. S. Conciliation Service.

Milton Derber, Coordinator of Research, Institute of Labor and Industrial Relations, University of Illinois, and Editor, Industrial Relations Research Association; formerly Economist and Chief of Research Division, National War Labor Board and Editor of Termination Report of National Labor Relations Board.

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Jack G. Day, Attorney; formerly Vice Chairman, NWLB Shipbuilding Commission, Chairman, Kansas City Regional War Labor Board, and Vice Chairman, National Wage Stabilization Board.

H. M. Douty, Chief, Division of Wage Statistics, U. S. Bureau of Labor Statistics; formerly Chief of Research Division, National War Labor Board.

John T. Dunlop, Associate Professor of Economics, Harvard University, and Impartial Chairman, National Joint Board for the Settlement of Jurisdictional Disputes, Construction Industry; formerly Chief of Research Division, National War Labor Board, Public Member, Boston Regional War Labor Board, and Economic Consultant to Office of Economic Stabilization.

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In addition to voluminous documentary material and to their own experience covering every important aspect of the National War Labor Board's work, the authors also drew heavily for advice and criticism from a large number of experts in the field representing labor, industry, and the general public.

Valuable assistance in the planning and research for the volume was provided by Morris A. Horowitz, Assistant Professor of Labor and Industrial Relations, University of Illinois. The authors wish to express their appreciation to Fred A. Krafft, Samuel E. Hill, and Frederick J. O. Blachly, members of the National Security Resources Board staff, who made substantial critical and editorial contributions.

EWAN CLAGUE, *Commissioner.*

HON. MAURICE J. TOBIN,
Secretary of Labor.

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Summary and Conclusions

By W. Ellison Chalmers, Milton Derber, and William H. McPherson

I. PURPOSE AND NATURE OF STUDY

THIS STUDY attempts to appraise the major policy decisions made by the Government to meet the threats to production involved in industrial disputes and skyrocketing wage levels from the time that the Nation began to arm in 1940 until the end of general price and wage controls in 1947. It appraises each decision in the light of the fundamental condition of the time. No attempt is made to conjecture about what might have followed had any of the basic conditioning factors been different; and there is only limited speculation as to what the results might have been if different decisions had been made. For these reasons the study has certain limitations if considered as the background for any blueprint projected into the future.

The purpose of this volume lies not in the presentation, but rather in the analysis of the facts regarding the operation of the three agencies on which the study focuses—the National Defense Mediation Board, the National War Labor Board, and the National Wage Stabilization Board. For the reader who is not familiar with the work of these boards, there are numerous footnote references to the official reports and other sources of information on each of these agencies:

This summary chapter deals only with what we regard as the basic problems and the major conclusions. An elaboration of these, together with a treatment of subsidiary problems and conclusions, will be found in the chapters that follow.

II. THE SETTING

To appraise properly the Nation's efforts in settling labor disputes and stabilizing wages during World War II, it must be recognized

that certain conditions of the time played a controlling role. Eight conditions were of primary significance in this respect.

(a) American involvement in the war came gradually—between September 1939, and December 1941. This period of transition permitted a reasonably orderly adaptation of industrial life to the needs of the emergency. Moreover, it allowed the Nation to experiment with new techniques and procedures, such as the National Defense Mediation Board in the field of labor disputes. This experience proved highly important when we became directly engaged in war.

(b) The war never touched the American mainland and the basic patterns of American life were not drastically altered. Even at the peak of the war effort governmental regimentation of the worker was slight. Except for inductions of the younger men into the Armed Forces, freedom of occupational movement was but slightly restricted.

(c) Although the population was badly divided over foreign policy before Pearl Harbor, it was united to an extraordinary degree in fighting the war. Despite numerous, and sometimes violent, differences over domestic policies, the war effort was primary. No strategic group in the population, openly or secretly, opposed our effort to win the war. No fifth column presented a threat to production or morale. Civil liberties were respected to an unusual degree for a war period.

(d) During the defense period and at the time of our entrance into the war, the economy was underemployed. Moreover, it had been underemployed for a dozen years previously. The problem of inflation, which has characterized every major war period, therefore developed rather gradually. For many months available supplies of production facilities and manpower resources permitted both large-scale output for war and, except for certain consumer durables, ample supplies of consumer goods. Neither manpower nor prices had to be frozen to assure adequate war production and a stable economy during this period.

(e) Partly because of the previous underemployment of our human and material resources and partly because the war never hit the American mainland, no significant section of the civilian population had to make important sacrifices in living standards and some sections materially improved their positions. Private debts were greatly reduced and substantial savings were accumulated. Industrial disputes, therefore, were rarely more than a temporary inconvenience to the individual citizen, and stabilization measures imposed few real hardships.

(f) Relations between management and organized labor in many industries, particularly the mass production industries, were quite immature. The right of workers to form unions without employer interference had been recognized by law only a few years before the

outbreak of the war. Many employers regarded unions as a nuisance to be tolerated at best. Union leaders, in turn, tended to regard many management representatives with suspicion and to doubt their motives. Although union strength was developing rapidly, union status was a major question in many industries at the time of the Pearl Harbor attack. While many AFL unions had won the closed or union shop, the key CIO unions which had organized the mass production industries were still struggling for security. Even grievance machinery in many plants was imperfectly established.

(g) Neither labor nor management was represented by a single group. The union movement not only was divided between AFL, CIO, and independents, but, at the outset of the war, still represented less than one-third of nonagricultural workers. Its leaders were divided on many policy questions, including how far to cooperate with each other. Management was even less well organized from an industrial relations point of view. Neither the United States Chamber of Commerce nor the National Association of Manufacturers provided even formal leadership in the policy decisions of its members.

(h) Notwithstanding the growing strength of the unions and the support of President Roosevelt and his administration, attempts by the union movement to play a major part in the direction of the war program never entirely succeeded. At least in part this was due to the split in labor's ranks. Only in agencies concerned directly with labor relations, such as the National Defense Mediation Board, the National War Labor Board, and the National Wage Stabilization Board did union leaders gain a direct voice in policymaking and administration. In such important agencies as the War Production Board (after Hillman's retirement) and the Office of Price Administration, labor representatives served largely in an advisory capacity.

III. A PROBLEM OF BALANCE

Within the conditions set forth above, the Government faced three major tasks involving labor. The first was to provide machinery to settle labor disputes with a minimum of interference to production. A second task was to restrain wage increases as a part of a general program of economic stabilization. The third was to assure the best possible distribution and utilization of the Nation's manpower in terms of the needs of both the Armed Forces and the domestic economy. Each of these tasks presented major difficulties. But the most important, and perhaps least appreciated, difficulty was how to secure proper balance between the three.

As the experience of the defense period demonstrated, it was relatively easy to settle disputes over wages in times of expanding production and rising profits. Employers were in a good position to pass on wage increases in the form of higher prices as long as price controls were not in effect. But when first price ceiling and then wage stabilization rules were introduced, wage disputes became more complex. The interest of the union did not always coincide with the interest of the government in a specific situation despite general agreement on the over-all objective of inflation control.

As available labor supplies became more scarce, a new element entered the picture. Employers began to compete with each other for manpower by bidding up wages. Their interests and needs in specific situations, likewise, did not always coincide with the interest and needs of the Government regarding manpower distribution. Nor was the best wage decision from the point of view of manpower distribution always the best decision for inflation control. Sometimes also there was a conflict between the objectives of industrial peace and manpower distribution. Whereas manpower was primarily a local labor market problem, industrial peace frequently depended upon industry-wide or regional considerations.

Thus, the threefold task of the Government in the labor field—settlement of labor disputes, stabilization of wages, and distribution of manpower—often required compromise decisions. It was theoretically, as well as practically, impossible to obtain results that were ideal for all three purposes. A balance had to be secured not only in the formulation of general policies but also in specific case decisions.

We therefore conclude:

1. The three objectives of the Government's program in the labor field were (*a*) the peaceful settlement of disputes, (*b*) the limitation of wages as a part of economic stabilization, and (*c*) the guidance of civilian manpower in accordance with production needs.
2. Realization of each objective inevitably meant some conflict with the achievement of the other two.
3. The basic problem was to achieve a proper balance between the programs designed to meet the objectives.
4. The problem of balance was not serious while the Nation's resources were underutilized. It became difficult when the Nation was attempting to make the best use of all of its resources.
5. The ultimate test of the adequacy of the Government's program during the defense and war periods is the degree to which this balance was achieved.

IV. THE SETTLEMENT OF INDUSTRIAL DISPUTES

Voluntarism.—From the early days of the emergency, as chapter 1 indicates, it was clear that some method had to be found for eliminating the danger that the production program might be crippled by serious work stoppages.

Until this time wages and working conditions usually were determined by a bargaining process, in which each side was free to institute a work stoppage. To protect the production program some restrictions were needed on the existing rights of labor and management to engage in strikes and lockouts. The Government had to make a fundamental choice of the approach it would use to restrict these rights. The first decision of the Government was to depend primarily on voluntarism—the self-imposition or acceptance by labor and management of restrictions on their freedom of action in industrial relations.

As experience accumulated and as conditions changed, that decision was modified, but it remained the cornerstone of the Government's industrial relations policy throughout the war.

During the defense period, voluntarism was the basis for the establishment of a tripartite NDMB and for the limitation of its powers to mediation and recommendation. For 8 months that Board was successful in keeping stoppages at a minimum. Despite its breakdown as a result of the *Captive Mines* case, voluntarism was continued as the basic approach after our direct involvement in the war. Labor and management joined in a no-strike, no-lockout agreement because they accepted the urgency of the war program and because they recognized the need for a peaceful means of resolving deadlocks. Like the Administration, they preferred a voluntary to a compulsory method of achieving industrial peace. They agreed, therefore, to be bound by the arbitral decisions of a new board.

Throughout the entire war period, this machinery, with few exceptions, achieved satisfactory results. Most industrial disputes were settled peacefully and, where work stoppages did occur, they were of short duration. The industrial machine achieved phenomenal production records. When Congress reconsidered the governmental decision in the spring of 1943, even under the pressure of the most severe dispute crisis of the war—the bituminous coal strikes—it decided to continue the same voluntary approach in the War Labor Disputes Act.

When, however, it became apparent that wage stabilization was also necessary, Congress decided to employ a larger element of compulsion. Both labor and management representatives acknowledged the necessity for this decision because it affected large numbers of

unorganized employers and workers. In the development of wage stabilization principles, in their application to individual cases, and in the enforcement of the program, labor and management representatives on the NWLB and NWSB participated.

Of course, voluntarism was not completely successful. A considerable number of stoppages occurred, many of which were quite important to the war production program. In some cases, moreover, the Government decided that it could not tolerate further production delays and resorted to some degree of compulsion. During the defense and war periods, the Government, in these few cases, finally achieved the continuation or resumption of production by seizing the properties. Such an action was supplementary to, rather than a replacement of, the voluntary approach. It was required where the group discipline was not strong enough to hold the recalcitrant party to the pledge which, through their representatives, the groups had made and to which they generally were adhering. It appears probable that had these cases not been so handled, war production would have been seriously delayed and an increasing number of noncompliance cases would have arisen.

In spite of the strikes that occurred and the use of the power of seizure in some cases, voluntarism was largely successful. Although the Nation needed a high degree of industrial peace, it did not require perfection. Indeed, in as complex and unsettled a state as then existed in industrial relations, it would have been quite unrealistic to assume the possibility of a complete elimination of stoppages.

We therefore conclude:

1. In meeting the labor disputes and wage stabilization problems, the Government chose to use as little compulsion as possible.

2. The Government was able to depend in large part on labor and management to join in imposing restrictions on their own actions and in the administration of such restrictions.

3. During the defense period, these restrictions were almost entirely voluntary and worked successfully through the NDMB for 8 months.

4. In the war period, the Government necessarily extended its use of compulsion in the peaceful adjustment of labor disputes, but still was successful in depending largely on voluntary action.

5. When wage stabilization controls had to be added to the program, the Government needed to go further in its use of compulsory powers. Nevertheless, it still was able to depend on the participation of labor and management representation in formulating and administering the controls over wages.

6. Voluntarism is more effective than compulsion because it contributes greater realism and flexibility and better cooperation between labor and management and between these groups and the Government.

7. There are practical limits to the voluntary approach. These limits vary with different circumstances. An essential prerequisite is the willingness of labor and management to establish and administer restraints adequate to meet the Government's needs.

8. Governmental seizure of the small number of plants in which either management or the union refused to accept Board decisions was essential to protect war production and to prevent an increasing number of noncompliance cases.

9. A basic Government problem was to achieve the most effective combination of voluntarism and compulsion.

Tripartitism.—As chapter 6 makes clear, the joint participation of labor and management with the Government in the establishment and administration of the dispute-settling machinery was essential to the success of the voluntary approach. This procedure was strongly favored by both groups. It contributed greatly to the realism of the decisions reached, to the fairness with which the boards operated, and consequently to the general acceptance of their decisions. In cases where acceptance was not immediately forthcoming, tripartitism was important in securing compliance with board orders.

When the two groups entered into the no-strike, no-lockout agreement, it was with the understanding that the new board would include representatives of both sides. The continuing participation of these representatives confirmed their continuing acceptance of that voluntary pledge.

The partisan members contributed to the effectiveness of each of the three boards by (a) realistically interpreting to the public members both specific problems and the implications of proposed general policies, (b) assuring both parties that their case had been adequately considered, and (c) confining the decisions of the public members within the range of acceptability to both parties.

In addition to assuming general leadership of the boards, the public members tried to mediate the conflicting views of the partisan members on all major issues. They cast the deciding vote in practically all instances of policy formulation and in a large majority of case decisions.

There always remained the possibility that one of the partisan groups might elect to withdraw. Indeed, the NDMB largely ceased to function as a result of the CIO withdrawal. The public members of each board, consequently, kept in mind the desirability of pursuing such policies as would result in the continued acceptance of the machinery by both sides. The alternative of withdrawal was seldom even seriously contemplated after its single use. Each group considered that the Government would have been forced thereby to use other devices that would be more repressive and would provide less satisfactory settlements.

There were unquestioned disadvantages to tripartitism. It was time-consuming; there was always the possibility, though rarely the actuality, that the public members might be outvoted on wage stabilization cases; and there was the uncertainty involved in the possibility of withdrawal. These disadvantages were more than compensated for by the advantages to the Government as well as to labor and management.

We therefore conclude:

1. The voluntary approach depended, for its effectiveness, on the participation of labor and management representatives in the dispute-settling and wage stabilizing processes.

2. The partisan members added realism to the public boards and gave to the parties whose cases were being processed an assurance that their problems were adequately considered.

3. The possibility of withdrawal gave labor and management a genuine veto power, but one that could be used only at a considerable sacrifice.

4. The public members played a crucial role in the dispute-settling and wage-stabilizing machinery. They cast the deciding vote in practically all instances of policy formulation and in most case decisions. Their influence was adequate to protect the Government's interests.

5. The position of the public members exerted considerable influence upon the partisan members who took the lead in working out policies which met the needs of the war program.

6. The greatest benefit of tripartitism was its contribution to compliance.

7. Other benefits of tripartitism included protection against appointments by political pressure and added assurance that case action on the part of staff and public members would not be partial to either of the parties.

8. There were disadvantages in tripartitism. It moved slowly. On a few occasions, the public members were outvoted on wage-stabilization issues. Withdrawal crippled one of the boards (the NDMB) and always remained as an uncertainty.

9. There was less danger of withdrawal from a tripartite board than of withdrawal from an advisory board or of loss of effectiveness on the part of an all-public board.

10. On balance, tripartitism worked well.

The need for general principles.—As analyzed in chapter 2, general principles were needed for the guidance of the arbitral machinery built on the voluntary no-strike, no-lockout agreement. That machinery was designed to supplement, not to replace, collective bargaining. To encourage the continuation of as much collective bar-

gaining as possible, there was a need for some general guides on substantive contract issues—particularly the critical issues of union security and wages—that the parties could follow in coming to their own decisions. Although collective bargaining was seriously modified during the war period, the establishment of these guides enabled the parties frequently to reach agreements without coming to the Board.

General principles also proved to be necessary in order that the NWLB could secure adequate acceptance of its decisions. As it worked out, these principles were frequently compromises, reached under the leadership of the public members, that satisfied each group of partisan members sufficiently so that it was willing to work with and accept the Board. These general guides were particularly important in assuring fairness of treatment in different cases. When the NWLB was forced by the size of its case-load to delegate much of its decision-making authority to a number of regional boards and commissions, guides for these agencies became essential.

Three important procedural questions arose: Who should be responsible for the formation of general principles; how should the responsible body go about establishing the principles; and when should the principles be established?

The experience of the NDMB was not helpful in these respects. That Board deliberately refrained from establishing general principles on the ground that it was primarily a mediation and not a decision-making body. While it had power to formulate recommendations, it was able to achieve settlements without using this power in about two-thirds of its cases.

Neither Congress nor the Administration was well equipped to establish the necessary principles at the beginning of the war because they had no experience on which to act. Moreover the leaders of both branches of the Government were of the opinion that wartime labor principles were far more likely to be realistic and acceptable if labor and management joined in their development.

General principles might have been worked out by the Labor-Management Conference that convened just after Pearl Harbor. Clearly there would have been some advantage in such an early agreement on the major issues. There then would have been greater assurance of the continuance of the NWLB, a framework for the ready processing of specific disputes, and the elimination of uncertainty for the parties. Actually, it did not happen that way. The Conference arrived at a no-stoppage and arbitrational agreement, but no agreement could be reached on the basic issue of union security. We cannot be certain whether it might have achieved an agreement on that issue and perhaps on the almost as urgent issue of wages if it had continued in session for a longer time. However, it appears more likely that, given

the circumstances of the time, no formula for the settlement of these issues developed in advance of the consideration of specific cases would have secured general agreement.

The responsibility for formulating general principles was therefore left to the new tripartite N.W.L.B. In contrast to the conference procedure, the Board developed its principles out of a series of case decisions in the manner of the common law. This method was not easy, especially since a number of Board members were for some time opposed to the idea of principles. The major issues—union security and general wage increases—required months of earnest debate and came close to endangering the very existence of the Board. But the method had the advantage of assuring realistic conclusions by working experimentally toward principles which could achieve the maximum of acceptability. Within the first 8 months of its career, the N.W.L.B. was able to develop principles on both of the basic issues and on many minor ones, which gained general acquiescence.

Because these first 8 months were a period in which both sides were particularly restrained under the stimulus of the immediate national emergency, that period of uncertainty had no serious effect on industrial peace. Later, when the Government established general stabilization policies by legislation and Executive order, the Board successfully developed general standards implementing these policies, largely by the case-by-case method.

We therefore conclude:

1. Any decision-making agency like the N.W.L.B. must have certain general principles as guides for the equitable and effective settlement of labor disputes.
2. Every dynamic period has a few special problems which are major impediments to industrial peace. In World War II the major impediments were union security and general wage increases.
3. Acceptable principles dealing with these major impediments must be formulated as soon as possible after the outbreak of the emergency in order to minimize interference with the war effort.
4. Neither the Congress nor the Administration is ordinarily well-equipped to formulate the necessary principles. Agreement by responsible leaders of labor and management is essential to the establishment of realistic and acceptable principles such as were involved during World War II.
5. Under certain circumstances, a labor-management conference, because of its composition, is a possible method of obtaining realism and acceptability of general principles. In World War II, however, the conference agreed only on the vital procedural principles of the no-strike, no-lockout pledge and the establishment of a board to settle disputes. The parties were too far apart to formulate principles on

the critical dispute issues of union security and general wage changes.

6. A tripartite board is another feasible method. In World War II this method succeeded, although it required some 8 months of the most strenuous deliberation on a case-by-case basis to develop the key principles.

7. During World War II the process of experimentation did not seriously impair the war effort because it took place at a time when concern for the Nation's safety was at a peak and both labor and management, with very few exceptions, were unwilling to cause a work stoppage.

8. The case-by-case method was an effective one for establishing dispute principles under the circumstances of World War II. It had a somewhat lesser role with respect to wage-stabilization principles because of the legislative basis of that program. Even in the case of stabilization, however, specific policies were developed within the broader framework of legislation and Executive order, largely through case decisions.

V. THE STABILIZATION OF WAGES

Two over-all problems faced the Government with respect to wage stabilization. Was wage stabilization necessary to prevent a runaway inflation? If wage controls were needed, when should they be put into effect? Chapter 3 analyzes the Government's decisions on these problems. The decision to control wages was essential to effective price control when demand for a large number of important goods and services exceeded the supply. During most of the early defense period this condition did not exist. At the outset of the defense program, the American economy was operating at a level substantially below capacity. Production for the Armed Forces and for friendly nations did not interfere with domestic consumption for many months. As certain strategic materials became scarce, the need for selective (but not general) price controls was properly recognized and implemented. Wage controls, unprecedented in our modern history, were not needed under these conditions.

By the fall of 1941, however, the rising level of prices and wages, together with the increasing rate of defense expenditures, indicated that the general supply-demand relationship was being reversed. On purely economic grounds, a strong case could then have been made for comprehensive control of both prices and wages.

But economic forces do not operate in a vacuum. The decision to stabilize prices and wages had to take into account political and psychological factors as well. In the fall of 1941 the country was not yet

at war, the wisdom of participating in the war was being sharply debated, and both unions and employers were opposed to governmental interference with free collective bargaining. Our economic future could not be foreseen until our position in the war was crystallized.

With Pearl Harbor, the situation changed. The need for comprehensive price controls was recognized by the enactment of the Emergency Price Control bill on January 31, 1942, although important agricultural prices were exempted. The realization that wage stabilization was unavoidable spread rapidly as the country became enmeshed in the problems of total war. From the beginning, the NWLB appreciated that it was necessary to limit wage increases in the labor disputes which it decided, although the labor members and, to a lesser extent, the public members opposed the application of any fixed principles. Following the President's seven-point anti-inflation message of April 27, 1942, and the promulgation of the General Maximum Price regulation, Board members began to recognize not only the need for some general principles in wage disputes, but also the problems created by the lack of control over voluntary wage agreements. The Little Steel formula of July 16, 1942, established a policy on general wage increases that was to serve as the cornerstone of the wartime wage program. The Board then had no authority over voluntary agreements. It received this authority from the President in October 1942, following the passage by Congress of legislation directing the stabilization of both wages and farm prices—the two main sources of income not previously subject to control.

The failure to impose wage stabilization rules until 10 months after the start of the war may possibly be justified on the ground that the public was not ready until that time to support such a program. All factors considered, however, it would have been desirable to have achieved wage stabilization as part of a general economic stabilization program in January 1942, or at least by the following spring.

Character of wage stabilization.—In addition to the over-all decisions as to whether and when wage stabilization should take place, the Government had to make a number of important decisions as to the character of the wage stabilization program. The effectiveness of the program, particularly after the President's hold-the-line order of April 8, 1943, suggests that in general the policies were soundly conceived and adequately administered. Between October 1942, and August 1945, manufacturing wage rates rose 13.9 percent and consumers' prices 8.7 percent as compared to figures of 17 and 18.1 for the much shorter period between January 1941 and October 1942, when no wage controls and only some price controls were in effect. The comparison is even more striking for the control period from April 1943, through August 1945. In this period manufacturing wage

rates rose only 10.6 percent and consumers' prices only 4.2 percent. While the statistics for the war period suffer from certain technical limitations, the success of wage stabilization as a support to price stabilization appears unquestionable. This does not mean that the job could not have been done more effectively. But it stands up reasonably well, not only in terms of the statistics cited, but also on the basis of other possible criteria such as comparison with other countries.

As is pointed out in chapter 4, perhaps the most important decision affecting the character of wage stabilization was that a wage freeze would not be attempted. Even if it had been politically feasible (which it was not), a wage freeze would have had serious effects upon morale and output because of the many cases of injustice which it would have created. Instead of a freeze, the program involved the establishment of a series of more or less flexible limits for various elements in the wage-rate structure. Some limits, such as the Little Steel formula, were held very tightly. Others were extended from time to time to cope with the inevitable pressures from unions and employers. By being flexible on the "fringe" adjustments, the Government was able to hold the main line on wage rates. A rigid program could not have been maintained in the light of the inequities which were in existence at the time that stabilization was started or which were created by the dynamics of the war situation.

Some of the policies established by the NWLB proved to be too loose and had to be tightened up. An outstanding example is the policy of correcting inter-plant inequities, the ineffectiveness of which precipitated a major crisis in the hold-the-line order of April 8, 1943. But a compromise was effected in the policy directive of May 12, under which it proved possible for the Board to continue to correct inequities without significantly weakening the control program.

Another important decision affecting the character of wage stabilization was to separate wage controls from price movements. Unlike the practice in most other democratic countries, wages were not adjusted automatically in accordance with changes in the cost of living. Nor were wage decisions of the Board normally influenced by possible effects on prices. A possible weakness of this policy of not relating wage-rate changes to living costs was that it may have contributed to the difficulties in the field of wage and price policies faced by the Nation in the postwar period. If the Little Steel formula had been subsequently adjusted to the rise in living costs during the war, union pressure for postwar wage increases might have been reduced. On the other hand, the stabilization program was a precarious balance at best and any further relaxation of wage controls during the war period might have resulted in retreat to a much higher level of prices by virtue of the pressure from farmers and the business community.

A third main decision affecting the character of wage stabilization was to stabilize wage rates or average straight-time hourly earnings and not gross earnings. The latter were, of course, affected by many factors other than changes in the wage rate. These factors included an increase in the hours of work, a shift in employment toward high-wage occupations, plants, and industries, and an increase in output under piecework systems of payment. Since these factors were directly related to increases in production—one of the primary objectives of the Government—stabilization of earnings would have inhibited production.

The effectiveness and weakness of specific wage principles are analyzed in chapters 4 and 5. It is unnecessary to summarize the findings here. The most significant feature of these principles was that, with a few exceptions, they were formulated through the process of trial and error in specific cases. This process gave them a quality of realism and acceptability which they might not otherwise have achieved.

Another major decision was to link administratively wage stabilization with dispute settlement machinery. At times the objectives of industrial peace and wage stabilization conflicted. But administrative separation of the two responsibilities would not have been practicable. Wage issues are among the most important subjects of industrial dispute. If two different agencies had been involved, constant confusion and friction would have resulted.

On the other hand, administrative responsibility for wage stabilization and price stabilization was divided between the NWLB and OPA, with the Director of Economic Stabilization as arbiter of wage cases involving price increases. The system worked out well. It would not have been feasible to attain uniformity in the application of wage policy if the NWLB had permitted its decisions in particular cases to be influenced by price considerations. Moreover, only a few of the NWLB decisions reviewed by the Stabilization Director (about one-half of 1 percent) were disapproved.

There was some friction between the NWLB (especially the labor members) and the Director of Economic Stabilization because of the latter's intervention in wage-price cases and his actions in prescribing limits to wage-control policy. Outstanding causes of friction were the OES formulation of the hold-the-line order (Executive Order 9328) of April 8, 1943, and the restriction upon "fringe" adjustments in early 1945. Nevertheless, the role of the OES unquestionably strengthened the stabilization effort.

Immediately following VJ-day a major change in wage policy occurred, largely in response to strong pressures by unions, employers, and other segments of the public against continuance of Government controls. One of the underlying assumptions behind it was the expect-

tation (which proved to be erroneous) of a considerable amount of unemployment during the reconversion period. Controls were removed over most wage increases which did not require increases in prices. Comprehensive control over prices continued.

This splitting of wage changes into two groups based upon price considerations was in direct contrast to the wartime policy and proved to be an unrealistic device. It was not practicable to permit wage increases for one group of workers and deny them to another because of profit-price differences. The result was a break in the wage line in February 1946. This in turn gave impetus to the attack upon price control by business groups in the spring of 1946. In June 1946, the price control program was broken for all practical purposes, although it was not formally abandoned until November 1946, and rent controls continued after that. Thus, the failure to maintain some form of comprehensive wage controls after VJ-day was one of several important elements in the breakdown of the price-control program and the inflation that followed.

We therefore conclude:

1. In a period of general excess in demand over supply, such as World War II, comprehensive price control, to be effective, must be supported by comprehensive wage control.

2. From an economic point of view, comprehensive wage controls might well have been initiated at the same time as comprehensive price controls, immediately after our entrance into the war.

3. Practically, however, in a democratic society, the effectiveness of such controls depends upon general recognition of the problem and willingness of the public to accept such controls. In World War II this general recognition and willingness were not present until some months after the start of the war.

4. The wartime experience indicates that wage and price control can be successfully administered by separate agencies and that it is sounder to combine wage stabilization with dispute settlement than with price stabilization.

5. A coordinating and policy-making agency, such as the OES, appears to be essential to give direction to the entire stabilization effort.

6. The effectiveness of the wage stabilization program, particularly after the hold-the-line order of April 8, 1943, appears to be supported by statistics on wage rates and consumer prices. Comparison with other democratic countries leads to the same conclusion.

7. Perhaps the most important decision affecting the character of wage stabilization was that a wage freeze should not be attempted. A rigid program could not have been maintained in the light of the inequities which were in existence at the time that stabilization was started or which were created by the dynamics of the war situation.

8. The decision to break the tie between wage changes and living costs strengthened stabilization although it probably contributed to postwar difficulties in the field of wage and price policies.

9. The decision to stabilize wage rates or straight-time average hourly earnings, and not take-home pay, was wise because stabilization of the latter would have inhibited production.

10. The specific wage principles formulated by the NWLB had their weaknesses, but in general they were realistic and acceptable to the employers and unions of the country. The bracket policy for the correction of inter-plant inequities was a considerable improvement over the initial policy and might well have been adopted earlier.

11. The failure to maintain a liberalized form of comprehensive wage controls after VJ-day was an important factor in the breakdown of the price-control program.

VI. THE PROBLEM OF MANPOWER

The Nation was faced with a serious manpower problem during most of the war period. This problem had many facets. During the emergency it was essential to recruit a large labor force and to utilize it effectively. Effective utilization involved, among other things, the placement of workers on the jobs where they were most needed and the avoidance of unnecessary labor turnover. Seniority protection for workers transferring to war jobs became an issue.

Wage rates are one of the major factors that influence worker decisions. Chapter 5 analyzes the way in which NWLB actions regarding wage rates and closely related issues inevitably affected the direction and volume of manpower flow and, to a lesser extent, the recruitment of additional workers.

The impact of Board decisions on manpower conditions, however, was not serious during the early months of the war. During that time voluntary wage increases could be effectuated without Board action. The lack of impact also stemmed in part from the relative insignificance of the manpower problem during that period. The Nation entered the defense period with substantial reserves of available manpower. The outbreak of war found these reserves greatly diminished, but still appreciable. It was not until the latter half of 1942 that local labor shortages became sufficiently widespread to create a general problem.

This was approximately the time when a general program of wage stabilization was introduced. Indeed, the development of labor shortages occasioned extensive wage increases and was one of the major factors that created the problem of their control.

But by this time the Nation's wage structure had already become ill-adapted to effectuating the desired allocation of manpower. A number of new war plants had adopted wage schedules that were, in some instances, more than high enough to attract the necessary labor force. Similar conditions of local imbalance had been created by company-wide increases for many other enterprises with widely scattered plants. Some concerns had raised their rates substantially in anticipation of the growing labor shortage, while others had been less prompt in foreseeing their future manpower difficulties. Thus, at the time when the program of wage stabilization was initiated, the national wage structure was seriously out of balance and, therefore, highly unstable. This chaotic condition was one of the factors that conditioned the nature of the Board's task and the impact of its decisions on manpower problems. Considerations both of manpower allocation and of equity required a considerable readjustment of the wage rates in certain plants, industries or areas as compared to others.

A second conditioning factor was the nature of manpower controls as administered by the War Manpower Commission and other agencies with related functions. These controls were remarkably free from any element of direct compulsion. Practically all of the aspects of the WMC program that purported to exceed the limits of suasion were notoriously lacking in any means of effective enforcement. In one sense, this made the task of the Board more difficult, for if manpower flow was to be guided largely by inducement, wage rates—as well as take-home pay and the likelihood of draft deferment—were sure to be of major significance. On the other hand, the Board might have faced more difficult problems in this area if manpower controls had involved a larger element of compulsion. Under a system of directed job-transfer, it would have been necessary to protect the individual workers against inequitable financial loss. While the adjustment of interplant wage differentials would then be less necessary as an economic inducement, it would become more necessary to maintain morale, since maximum efficiency could not be expected from workers who were suffering financial loss as a result of an obligatory change of employment. Moreover, under controlled labor allocation the manpower consequences of the Board's actions would have become so patent as to compel more formal recognition of manpower considerations in the formulation of Board policy.

Although it was not given serious consideration at the time, the noncompulsory character of manpower controls would have required the introduction of wage stabilization. Even if wage control had been entirely unnecessary as an aid to price control, it would still have been essential as one means of attaining a fairly satisfactory distribu-

tion of civilian manpower. After labor scarcity developed, the raising of wages in essential plants and industries would have been ineffective in attracting labor if nonessential employers were free to make corresponding increases. This significance of wage control received little consideration in congressional debates or in Board discussions, though it was actually a cornerstone of our manpower program.

In facing the manpower implications of its wage-rate decisions, the Board was confronted with several dilemmas. These dilemmas largely explain the Board's reluctance to give formal recognition to manpower considerations in other than the rare and unusual cases where wage increases that were clearly necessary for the effective prosecution of the war could not be justified under any of the other criteria used by the Board.

In the first place, adjustment of wage rates could not match in flexibility the constant changes in local manpower needs. Partly because of changes in procurement priorities, a plant that was in desperate need of labor at one time, might be of little importance to the war effort 6 months later. Its wage rates could not be promptly raised and lowered to meet the Nation's interest in attracting and then repelling labor at this site. Although the desperate labor needs of many plants were temporary, any wage increase approved to meet those needs was, in effect, permanent. Wage rates could not practically be reduced during the war period. Because of labor scarcity and the rising cost of living, neither the employer nor the union could be expected to propose such a change. The adjustment of differentials could be achieved only by upward revisions, with consequent threat to the stabilization program.

A second dilemma arose from the fact that many wage increases approved or ordered by the Board were inevitably on a company-wide or multi-employer basis, in keeping with the past patterns of collective bargaining. Such adjustments, affecting plants in many localities, were bound to create disturbing manpower situations in some areas. Board actions in some instances had to result in disruption either of local labor-market differentials or of traditional practices regarding the area of collective bargaining.

A third dilemma was the impossibility of reconciling the need for prompt action by the Board in serious manpower cases with the need to assure that every alternative means of attracting labor had been exhausted. Prompt action was necessary because of the urgency of war production and because it required less of a wage increase to retain a work force than to replenish one that had been riddled by quits. Exhaustion of all alternative methods by other Government agencies was important because numerous nonwage factors could make the jobs more attractive, and an unstabilizing wage increase

should be introduced only as a last resort. Had the Board shown greater readiness to act on manpower grounds, it is possible that other agencies would not have taken all desirable steps to meet the problem.

A fourth dilemma involved the frequent incompatibility of manpower considerations and the other criteria used by the Board in determining the justification for a wage adjustment. These criteria usually involved, in one way or another, the equity of certain rate differentials. The manpower considerations centered, not on equities, but on expediency. A Board action that removed certain inequities might nevertheless disrupt a desired flow of manpower. Similarly, an action taken exclusively on manpower grounds might create, rather than remove, inequities.

A final dilemma—not wholly unrelated to the others—arose from the frequent conflict between considerations of guiding manpower flow and maintaining industrial peace. The avoidance of serious employee dissatisfaction and possible work stoppage sometimes called for a wage adjustment inimical to the desired flow of manpower. Thus, a strong union might win an increase in an adequately manned plant or industry. In other cases, an increase that appeared necessary for manpower purposes might create such serious dissatisfaction on the part of workers in other plants as to be quite impracticable from an industrial relations standpoint.

Faced with these dilemmas, the Board preferred to give only informal consideration to manpower needs, and its decisions represented frequently a compromise between conflicting objectives.

Although the Board seldom made a decision formally on manpower grounds, except in the few rare and unusual cases, it did more often stretch its other criteria in order to justify a decision that was believed necessary to meet certain manpower needs. In many cases where no clear need existed for a change in the flow of manpower, the Board's action nevertheless inevitably had that effect. The Board frequently appeared to give little or no consideration to the manpower consequences of its decisions.

The most serious weakness of wage-manpower policies lay in the failure of the Government to assign formally to the Board some responsibility for the manpower program. Such an action would have required the Board to recognize more definitely than it did the effect of wage changes on manpower flow. The Board would then have had to establish a closer working relationship with WMC and work out a better balance between the functions of wage stabilization, dispute settlement, and manpower distribution.

We therefore conclude:

1. Wage control is essential to any effective manpower program because wage decisions inevitably have a significant effect on manpower allocation.

2. The earlier introduction of wage control would have aided in obtaining better manpower allocation.

3. Although coordination between wage and other manpower controls was gradually improved, it never became adequate. Successful coordination would have required a greater administrative centralization of these other manpower controls.

4. The NWLB should have been given specific responsibility to consider the manpower consequences of wage adjustments in all cases.

5. The extreme reluctance of the NWLB to award or approve rate increases for manpower reasons was effective in obtaining the application by other agencies of nonfinancial measures, but often resulted in deferring wage adjustment until the time of its greatest effectiveness had passed.

6. The NWLB should have established a manpower division to advise its own agencies on manpower considerations and to facilitate liaison with other governmental agencies having manpower functions.

7. NWLB use of the substandard and cost-of-living criteria in wage adjustments was warranted regardless of their manpower consequences. The early use of the inequity criterion permitted a desirable flow of manpower, but allowed too continuous a raising of rates. The adoption of the bracket policy created fewer new manpower problems, though it perpetuated some excessive differentials created earlier. The Board's handling of internal wage-rationalization problems contributed to efficient labor utilization.

8. Although the NWLB eventually adopted fairly effective controls over new incentive plans, the earlier introduction of these policies would have avoided many instances where abnormally high earnings exerted an undesirable influence on manpower flow.

9. Because of the initial huge manpower reserves of the country, the unwillingness of the Board to give greater weight to manpower considerations in its wage decisions did not too seriously jeopardize the manpower program.

VII. PROBLEMS OF ORGANIZATION AND ADMINISTRATION

The organizational and administrative problems relating to the three boards involved principally (1) the scope of their functions and their responsibilities, and (2) their methods of operation.

The functions of the NDMB were purely mediatory and its operations were simple. It handled unresolved labor disputes, certified to it by the Secretary of Labor as endangering national defense. Two types of cases lay outside of its jurisdiction. It was precluded from

dealing with disputes covered by the Railway Labor Act, for which satisfactory channels already existed. It was required to refer to the NLRB disputes concerning representation. In addition, it voluntarily made similar referral of cases involving unfair labor practices. Its relations with other Government agencies therefore presented no special problems. Its operational methods were equally satisfactory. Its relatively small volume of cases made decentralization unnecessary. Although original estimates of the time required of its members for Board duty proved to be unrealistic, it adjusted itself quite promptly to a growing workload and settled most of its cases with reasonable promptness.

The most troublesome of the organizational and administrative problems regarding dispute settlement and wage stabilization involved the NWLB. As indicated in chapter 7, this Board was precluded from dealing with issues within the jurisdiction of the NLRB. This provision was the source of the most difficult jurisdictional problems faced by the NWLB in dispute cases, as, for example, in the cases involving foremen. The Board was careful to observe its legal obligation to comply with the National Labor Relations Act. It referred to the NLRB cases involving questions of representation or unfair labor practices, even though the resulting delay often aggravated the situation. The difficulties, however, were unavoidable, for any alternative arrangement would have created more problems than it solved. On the other hand, one limitation placed on the NWLB—the exclusion of agricultural employees from its jurisdiction—was economically unjustified and must be regarded as an unwise and inequitable decision. Many limitations on jurisdiction were voluntarily introduced by the Board itself, in order to free it from the consideration of cases of negligible significance.

Although the NWLB had general responsibility for wage stabilization, certain areas were excluded from its wage jurisdiction. The assignment of salary control for administrative, executive, and professional employees to the Commissioner of Internal Revenue worked fairly satisfactorily. The chief problems were those of demarcating clearly the jurisdictional boundary between the two agencies and obtaining similarity of stringency in the two programs. On the other hand, the decision to give railroad wages separate treatment raised some serious problems that were never fully resolved. Wage control in this industry undoubtedly needed separate consideration, but it appears that this could have been obtained on a more equitable basis if the persons dealing with this problem had been constituted as an industry committee within the Board's framework rather than operating quite independently of the Board.

The Board itself wisely limited its jurisdiction in order to keep its heavy case load within manageable proportions. It delegated to various Government agencies authority to approve wage adjustments for their own employees. It usually referred back to the parties minor disputes, such as those involving grievances. Through its general orders it permitted minor wage changes to be made without specific approval and also gave a free hand to most establishments with eight or less employees. It is likely that more could have been done in this respect.

Chapter 9 indicates that despite the various efforts to limit its case load, the NWLB was never entirely successful in processing its cases as rapidly as was desired. The considerable time consumed in many cases resulted in some loss of industrial morale and occasional impairment of good relations between employers and unions. A number of short work stoppages and some violations of the wage stabilization law occurred.

Part of the problem of delay in case processing arose out of the Board's determination to assure full consideration and fair treatment to the parties. Many of the cases involved complex issues which required lengthy hearings and careful analysis. Court review was sometimes urged as an additional safeguard. But, as in the case of the suggestion that the courts be used to secure compliance with Board orders, it would have unduly prolonged case decisions and might have undermined the authority of the Board. While some improvement in Board procedures was possible, it could have yielded relatively little saving of time without endangering the fairness of the decisions.

The speed of case processing depended also on the administrative efficiency of the Board. As the Board gained experience it made many improvements in its internal operations. However, it was never able to overcome the handicaps of its first 2 years when it accumulated a massive backlog of cases. Some of the difficulty arose because of the dearth of experienced personnel. The Board was never adequately staffed for the size of its job. Another major handicap was the lack of adequate wage data. The time required in developing principles also slowed down case processing.

A major cause of the early backlog was the Board's reluctance to decentralize its operation and to delegate authority. It eventually created a number of industry commissions and panels and 13 regional boards, but many of them were never able to catch up with their initial caseload. As chapter 8 suggests, such decentralization was undoubtedly desirable and should have been undertaken earlier. A larger number of regional boards might have improved efficiency and brought the Board closer to the parties.

The combination of area and industry agencies, however, created problems. The industry structure proved to be highly useful where a technical assignment was involved or where the collective bargaining system was closely integrated. On the other hand, it sometimes created special wage stabilization problems for the regional boards. Commissions and panels might have been required to consult the regional boards more frequently to obtain data about local wage and manpower patterns and a better appreciation of the regional point of view.

A final major administrative problem involved the enforcement of wage stabilization regulations. That responsibility might have been assigned to another agency, such as the Bureau of Internal Revenue. As chapter 10 concludes, it was wisely left to the Board despite considerable reluctance on the part of the Board to assume a policing function. The Board was slow to start enforcement activities, thus aggravating the problem of violations. Even then, it was less successful in some industries and areas than in others. However, the tripartite board proved to be an effective device for enforcement, because the partisan members greatly contributed to general acceptance of the stabilization program. On the other hand, there was marked inconsistency in the penalties assessed for wage violations, resulting from the absence of any standards and the failure of some partisan members to adopt a judicial attitude. The results would probably have been more equitable if the partisan members had been willing to support the enforcement program without tripartite participation in each individual case. Nevertheless, an adequate degree of enforcement was achieved with a minimum of harshness and with relatively slight administrative effort.

Like the NDMB and unlike the NWLB, the NWSB was able to perform an adequately expeditious job, and had no serious operational problems. Its responsibilities were almost entirely limited to wage stabilization. Even within this area, its activity was limited by governmental relaxation of wage controls. Because of its limited authority, this Board did not have a huge caseload. Moreover, it inherited from the NWLB a decentralized structure that had finally been brought up to reasonable standards of efficiency.

We therefore conclude:

1. The exclusion of representation and unfair-labor-practice issues from the disputes jurisdiction of the NDMB and NWLB was logical and unavoidable, although it created certain problems during the life of the latter agency.
2. The decision to combine responsibility for the administration of wage controls with that of dispute settlement in the NWLB proved sound.

3. Exclusion of administrative, executive, and professional personnel from the wage jurisdiction of the NWLB and NWSB was probably desirable. The exclusion of agricultural and railroad employees was probably a mistake.

4. The power of the Board to decline jurisdiction over minor cases and to grant blanket approval of certain types of wage adjustment was a definite asset.

5. The average length of time required for case processing was a serious problem in the case of the NWLB, but not the NDMB or the NWSB.

6. The number of procedural steps probably could not have been shortened without impairing the equity of the decisions, the rights of the parties, or the efficiency of the Board. However, the grounds for appeal might well have been narrowed.

7. A larger number of public members on the NWLB and its agencies would have been beneficial.

8. A major source of delay in the processing of NWLB cases was the reluctance of the Board to decentralize and to delegate to wage stabilization directors authority to rule on voluntary wage applications.

9. A closer relationship between the NWLB and its subsidiary agencies and between the regional boards and the industry commissions would have been helpful.

10. The NWLB and NWSB were the proper agencies for enforcement of the wage stabilization program.

11. The support of the partisan members was essential to the success of the enforcement program. It is unfortunate that the partisan members of the National Board were unwilling to support the program without requiring tripartite participation in the initial decision of individual cases.

12. Enforcement was achieved to an adequate extent, but enforcement efforts of the NWLB should have been begun more promptly and conducted with greater impartiality.

VIII. OVER-ALL APPRAISAL

In this volume we have attempted (1) to analyze the problems which inevitably face a democratic government in settling labor disputes and stabilizing wages in time of war, (2) to single out the major environmental factors which conditioned the way in which these problems were met during World War II, and (3) to appraise the major policy decisions, at both the substantive and procedural

levels, in terms of achieving the basic objectives of a wartime program. In this chapter we have summarized our analysis of the more important problems, conditioning factors, and policy decisions. We have concluded that, in general, the basic objectives—the minimizing of work stoppages and the control of wages as part of general economic stabilization—were adequately achieved. We have also concluded that the joint participation of union and management representatives with the Government in the formulation and administration of the wartime labor program contributed greatly to the realism and fairness of the decisions reached and to their general acceptance. The program did not work perfectly. There was a considerable number of work stoppages, some of which were the result of weaknesses in the administrative machinery. A small number of companies or unions defied Board orders, requiring Government seizure of the establishments involved. Wage stabilization controls were adopted somewhat later than was economically desirable. Particular wage policies, such as the initial approach to the correction of interplant inequities, were too loose. Tripartite administration of the enforcement policy tended in some areas to be lax. Case processing was often unduly delayed. Coordination between the labor boards and other branches of the Government sometimes functioned poorly.

But even if errors had been avoided, the results would have been considerably less than perfect. As we have shown, the objectives of labor dispute settlement and wage stabilization sometimes conflicted and these in turn sometimes conflicted with the equally important governmental objective of efficient manpower allocation. Compromises were inevitable. The prime need was to achieve a working balance between the three sets of objectives. Under the conditions prevailing during World War II, we have concluded that the policies adopted by the Government were reasonably successful in achieving this balance—with a minimum amount of compulsion and with a high degree of respect for the tenets of a democratic society.

Voluntarism and Compulsion in Dispute Settlement

By W. Ellison Chalmers

I. INTRODUCTION

BETWEEN September 1939 and August 1945, the country's war needs precipitated three major crises in industrial relations. The three crises, as defined by the Government, were—

1. Critically needed defense production was being delayed by work stoppages. The Government determined in March 1941, that existing stoppages in key plants had to be discontinued and the increasing trend of stoppages had to be reversed if defense goals were to be achieved.

2. When, with Pearl Harbor, the Nation was plunged into war, the Government decided that much larger sections of the economy had to be employed in direct or indirect war production. Work stoppages in any part of this whole area would endanger the war production program.

3. By the summer of 1942, the economic stability of the country, and thus the war production program, was threatened by rising prices. The Government decided that wages as well as other key price transactions had to be stabilized.

In each case existing procedures for the adjustment of many types of labor-management disputes were proving seriously inadequate as measured against the Nation's needs.¹ Because the Government was responsible for meeting the entire war crisis, it had to act in such a way as to best assure the achievement of the national goals. Thus, for each of these three situations the basic decisions had to be made by the

¹ On the whole, procedures in use on the railways and under the National Labor Relations Act functioned adequately throughout the defense and war periods.

Government. There had to be a determination by the Government that the existing arrangements were so seriously deficient that a change was essential. This involved a governmental definition of the goals that had to be met. This first step in the decision-making process was exclusively governmental. It was made on behalf of the entire Nation, and, of course, in relation to the consensus of the public as well as that of the administration of the Government. The subsequent steps in this process did not have to be as exclusively governmental. There had to be a decision on the modifications to be made of previous "rules of the game." This required a governmental decision as to how much, if any, of the responsibility for the establishment of the revised rules and their administration should be assumed by the Government and how much should be assigned to the direct participants, labor and management.

In the free enterprise economy of 1939, the essential decisions of labor-management relations were made by the parties themselves. Through the enactment and administration of the National Labor Relations Act, the Government had established the policy of protecting unionization and encouraging collective bargaining. But the decision to engage in collective bargaining had to be made by the employees involved, and the results of the collective bargaining were the joint decisions of the managements and unions directly affected.²

In each of the three wartime crises the Government determined that private-group decisions failed to meet the needs of the Nation. Some restriction of the freedom of action of the private groups was necessary. A possible alternative was the elimination of all discretion by the parties, but there was no important consideration of the establishment of complete governmental direction and compulsion over labor-management relationships.

Thus, in each of the three crises, the Government's problem was to determine how much was needed in further restrictions on the freedom of action of labor and of management in their relationship to each other. A closely related problem was to what degree those restrictions should be formulated and enforced by the parties themselves. Within this context, therefore, voluntarism is defined as the self-imposition or acceptance by labor and management of restrictions on their freedom of action in industrial relations.³ "Compulsion" is defined as the imposition by Congress or the President of restrictions

² The U. S. Conciliation Service and a few parallel State conciliation agencies did useful work in aiding disputing parties to reach agreements.

³ It should be noted that this definition does not imply the absence of alternatives considered less desirable by the parties. We shall note that throughout the whole period under review labor and management decisions were motivated not only by their recognition of the war needs of the Nation but also by their desire to avoid more compulsory alternatives.

on the freedom of action of labor and management in industrial relations.

This chapter will evaluate the decisions made by the Government to meet each of these crises. How far did the Government need to go in substituting its own directions for the voluntary actions of the parties? In such an evaluation, the following steps are necessary: (a) Definition of the crisis in terms of governmental needs, (b) consideration of the basic conditioning factors that defined the alternative choices practically available to the Government, (c) examination of the governmental decision in terms of how much responsibility for the accomplishment of its goals was placed upon the private groups of labor and management, and (d) evaluation of the consequences of these governmental decisions.

A. CONTRASTING VALUES OF "VOLUNTARISM" AND "COMPULSION"

A basic governmental problem, in each crisis, was the selection of the method by which the further restrictions would be established. A number of general considerations were involved in each crisis. They will be summarized here, so that they will not have to be repeated in the analysis of each case.

1. *Values of voluntarism.*—The whole orientation of the war provided a profound psychological appeal for "democratic" action. With almost complete unanimity the country defined as a basic war objective the defeat of nations which had abandoned democratic principles and whose aggressive acts were assumed to be the result of this abandonment. As a Nation, therefore, we rallied to the defense of our own democracy and assumed that our war effort would be successful only if we preserved our own democratic institutions.

It was recognized that a democratic government could sharply restrict the individual's freedom of choice, if the government rested on the political participation of the citizens and its actions were based on the consent of those directed. But the democratic concept included the belief that insofar as it was possible to permit the direct participation of the affected groups in the determination and application of restrictions upon their freedom of action, the response of the groups would be more willing and cooperative.⁴ Further, it was also widely

⁴ It is beyond the scope of this study to analyze the restrictions imposed on labor or management that were outside of the field of industrial relations. There were many such restrictions on the opportunity to secure Government contracts, materials, machinery, and labor, on the prices charged for commodities and services, and on the opportunity for workers to move from job to job. This study makes no attempt to analyze how extensive was the "democratic participation" of the groups in the determination and administration of such restraints. It may be noted, however, that the extent to which these restraints existed and the extent to which there was participation in their formulation and administration had a profound effect on the immediate problems of this study. Major differences in the extent of, or participation in, such controls might well have substantially altered the basic elements of the industrial relations history of the war discussed in this chapter.

believed that the more authoritarian became the government during the war period, the more danger there would be that the postwar government would continue authoritarian controls.

It also was generally argued that there would be greater realism of specific decisions if they were made by those who knew the problem intimately and who were directly involved in it. This argument assumed that the national objectives were both understood and accepted by the groups directly involved. The contention of the greater realism of voluntary decisions was considered to have particular validity in the complex field of industrial relations. In this area, it was argued not only were the specific relations between unions and employers a complex of subtle factors, but also there were enormous contrasts from case to case that endangered the usefulness of any generalized rules.

Further, it was recognized that the Government goals, of uninterrupted production and, later, of wage stabilization, were simply elements of the larger goals of maximum and flexible war production. The accomplishment of these larger goals, it was widely considered, depended on the willingness with which decisions were accepted. For a large and increasing part of the economy, unions were the representatives of employees in dealings with management. If unions were to be expected to join with employers in efforts for more efficient production, there needed to be a common acceptance by both that they could and would work together.

In addition, insofar as the individual parties directly affected had to be subject to restrictions imposed from above, it was argued that their acceptance would be more willing if they considered that they had been directly represented in the making of the restrictions. Thus, the more that group representatives could be involved in decisions affecting their members, the more likely it was that the decisions would be willingly applied. Since the Government was involved in an unprecedented mobilization of the economy, it was of great importance to reduce to a minimum the Government's problem of securing compliance with decisions.

Finally, it was recognized that national decisions had to be made in quite general terms, particularly within the confused and varied area of industrial relations. On the basis of this conclusion, it was argued that the participation of group representatives would permit a flexible development and application of the rules without undermining the support for the general principles involved.

2. *Values of compulsion.*—There were contrasting values involved in governmental direction which were equally well recognized. The immediate, urgent, and fundamental objective of the Nation, at least by the time of Pearl Harbor, was the winning of the war. The Nation,

with almost complete unanimity, believed that all of our basic democratic principles would be seriously threatened if the war were not won. The people as a whole, and labor and management groups in particular, were ready to accept for the period of the war, such governmental restrictions on their liberties as they considered necessary in the interests of the greater immediate objective.

In this period, the decisions of labor and of management, in the fields both of negotiations and of wage levels, had an important effect on the national welfare as well as that of the groups directly involved. Where disputes arose that threatened the continuation of production, each side tended to agree in the abstract on the importance of continuous production, but to consider that concessions to avoid the deadlock should be made by the other side. In the field of wage stabilization not infrequently the two sides were ready to join in a decision which might well have solved their own immediate problems, but which would have damaging consequences for other groups or even for the economy as a whole. It was argued, therefore, that to be certain that the larger interests of the Nation as a whole were adequately recognized, the decision had to be made by Congress or the President rather than by the groups directly affected. Since the governmental machinery had to give adequate recognition to the interests of each of the directly involved groups as well as of the Nation as a whole, a governmental decision was not only necessary but could also be accepted as democratic.

The negotiated solution of a problem either by the parties directly involved, or by their group representatives, is generally a long and cumbersome process. The war needs of the Nation required not only a correct but also a quick decision. The entire war production program was based on the need for the rapid accumulation of war matériel. The substitution of governmental decisions for negotiated agreements, it was argued, would contribute to the speediest accomplishment of our war production goals.

Finally it was clear that the decisions avoiding work stoppages and stabilizing wages were only elements in the much more inclusive mobilization of the Nation for war. These particular decisions had to be made in the light of other decisions that either had been made or were in the process of being made. It was, therefore argued that the more decentralized the decision-making process, and particularly, the more it remained out of the hands of the governmental organization itself, the more difficult and cumbersome might be the administrative task of carrying through the total program.

B. COMBINING VOLUNTARISM AND COMPULSION

In each of the crises under study, the practical alternatives did not include either extreme. The practical problem in each case was to make a decision which gave proper weight to the values of both voluntarism and compulsion.

The Government tended to choose the minimum degree of compulsion possible. This was partly because the crisis arose within the framework of a voluntary system. It is true that the crisis arose in terms of the inadequacy of the voluntary arrangements, but it is also true that there was a strong attachment to the prevailing system and a reluctance to depart from it any further than necessary. This tendency to limit the move into compulsion was strengthened by the necessity for general acceptance of whatever changes were decided upon.

Obviously, a governmental decision that included any degree of voluntary acceptance of responsibility by labor and management depended on both the readiness and the ability of the groups to accept and successfully execute such responsibility. As a result, these decisions were not just governmental decisions; the groups participated in them. The Government's decision was in part shaped by the extent to which they were prepared, or even anxious, to assume such responsibility.

The ability of the groups, as representative of specific parties, to participate in decision-making and execution also was affected by the degree of their self-discipline. Any governmental decision to place any degree of responsibility in the private groups of labor and of management, therefore, had to be made in the light of a judgment that each group could in fact perform in line with its expectations and intentions.

The readiness of the groups to share in responsibility also depended on their judgment of the fairness of the proposed Government goals. The war effort was a combined effort of all elements in the Nation. It involved sacrifices of rights as well as of advantages for every group. An essential element of voluntary group participation in decision-making and execution, therefore, was the conviction that the Government goals were a reasonable approximation of an equality of sacrifices for all groups. Of course, this also required the conviction on the part of each group that the governmental goals were desirable.

Finally, the governmental decision, in each crisis, had to be made on the basis of a judgment not only of the attitudes and abilities of each group, but also of their group relationships. In the field of industrial relations, the problem before the Government involved both

the type of responsibility each group was prepared to assume to meet national objectives, and the extent to which they could and would agree on decisions capable of achieving those national purposes.

II. ASSURING DEFENSE PRODUCTION

A. CHARACTERISTICS OF THE CRISIS

The first crisis was limited to a small part of the economy. The defense program began to develop during the early months of 1940. It started slowly with the action of Congress and the Administration in making defense appropriations and in awarding defense contracts. In the last 7 months of 1940, \$10.5 billion of contracts had been awarded,⁵ which although very substantial by peacetime standards represented only a small fraction of the total production schedule of the Nation. The governmental need for uninterrupted production was even more narrowly focused, because many of these contracts were in plants for which alternative production facilities were available. As the program advanced, however, there were more and more plants on whose rapid and uninterrupted production the development of the program was dependent. This was in part because limited facilities were available for some materials and no alternative source of supply existed. In part it was because some of the basic materials on order were essential to the rest of the program.

Nor was this crisis universally recognized. There was still a large part of the population that considered it important for the Nation to avoid involvement in the European war. For these the defense program was reluctantly accepted as a necessary preparation for the possible contingency, but one which might be avoided and certainly one that was not too immediate. Although the Administration was less sanguine, even it was not prepared to move too rapidly in the war mobilization of the Nation. As a result, by March 1941, no requirement had been placed upon industry that it divert civilian production to the making of defense materials, and no system of priorities had been established to distribute basic materials.

Both labor and management were prepared to modify but not to abandon their own goals in order to achieve continuous production in defense plants. For the labor movement, the improvement in job opportunities and the economic advances that resulted from the addition of Government contracts to civilian production meant an opportunity to extend organizational efforts. The unions were provided with an opportunity to expand in many areas that were as yet un-

⁵ The United States at War, Bureau of the Budget (1946), p. 29.

organized. Where organization had already been achieved, the defense period provided an opportunity to secure gains that would strengthen and solidify the union position. To the unions this appeared as a natural and desirable drive for further progress toward their basic goals.

Labor considered such progress all the more desirable because it believed that many employers, despite the public purpose expressed in the National Labor Relations Act, had not fully accepted collective bargaining. Many employers appeared unwilling to accord to unions the status that they sought unless compelled to do so by economic action. The unions, therefore, feared that any move to impose restrictions upon them under the plea of the crisis would have the effect of limiting not only their economic advances but also their security within industry.

Within the labor movement there was a significant minority group that went even further in resisting any acceptance of the overriding character of the national emergency. This group considered that the Government's defense program was, in fact, an instrumentality for an imperialistic support for reactionary economic interests against the best interests of workers, both in Russia and in other parts of the world. Strikes initiated by local union leaders who held this opinion were some of the most serious at this time.

Management reluctance to accept the overriding character of the emergency was as extensive as that of labor. Management feared that the crisis would be used by labor as an opportunity to secure concessions which it considered undesirable and would otherwise be unwilling to grant. Such concessions, although serious enough in defense plants, appeared even more serious in their inevitable repercussions upon the much larger area of civilian production. And such concessions appeared equally serious in their continuation into the future after the crisis had passed.

These fears were not allayed for many managements when they contemplated the possible role of the Government in labor relations. They feared that the Government was far more susceptible to labor than to management pressure and that governmental action under the necessities of the crisis would result in undesirable labor advances. Even where this did not occur, many managements reasoned, there would be an unhealthy extension of governmental controls over labor relations that would be hard to eliminate in the future and that might at any time be applied contrary to their interests.

Neither side wished to interfere with the defense program. But each side in a particular deadlock tended to say that if the other would accept its position there would be no interruption of the program. Neither side in such deadlocks was prepared to compromise its own

interests beyond what it considered its needs and its power possibilities in deference to the defense program.

All reported work stoppages in United States, January 1940–December 1941

	Number of strikes in progress	Workers involved (thousands)	Man-days idle (thousands)		Number of strikes in progress	Workers involved (thousands)	Man-days idle (thousands)
<i>1940</i>				<i>1941</i>			
January.....	222	41	247	January.....	345	110	663
February.....	270	38	290	February.....	385	128	1,134
March.....	295	43	387	March.....	495	178	1,558
April.....	336	53	442	April.....	588	566	7,114
May.....	361	77	666	May.....	665	423	2,202
June.....	336	56	484	June.....	567	226	1,504
July.....	390	83	586	July.....	627	222	1,313
August.....	394	90	706	August.....	691	300	1,810
September.....	394	108	781	September.....	671	353	1,935
October.....	419	108	915	October.....	633	343	1,912
November.....	373	102	740	November.....	428	333	1,344
December.....	277	62	453	December.....	264	50	434

Source: U. S. Department of Labor, Bureau of Labor Statistics, Monthly Labor Review, vol. 54, No. 1 (April 1942), p. 945

As is indicated in the foregoing table and as was to be expected, there was a significant increase in the number of strikes during the early part of 1941.⁶ This increase resulted, on the one hand, from the considerable organizing success and enlarging bargaining power of labor, and, on the other hand, from the determination of many managements to resist any advance in labor's power and status.

The crisis, therefore, was that of stoppages in bottleneck defense plants where either labor or management was unwilling to accept the terms proposed by the other despite the urgency of the Government need.

B. THE GOVERNMENT'S DECISION

The Government decided to meet the crisis by the establishment, on March 19, 1941, of a National Defense Mediation Board (hereafter referred to as NDMB). In Executive Order 8716 the President called upon labor and management in defense plants to settle their disputes without stoppages and provided a tripartite board to assist them to reach this goal. There were five significant elements of the governmental decision that bear directly upon the general problem being considered in this chapter.

⁶ Of course, these strikes developed in relatively few of the defense plants. Many contracts were negotiated between labor and management without any stoppages, as both sides sought to reach agreement rather than to resort to economic force. Not infrequently deadlocks were successfully mediated by the U. S. Conciliation Service and the Labor Division of the Office of Production Management whose labor and industry consultants assisted the two sides. But even the few plants where strikes developed were too many for the defense needs of the Government. In early March 1941 strikes had stopped production of critically needed airplanes and in the limited facilities for aluminum manufacture and processing. Others were threatening.

(a) By the Executive order, the obligation of the NDMB and the parties was limited to disputes that "threaten to burden or obstruct the production or transportation of equipment or materials essential to national defense." This represented a relatively small segment of the economy. Only for this narrow area did the Government indicate that the normal processes of collective bargaining should be modified. The coverage of the Executive order was necessarily quite vague, and there was considerable uncertainty in the minds of the parties as to whether in a specific case production essential to the national defense was involved. The order specified a process of certification by the Secretary of Labor to the Board that provided to the parties, for the first time, an unequivocal determination of defense urgency.

(b) The order was based on the concept that the primary approach to the settlement of disagreements between management and labor would continue to be collective bargaining, even in crucial defense plants. Thus, the certification process to the Board was to be limited to those cases in which a deadlock had developed in the collective bargaining that could not be peacefully resolved by the parties.

(c) The Board was to proceed on a case certified to it by seeking through mediation to secure an agreement between the parties. Thus it was to try to find whatever terms would sufficiently satisfy both parties so that they would agree rather than resort to a stoppage.

(d) If by mediation the dispute could not be resolved, the Board was empowered to issue formal recommendations specifying the terms which in its judgment would be appropriate as a solution of the dispute. Even here, the parties were not to be compelled to accept the recommended solutions. The public announcements of its recommendations, however, were expected to enlist sufficient public pressures on both sides to force a settlement.

(e) The President appointed labor, management, and public members to the Board. By this action he expressed a governmental determination to achieve peaceful solutions. By the labor and management appointments he sought to place a direct share in the responsibility for peaceful dispute settlements on the groups themselves. As will be noted later, the role of the public members involved the mediation of disputes with the assistance of the labor and management members. The acceptance of these appointments by labor and management leaders represented their decision to accept responsibility to work out peaceful solutions.

Thus, in this first crisis, the President decided to depend almost exclusively on the voluntary actions of labor and management, through collective bargaining, the participation of labor and management representatives in mediation and in the making of recommendations and in the acceptance of recommendations. There was, however, a minor

element of compulsion in the President's decision to establish a board, the use of public representatives and the expected public pressure behind board recommendations.

C. EVALUATION OF THE WISDOM OF THE DECISION

1. *Eight months of successful operation.*—Implicit in the decision summarized above was the determination not to create a set of rules, obligations and procedures that would be directly applicable to any new kind of crisis that might develop. The Executive order asserted the Government need for continuous production and yet did not explain what would happen if the collective bargaining, mediation, and recommendation processes failed to achieve that result. The whole program involved the participation of labor and management representatives on the NDMB, but did not indicate what would happen if either of them refused to serve. There were stoppages in bottleneck defense plants that occurred during this period. The Government did not choose to define them as so seriously interfering with the defense program as to require an abandonment of the approach except in three cases where seizures were necessary. When, however, as we shall note below, the CIO withdrew from the Board in November, the Government had to consider the abandonment of its reliance on mediation and recommendations for the accomplishment of its goal.

The first and crucial test of the wisdom of the decision of March 19, 1941, was the resulting effect on stoppages. All of the first six cases referred to the Board involved stoppages which had been in effect for some time. In each case production was resumed within a few days of its certification to the Board. For the whole period of the Board's operation, 64 of the cases certified to it involved strikes which were already in progress at the time of certification. Thirty-six of these were ended before the Board heard the cases, and 12 more were ended before final disposition by the Board. By the second month of its operation, 98 percent of the workers involved in cases certified to the Board were at work during the processing of their case by the Board. Throughout the Board's life this figure never went below 88 percent, and during its final stages, the figure had reached 100 percent. These figures are the more remarkable when it is remembered that cases were certified to the Board only after the parties had become deadlocked in their own negotiations and the Conciliation Service and the OPM consultants had not been able to get the parties beyond that deadlock.

Yet, the record is by no means perfect. Not only did the percentage of workers on strike during the Board's handling of their cases range up to 12 percent, but in 24 of the 118 cases certified to the Board a stoppage originated after the case had been certified to the Board. In addition, in four of the cases, the Board found itself unable to

settle the cases, and had to refer them to the President. In three of these four cases the President judged the defense needs so urgent that he used Government force, in the form of a seizure of the properties, as a means of restoring production. And in one other case, the Board returned a certification to the Secretary of Labor because it considered it inappropriate to function in a dispute involving two competing unions of the American Federation of Labor.

A second and more fundamental test of this largely voluntary policy is the effect on production. Unfortunately it is impossible adequately to appraise that effect. It has been argued that the NDMB process had the result of encouraging the development of more powerful unions whose insistence on collective bargaining limited the freedom and flexibility of management. We are not able to appraise the significance of the Board in accentuating the development of unionism. Nor can we assess how significant were the resulting limitations on managements' production programs. Assuming, however, the inevitability of the strengthening of unionism in this period, the President's decision appears to have encouraged the development of more cooperative relationships between management and labor. The phenomenal progress made in equipping the country for war would appear to substantiate Dr. George Taylor's conclusion:

The "miracle of production" which the United States wrought, convincingly supports the soundness of the decision in favor of voluntarism and the tripartite board.⁷

There appear to be three basic reasons why this approach worked so successfully from March to November 1941.

(a) Both labor and management were willing to use the Board to find a solution to deadlock. Early in the Board's history, it began to use the device of urging both sides to resume production without any change in conditions until it could act on the case. In most cases, since labor was pressing for changes from previously existing conditions, this had the effect of urging upon labor that they delay using strike pressure until the Board had acted. The device was not used in every case, and in some cases, only after some preliminary exploration or adjustment seemed to provide a basis for the successful presentation of the appeal. In most cases, however, it was successful in causing a return to work, or a continuation of work, while the case was being processed by the Board.

As the statements of the participants made both at the time and in the postwar period indicate, this appeal was so largely successful because the parties preferred not to interfere with the national defense effort. The Board's positions were based on the Government's need

⁷ George W. Taylor, *Government Regulation of Industrial Relations* (New York: Prentice Hall, 1948), p. 118.

for production as demonstrated by the certification of the case. Trade-union leaders used the same appeal to their own membership. But it was also based on the belief of both labor and management that out of the Board's actions would come a settlement which they could both accept in lieu of further strike action. Clearly the appeal, of itself, would not have been significantly successful unless it had been backed by the prospect that a solution of the dispute would follow.

(b) The Board's mediation efforts were quite successful. Despite the fact that the cases came to the Board only after a deadlock had developed which conciliation efforts, including those of the consultants of the OPM, had been unable to surmount, the Board secured final agreements by mediation in 45 of the 86 cases which it concluded during its history.⁸ These mediated settlements involved 70 percent of the union security issues that came to the Board and a similar percentage of the wage issues in certified cases.⁹ In part, this mediational success was the result of the prestige attached to a presidentially appointed Board. In part, it was the result of the special skill of the mediators selected by the President. But, it would appear, that more than anything else it resulted from the tripartite character of the Board. In each case the parties appeared before a tripartite panel in which a public representative worked together with one or more representatives of each of the interest groups represented in the case. The partisan member frequently was able to secure a better understanding of the most urgent issues from the party with which he was identified.¹⁰ And each partisan representative on the Board added to this understanding an acceptance of a responsibility to secure a solution of the dispute. He therefore participated in working out a compromise formula that both sides could accept, and insisted to his own group that it be accepted.

(c) Recommendations successfully supplemented mediation. In 41 of the cases concluded by the Board, it was necessary to proceed to a formal recommendation. In 37 of these 41 cases, the parties accepted the Board recommendations.¹¹ In making its recommendations the Board did not proceed from any fixed principles, other than to find the basis upon which both sides could agree. Thus it took each case on its merits and sought to discover, and then to enunciate, terms that would meet the essential needs of each party. This ap-

⁸ U. S. Department of Labor, Bureau of Labor Statistics, Report of the National Defense Mediation Board, Bull. No. 714 (1942), p. 14.

⁹ *Ibid.*, p. 19. These were the issues most frequently involved in certified cases, and usually were the issues causing the deadlocks.

¹⁰ *Ibid.*, p. 21.

¹¹ *Ibid.*, p. 14. The tabulation included nine cases referred to the NLRB and three in which a dissatisfied party finally and reluctantly accepted the recommendations.

proach, as Taylor has noted,¹² involved something different from simply determining what would have been the result had a strike developed and continued as a test of relative economic strength. By virtue of the defense program each side had developed such economic strength that its full testing dangerously affected the needs of the country. For each side, therefore, the only possible settlement was something less than would appear to that side as the possible result of the full use of its power. If either side had insisted on the full equivalent of the result of its economic power, no solution could have been achieved without a test of that power in every case in which the same conclusion was not accepted by the other party. The insistence upon the conclusion of its economic power by either side would have resulted, therefore, in the failure of the Board to achieve a peaceful solution. As we shall see, when that insistence was made by the United Mine Workers, and concurred in by the entire CIO, it resulted in the dissolution of the Board itself. But until that crisis developed, the Board had been successful in finding and recommending formulae which settled many cases on terms that the parties were prepared to accept because they met what they considered essential needs, although less than they believed that their economic power might have gained for them.

As with the mediation process, the tripartite character of the Board was fundamental to the success of the Board in the use of recommendations. In working out a recommendation, the partisan members of a panel realistically presented the limits of the area of possible acceptance. The public members worked within these limits to develop, for each case, a formula that their colleagues, and then the parties, could be expected to accept.

A summary analysis of the recommendations of the Mediation Board on the primary issues of union security and wage increases will illustrate the Board's two guiding principles (*a*) to consider each case on its own merits, and (*b*) to find what the parties considered their needs and would accept in lieu of strike action. In the field of union security the Board recommendations were characterized by considerable variety, ranging from the closed shop to the omission of any provision beyond that existing in a previous contract. In the development of these recommendations the Board came to use most frequently (but not exclusively) a maintenance-of-membership provision. This provision was not just a compromise between two more extreme positions taken by the parties. It was a device to meet, on the one hand, what the union considered its need for protection as a substitute for the strike weapon, and on the other hand, what management con-

¹² *Op. cit.*, pp. 107-108.

sidered its obligation, not to impose union membership on such of their workers who had declined to join.

In its recommendations on wages, the Board's panels recommended a variety of different wage increase figures. In general, these were based on some approximation of the change in the cost of living. Attention was also paid, however, to present and prospective profits of the companies, the prospects of continuous or intermittent employment, and the comparison with the wage rates and wage increases enjoyed by comparable groups of workers.¹³

The record of the Board and the parties did not fully meet the Government's goal of uninterrupted defense production under a system of free collective bargaining in three respects.

(a) The Board was not able to handle union jurisdictional disputes successfully. Indeed, as we have noted, in a dispute between two affiliates of the AFL it returned the case to the Secretary of Labor and did not function on the case at all. Its tripartite character did not appear equal to the task of settling that internal labor dispute.

(b) Government seizure was necessary in three cases. The whole process of the Mediation Board set up in March 1941, was that of defining the defense urgency of specific cases and then providing a three-party mediational device for their peaceful settlement. If mediation had been completely successful no further governmental action would have been necessary. In three cases, however, the refusal of the parties to accept Board recommendations, the final stage of the Board's activity, made it necessary for the President to act.

The failure of the Board in these three cases primarily reflected the inability of the group representatives on the Board to secure the concurrence of their own local partisans. In two of the three cases, the panels of the Board had developed unanimous recommendations. The representatives of the groups sitting on the Board had come to agreement on terms which they considered sufficiently fair to the interests of each party to provide a basis for settlement. The refusal of one of the parties in each of these two cases (one of the recalcitrants was an employer and one a union) represented an unwillingness of the specific parties to accept the conclusion of their group representatives. The Government had to move in to enforce a group discipline that was not always strong enough to be effective.

As Dr. Taylor has noted,¹⁵ the necessity for Government seizure presented a dilemma to the Government and to the Board. If, as a result of seizure, the Board's recommendations were put into effect,

¹³ For a more complete analysis of the recommendations of each issue, see the Report of the NDMB, pp. 23-35, 64-67, 74-80.

¹⁵ *Op. cit.*, p. 112.

the result would be a close equivalent of compulsory arbitration. On the other hand, if the Board recommendations were not enforced, there would be no protection afforded to the party that had foregone the use of its economic power in favor of following the Mediation Board's procedures. And if there was going to be some other solution of the issues that caused the dispute, that could be achieved only by adding some additional and, therefore, superior mechanism to that of the Board. Such a result would have been to displace the Board as a board of final action, and transfer all of the difficult disputes beyond it. There was no resolution of this dilemma during the life of the Mediation Board. The Board itself¹⁶ wanted the issues decided by an enforcement of its recommendations, even though this represented a departure from mediation. In the only clear case that arose, however, the *Federal Ship* case, the Navy, as the operating agency, avoided an insistence of the union to enforce the maintenance-of-membership recommendation on the basis of which seizure had been effected. The return of the establishment to private management after Pearl Harbor was accomplished before the issue had been settled.

It may be doubted whether such an uncertainty could have continued indefinitely. Had the dissolution of the Board and the developments following Pearl Harbor not made the question moot, it would have been necessary to have resolved the dilemma in one way or another. Perhaps it would have been resolved, as it later was under the War Labor Board, by the enforcement of the Board's recommendations. This would have added a good deal of compulsory power to the Mediation Board. So long as enforcement was undertaken only at the request of a tripartite board, however, it still would have rested on the group consent for the actions of the Board. And so long as there was no certainty during the Board handling of the case as to whether the Government later would use compulsion, the Board could still have operated primarily on the voluntary acquiescence of the parties to its action in specific cases.

In any case, the process of the Board itself recognized the possibility that its recommendations could be refused by either party. The seizure action of the Government was in effect a prohibition of a strike against the Government, not against the individual employer.

(c) In a few cases the existence of the Board had the effect of reducing the effectiveness of collective bargaining. Since only a little over 100 cases were certified to the Board during a period of over 9 months, it is clear that the vast majority of the adjustments between management and labor continued to be made by collective

¹⁶ See Taylor, *op. cit.*, p. 112.

bargaining.¹⁷ Indeed, even in the certified disputes, most issues had been settled in negotiations. This suggests that in most cases the differences between them were not irreconcilable in the normal processes of negotiations, including the threat of strikes. Had a compulsory arbitration alternative been applied, it is reasonable to believe that a far greater number of cases would have been referred to the Board.

It is still true, as a questionnaire circulated by the NAM suggests,¹⁸ that there was some tendency for the weaker side in the bargaining process to decline to conclude an agreement in order to secure the advantage of governmental action. The inclusion of the public members on the Mediation Board meant that there was inevitably added to the bargaining of the two sides whatever weight the public members, backed by their power of making recommendations, wanted to give to whatever they considered the equities of the particular case. In addition, there tended to develop a process by which each side maintained during the bargaining a more extreme position than they were really prepared to insist upon, in order to aid the further bargaining process that was certain to develop within the Board operations after the case was certified.

2. *The practical dissolution of the Board.*—In its efforts to handle the *Captive Mines* case,¹⁹ the Board confronted a crisis which it was unable to surmount. The result was the dissolution of the Board. The crisis did not have any serious effect upon defense production; it was finally concluded with only a 2-day stoppage. It was significant primarily in demonstrating the limits of the voluntary approach within the framework of the defense situation.

The basic issue in the case was union security. The United Mine Workers were demanding that the union shop clause already included in the Appalachian agreement be accepted by the employers in the "captive" mines. The companies refused to go beyond the open-shop clause in the previous contract, under which an average of 95 percent of the miners were already members of the union. The Board was unable to bring them into an agreement.

Both sides were preoccupied with their own evaluation of the wider implication of any agreement. The UMW argued that in order to protect its future position after the emergency had passed, it needed the strength that the union shop would provide. The employers,

¹⁷ The BLS estimated that there were at that time some 40,000 contracts in force. During the 8-month period most of them were modified and renewed. Since the Board only received 106 cases, it is obvious that a very large number of contracts in defense plants were concluded without the help of the Board.

¹⁸ National Association of Manufacturers, *Employer Reactions and Opinions Concerning the NDMB* (New York, December 12, 1941).

¹⁹ The detailed history of the case and all of the basic documents are included in the Report of the NDMB, pp. 108-134, 268-275.

apparently, were concerned not only with the future effect upon the mines involved, but also with the possible effect upon the steel and other agreements to which they were a party and in the negotiation of which they had successfully resisted a similar demand. Although the employers finally acceded to a Board recommendation that the case be submitted to an impartial arbitrator, the union refused even this recommendation until after the case had passed beyond the Mediation Board.

Apparently each side considered that it had acquired a considerable increase in bargaining power since the contract had been negotiated 2 years before. The union in particular was unwilling to concede that the defense emergency made it desirable for them to accept less than they believed could be won by their enhanced bargaining power.

The record suggests that the Board made every effort to avoid taking a definite position on the merits of the issue. It twice acted by making procedural rather than substantive recommendations. It made formal recommendations only when the President in the role of mediator had returned the case in the hope that a substantive recommendation could lead to a conclusion of the controversy. The Board's reluctance is understandable. It found that the group representatives who were members of the Board, as well as the parties, considered the issue to have much wider significance than the individual case and the immediate settlement. For the employers the paramount issue was whether the case would lead to the general extension of the union shop or the closed shop in many industries not then covered. This would have represented an increase of union power in relation to the employer and to the individual employee that employers were anxious to avoid. To them insistence upon the demand meant an unfair advantage pressed by the unions because of the special bargaining position they had achieved due to the national crisis.²⁰ The union representatives saw in the issue the danger that the employers and the Government would fail to recognize the special responsibilities to avoid work interruptions which the defense crisis imposed upon them. The union leaders also feared that the crisis would be used to prevent unions from progressing toward a status in industry which they would have attained had the emergency not intervened.²¹

Thus, the case was not only a crisis in the sense that it threatened to erupt into a strike that would very seriously interfere with the defense program. Even more fundamentally, it was a crisis for the Board itself. As we have seen, the success of the Board had depended on the acceptance by labor and management, through participation on

²⁰ See the Fairless dissent from the final arbitration award of Dr. Steelman, *ibid.*, p. 276.

²¹ See dissenting opinion of Hugh Lyons, the CIO representative on the NDMB panel that handled the case. *Ibid.*, pp. 121-122.

a tripartite board, of the necessity for a negotiated rather than a strike solution of their deadlocks. A considerable number of cases involving union security had been successfully handled by the Board. One solution or another had been found which sufficiently met the needs of the two specific parties involved, and which had not committed the Board to a policy which it endeavored to get all parties to accept in every case. Despite the efforts of the public members of the Board,²² the group representatives came to think of any recommendation in this case as a conclusion committing the position of the Board in future cases. The Board was unable to achieve unanimity on this basis. The parties were not prepared to accept a formula which assumed that the fact of agreement was more important than the urgent considerations of principle which each held.²³

Faced with the necessity of making a choice as between the positions of the groups represented on the Board, the public members voted against the union-shop demand of the union in the particular case. The AFL members joined with the public and employer members in the final vote. The CIO members announced their resignation, saying that they no longer could have confidence in the impartiality of the Board.²⁴

Although the CIO members insisted that they would continue to avoid strikes if possible, they were obviously saying by implication that they would no longer forego strikes in favor of the tripartite mediation and recommendation procedure of the existing Board. Conceivably, the President might have sought to reconstitute the Board with a different public membership. But this was not a likely alternative because it would have appeared as a repudiation of the position of the public members. The President had gone even further than the Board majority in his subsequent handling of the *Captive Mines* case by saying that the Government would never order the so-called closed shop. It is also conceivable that the President could have convened immediately a bipartisan or tripartite conference in an effort to seek a general procedural agreement or means of resolving labor disputes. In view of the inability of the groups to find a common ground on the issue of union security in the *Captive Mines* case, this likewise could not have appeared as a real possibility at that time. It must be concluded that under the strong influence of the leader most directly involved in the specific case, the CIO was choosing to abandon its previously accepted responsibility to participate in the

²² Note particularly the language of the opinion in the final recommendation written by Chairman Davis, *ibid.*, pp. 122-126.

²³ It is clear from the Davis opinion cited in footnote 22 that the public members, on the other hand, were primarily concerned to achieve a mediated solution and were prepared to conclude the case by an agreement on either the union or the employer position on the union-shop issue.

²⁴ Dissenting opinion of Murray and Kennedy, NDMB Report, p. 134.

peaceful settlement of disputes in defense plants under the NDMB, presumably in the hope that whatever devices were later employed by the Government would be more favorable to them.²⁵

If the Pearl Harbor attack had not occurred soon after, the NDMB might have had to be abandoned by the Government. In the subsequent 4 weeks there was not enough crystallization of opinion to indicate what alternative might have been chosen.²⁶ However, it appears doubtful that the Government would have chosen a legal prohibition of strikes. Even in the war crisis a year and a half later, when Congress finally passed the War Labor Disputes Act, there was no strong inclination to adopt such a prohibition.

3. *Summary evaluation of the decision of March 19, 1941.*—The process of the tripartite NDMB was essentially voluntary, although Government compulsion in the form of seizure had to be used in three cases. By placing representatives on the Board, management and labor accepted the necessity for restricting their private actions toward each other in critical defense plants. When stoppages were averted or discontinued despite the fact that either side assumed that greater gains could have been achieved by such action, and when they accepted the mediation and recommendation functions of the Board, the parties to the disputes agreed that they would limit their efforts in accordance with the needs of the Nation.

For 8 months this essentially voluntary approach largely succeeded. During that period the groups demonstrated that, given the appropriate machinery, they were prepared to accept less than they might have won through economic action in order that their conflict might not interfere with the urgent national effort. During that time they achieved substantial peace in the defense plants, and established relationships which they considered most necessary, thus providing the basis for a phenomenal production effort. Clearly the results were better for the Nation than would have been an alternative system of compulsory arbitration, because the latter system would have replaced free collective bargaining by governmentally imposed standards of labor relations in defense plants. This approach had to be abandoned when the Board was unable to reconcile what each side considered its essential needs. Had there not occurred shortly thereafter (by the Japanese action at Pearl Harbor) a fundamental redefinition by the groups of the relative importance of their private needs in the light of the national emergency, some new approach would have had to wait on the development of a new and more basic agreement between the Government and the interest groups. We have concluded that that could not have been achieved immediately.

²⁵ In the *Captive Mines* case there was indeed a more favorable solution in the Steelman Arbitration Award, which decided in favor of the union demand, *ibid.*, p. 272.

²⁶ Murray did propose a basis for reviving the NDMB, but this was never fully considered because the outbreak of war substantially changed the situation. See ch. 6.

III. SETTLING ALL DISPUTES WITHOUT STOPPAGES

With the attack on Pearl Harbor, the Nation had to make a second crisis decision in industrial relations. Nearly a month earlier, the CIO resignations had made the Mediation Board practically useless and simultaneously had demonstrated that peace on the industrial relations front could not be assured through that mediation machinery because there was at least one issue on which each side apparently was ready to deadlock negotiations.

A. CHARACTERISTICS OF THE CRISIS

1. *Increased production needs.*—With Pearl Harbor the production needs of the Nation had to be suddenly and drastically revised upward. Prior to this time the country had been preparing to defend itself at some indefinite time in the future, if it became necessary. Now it had to beat off a series of attacks and fight a series of delaying actions in which one defeat after another was suffered before there was any hope of turning to the attack. One of the basic determinants of the severity and significance of the defeats, and of the time and significance of later offensive actions was the amount, quality, and timeliness of military equipment. Already the country had been devoting 15 percent of the industrial production to war material.²⁷ Within the subsequent 6 months 100 billion more were appropriated, and an additional 60 billion were added within the following 4 months.²⁸ Congress made credit available as rapidly as the economy of the country could absorb it in the direct and indirect production of munitions of war.

2. *Psychological change.*—The Pearl Harbor attack also caused a profound psychological change. As the Budget Bureau report summarizes:

The attack at Pearl Harbor put an end to the inhibiting doubts that beset our national policy and action during the preceding year * * * all were ready to exert every effort and to make sacrifices for eventual victory. There was a single national program as clear and dominant as can be found in the history of any people.²⁹

3. *Prospect of stoppages.*—There were no laws or machinery to assure the country that the enormous production needs would be met without serious stoppages. The Mediation Board had broken down on a critical issue. It had been unable to find a formula that secured general acceptance. Existing laws, designed primarily to encourage collective bargaining, were inadequate to deal with labor dispute problems in a war economy. The history of the past year had already indicated that there was an increasing tendency for negotiations to

²⁷ Bureau of the Budget, *The United States at War* (1946), p. 103.

²⁸ *Ibid.*, p. 112.

²⁹ *Ibid.*, p. 103.

result in deadlocks as each side considered that the effect of the military production program was to strengthen its bargaining position.

4. *Alternative approaches possible.*—Under such circumstances the Government had to act. It was obvious that it had to insist, as a fundamental of industrial relations in wartime, that stoppages should be abandoned. The only question before the Administration was the method to be selected to reach that goal.

Two different alternatives were being suggested in Congress. A bill by Senator Ball would have prohibited strikes and required the resolution by compulsory arbitration of any unsettled issues. A bill by Representative Smith had already passed the House, and was being seriously considered by a Senate committee. Although less extreme than the Ball bill, it would have required, among other things, a compulsory cooling-off period, a majority vote of the workers before a strike was permitted, the freezing of existing union security provisions unless there was an agreement for a change, the registration of unions, and the submission of their financial statements. It is important to note that although the Smith bill would have imposed by law a number of restraints on the collective bargaining process, it permitted strikes, even in urgently needed military production, if negotiations and the cooling-off period were unsuccessful.

A third alternative was also being discussed. It was the proposal, publicly advanced by both the AFL and the CIO and formally discussed within the administration, of a no-strike, no-lockout agreement reached by a labor-management conference. This would have been an effort to revive and carry forward the voluntary approach of the Mediation Board. Up to December 7, however, this approach had not been adopted, apparently because of the fear within the administration that such a conference could not reach an agreement on methods for the solution of disputes without strikes and particularly on a method or principle for the solution of the difficult union security issue.

Under the different circumstances created by Pearl Harbor, the administration reappraised the significance of the experience of the Mediation Board. That experience had demonstrated:

(a) There is great value in the most extensive possible dependence on collective bargaining. Most of the negotiations in defense plants had been successfully concluded without reference to the Mediation Board. Not only were these negotiations concluded peacefully, but they also may be assumed to have resulted in a realistic agreement on terms under which both sides were prepared to cooperate.

(b) There were great values in tripartitism. At least during a period when strikes were not prohibited, the labor and industry members were of great value in achieving mediated settlements of deadlocks. Where recommendations were necessary, the tripartite Board worked

out a set of terms that were quite realistic, and, in almost all cases, succeeded in getting the parties to accept them.

(e) In most cases, labor and management would accept an alternative way out of their deadlock instead of a stoppage if they were convinced of the national necessity for such action and had confidence in the machinery. The experimental development of the appeal to remain at work while a case was being handled by the Mediation Board had demonstrated that in most cases even where neither side would give in to the other, they were still prepared to accept a patriotic duty to avoid a strike.

(d) On the other hand, there were limits to the voluntary acceptance by labor and management of a peaceful solution of their deadlocks. Although accepting the urgency of continued production, each party to a deadlock tended to insist that further compromising be done by the other party. Where the Board could not convince both sides of the fairness of a compromise settlement, the parties had to be convinced that the national urgency was greater than their own particular interest. Two issues, wages and union security, gave the Board most trouble in this connection. Although wages were a frequent cause of a deadlock, the Board was able to find an acceptable compromise on this issue. However, this had been achieved by a constant upward adjustment in wage rates. On union security, however, the Board had not been completely successful. The dissolution of the Board on this issue indicated that each side was inclined to place the responsibility for the deadlock on the other side. The whole approach depended on the degree of self-discipline of the parties. Representatives of both groups were on the Mediation Board because they recognized the necessity for the peaceful adjustment of certified disputes. However, they were not always able to secure the agreement of the parties involved in the specific case. The strikes that occurred or continued while the Board had the cases, and the necessity for seizure in three cases, indicated that not all labor nor all management could be induced to follow the leadership of their representatives on the Board.

B. THE GOVERNMENT DECISION

1. *Call for a conference.*—Instead of the alternatives proposed in Congress, the Administration chose to try the voluntary approach in the hope of securing a more sweeping and more effective elimination of strikes. The President acted on December 12 by calling a Labor-Management Conference for December 17, 1941. He invited 12 AFL and CIO leaders whose names had been suggested by the federations and an equal number of leading employers whose names had been

selected after informal consultation with business associations. In the conference call the President specified the Government need that there should be no stoppages of war production. He asked the participants to agree to forego strike action and to recommend some machinery that could settle disputed issues.

Obviously, the Government decision was not irrevocable. Congress postponed action on any alternative approach only until this voluntary approach had been attempted. The decision depended upon an agreement by the conference that would be satisfactory to the Government.

2. *Conference agreement.*—As the conference began,³⁰ the participants advanced proposals that indicated considerable differences regarding just what the conference should agree upon. Early in the conference there was a CIO proposal urging the establishment of industry-wide tripartite councils whose responsibilities would have been far broader than the settlement of industrial disputes. It was not supported by the other groups. Late in the conference, another CIO proposal suggested the elimination of profits on war contracts. Presumably this was not so much a substantive as a tactical proposal designed to highlight a contrast to the employers' insistence on a moratorium on union advance in the area of union security. The proposal was formally supported by the AFL, but defeated, in a tie vote, by the opposition of the management representatives.

Both labor and management made proposals for the establishment of procedures for the settlement of disputes. These were based on a common acceptance of the President's position that there should be no work stoppages during the war. Both a combined AFL-CIO proposal and a resolution of the management representatives advocated that differences should be adjusted by collective bargaining, and by mediation if necessary. They also agreed on a national board on which both interest groups should be represented. The labor proposal was for a bipartisan board with a public chairman. The management proposal was for a fully tripartite board. The labor proposal went no further than the device of recommendations by this national board. The management proposal contemplated the appointment of arbitrators, but assumed that these would function only when the parties agreed to abide by their decisions.

The subsequent proposal of the Associate Moderator, Senator Thomas, was designed to bring the parties to agreement. It provided simply: (1) There shall be no strikes or lockouts. (2) All disputes shall be settled by peaceful means. (3) The President shall set up a proper War Labor Board to handle these disputes.

³⁰ For the factual material summarized in this section, see U. S. Department of Labor, *The Termination Report of the National War Labor Board* (1948), vol. II, pp. 1036-1042 (hereinafter referred to as *The Termination Report*). Also see ch. 2 of this study.

The labor representatives urged the adoption of the proposal. The management representatives countered by moving the addition of a single principle that the Board should not consider any proposal to modify existing union security provisions previously agreed to by a union and employer and that the unions should not attempt to change any such provision except by voluntary negotiations between the employer and the labor organization concerned.

The labor motion in favor of the Thomas proposal was rejected by a tie vote. The management proposal for the Thomas proposal plus their union security principle was rejected also by a tie vote. With the Conference thus in a deadlock, the Moderators reported to the President. The President responded by welcoming the agreement on the three points described above and then observing:

Government must act in general. The three points agreed upon cover of necessity all disputes that may arise between labor and management.

Clearly the President by this device was attempting to achieve an agreement where none had yet been consummated. His action could have been rejected by the management representatives. But they were in a difficult position. They had already accepted the desirability of the elimination of stoppages and the settlement of disputes by a tripartite board. They had hoped that the President's previous statement in the *Captive Mines* case would lead him to agree with their position on union security. But instead he had left the matter to be determined by the new board, on which management would be represented. A few hours later, therefore, they issued a public statement, saying:

The employer members of the conference accept the President's direction for the peaceful settlement of disputes and the establishment of a War Labor Board * * *. We believe that, in determining the procedure of the Board, consideration should be given to the principle we have consistently maintained. * * *

Thus an agreement was reached. The Conference discussion laid the basis for the agreement, but it was only achieved after the President used the prestige of his position to insist on the terms of the agreement, and the employer representatives accepted the position of the President. The agreement clearly included the provisions that stoppages should be eliminated, and that a tripartite board should be established to settle disputes.

3. *Establishment of National War Labor Board.*—Three weeks later, on January 12, 1942, the President completed the decision, jointly made by the Government and the interest groups, by Executive Order 9017 establishing the National War Labor Board.³¹ The order begins by the President's declaration that—

³¹ The order is given in full in Termination Report, vol. II, pp. 49-50.

* * * the national interest demands that there shall be no interruption of any work which contributes to the effective prosecution of the war * * *. It bases the new Board on the conference agreement by noting, * * * as a result of a conference of representatives of labor and industry * * *, it has been agreed that for the duration of the war there shall be no strikes or lockouts, and that all disputes shall be settled by peaceful means, and that a National War Labor Board be established for the peaceful adjustment of such disputes * * *.

The order recognized the readiness of the representatives of the interest groups to participate in the execution of their agreement by the appointment of labor and management as well as public representatives on the Board:

There is hereby created * * * a National War Labor Board * * *. Four of the members shall be representative of the public; four shall be representative of employees; and four shall be representative of employers.

The procedures for the administration of the no-strike, no-lockout agreement were established in the order.

The procedure for adjusting and settling labor disputes * * * 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. * * * After it takes jurisdiction, the Board shall finally determine the dispute, and for this purpose shall use mediation, voluntary arbitration, or arbitration under rules established by the Board.

There were many who were not sure that the decision would work satisfactorily. They thought that some compulsory alternative would shortly be necessary³² because of the deadlock on union security, the breakdown of the Mediation Board, the much greater urgency for the avoidance of stoppages, the probability that the new Board would have to function as an arbitrator in many cases, and the probably increasing difficulty of wage decisions. In addition, it was not certain how many members of each group would accept the decisions of their representatives.³³

C. EVALUATION OF CONFERENCE DECISIONS

1. *Record of stoppages.*—The President, in his call for the conference and in the subsequent Executive order, had declared continuous production as the primary Government need. The most significant single criterion, therefore, in judging the labor, management and

³² See references to Leiserson and Wyzanski speeches in ch. 2.

³³ Although the AFL and the CIO had nominated conference participants, these had no constitutional authority to commit the international and local unions. The authority of the employer participants was even more indefinite, since the business associations that had been consulted had no specific role in collective bargaining.

Government decision, is the record of continuity of production. As indicated in the following table,³⁴ the record was by no means perfect. During each of the war years there was a considerable number of strikes in cases that sooner or later were before the War Labor Board. The number of these cases rose in 1943 above 1942 levels and rose again in the following year. The number of workers involved and man-days idle were also very considerably higher after 1942.

Work stoppages of concern to NWLB,¹ January 1942–August 1945

	Stoppages	Workers involved (thousands)	Man-days idle (thousands)
1942.....	420	238	818
1943.....	1,439	1,288	11,302
1944.....	1,629	961	4,867
1945 ²	869	837	6,563
Total.....	4,557	3,324	23,550

¹ Stoppages which developed in disputes certified to the NWLB either after the stoppage had been concluded, while it was in progress, or before the stoppage had developed.

² Through August.

Source: The Termination Report, vol. II, pp. 822, 825, and 827.

But the record cannot be evaluated properly until seen in perspective. Compared to the total number of days devoted to war production, only a very small percentage of production days was lost,³⁵ never rising above 0.17 percent. Furthermore, the record has to be appraised in the light of the existing strains in industrial relations. This was a period of unprecedented growth in union organization and therefore of increasing possibilities of friction between labor and management. It was a period in which the bargaining power of individual workers and organized unions expanded enormously. And it was also a period when rising living costs and other pressures made labor increasingly restive. Finally, and perhaps most fundamentally, management in many plants had not accepted the union as either a desirable or a permanent participant in industrial relations decisions. Against these considerations we must also note that both labor and

³⁴ It should be noted that the table does not include all work stoppages that occurred during the war. Of the 14,896 stoppages (involving 6.7 million workers), only 29.2 percent ever came to the attention of the NWLB (Termination Report, vol. I, p. 533). Many of the other stoppages were not considered important to the war program. Many others were of short duration and were settled by the parties themselves or with the help of Federal and State conciliation and mediation agencies.

³⁵ It will be recognized that these figures do not accurately reflect the full significance of stoppages. Many of the stoppages slowed down the flow of necessary materials to other plants and therefore caused the loss of additional production time. On the other hand, a number of the stoppages included had very little effect on production schedules because the material was not immediately needed or because later production more than made up for lost time.

It may also be noted that Witte concludes: "During the war the record [of strikes] in this country was at least as good as in these foreign countries [Great Britain, Australia, New Zealand, Canada, Sweden]." E. E. Witte, "Experience With Strike Legislation Abroad," *Annals of the American Academy* (November 1946), p. 145.

management were solidly back of the Government's war program and were prepared for sacrifices to make their maximum contribution to it.

We cannot be certain just how much disruption of production might have occurred if the Government had followed any different approach. But, judging by the period of the First World War, we may conclude that in the absence of the no-strike, no-lockout agreement, including the agreement to be bound by the decisions of the Board, there would have been a great number of stoppages, many of them far more severe than those that did take place.

It would appear that the strike record was fairly satisfactory from the standpoint of the Government. In 1943 when Congress debated and finally passed the War Labor Disputes Act, it demonstrated its acceptance of this record by supporting and underwriting the Board and by refraining from imposing a more completely compulsory alternative approach. Among the many thousands of collective bargaining negotiations³⁶ that occurred in war plants during the war, only about 20,000 came to the Board as disputes and only about 20 percent of these became strikes at any part of the negotiation and arbitration process.

Some of the more important reasons for the relative success with which stoppages were avoided during the war are dealt with below. They will be found in the factors underlying the acceptance of Board Decisions, the substantive agreement achieved through the Board on formulae for wage, union security and other issues, the development of compliance and seizure procedures, and the continued vitality of the process of direct collective bargaining. One particularly important reason for the relative success of the program was the practically unanimous acceptance of the Board's practice not to process disputes while a stoppage was in effect. This policy had been experimentally developed by the NDMB and was adopted in the early days of the NWLB and was continued throughout its life.³⁷ It is true that the policy had to be supplemented on occasion by preliminary adjustments between the parties that would provide a reasonable basis for the continuation or resumption of work pending a settlement of the basic issues. In addition, it frequently had to be implemented by

³⁶ No available statistics permit even a close approximation of the number of negotiations that were concluded during the war and that might have gone to the Board if either party had caused a deadlock. If we assume that there were over 50,000 agreements in effect during the war, that most of these were in establishments and involved workers that were assumed to be covered by the no-strike agreement, and that these were renegotiated each of the 3½ years from January 1942 to August 1945, over 150,000 negotiations would be involved. If we also add internal wage adjustments and wage-reopening clauses within the term of the agreements and grievance and other deadlocks (some of which are represented in the total Board cases), the total potential deadlocks that might have been certified to the Board is probably well over 250,000.

³⁷ Termination Report, vol. I, pp. 68-70. As this report notes, the only significant exception to this policy was that made in the approval of the coal agreement reached between the Secretary of the Interior and the United Mine Workers in 1943.

the techniques of persuasion or insistence on the part of the Board its interested members, or its staff. But the Board's refusal to decide disputed issues while a stoppage existed was a powerful weapon in securing the application of the no-strike, no-lockout agreement.

2. *Acceptance of Board Decisions.*—The record could not have been achieved had not the parties generally accepted the obligation to refrain from striking and from lockouts and to accept Board decisions.³⁸ A public member of the Board reported in January 1943, that no strikes in war plants had been authorized by international union officers and that the Board's labor members had frequently urged the avoidance or discontinuance of strikes on their own constituents.³⁹ Indeed, both labor and management members of the Board often urged acceptance of Board orders because of the obligation of the no-strike, no-lockout pledge. In all but two or three of the cases of non-compliance with Board orders, the Board unanimously condemned the recalcitrant party.

Chairman Garrison concluded in his introduction to the Board's Termination Report that the tripartite character of the Board was a significant factor.⁴⁰ The participation of labor and management representatives assured the parties to a deadlock that their case would be adequately considered by persons conversant with the points of view and technical problems of the parties. The determination of all groups on the Board that the majority decision of the Board should be accepted reflected their will to make the Board machinery work. Finally, the public members moved within limits that the partisan members could accept. These limits were determined in part by the problems presented and the pressures developed in the individual case. In part, the limits were determined by the wider implication for each group of the principle being developed or applied in the individual case. Within these limits, the public members brought the partisan members into agreement or at least acquiescence on case decisions and policies which they considered would safeguard the continued acceptance by both groups of their voluntary no-strike, no-lockout pledge, and at the same time were consistent with the public interest.

3. *Acceptance of a formula on union security.*—But the Board could have been successful only by finding a way of reconciling the pressures of the two sides that made the union security and wage issues the dominant and most urgent ones. In the first months of the Board's operation, the union security issue was the most difficult. It had resulted in the dissolution of the Mediation Board and had deadlocked the con-

³⁸ In the 95 percent of the 17,650 disputes cases closed "the decision of the Board resolved the disputes without further threat to production." The Termination Report, vol. I, p. 415.

³⁹ Speech of Wayne Morse, January 17, 1943, The Termination Report, vol. II, p. 506.

⁴⁰ For a consideration of alternative methods of constituting a board, see ch. 6.

ference. Some progress toward a solution had been made by the Mediation Board in the development of the maintenance-of-membership formula, but that had not been sufficient to prevent either of the crises referred to above.

In its handling of the union security issue, the Board went through a number of steps before arriving at a stable and acceptable solution. Its first step was the agreement of all members that the Board had the authority and responsibility of making a decision on the issue. It then went through a long series of discussions and case decisions experimenting with various formulae until a standard policy was finally achieved.⁴¹

This whole process was significant because:

(a) The public members earnestly sought to find the basis for a unanimous agreement. This was temporarily achieved, but industry representatives later returned to dissenting on the issue. However, the employer members participated in the unanimous decision that the issue had to be acted on by the Board.

(b) The resulting maintenance-of-membership formula protected the urgent needs of both parties. It permitted the employer to hire whom he pleased and did not require him to compel any employee to become a union member. On the other hand, it assured the union that their strength and status would be protected and it gave them the disciplinary authority they needed.

(c) It resolved the crisis so that neither side withdrew from the Board, and both labor and management representatives continued to insist that the agreement should be kept and the Board orders accepted. Thus, by August 1942, when the Board formula had been fully developed, union security was no longer an issue that threatened to destroy the Board.

4. *Agreement on wages.*—Because wage rates were a basic factor in most disputes, agreement on the wage issue was equally necessary if the voluntary approach was to work. We have seen that the Mediation Board had handled this issue by obtaining agreements for substantial increases in wages; indeed, by trading off other issues through the device of an agreement on a wage increase. We have also seen that the Mediation Board had used a variety of standards for wage adjustments, including profit levels and prospects, and wage levels that had been reached by agreement.

With the war and the establishment of an agency empowered to make binding awards, settlement of the wage issue became much more difficult. The Conference had established no principles for the war-time adjustment of wages,⁴² and indeed the participants apparently

⁴¹ The Termination Report summarized these steps, vol. I, p. 82. See also ch. 2.

⁴² See ch. 2.

assumed that the new Board would proceed on this issue much as had the Mediation Board. But in making its wage decisions, the Board could no longer rely on the test of whatever the two sides would accept. Since it had final authority in dispute cases, it gradually came to the conclusion that it had to develop standards which could be applied to future as well as present cases. In addition, it had to give some leadership in the standards that would be applied by the parties in all wage negotiations.

Not only did the tripartite Board extend the Conference agreement by the incorporation of a stabilization objective, but, in the subsequent months before congressional action establishing a national policy of wage stabilization, it developed the basic concepts for the wage stabilization program by its handling of dispute cases. These concepts of maladjustment, inequities and substandards were developed on the basis of a flexible wage stabilization program which would help minimize inflationary pressures without seriously interfering with stable industrial relations and the most effective expansion of war production.

Even before the President and Congress were prepared to require a general stabilization of all prices and before there had been any move to control voluntary wage changes, it had been demonstrated that wage disputes could be worked out on a voluntary basis within at least some stabilization limits.⁴³

Although union security and wages were the most frequent, and usually the most controversial issues, the Board succeeded only because it worked out with equal success a considerable number of other issues. These are briefly summarized in the appendix to chapter 2.

5. *Compliance and the use of the power of seizure.*⁴⁴—The record of nearly continuous production was achieved largely because of the determination of the parties to abide by the no-strike, no-lockout agreement and their readiness to accept the results of the tripartite adjudication of the disputed issues by the Board. Over 95 percent of the dispute cases handled by the NWLB were thus resolved without any further threat to production.⁴⁵

But, in order to protect the whole structure of the agreement, the Board and the Government found it necessary somehow to achieve

⁴³ There was a great deal of pressure on the Board, including its labor and management members, to work out such limits. Some of these pressures were expressed in the Emergency Price Control Act of January 31, 1942, the President's stabilization message of April 27, 1942, and the general maximum price regulation. See ch. 3.

⁴⁴ Throughout this study the words "compliance" and "enforcement" are used in the sense used by the NWLB. The Board's distinction between "compliance" and "enforcement" is significant. The Board referred to its problem of securing acceptance of decisions in dispute cases as "compliance" because it sought a voluntary acceptance of the obligation imposed upon the parties by the no-strike, no-lockout agreement. It referred to the "enforcement" of its wage stabilization actions, because its procedures in the area were based on the Stabilization Act, Taylor, *Op. cit.*, p. 170. See also ch. 10 of this study.

⁴⁵ The Termination Report, vol. I, p. 415.

substantial compliance in the remaining cases as well.⁴⁶ The Board's experience demonstrated that it could successfully handle most non-compliance cases by persuasion. In many of these cases, noncompliance was based on a misunderstanding of the Board order, frequently because of vagueness or confusion in the wording. Clarification frequently brought compliance. Other noncompliance cases were based on disappointment and resentment with a Board order. Such emotional reactions were usually tempered, after a short interval, on the advice of company or union leaders. In still other cases, although the aggrieved party never became reconciled to the decision of the Board, the decision was accepted finally as a patriotic duty in view of the war emergency. Thus, in most of the noncompliance cases the judgment of the parties was modified, and acceptance of the Board order eventually was accomplished.

In order to secure this voluntary compliance, the Board followed a number of procedures. Underlying all such procedures was the unanimous position of the Board that compliance by both parties should follow its order regardless of the fact that there may have been a minority dissent in the Board on the terms of the order. One successful Board procedure was to arrange discussions with the parties. Another was the issuance of appeals by the Board or its staff members to employers, or to union members, local union leaders and especially to international union officials. The Board frequently depended also on its own labor and industry members to urge compliance upon a recalcitrant party. Occasionally, the Board proceeded to stage a public show-cause hearing. By this latter device it was able either to secure compliance by focusing public attention on the importance of compliance or by modifying its order.

However, this program alone was not completely successful. Although these voluntary procedures eventually accomplished compliance in most cases, sometimes success was achieved only after considerable delay. More serious was the fact that, for some 200-300 cases, voluntary compliance was never achieved.⁴⁷ A great many of these were small cases which involved only a few employees and did not have an urgent effect on the war production program. But a few cases greatly endangered the war production program. The bulk of these involved wages or union security.⁴⁸

One proposal for dealing with such cases provided that Board orders would be enforceable through the courts. During the congress-

⁴⁶ The Termination Report, vol. I, p. 416. Note, for example, the statement of the industry members.

⁴⁷ E. E. Witte, "Settlement of Wartime Labor Disputes," *Harvard Business Review* (winter, 1947), p. 169.

⁴⁸ A statistical analysis of types of issues for a group of cases referred by the Board to the President or Stabilization Director is given in Termination Report, vol. I, p. 425.

sional debates that climaxed in the passage, over the President's veto, of the War Labor Disputes Act in 1943, there was considerable discussion about enforcing Board orders by permitting the Attorney General to seek a court injunction against a noncomplying party. An amendment to this effect was defeated in the Senate, and another proposal (permitting the use of an interim injunction to maintain the status quo while the Board was acting) was defeated in the House. The Board recommended against such procedure both because it feared the result would be extensive delay in the final application of its orders and because it preferred to place the emphasis on voluntary compliance, as well as for other reasons.⁴⁹

In the last months of the war, noncompliance with Board orders became somewhat more significant. The public members of the Board even considered a change from their earlier position. They debated whether it might not be desirable for the Board to have the authority to apply to a special Emergency Court for the judicial enforcement of such of its orders as might be necessary. This proposal was never acted on by the Board. It probably could not have been applied without a considerable weakening of the voluntary basis upon which Board orders were accepted during most of the war period because it would have tended to shift the emphasis from voluntary compliance to legal enforcement. It also would certainly have required changes and delays in the procedure utilized for processing cases.⁵⁰

Although the device of court enforcement of Board orders was not used, there had to be some way to deal with those noncompliance cases that involved actual or potential interruptions in important war production. Several devices were tried. Each of these involved referring cases to other executive agencies of the Government. Under this arrangement, when the voluntary procedures of the Board failed, compulsory powers of the Government were imposed at the discretion of the Director of Economic Stabilization or the President after the Board had reported its inability to achieve continuous production.

Only about 100 of the 17,650 cases decided by the Board remained after all its voluntary efforts had been concluded which were considered sufficiently serious to be referred by it for additional action.⁵¹ Many of these were sent to the Director of Economic Stabilization in accordance with Executive Order 9370 of August 1943. It was hoped that the application of economic sanctions might secure compliance in most of these cases. Under this order it was possible to suspend favorable provisions ordered by the Board so long as the union and the workers failed to comply; to suspend war contracts, material priori-

⁴⁹ See *The Termination Report*, vol. II, pp. 452-62.

⁵⁰ See statement of Chairman Davis, *ibid.*, pp. 461-462.

⁵¹ No exact figures are available. This estimate is made by Garrison, *The Termination Report*, vol. I, p. 27.

ties, or manpower referrals from noncomplying employers; to withdraw draft deferments from noncomplying workers. In the few cases in which these devices were tried, they did not prove to be very effective. There was either considerable doubt about their legality, or they appeared to have little persuasive power, or the Government hesitated to apply them because of basic production needs.⁵²

Only 46 of the remaining most urgent noncompliance cases were sent to the President for his final consideration. Six of these were settled by an appeal from him to the noncomplying party. In each of the other 40 cases the President ordered the seizure of the property and at least the token operation of the property by the Government for as long as noncompliance continued. This device, it will be remembered, had already been used four times in support of actions of the NDMB. Until 1943 the action was based exclusively on the war powers of the President and subsequently on the additional authority of a provision of the War Labor Disputes Act.

Of the 40 seizure cases that developed during the life of the NWLB, 19 arose from employer noncompliance and 21 from union noncompliance. In practically all of these 40 cases, production was resumed or continued following the seizure. Where seizure had developed because of an employer refusal to comply with a Board order, the Government agency operating the plant put the order into effect, and, if a modification of the Board order later appeared to be desirable, it applied to the Board for approval. If the noncomplying party was the union, strike action was usually dropped when the flag was hoisted above the seized property. The War Labor Disputes Act did provide for penalties against the union and its leader for a strike against the Government, but this was invoked only once and applied only to a few local leaders.

There were at least four important cases in which seizure was only partly successful or was considered useless to attempt. The most significant of these was the *Bituminous Coal* case of 1943.⁵³ In that case there were three short strikes despite the fact that the properties had been seized and were being operated by the Government. On one of these occasions the President threatened to induct miners into the Army. The case was finally settled only after the Government negotiated an agreement with the United Mine Workers and the Board approved the agreement despite a continuing strike. In the *Montgomery Ward* case of 1944 the Government was able to apply the Board decisions only after overcoming the most difficult kind of operating and legal problems subsequent to seizure of the property. In cases late in the war period involving the Musicians' Union and the Typo-

⁵² The Termination Report, vol. I, p. 424.

⁵³ For a detailed description see The Termination Report, vol. I, pp. 1079-1120.

graphical Union, the Government failed to secure compliance but elected, for a variety of reasons, not to apply seizure procedures.⁵⁴

In recapitulation, the parties voluntarily accepted the Board's orders without challenge in the vast majority of the cases. Even where there was an original noncompliance, in most cases the persuasion of the Board was successful in securing compliance. Some other cases were ignored as unimportant. In a small number of cases forceful measures were necessary. Although other devices proved impractical, seizure proved to be largely successful. Even seizure or its threat failed to win compliance on a few occasions. The problems of compliance were becoming increasingly serious toward the end of the war, particularly in industries not closely tied in with the war effort.

In part, the Board's success was due to its tripartite character, which contributed to the realism of the original decisions and the effectiveness of appeals for compliance. In part, voluntary compliance resulted from the desire of both sides to retain the Board structure and to conform to the patriotic attitudes of the community. It is somewhat unlikely that either the compliance or the production record would have been as good, had the Board and the Government depended more largely on coercive authority to secure the application of Board decisions.

On the other hand, there is sufficient evidence to suggest that the voluntary system would not have continued to work effectively if the few recalcitrants had not been brought into line by the use of the Government's seizure power. Such power, it should be noted, appeared much more absolute and final than it really was. When applied against a recalcitrant employer, it certainly resulted in the application of the Board order. But, as the Montgomery Ward case indicated, the application might be long delayed, and even then fail to achieve the substantive result intended. This latter conclusion is also suggested by the fact that of the 19 seizures for employer non-compliance 12 had to be continued until the end of the war because the employer never did accept the Board order. When seizure was applied against a recalcitrant union, it depended largely on the patriotic appeal of the flag. The bituminous coal case highlighted the fact that even this appeal was not always completely effective, and had to be used sparingly to be effective at all. If Government power had been the main reliance it probably would have been neces-

⁵⁴ In the *Musicians' Union* case, the Director of Economic Stabilization decided that the dispute was not unduly impeding the war effort. Termination Report, vol. II, p. 714. In the *Typographical Union* case, the Board tried to apply pressure by suspending its processing of voluntary wage applications, but did not press the matter further in the face of a union defiance since VJ-day occurred soon after the Board's action. Termination Report, vol. I, p. 419.

sary to experiment extensively with injunctions, with penalties assessed against a union or its members or even with military discipline exercised over individual workers, just as the President threatened the coal miners in 1943.

6. *Weakened collective bargaining.*—As indicated earlier, the labor-management conferees had assumed that, although the Board would be given final authority to decide disputed issues, there would be a very large reliance on the process of collective bargaining during the war. This assumption conformed to both the Administration policy, as stated in the order creating the Board, and the judgment of Congress, as expressed as late as 1943 in the discussion of the War Labor Disputes Act. In fact, there was a significant weakening of the bargaining method of reaching an agreement during the war. There was a considerable tendency for parties in negotiations to hold back their best offers so as not to prejudice their position before the Board. In addition, there was some tendency for employers to delay the conclusion of a dispute, depending on the no-strike, no-lockout agreement, and then the later decision of the Board. More significantly there was, as public members of the Board noted,⁵⁵ a tendency for both parties to pass to the Board the onus of making a decision which was less than they, and particularly their people, consider proper. But one of the most significant factors that operated to reduce the effectiveness of collective bargaining lay not in the Board's function of dispute settlement as such but of wage stabilization. Since the upper limits of wage adjustment were set by the Board, and since unions tended to be under the necessity of reaching these limits, there was considerably less room for the parties in which to trade. Insofar as there was any uncertainty in the approvability of any specific wage change proposal, the parties ran the risk of losing that part of the bargain for which they had abandoned other contract demands.

Despite this tendency, the number of Board cases and decisions was only a small fraction of the total agreements reached during the war. Even in these cases, most of the issues were settled in negotiations. In part, this continued dependence on collective bargaining was an indication of the desire of both sides to make their own decisions.⁵⁶ Perhaps of even greater importance was the fact that as the Board began to develop general principles, the parties were able to anticipate at least the general standards that the Board would apply to their case,

⁵⁵ Speech of Frank Morley, cited in *The Termination Report*, vol. II, p. 522, and of Nathan Feinsinger, p. 556.

⁵⁶ One striking illustration of this desire was that of the West Coast paper manufacturers and unions who submitted only one case to the Board during the war. And even in this case, they proceeded to modify by mutual agreement the decision handed down by the Board.

if submitted, and to prefer the speed, realism, and self-decision involved in coming to an agreement themselves within those general standards.⁵⁷ The Board consciously desired to encourage the maximum reliance on collective bargaining and used a number of devices to reduce the tendency of the parties to refer issues to the Board, including the extension of existing agreements beyond their termination dates, with retroactivity while renewal negotiations continued, the Board delay in assuming jurisdiction if collective bargaining efforts had not been exhausted, the reference back to the parties of numerous issues, and the reference back to the parties for the application of a general principle.⁵⁸

As an important element in the appraisal of the effect of the Board's approach on collective bargaining, major emphasis needs to be given to the operation of the Board itself. In its tripartite deliberations, there was frequently transferred to its own rooms the process of collective bargaining, pictured by public members Witte in the *Harvard Business Review* and Keezer in the *American Economic Review*.⁵⁹ Indeed, the most striking indication that the structure and attachment to the process of collective bargaining were preserved throughout the war period was the determination immediately after VJ-day to lift the governmental restraints on its operation.⁶⁰

IV. UNIVERSAL WAGE STABILIZATION

The third basic decision considered in this chapter involves the issue of wage stabilization. This discussion, however, does not attempt to analyze the need for a general stabilization of wages in relation to other prices (considered in ch. 3) nor the general standards that needed to be applied to achieve stabilization (analyzed in ch. 4). Rather, as part of the general consideration of the approach of voluntarism, this section analyzes the significance of embracing the problem of stabilization within the terms of the no-strike, no-lockout agreement.

A. NATURE OF THE CRISIS

By the spring of 1942, it was quite clear that there needed to be a general stabilization of prices. Prices were moving up, the increasing

⁵⁷ The Termination Report, vol. I, p. 65.

⁵⁸ Seven such techniques are summarized in Feinsinger's speech of March 23, 1945. The Termination Report, vol. II, p. 557.

⁵⁹ *Harvard Business Review* (Winter, 1947), p. 169, and *American Economic Review*, vol. XXXVI: 3 (June 1946), p. 233.

⁶⁰ It may well be argued that the restraints on collective bargaining were lifted too soon. That issue is not evaluated here. The important point in this analysis is that neither labor nor management responded to the request of the President for a renewal of the no-strike pledge. The President's Executive order leading to the dissolution of the NLRB, as it indicates, was based on the demonstrated preference of both labor and management for the resumption of untrammelled collective bargaining.

governmental purchases and the declining production of consumer goods gave promise of still greater increases in prices unless some controlling action was taken. This prospect of advancing prices was clearly a threat to the Nation's economic efficiency and morale.

1. *Need to stabilize wages as part of complete stabilization program.*—As an element in the stabilization of all prices, clearly wages needed also to be stabilized.⁶¹ They were a significant element in the cost of production and, therefore, advancing wages were bound to lead to increases in selling prices. In addition, advancing wages added to inflation by increasing funds in the hands of consumers to bid for relatively scarce commodities.

But wages were tied to prices in another way. There were many other aspects of the economy pressing on inflation besides wages. Even with no increases in wages, the danger mounted as a larger and larger quantity of money was being paid for products which were not made available to consumers. The advancing level of farm prices and of profits were inflationary pressures also. Any complete approach to stabilization of prices, therefore, involved moving on a broader front than just wages. Indeed, it appeared impossible to proceed to wage stabilization unless the pressure for wage increases was significantly reduced by the stabilization of the cost of living. And, in addition, the Government could not expect workers to respond to a program of wage stabilization unless they considered that simultaneously there was at least an approximately equal concession on the part of other groups in the economy. The problem for the Government, therefore, was to maintain a delicate political balance in establishing its goals of wage stabilization within an over-all program of price stabilization.

2. *Need to include collective bargaining agreements on wages.*—As far as wages were concerned, it soon became clear that the action of the Board in the settlement of dispute cases could not of itself achieve stabilization. In the *Little Steel* case, the Board based its decision for a general increase largely on the fact that wages had already moved up by agreements negotiated without reference to the Board. It recognized that it would be inequitable to continue to limit only those wage rates that came before it for settlement.

During the early months of its existence, the Board acted on the assumption that employers would be reluctant to grant wage increases, and that, therefore, they could be expected not to agree in collective bargaining negotiations to greater wage increases than the Board would grant had the matter come before it as a dispute case. Under

⁶¹ The program of the NWLB centered on the control of wage rates rather than of earnings. (See ch. 4, p. 158.) Consequently, throughout the chapters of this study, the reference to "wages" refers to wage rates unless otherwise indicated.

such an assumption, the maxima awarded by the Board would set the limits that wage levels would be expected to rise because union pressure for higher wage levels than those previously ordered by the Board would be met by employer refusals and the reference of the case to the Board for settlement. However, by the summer of 1942 it became apparent that that assumption was no longer true. Unemployment had been reduced to a low figure, and many manufacturers were under the necessity of attracting large numbers of new employees, frequently to new plants and plants in undeveloped areas, in order to meet their war contracts. Therefore, many employers had developed a readiness and even an anxiety to lift wage levels in order to attract the necessary additional labor. Under these circumstances, negotiated settlements were bound to move the wage levels up appreciably and increasingly. In the *General Cable* case⁶² the Board formally recognized that it would be impossible to stabilize wage rates if limitations on wage increases were applied only to the dispute cases that came to it. The Board concluded that it was necessary to have an equal limitation applied to the voluntary actions of employers and agreements of unions and employers. Labor and management members, by participation in this conclusion,⁶³ voluntarily set the stage for the further restriction on their collective bargaining freedom.

B. DECISION TO STABILIZE ALL WAGES

It is conceivable that, given the responsibility, labor and management might have followed the same general approach used in the settlement of disputes and agreed to establish and apply stabilization limits. It did not happen this way (except in the building industry). After the Government had determined that stabilization was essential and that stabilization of prices required the maintenance of the existing level of wages, the Government ordered the wage stabilization controls. This it did in a series of steps, including the President's Seven-Point speech of April 27, 1942, his message to Congress of September 7, 1942, and the action of Congress in the Stabilization Act of October 2, 1942. This alternative approach was adopted because (a) the program had to be a more inclusive one than just wage stabilization, and (b) because, generally speaking, organized labor and management were not in a position to establish sufficiently powerful internal controls to police such an agreement even if they had entered into it.

Given the governmental intention to enact a general stabilization program, representatives of labor and management groups, on the tri-

⁶² National War Labor Board Transcript, Executive Meeting, August 5, 1942.

⁶³ This conclusion had already been expressed in a May 5, 1942, memorandum signed by the chairman of the Board, the Secretary of Labor, the heads of the OPA, and the Manpower Commission. However, the President was unwilling to act until opinion had crystallized throughout the Nation, and farm-price stabilization also appeared possible.

partite board, took a decision that involved a considerable assumption of responsibility for the operation of the stabilization program. The Board unanimously recommended that the administration of the wage stabilization program should be assigned to it. On July 29, 1942, the unanimous statement of the Board to the President voiced—

its deep concern of reports that the procedure and authority of stabilizing wages by the War Labor Board machinery may be drastically modified. Wage decisions of the War Labor Board have been accepted by labor and industry after careful consideration of their anti-inflationary effects. * * * A denial to labor and industry of participation in determining wage policy in keeping with the democratic principle of a tripartite board, set up in accordance with the labor-industry agreement of last December would seriously injure morale and effect detrimentally maximum production. * * * We are concerned with the preservation of government by the consent of the governed.⁶⁴

The consequence of this position, assumed by the labor and management representatives on the Board, and implemented by Executive Order 9250 on the basis of congressional action, was to extend the area of tripartite functioning in labor relations to the area of wage agreements as well as dispute settlements. It involved the labor and management representatives both in the establishment of specific standards, and in the administration thereof.

C. APPLICATION OF THE DECISION

It is important to note that the stabilization standards of the congressional act and of the President's Executive Order 9250 were extremely general.⁶⁵ The Board's first responsibility was the definition of more precise standards. It, therefore, began its wage stabilization administration with a series of general pronouncements immediately following the issuance of the Executive order. The most significant of these was the general policy statement of November 6, 1942, which, after considerable discussion, was adopted unanimously.

These wage stabilization standards, as drawn up by the Board on November 6, 1942, and as applied until the following spring, permitted considerable flexibility to meet varying situations. When the Director of Economic Stabilization, in April 1943, decided that a much more rigid type of wage stabilization was necessary, the Board unanimously objected. Labor and management representatives joined with the public members of the Board in insisting upon more flexibility and a wider discretion and responsibility to the Board than was provided in the order: (a) because both labor and industry members as well as public members believed that there could not be the maintenance of industrial peace and morale without the adjustment of wage rates that appeared to be out of line, and (b) because without

⁶⁴ Quoted in David R. Roberts', *The Development of Wage Stabilization Policy, During World War II*, unpublished manuscript, National Archives, p. 59.

⁶⁵ Even these general standards were copied from the concepts already developed and agreed to in the tripartite board. See chs. 2 and 4.

some flexibility it was impossible for the tripartite Board to adapt itself to the pressures from both sides and to provide enough accommodation to keep adherence to its joint operations. The result of this unanimous Board objection⁶⁶ was a reconsideration by the Director of Economic Stabilization and the issuance by him, 5 weeks later, of a clarifying, more flexible policy directive. Apparently, in the judgment of the labor and industry members of the Board, considerable flexibility was necessary if they were to continue to be successful in getting the groups they represented to accept and apply the Government principle of wage stabilization.

Thus, as Board Chairman, Taylor concludes,⁶⁷ the tripartite Board, in accepting the responsibility for wage stabilization, performed the function of balancing and integrating the need for wage stabilization with the need for stable industrial relations. It should be noted, however, that the April 1943 order (9328) had intervened in the determination by the tripartite Board of the wage stabilization policy. What was worked out by the subsequent modification represented a substantially tighter formulation of the program, although it retained a significant degree of the previous flexibility and the group participation in its formulation and application.

V. SUMMARY AND CONCLUSIONS

This chapter has focused on one basic principle involved in the governmental decisions on labor disputes and wage stabilization during the defense and war periods. In each of three crises the Government correctly decided that the normal working of the free enterprise system resulted in some choices being made by labor and management groups which endangered the Government's military programs. In each case, some restrictions on these private decisions were necessary. The question then to be decided was to what degree the restriction should be self-imposed or at least accepted and administered by the groups (called voluntarism in the chapter) and to what degree these restrictions should be imposed and enforced by the Government (called compulsion).

The Government decisions and the results of those decisions are summarized below.

A. EVALUATION OF BASIC DECISIONS

1. In March 1941, the Government decided to call upon labor and management to share the responsibility for achieving the goal of

⁶⁶ Labor even seriously considered withdrawal from the Board if the order were not modified. It appears, therefore, that a basic reason for the modification by the director was his desire to continue the tripartite Board and its responsibility for wage stabilization.

⁶⁷ *The Termination Report*, vol. I, p. 21,

uninterrupted production of critically needed defense materials. To implement this request, the Government established the National Defense Mediation Board and appointed labor and management as well as public representatives to it. By the participation of their representatives and by their use of the Board in the adjustment of specific cases, labor and management for 8 months accepted the governmentally assigned responsibility.

At that time (or indeed later) the Government did not have, as a practical alternative, the possibility of a legal prevention of strikes. Although most elements in the community recognized that an emergency existed, no group was prepared to accept the imposition of such restraints on the system of collective bargaining.

For 8 months there was a great reduction in the number and duration of work stoppages in crucial defense plants. With the active participation of labor and management representatives, the Board, by mediation and by its recommendations, secured peaceful agreements in most of the cases.

The Government goals were substantially but not completely realized. A number of stoppages did develop, both before, during and after the Mediation Board handling of the cases certified to it. In three cases Board failure had to be followed by Government seizure in order to get the production which the Government urgently needed.

In November 1941 the machinery broke down, in part from the inability of the Board to settle the *Captive Mines* case, but primarily from the resignation of the CIO members. These events demonstrated (a) that a voluntary mediation approach through a tripartite Board could succeed only to the extent that both sides were prepared to accept less than their bargaining strength might dictate, and (b) that the issue of union security was extremely difficult to adjust because it embodied, among other things, the fear of the unions that they would be reduced to impotence without an effective substitute for their normal strike weapon, and the employer fear that the power of trade unions would develop to excessive proportions through the bargaining position they secured during the defense program and the administration's sympathetic concern for them.

Within a month of this breakdown, the Pearl Harbor attack basically changed the characteristics of the problem. In that interval, no new approach was worked out by the Government and the parties. One cannot be sure, therefore, what might have been tried, or how any alternative approach might have worked, within the framework of a continuing defense period. There were suggestions of a new voluntary approach through a labor-management conference, but given the intensity of the union security issue, it appears unlikely that it would

have been successful. There was some consideration of a direct prohibition of strikes. It appears very unlikely that there would have been a sufficiently widespread acceptance of this approach to permit its adoption.

2. In December 1941, the Government decided to try again to place the major responsibility for maintaining industrial peace on management and labor. The President's call for a labor-management conference resulted in an agreement of the leaders of both sides that there would be no work-stoppages and that a new National War Labor Board would make final determination of any issues left unsettled in collective bargaining.

The President thus asked labor and management to work out a program involving a greater restriction on their own actions than he was desirous of imposing. The groups responded in part because they recognized the national crisis and the national need for uninterrupted production, in part because they knew that they needed some supplement to their own collective bargaining when deadlocks developed, and in part because they preferred to avoid compulsory action by the Government.

On the whole, this decision, participated in by labor and management, worked out extremely well during the entire war period. Many threatened stoppages that would have seriously interfered with the war effort were avoided. The settlements worked out through the Board were quite realistic expressions of the needs of both parties.

When the country reconsidered this decision a year and a half later, Congress agreed that, on the whole, the results were more satisfactory than would be those of a compulsory alternative.

A crucial aspect of this decision was the participation by labor and management representatives in the tripartite Board. The basic conflicts between the two groups, particularly as regards union security and wages, were negotiated on the Board. Although the Board discussions were heated and even led to some talk of the withdrawal of one group or the other from the Board, the intensity of negotiations at the plant level and the probability of extensive and bitter work stoppages were substantially reduced. However, in certain cases serious friction continued throughout the war, because of the presence of attitudes of individual unions and managements which could not be reconciled by the Board. Through the guidance of the tripartite Board, settlements were achieved which helped inexperienced parties to improve their relationships with each other. In addition, the joint participation of labor and management representatives in the decision-making process had a profound effect in assuring the acceptance of decisions made by the Board.

However, the wartime record was not perfect. Although stoppages were greatly reduced, they were not eliminated. The self-discipline of labor and management was not complete, and in 40 cases the Government had to use its seizure powers to assure continuation or resumption of work under conditions ordered by the Board. To strengthen the hand of the Board, and to establish unquestionably the Government's seizure powers, the War Labor Disputes Act gave both a legislative base.

The availability and use of the Board machinery weakened the effectiveness of collective bargaining. A vast majority of agreements were still developed by collective bargaining. The gradually developing principles of the Board were very frequently used as the guide for these negotiations. But in a great many cases the parties failed to make a determined effort to reach their own conclusion, and turned to the Board to make the decision for them.

3. In October 1942, the Congress authorized a wage-stabilization program. There was now general agreement, including agreement by most of the representatives of labor and of management, that wage stabilization must accompany price stabilization. There was also agreement, expressed in the unanimous action of the Board, that such a stabilization program would have to have a legislative base and be imposed on all groups. However, this action called for including some element of voluntarism in its implementation. On the recommendation, and even insistence, of the tripartite Board, the responsibility for the formulation and administration of wage stabilization was placed in the Board. When the Director of Economic Stabilization decided, in the spring of 1943, that the Board's standards were not sufficiently restrictive, he nonetheless yielded to the insistence of the tripartite Board that considerable flexibility be permitted as the price of the continued participation of labor and management in the administration and enforcement of the stabilization rules.

Both labor and management accepted the governmental determination that wages had to be stabilized and, in very large part, conformed to the established rules. The participation by labor and management on the Board resulted in a greater degree of flexibility in the formulation and application of wage stabilization rules. It should be noted that the effect of such participation was the gradual advance in wage levels and in total labor costs through fringe adjustments. But this moderate weakening of the stabilization line had the more than compensating virtue of permitting a realistic adjustment of labor standards to the practical problems of peaceful and cooperative industrial relations. And the participation of labor and management in its administration had the result of a much greater acceptance and voluntary application of the principles than would have been true otherwise.

B. GENERAL CONCLUSIONS

From the analysis of these three basic governmental decisions five more general conclusions would appear to emerge:

1. The basic problem in a democratic government in a crisis period as well as at other times is securing the consent of the great majority of citizens directly affected. Consent at any particular time and in relation to any specific program depends on the degree to which the national patriotism of the groups overrides their specific group interests. Where patriotism is dominant⁶⁸ and where a governmental need is recognized, the groups can be expected to modify voluntarily their rights and freedom of action even more extensively than the Government may be prepared to impose such restrictions.

2. It follows that the governmental decision in a specific crisis has to be made in the light of the attitudes of the parties as well as of its own emergency needs. The three decisions analyzed in this chapter were different, fundamentally, because of both considerations. As the national need became more urgent the restrictions on individual freedom had to be extended. In the area of disputes, voluntary decisions of the parties extended the self-imposed restrictions to parallel the national need. In the area of wage stabilization, the Government imposed compulsory controls, but even then with a large element of voluntary participation in decision-making by the parties. In both areas, the effectiveness of voluntary restrictions diminished somewhat as the strain of continued self-discipline accumulated.

3. Voluntarism (the self-imposed restriction by labor and management on their freedom of decision-making) is modified by the use of a tripartite board. The decisions of the tripartite boards were based on an agreement, tacit in the case of the NDMB and formally expressed in the case of the NWLB, which was voluntarily made and applied. In addition, these decisions were in part made by the groups themselves through the participation of their representatives on the boards, but they were decisions made as a result of the significant modifications achieved by the public members in their role, in both boards, of mediating the position of the two groups, and in pressing a governmental as distinct from a partisan interest. Given a determination of the Government to restrict but not to eliminate normal freedom of choice, there are great advantages in the voluntarism of labor and management participation in the imposition and application of restrictions upon their freedom of action in industrial relations.

⁶⁸This is not to say that either group is prepared to yield to the insistence of the other on the appeal to its patriotism. Nor is it to say that either side is prepared to abandon its efforts to secure advantage at the expense of the other. But it does indicate that patriotism is dominant when each side is prepared to restrict its insistence on an advantage by conformity to restrictive rules laid down with their participation.

4. These advantages arise partly from the development of a more realistic and flexible program to accomplish the Government's objectives. They emerge, even more, out of the subtle psychological stimulus to the parties to cooperate wholeheartedly in order to achieve the Government's larger goal of war production. It was a fundamental principle of the Government to depend on free labor and free management to win the production war.

5. Where the approach of voluntarism is used there will be only an approximate accomplishment of the Government goals. In World War II the goals of uninterrupted production and of wage stabilization were achieved only within fairly wide tolerances. The nature of these tolerances depends on a number of factors, including the degree of support by the parties for the Government's program, the degree of self-discipline on the parties, and the variation in the intensity of the clash of interest between the objectives of the Government and of the parties. When the deviation between Government goals and accomplishment was too wide to be tolerated, Government compulsion had to replace voluntarism even at the cost of more grudging cooperation. Thus, the Government chose compulsory alternatives in the addition of wage stabilization control, the later narrowing of wage stabilization flexibility, and in the seizure of plants with continuing strikes. This contrast should not be understood to imply that the immediate Government goals will be completely achieved by compulsion. Even if it is determined that compulsory measures have to be introduced at the cost of somewhat less cooperation, they too cannot be expected to be completely successful, and their approximate success will depend on the general approval and acceptance of the affected parties.

6. Voluntarism is only as successful as the group cohesion of the parties permits its implementation. Labor, during the early defense period, was under considerable strain because of a segment within the labor movement which did not accept the governmental objectives. In the war period, both labor and management held quite firmly to the agreement made by their leaders in December 1941 concerning labor disputes. This record was all the more remarkable in view of the dissensions and divisions within the labor movement, and more particularly in view of the much looser organization of management.

The Principles of Dispute Settlement¹

By Milton Derber

I. THE PROBLEM

THE OUTBREAK of the war made inevitable the establishment of a board to settle labor disputes that could not be settled by existing procedures. On this point practically all interested groups were agreed. But the basis on which such a board should operate was a matter on which opinion was rather sharply divided. Should the precedent of World War I be followed and a set of principles be adopted for guidance of the board? If so, who should determine the principles—the Congress, the Chief Executive, a labor-management conference? And what issues should be thus settled in advance and in what detail? Or, contrariwise, should the board be free to chart its own way? And if so, what should its approach be? Should it sit down and hammer out a code of principles for its own guidance and the guidance of the Nation's employers and unions? Or should it imitate the architects of the common law and build up a set of precedents case by case, issue by issue? Or, still another alternative, should it avoid all principles, regard each case primarily on its own merits, and decide issues *de novo*?

This basic set of dilemmas was perhaps most sharply crystallized when on February 18, 1942 (little more than 5 weeks after the establishment of the Board), Dr. William M. Leiserson, then member of the National Labor Relations Board, delivered an urgent warning in a public address² that the War Labor Board might meet the fate of its predecessor, the National Defense Mediation Board, if it also attempted to decide each case on its own merits. Dr. Leiserson stated

¹ Ch. 1 has analyzed in detail the problems of voluntarism in dispute settlement. This chapter is concerned primarily with the development of substantive principles of dispute settlement.

² John H. Finley Memorial Lecture, The College of the City of New York, February 18, 1942, reprinted in *Labor Relations Reference Manual*, vol. IX, p. 922 (The Bureau of National Affairs, Inc., Washington, D. C.).

that the success or failure of the new board would be determined by how it disposed of the closed-shop issue and requests for wage increases. "It seems rather strange to leave the determination of such crucial national issues to an arbitration board designed to make awards in particular cases." He regretted as a lost opportunity the failure of the President's War Labor Conference to formulate a national war labor program by mutual agreement of labor and management and urged its reconvening. In the absence of such agreement, he insisted that Congress or the President formulate governmental policy on the fundamental issues.

The Leiserson position was assailed by Philip Murray, president of the Congress of Industrial Organizations, whose major steel cases had just been certified to the Board.³ It drew from Chairman William H. Davis of the NWLB, leading exponent of the common law approach, the comment that he found it difficult to share Dr. Leiserson's lugubrious predictions but that personally he would have no reason to object if the labors of the NWLB were lightened by a formation of policy by some higher authority.⁴

II. PRIOR EXPERIENCE

In order properly to evaluate the decisions which were made on these critical questions, a brief survey of the experience then available to the policy-makers may be helpful.

A. WAR LABOR BOARD OF WORLD WAR I

The experience of the War Labor Board of World War I was a leading guide.⁵ The need for a unified war-time labor program had become evident by the fall of 1917. Many Government agencies, including the President's Mediation Commission and various production and procurement departments, had suggested it. Finally in January 1918, the President appointed the Secretary of Labor as labor administrator to set up the necessary machinery.

The Secretary, on the advice of a special advisory committee,⁶ created a 12-man body consisting of 5 representatives of employers, 5 representatives of wage earners, and 2 public representatives as joint

³ New York Times, March 9, 1942.

⁴ New York Times, February 22, 1942.

⁵ Most of the discussion which follows is based on U. S. Department of Labor, Bureau of Labor Statistics, The National War Labor Board, Bulletin No. 237 (December 1921).

⁶ The advisory committee consisted of a representative of the general public as chairman, two representatives of employers, two representatives of wage earners, a representative of women, and an economist.

chairmen⁷ with the view of reaching agreements on principles and policies for a national labor program. This War Labor Conference Board began its meetings on February 25, 1918, and handed in a unanimous report of March 29. It recommended the establishment of a national war labor board composed in the same fashion as the Conference Board; set forth a set of procedures for the processing of labor disputes; and concluded with a code of substantive principles and policies to govern relations between workers and employers in war industries for the duration of the war.

The provisions of the code may be summarized as follows:

- (a) There should be no strikes or lockouts during the war.
- (b) The right of workers to organize in trade-unions and to bargain collectively, without employer interference, is recognized and affirmed.
- (c) The right of employers to organize in associations or groups and to bargain collectively, without worker interference, is recognized and affirmed.
- (d) The workers, in the exercise of their right to organize, shall not use coercive measures of any kind.
- (e) Wherever the union shop exists, it shall be continued and union standards as to wages, hours of labor, and other conditions of employment shall be maintained.
- (f) The continuance of nonunion shops shall not be deemed a grievance. However, this shall not deny the right of workers to organize, as guaranteed in paragraph *b*, nor prevent the War Labor Board from urging, or any umpire from granting, under the machinery herein provided, improvement of their situation in the matter of wages, hours, or other conditions.
- (g) Established safeguards and regulations for the protection of the health and safety of workers shall not be relaxed.
- (h) Women employed in work ordinarily performed by men must be allowed equal pay for equal work and must not be allotted tasks disproportionate to their strength.
- (i) The basic 8-hour day is recognized as applying in all cases in which existing law requires it. In all other cases the question of hours shall be settled with due regard to governmental necessities and the welfare, health, and comfort of the workers.
- (j) Maximum war production should be maintained and practices by employers or workers which tend to restrict production or artificially increase costs should be discouraged.
- (k) To mobilize the labor supply with a view to its rapid and effective distribution, the Department of Labor shall keep on file a per-

⁷ The employer representatives were chosen by the National Industrial Conference Board, the labor representatives by the American Federation of Labor. Each of the two groups selected one public representative.

manent list of the number of skilled and other workers available in different parts of the Nation.

(*l*) In fixing wages, hours, and conditions of labor, regard shall always be had to the labor standards, wage scales, and other conditions prevailing in the localities affected.

(*m*) The right of all workers, including common laborers, to a living wage is hereby declared.

(*n*) In fixing wages, minimum rates of pay shall be established which will insure the subsistence of the worker and his family in health and reasonable comfort.

How significant was this code of principles? It is clear from a study of the Board's decisions that the wage and hour principles were vague generalities which failed to serve as workable guides. Attempts to implement the concept of a living wage were soon abandoned and the principles of equal pay and a minimum wage were never effectively defined.

On the other hand, the principles relating to union organization, activity, and status proved to be of major importance. In 1918 there was no National Labor Relations Act to safeguard the organizational activities of unions. While wartime conditions greatly strengthened the position of organized labor, recognition of the right to organize and to bargain collectively and the prohibition against discharges for membership in trade unions or for legitimate trade-union activities gave a great, if temporary, impetus to stable unionism and industrial relations. To a considerable extent, the Board played a role similar to that of the subsequent National Labor Relations Board.

The basic issue of union status was settled by the principles freezing closed and open shops, thereby avoiding the widespread controversy which was to confront the country in World War II.

B. INTER-WAR EXPERIENCE

Although the principles established during World War I were quickly abandoned after the armistice, a number of those relating to the right to organize and bargain collectively without employer interference were revived first in railway labor legislation of 1926 and 1934 and later in New Deal legislation affecting all interstate industry. In contrast to the wartime experience, however, the decisions of the boards established to administer these laws were subject to review and enforcement in the courts. The flexibility which characterized

the voluntarily adopted wartime principles was greatly reduced by legislative enactment and court interpretation.

The National Labor Board, the first National Labor Relations Board, and the special industry boards set up during the emergency NRA period to handle labor disputes arising out of section 7 (a) of the Recovery Act and the labor provisions of the industry codes came closest to the problems of a war situation. But the emergency atmosphere was short-lived and, securing compliance with decisions became a major problem. Nonetheless, the decisions of the two national boards had considerable influence on the establishment and administration of the National Labor Relations Act of 1935. Throughout this period primary emphasis was placed upon employer unfair labor practices and union representation questions.

C. THE NATIONAL DEFENSE MEDIATION BOARD

The experience of the defense period preceding America's entrance into World War II was, of course, most significant for policy decisions in the war period. This experience has been analyzed in chapter I and need not be reviewed again here. It need only be noted that the Board was given no substantive principles or guidance for action. It was conceived of primarily as a supermediation body whose composition and prestige, backed by the power of the President, would enable it to maintain industrial peace in the relatively small number of cases which it was expected to receive. In the tradition of a mediation agency, the Board handled the issues of each case on an individual basis without the creation of binding principles or precedents. As the authors of the official report of the Board state: "It was the opinion, at least of the majority of the members, that the Board itself, being primarily a mediation board, could not consistently adopt a set policy upon a matter concerning which there was basic disagreement between employers and employees."⁸

III. THE WAR-LABOR MANAGEMENT CONFERENCE AND EXECUTIVE ORDER 9017

From the point of view of the subject matter of this chapter, four aspects of the Labor-Management Conference were significant: (a) The major emphasis was on machinery and procedure and not on substantive principles for the settlement of labor disputes; (b) only

⁸ U. S. Department of Labor, Bureau of Labor Statistics, Report on the Work of the National Defense Mediation Board, Bulletin No. 714 (1942), p. 24.

one substantive issue, union security, was seriously debated and resulted in a deadlock; (c) the President placed an exceptional premium on speed of action and resolved the one deadlock by his own decision; and (d) different conceptions of the role of the new board prevailed. Since the conference has been analyzed in chapter I, only the last of these aspects requires additional comment.

One prominent view was that the new Board would closely resemble its predecessor in emphasizing collective bargaining and mediation, although it might have to decide more cases. Since the objective of mediation is to bring about agreement between the parties, guiding principles as to the substance of issues in dispute would be unnecessary. Consequently, aside from the union security issue which had caused the downfall of the NDMB, there was no compelling reason for the consideration of principles. Another important group recognized the decision-making character of the new Board but felt that the responsibility for the formation of principles should be left to the new Board. Others felt that the decision-making Board should have guiding policies fixed for it by Congress or by the President. There was thus no group in the conference which thought it necessary to press for substantive principle at that point.

But the question of principles was not entirely forgotten. Following the adjournment of the conference, Government officials set to work to frame the Executive order establishing the new Board. Two paramount questions confronted the administration—first, how detailed should the procedure and machinery of the new agency be outlined and second, should a set of substantive principles be formulated to guide the Board. During the nearly 3-week period between the end of the conference and the issuance of the Executive order both questions were debated.

In an address⁹ delivered at Northwestern University on January 12, 1942, Judge Charles Wyzanski, Jr., who was a public member of the NDMB, gave careful thought to the question whether an arbitration agency should decide each case on its merits or should be governed by an announced set of substantive policies. The speech clearly summarizes the differing points of view which prevailed at the time.

Judge Wyzanski listed, in addition to union security and wages, 15 different issues which might be included in a policy statement. They covered such subjects as overtime pay, paid vacations, women's rates for work formerly done by men, procedures to encourage job simplification, incentive systems, grievance procedure, delegated agencies, contract reopening, and retroactivity.

He noted that the argument for the declaration of principles came most forcefully from industrial leaders, the conservative press, and

⁹ Reprinted in Labor Relations Reference Manual, vol. IX, p. 931.

lawyers. According to Wyzanski, three main points were being made by these persons: (a) That the mere statement by the Government of a policy which it is prepared to support will lessen disputes—many disputes would never arise once the rules were known; (b) that labor itself has recognized the desirability of clear principles as a method of achieving labor peace—the collective bargaining contract is a demonstration of this fact; (c) that in the absence of a declaration of rules, the tendency will be for disputes to be settled on the basis of the strength of the parties without regard to either justice or the unsettling effect of the decision upon other situations.

Judge Wyzanski went on to note that the majority of union leaders opposed a declaration of policies because labor is always seeking to improve rather than to stabilize its position and because these leaders, by temperament, training, and fields of opportunity, are “experts in trading, in dramatic presentation, in ad hominem argument, and in the subtleties of political adjustment * * *. And they have no desire to subordinate that great skill to the less colorful art of juggling words, rules, and precedents.”

Finally, he declared, many disinterested persons specializing in labor relations also oppose a declaration of detailed rules because (a) The country was in the adolescent period of labor relations when war broke out and the announcement now of a fixed policy not only would stunt normal growth but in fact could not be carried through because of lack of sufficient experience with collective bargaining and with labor relations; (b) neither management nor labor is sufficiently disciplined to implement such a program; and (c) maximum war production might be endangered if, without public debate and overwhelming public support, the country adopted a program strongly opposed by unions or employers.

Judge Wyzanski did not attempt to evaluate the various positions. He concluded, however, that in view of the conflict revealed at the President's labor-management conference and the unwillingness of Administration leaders to establish rules without the support of the representative groups, there was no chance of a broad declaration of policy at the time. “Unless they are otherwise directed by the President or Congress, I, therefore, do not expect to see any announced set of substantive policies to guide the labor arbitration agencies.”

The Wyzanski speech was delivered on the same day that Executive Order 9017 was issued. Since it was made by a man who at the time was close to the inner circles of the policy-makers, it may be safely concluded that it accurately reflected the thinking which was then going on.

The advocates of maximum discretion for the Board won out. Executive Order 9017 simply set up the National War Labor Board

as a tripartite agency with the responsibility of settling through mediation, voluntary arbitration, or arbitration labor disputes that could not be resolved by other existing procedures. The Board was given virtually complete freedom to carry out its job.

IV. THE INITIAL APPROACH OF THE BOARD

The new War Labor Board resembled its predecessor, the NDMB, in many respects. Half of the members of the Board, including the Chairman, were carry-overs from the NDMB. All staff members, records equipment, and unsettled cases were transferred from the old board to the new. Much of the philosophy of dispute settlement was also carried over. Major emphasis was placed on collective bargaining and the agreement of the parties. It was hoped to be able to continue to rely in large measure upon mediation, conciliation, and voluntary arbitration. The most significant difference, as the Chairman put it, was that the Board was probably going to have to make decisions which are less of a bargaining decision and more of an absolute decision.¹⁰

It was also recognized that at least with respect to the major issues of union security and wages the policy of the NDMB to handle each case primarily on its own merits and to refrain from the establishment of precedents or principles probably could not be maintained. The union security issue, in particular, had become charged with so much emotion that some sort of definite and acceptable answer to it seemed essential if the Board was to survive. The captive mines case, the debate in the labor-management conference, the Wyzanski and Leiser-son speeches, and innumerable newspaper editorials and articles made it clear that if the Board did not arrive at an acceptable policy, either the President or the Congress would have to deal with the issue. The situation with respect to general wage increases was a matter of conflict not only between labor and management but also between labor and those in the Government who were responsible for preventing an inflationary spiral. There were, of course, many other issues in dispute that required careful consideration but they were not at this time critical issues.

The position of the public members of the Board was expressed in a speech by Wayne Morse before the International Juridical Association on March 21, 1942. He said in part:

I am satisfied that, if the Board is permitted to function, in a period of a few months it will build up a record of sound principles which will guide labor and

¹⁰ National War Labor Board, Transcript, Executive Meeting, February 6, 1942, p. 44.

employers to an orderly and peaceful settlement of their differences during the war period in accordance with the spirit and intent of the Executive order creating the Board.

* * * * *

There are some critics who seem to believe that the Board should not be let alone to develop the principles which it is to apply in settling labor disputes during the war. They question the desirability of such a common-law system approach to the adjudication of labor disputes. They urge that some authority higher than the Board, such as the President or Congress, should lay out certain patterns of labor policy governing such issues as wages, profits, union status, responsibilities of management, hours of employment, and union organizational activities. Many columnists, editors, and some public officials are urging that the Board should work within the framework of a general policy which freezes wages and union organization as of some past date, such as the date that war was declared.

* * * * *

I do not share such views because I fear that such an inflexible policy would, in a large measure, defeat its own ends. It may be that the work of the Board would be lightened by an enunciation of certain broad general policies which the Government desires to have labor and employers follow during the war. Possibly the strengthening of the enforcement powers of the Board would assure its greater effectiveness in executing its functions. However, above all else, it is important that the Board should be kept in a position so that it can decide individual cases in accordance with the facts shown by the record of each case as it is presented to the Board. It seems to me that if the Board is to accomplish its primary purpose, namely, the peaceful settlement of labor disputes during the period of the war, to the end of promoting the maximum production of war goods—it should not be hamstrung by inflexible policies.¹¹

The labor members of the Board favored a continuation of the NDMB policy. However, they too recognized, reluctantly, that some patterns were inevitable. Their approach was indicated by one of them in the course of the discussion over a union security dispute:

* * * My way of approaching this thing on the union side of this question is the history of the relationship, the question of certification, the question of production and the war effort and so on and what will produce in the light of known facts and history the best possible results. I believe that this is a case that ought to be dealt with on its own merits. I think the union status thing is the more important thing in view of what appears to be the background and history of relationships. I don't believe that we should say we don't want to do anything about this because there is another case coming up next week or the week after or at some future time or in the absence of a national policy. I think a national policy that grows out from a set of experiences and understanding is a damn sight more healthy thing than a national policy that is the result of a bunch of people in the legislative chambers debating something or an executive order.¹²

The industry representatives, on the other hand, preferred to see congressional action on, at least, the union security and wage

¹¹ Reprinted in part in Labor Relations Reference Manual, vol. X, p. 1277.

¹² National War Labor Board, Transcript, Executive Meeting, March 11, 1942, p. 76.

issues. This position was strongly emphasized by such prominent employer organizations as the National Association of Manufacturers.

A few key industry members of the Board, however, felt that pending congressional or Presidential action it was more farsighted for management to concentrate on working out policies with the other groups on the Board. Roger Lapham stated:

As an employer representative of this Board, I feel it is this Board's duty to go ahead and establish a national wage policy as well as a policy with respect to the closed shop or any modification thereof. If we are called off by higher authority or if Congress chooses to carry the ball, itself, why, that's that. But in the meantime, let us go ahead, saw wood, and do something.¹³

Lapham advised his colleagues on the Board to be realistic about labor's strength both economically and politically and, still more important, to recognize that there must be the closest kind of cooperation between management and workers if we are to win this war—this battle for national existence.

It was thus apparent at the outset of the Board's life that the President and the Congress were leaving it to the Board to work out a solution to the two major problems—union security and wages. On other substantive issues the pressure for policies was much less immediate.

V. POLICY ON UNION SECURITY

As the previous discussion has made abundantly clear, the first major policy issue was union security. Instead of sitting down and considering the issue in an abstract and generalized way, the Board took up one case after another and attempted to work out a solution which would be acceptable to the labor and industry groups. The problem confronting the Board was well put by industry member Lapham. "As to Union status, this should be a simpler issue than wages for which to find a solution. Yet, the truth is, of the two, it is the more troublesome because neither management nor labor seem able to discuss it without an emotional pounding of the table."¹⁴

It took over 6 months of the most severe debate and experimentation for a working solution to be attained. And even the solution that was reached did not achieve unanimity. It was a majority vote accepted reluctantly by industry under wartime pressures. The cases which were decided and the compromises which were proposed have been described in great detail in the Termination Report of the

¹³ *Thinking Out Loud or the Present Thoughts of One Employer*, mimeographed, February 18, 1942, p. 10.

¹⁴ *Ibid.*, p. 11.

National War Labor Board and it is not necessary to repeat the details here. However, it is important to review the main steps in the evolution because no policy was more sharply crystallized than union security.

It should be noted first that the Board started out with a backlog of experience accumulated by its predecessor, the NDMB, as well as the debate in the President's labor-management conference and the public press. The unions, as a rule, wanted either the closed or union shop to give them a maximum of bargaining strength and to maintain internal discipline. They argued that the no-strike pledge removed their major weapon and some strong form of union security was required to replace it. On the other side stood those employers who insisted that the law required merely that unions representing a majority of their employees should be recognized only as exclusive bargaining agents. They contended that unions should not be permitted to improve their status because of the war emergency. They gave wide currency to President Roosevelt's statement during the captive mines dispute of 1941 that the Government would never order an employer to compel employees to become union members.

The public members of the NWLB were thus faced with a most difficult task. By siding with either the unions or employers, they might cause the other to quit the Board. The alternative was to develop some compromise which might bring agreement, or at least, if it did not satisfy either side entirely, would be sufficient to prevent a break. The compromise which appeared to be most suitable, maintenance of membership, had been used a number of times by the NDMB, following a pattern that had been in effect in the Pacific Northwest paper industry. This clause simply provided that those who were or became union members must maintain their membership for the duration of the agreement or subject themselves to discharge. It did not require any worker to become a member of the union. But even maintenance of membership contained compulsory features which many employers on and off the Board considered objectionable.

The result was a succession of experiments in an effort to develop a workable clause. In the first case involving the union security issue the public and labor members, with industry dissenting, directed a maintenance-of-membership clause that required each employee to sign a card informing the company of his membership in the union and his willingness to remain a member in good standing for the duration of the agreement. In a succeeding case, the maintenance-of-membership provision was applied to all persons who were members of the union as of a given date; no card signatures were required. In another early case a special election was ordered to determine whether a majority of the employees desired the granting of the main-

tenance-of-membership clause. In several cases the request for maintenance of membership was denied entirely and the voluntary check-off alone was granted.

In the course of the bargaining process, some of the industry members indicated that a maintenance-of-membership clause might be acceptable if union members were given an opportunity to withdraw from the union before the provision took effect. The labor representatives regarded the idea with some misgivings but decided to go along. As a result, a maintenance-of-membership provision with a 15-day escape clause was formulated. In June 1942 this provision was approved by a number of the industry members of the Board and in one case a unanimous vote was obtained.

But the unanimity was short-lived. The employer members who had been most insistent upon the establishment of a formula now argued that it be applied with considerable flexibility. For example, they contended that the provision should not be awarded to comparatively new unions or to unions which had achieved good relations with their employers. They also insisted that the unions should submit to a variety of tests such as the issuance of public financial statements as a mark of their democratic character.

The refusal of the industry members to agree to maintenance-of-membership with the escape period as a general principle led to a recognition by the public members that further attempts to secure unanimity were futile. During the later discussions of the major steel cases in June 1942, its award was virtually taken for granted by all sides, including the dissenting industry members. Finally in the *Norma Hoffman* decision¹⁵ of August 24, 1942, the Board majority formulated the precise language of what subsequently became known as the standard maintenance-of-membership clause. Thereafter, it was awarded in union status cases with considerable regularity, the main exception being cases where the union had shown evidence of irresponsibility by violating the no-strike pledge. In a small number of additional cases, other forms of union security were ordered because maintenance-of-membership was not applicable to the particular industry (e. g., maritime).

The evolution of the maintenance-of-membership policy illustrated the manner in which the Board carved out through case decisions a body of substantive principles or patterns. It was the old common law approach depending upon the experience and trial and error. There was one important difference. Because of its tripartite structure, the Board also functioned as a collective bargaining agency and its principles reflected directly the interests of the groups involved.

One of the major objectives of the public members of the Board

¹⁵ *Norma Hoffman Bearings Corp., Case No. 120.*

was to achieve agreement between labor and management. Although such agreement was not achieved with respect to either maintenance-of-membership or the Little Steel formula, restricting general wage increases, the Board principles were sufficient compromises to gain acquiescence.

The approach led to few striking innovations. As public member Lloyd K. Garrison once stated:

* * * the fact is that, apart from the Board's pioneering work in the presumably temporary field of wage stabilization, the Board has turned out relatively little that is new. On the contrary, it has relied upon industrial experience as the primary source of its rulings, and has turned to the best practices of employers and unions, developed through years of collective bargaining and trial and error, as guides for the solution of present-day controversies. In this selective process, aided greatly by the first-hand knowledge of the industry and labor members of the Board, as well as by the contentions and agreements of the employers and unions who have appeared before us, certain precedents set by collective bargaining have been particularly relied upon, certain methods of settlement tested by experience have been particularly singled out for use, and certain trends in collective relationships have been given a particular impetus and a more specific form.¹⁶

Thus, while the Board turned out relatively little that was new, it did extend what it regarded as the best existing practices to industrial areas hitherto untouched by such concepts.

VI. THE NATURE OF PRINCIPLES USED IN DISPUTE CASES ¹⁷

The principles thus established by the Board to apply to the settlement of other types of dispute cases were not all as clear-cut as maintenance-of-membership. Many of them varied considerably in precision of statement as well as in regularity and consistency of application. There were numerous reasons for this variation. Some issues were too complex to lend themselves to simple statement. Others varied so much from industry to industry and from case to case that a single pattern was inadequate. Still others involved problems on which the Board could not agree to apply a consistent pattern. In not a few cases, the Board deviated from past precedent simply because under the pressure of time and case-load, it did not have readily at hand a clear description of previous actions. And sometimes exceptions to general rules were deliberately made as the only way out of difficult situations.

Because of the variety of cases that came before it, the Board rarely felt obligated to adhere to a principle under every condition. Its main

¹⁶ The Termination Report, vol. I, p. 65.

¹⁷ This section is concerned mainly with nonwage issues. Wage dispute issues are treated in sec. VIII.

obligation to the Nation, as its members saw it, was to safeguard war production by reducing industrial conflict. If more industrial production could be achieved by deviating from general rules or by finding a way around a rule, the Board often adopted the exception to the rule. Wage stabilization principles, based on congressional and Executive dictates, represented a special problem to be discussed later.

For purposes of analysis, Board actions on dispute issues may be divided into three main categories:

(a) Actions based upon principles which were consistently followed.

(b) Actions based upon principles which were applied in different ways.

(c) Actions following no principles.

A. PRINCIPLES CONSISTENTLY FOLLOWED

A few rules were practically invariable. During the captive mines case, the President had stated that the Government would never order the closed shop. The Board followed this dictum throughout its existence without an exception. As a counterbalance, however, the Board adopted the equally firm principle that it would not deprive a union of the closed or union shop once it had been voluntarily agreed to by the employer.

Almost as uniformly applied was the rule establishing arbitration as the last step in grievance procedure. Among the flood of dispute issues which threatened to swamp it, the Board found many grievances arising under existing contracts. Instead of settling these grievances themselves, many unions and employers had developed the habit of referring them to the Board. This practice was not only contrary to sound collective bargaining; it also seriously delayed the Board in the settlement of more important cases. One means of coping with this problem was the ordering of arbitration as the final stage of grievance procedure and the refusal to accept grievance cases which had not gone through all of the stages. On this issue, the Board went beyond its customary decision-making approach. It prepared a number of general declarations unrelated to any case in which it enunciated this policy and urged all employers and unions to follow it. In disputes over the details of grievance and arbitration machinery, on the other hand, the Board's action varied considerably.

The principle of the check-off of union dues and initiation fees went through a long and gradual evolution before it reached stable form. In the early months of the Board, the check-off was viewed principally as a mild form of union security, a substitute for maintenance-of-membership. With the Little Steel decision in July 1942

the Board began to use the check-off as a supplement to, rather than a substitute for, maintenance-of-membership. It was granted where the union could prove a special need for having the company collect dues. Finally, the Board began to award the check-off together with maintenance-of-membership as a regular matter except where there was a substantial reason, such as a violation of the no-strike pledge, for not giving it. The individually authorized form of check-off was most commonly ordered although in several of the mass production industries where plants were sprawling and dues collection exceptionally difficult, the automatic check-off was awarded.

B. PRINCIPLES APPLIED IN DIFFERENT WAYS

On perhaps a majority of the important dispute issues the Board evolved a clear general principle but, for various reasons, did not consistently apply it. A few examples may illustrate the practice. For instance, the principle of equal pay for equal work was enunciated at an early stage with respect to sex. It was applied without exception whenever the issue involved the same occupations in a given establishment. But this was generally relatively easy to do; the only problem was to determine whether, in fact, the women on the job were performing the same work as the men. Far more complex was the problem of correcting alleged discrepancies between the rates of jobs employing women exclusively and the rates of other jobs employing men. In these cases Board actions varied considerably although for the most part, one of three positions was taken. These are summarized in The Termination Report of the N.W.L.B. in the following language:

(1) It (the Board) presumed that rates for jobs traditionally performed by women were correctly rated in relation to the general wage schedule of the plant, especially if such rates were established through collective bargaining; (2) it remanded the issue to the parties for further negotiations as to the jobs which were historically performed by women and appropriate rates for such classifications; (3) it suggested or ordered the institution of a job evaluation to establish the worth of a job on the basis of content irrespective of the sex of any incumbent.²³

Similarly, the Board adopted the general rule that union security would not be awarded to unions which were irresponsible, but the problem of determining irresponsibility defied consistent treatment. The Board limited the concept to violations of the no-strike pledge. But often a union violated the pledge because of some employer provocation. And many strikes took place without official union approval. How to allocate the blame and how to assess penalties? The Board treated each case individually and where penalties were assessed, they varied considerably.

²³ P. 294.

Disputes over discharges were generally referred back to the parties for settlement under the grievance and arbitration procedure of the agreement or, if no suitable procedure were available, the parties were ordered to select a special arbitrator to decide the dispute. Where the discharge was related to a strike, the Board's policy was first to order the strike terminated and all employees reinstated to their jobs. After reinstatement, the employer could discharge employees for cause, subject to the grievance procedure. In practice, however, the policy was marked by a number of exceptions. In a few cases, for example, the Board itself decided the merits of the discharge directly. But while there was some variation and inconsistency, a general policy emerged and was ultimately enunciated in a general declaration.

The policy on retroactivity of wage payments provides another leading example of varying application. After numerous, often conflicting, case decisions, the Board attempted to standardize its practice in a general statement of policy. This statement, as subsequently revised, provided that the Board would use the date agreed upon by the parties or fixed by their contract or, where an existing contract contained a wage reopening clause, the date when the wage issue was actually reopened; or in the absence of such agreement, the date of expiration of a previous agreement governing the same bargaining unit. If there was no agreement of any type, then the date of certification by the United States Conciliation Service or assumption of jurisdiction by the War Labor Board was to be used. However, if the Board agency acting on the dispute deemed some other date appropriate, due to special circumstances, the previous rules could be disregarded. This was obviously a loose policy and frequent exceptions to the general rule were inevitable.

C. ACTIONS FOLLOWING NO PRINCIPLES

On a number of issues, like seniority and most aspects of grievance procedure other than the establishment of arbitration as the final step, the Board found it most expedient to refrain from establishing principles and to treat each case individually. It was not uncommon for the Board to use some of the cases as precedents for others but no serious attempt was made to establish a consistent pattern. The reasons for this method of dealing with these issues were numerous. Some of the issues came to the Board in such small numbers as not to warrant a general principle. The Board did not develop principles, as a rule, unless the pressure of cases impelled such action. Usually the facts varied so much from establishment to establishment that attempting to enforce a WLB general rule would have seriously affected the equities of the individual situation. In the case of issues which involved breaking new ground in the field of industrial rela-

tions, the Board was reluctant to move more rapidly than the parties in a given industry or locality.

VII. WAGE DISPUTE PRINCIPLES¹⁹

A. THE PRESTABILIZATION PERIOD

In its first few months the Board dealt with wage issues in much the same fashion as it handled other dispute issues—case by case. There was, however, a strong awareness of the overhanging problem of inflation control. On February 6, 1942, Leon Henderson, Price Stabilization Director, appeared before the Board and urged the need for stabilizing wages as part of the over-all stabilization program. He noted that as far back as the summer of 1941 suggestions had been made in Congress to give his agency authority to freeze wages but that he had opposed such action. More recently he had urged the President to leave the control over wages to the NWLB rather than to the Price Administration. The Leiserson address of February 18, 1942, was another important call for a national wage policy.

The industry members of the Board likewise took the position that a wage control policy was essential. Some of them insisted on the need for congressional or Executive guidance on the matter; others urged that the Board itself should immediately formulate a policy. One industry member proposed that further general increases in wages should be permitted only to correct for wages below the prevailing average for comparable jobs in a community or to avoid hardship.

The labor representatives on the Board were strongly opposed to any attempt to regulate wages. They wished to continue the NDMB approach—each case on its own merits, with the primary emphasis on collective bargaining. The public members were sympathetic to the emphasis on collective bargaining but were constrained to recognize that some set of flexible principles regarding wages was unavoidable. As one of the public members stated in a general Board discussion following the certification of the basic steel industry cases in February 1942, "No doubt the decision that we make in steel will be a precedent, damn near a policy."²⁰

The reluctance of the public members at this stage to commit themselves to any firm wage control program was illustrated by the majority opinion in the first major wage case, *International Harvester Co.* case No. NDMB 4, 4-a, and 89 (April 15, 1942). This opinion set forth a number of basic principles which should be considered

¹⁹ As described in ch. 4, the Board discussed wage stabilization in terms of wage rates, not take-home pay.

²⁰ National War Labor Board, Transcript, Executive Meeting, February 6, 1942, p. 44.

minimum guarantees in any wage issues considered by the National War Labor Board. The principles were briefly as follows:

(a) Wages should be sufficiently high to maintain a decent standard of living.

(b) Every effort should be made to protect real wage levels although labor could not expect in time of war to have wages tied to the cost of living.

(c) Substandard wages should be raised to the standard level whenever possible.

(d) Wage adjustments to offset rises in the cost of living should be made to the extent that they could be done without inflationary effects.

These principles, it may be noted, were similar to the principles set forth by the War Labor Board of World War I and which proved to be ineffectual because of their vagueness and generality. Nevertheless, they represented a first step in the formulation of a wage policy.

Less than 2 weeks after the Harvester decision, the President on April 27, 1942, issued his Seven-Point anti-inflation program which, among other things, directed the NWLB to stabilize wages with due consideration to inequalities and the elimination of substandards of living.²¹ The Presidential statement stimulated further discussion in the Board about wage policy. Perhaps its major effect was to push the public members in the direction of firmer wage principles. To the industry members, the statement simply meant a reinforcement of their original position. As one industry member stated:

I should think as a result of it (the Presidential statement) we have got to try to develop some formula that we are going to fit these things into reasonably. You just can't pick this and that and the other thing out of the air. * * *

To the labor members it meant a withdrawal from the position of no policies to a recognition that—

this Board in deciding wage disputes which come to it as part of its job shall be guided by the national policy laid down by the President. * * *

But they continued to insist upon a broad interpretation of the President's words and placed primary emphasis upon collective bargaining and the particular circumstances of each case.

The public members agreed that collective bargaining was to retain its primary role. As the chairman stated:

* * * There was a great pressure on the President not to leave this thing to collective bargaining, to have Leon Henderson or somebody say that wages are

²¹ See ch. 3 for a fuller discussion of this program.

²² National War Labor Board, Transcript, Executive Meeting, May 5, 1942, p. 27.

²³ *Ibid.*, May 5, 1942, p. 21.

frozen where they are, that there won't be any increase in wages. That was what Congress wanted to do * * * (my advice) was not to freeze the wages but to make them dependent on collective bargaining. That was the same advice you fellows (the labor members) were giving him, and that is the advice he followed * * * The actual situation is * * * that the President has said to the country that this Board is going to do that job. Now, I understand that to mean * * * that it is to do it by deciding cases.²⁴

The Seven-Point program had one other important effect. It made the Board conscious of the problem of controlling, in addition to wage disputes, voluntary wage rate increases. A number of the Government procurement agencies, for example, called upon the Board for advice or action on suggested wage increases. The Office of Price Administration was particularly insistent upon the establishment of a policy. At a Board meeting early in June 1942, one of the industry members proposed the adoption of a wage stabilization declaration to the effect that employers shall not voluntarily make general increases in salaries or wages without first clearing through the proper governmental agencies and any general increases in salaries or wages shall be granted only after an examination of the circumstances and approval by the War Labor Board.²⁵

The labor representatives vigorously attacked the proposal. One charged it would lead to socialism and complete regimentation. Another suggested that the voluntary wage problem be left to other agencies. The labor position was best summed up, however, in the following statement:

* * * I think it wipes out collective bargaining and it invites every negotiation in this country to break off and make a dispute before this Board and really sets this Board up as the controller of wages in this country. I don't think the Executive order provided for that. With one clean sweep you wipe out collective bargaining. You bring every dispute to this Board. You destroy, in my judgment, the no-strike agreement.²⁶

The public representatives urged a postponement of any decision on the resolution until the big steel and auto wage disputes had been disposed of. They pointed out that Board decisions had already laid down patterns in the case of substandard and inequality adjustments and that further decisions would set additional patterns for the unions and employers of the country to follow.

On July 16, 1942, in the *Little Steel* cases, the public members, supported by the industry members, issued the formula which was to serve as the definitive answer for the remainder of the war period to the basic problem of the relation between wage increases and the cost of living. It was a precise formula, just as the maintenance-of-membership policy was precise, and it contrasted strikingly with the

²⁴ *Ibid.*, May 5, 1942, p. 6.

²⁵ *Ibid.*, June 16, 1942, p. 20.

²⁶ *Ibid.*, June 16, 1942, p. 20.

general wage principles of World War I. Labor opposed it, partly because it was a formula, partly because it did not yield as high a return as the unions had wanted. At a press conference announcing the Little Steel formula, the vice chairman of the Board stressed that "this is no mathematical formula that you push a button and an answer comes out. I mean, these are guiding principles to be followed, but it takes a good bit of discussion and meeting of minds as to the application of these figures to a situation * * *." One of the labor members replied that it "stymies collective bargaining."

Thus, on a case-by-case basis, a set of general principles of wage adjustment was developed by the Board. Particularly under the influence of the President's anti-inflation statement, they had a stabilizing purpose. They were quite precise on the relation of wages to the cost of living and less precise in other respects.

As pointed out in chapter 3, it was not feasible to stabilize wages solely through disputes. On September 7, 1942, the President pledged to stabilize all wages if Congress would agree to stabilize the prices of farm commodities. At the same time he asked Congress to enact legislation enabling him to stabilize both farm prices and wages. On October 2 such legislation was enacted and on the following day Executive Order 9250 was issued making the NWLB responsible for the administration of wage controls.

B. EFFECT OF STABILIZATION LEGISLATION

The enactment of a national wage stabilization program had two important effects upon the Board's approach to the settlement of wage disputes. For one thing, the policy of developing principles exclusively through the process of case decisions was no longer practicable. As one of the union members put it:

I was one of those that fought tooth and nail against this Board adopting any wage policy, but rather to deal with each case on its own merits. I am not kidding myself any longer about that * * * with thousands of cases piling in here it is just a physical impossibility to do so.²⁷

Another stated:

It is true that we talked about the Little Steel formula, but none of us, up until the present time, were willing to say that the Board had a definite wage policy. * * *²⁸

The pressure for the quick establishment of general principles to implement the very vague legislative and executive stabilization language came from both inside and outside the Board. The Board itself realized that a policy statement was necessary to guide the members of its rapidly expanding staff in the newly formed regional offices as

²⁷ *Ibid.*, October 27, 1942, p. 117.

²⁸ *Ibid.*, October 28, 1942, p. 245.

well as for the information of the country at large. Otherwise it would have been impossible to achieve equality of treatment for parties similarly situated. The Director of Economic Stabilization also requested a declaration of policies for his guidance in wage cases which involved price relief.

On November 6, 1942, the Board therefore issued a policy statement,²⁹ which was to serve as the basis of wage stabilization for the duration of the war. It is important to note, however, that the main principles set forth in this statement came not from abstract discussion but from prior case experience. Thus the first major principle enunciated and the foundation stone of the stabilization program was the Little Steel formula. With respect to wages which were substandard, the statement noted that—

The National War Labor Board has dealt with but a very few cases in which the substandard issue has been a factor. Therefore, the Board is not in a position at this time to enunciate a general policy * * *.

The provision relating to inequalities and gross inequities was much broader than the Little Steel formula but likewise expressed much of the thinking of decisions in previous disputes. The Board specifically declared that it would not approve wage increases for the purpose of influencing or directing the flow of manpower but also provided that it might make special adjustments³⁰ in the interest of the more effective prosecution of the war.

The second main impact of the stabilization program on dispute principles came from the emergence of the Economic Stabilization Director as the chief spokesman of the Administration with respect to inflation control. All wage decisions of the Board which necessitated increases in prices or involved increased costs to the Government became subject to review by the Stabilization Director. Although the number of dispute cases falling in this category was comparatively small, many of them were important in terms of number of employees affected and some of them involved significant policy changes. Any important liberalization of wage policies thus required the approval of the Stabilization Director. This limitation on the Board's autonomy and the failure of the Government to work out a satisfactory procedure for price relief cases were among the most criticized features of the stabilization program—particularly on the part of organized labor.³¹

The elaboration of wage principles and their application to wage disputes as well as the relations between the Board and the Stabilization Director are described in detail in chapters 3, 4, and 5 and in the

²⁹ The Termination Report, vol. I, p. 187.

³⁰ See ch. 5 for analysis of this policy.

³¹ See chs. 3 and 4 for reasons for criticism.

Termination Report of the NWLB. The details need not be repeated here. It is sufficient to observe that while the Board continued to place the main emphasis on case decisions in policy formation (e. g., the substandard policy), it was also obliged to temper the settlement of wage disputes by policies arrived at more or less independently of cases. The so-called brackets policy for the correction of interplant inequities is a leading illustration of the latter. Even this policy was applied with considerable flexibility in individual cases.

The wage principles, like the nonwage policies, were not applied rigidly to disputes. Such a course would have run counter to the underlying concept of collective bargaining and the traditional approach of the members of the Board respecting industrial relations problems. The main objective of the Board in a dispute was to arrive at a decision which, within the limits of the stabilization program, had a maximum of acceptability to the parties involved—if possible, complete agreement. The Board never approached its problems in the role of a court applying a fixed set of principles to a particular set of facts, with the knowledge that regardless of the reactions of the parties, the decision would be enforced by the power of the state. As is pointed out in chapter 1, the Board relied primarily upon voluntary acceptance by the parties of its decision and only in a few extreme situations upon Presidential enforcement of its orders against the wishes of the affected parties. Thus, each dispute was studied with great care in terms of its particular circumstances and the principles were applied with considerable flexibility. Sometimes the principles were ignored for the purpose of a specific case; sometimes, if the case was sufficiently important, and the prospect of acceptability of a decision based on existing principles was tenuous, the case was used as a springboard for the modification of the principle.

C. FRINGE ISSUES

Of all the wage issues, the so-called fringe issues were the most flexibly treated. As other chapters note in greater degree, the wage stabilization program was essentially a delaying action against the inexorable inflationary pressure generated by the war. Wage stabilization was only one of seven anti-inflation forces included in the President's April 27, 1942, program. The line was not held equally well on all these points and the labor organizations constantly pushed for greater elasticity in wage policy. In the face of substantial pressure, the Board was able to hold its main line—the Little Steel formula. But the unavoidable price was greater flexibility on secondary lines. The fringe issues—job evaluation and reclassification, paid vacations, shift differentials, paid holidays, paid lunch periods, severance pay, in-

insurance plans, and many others—were therefore the issues which underwent the most continual change, until on March 8 and April 24, 1945, the Director of Economic Stabilization established stabilized limits for the more important of them.³²

The policies on the major fringe issues were developed in the customary Board manner—through dispute case decisions. As in the case of most other issues, the Board would begin without a general policy. The issue would be treated on an individual case basis. Gradually, however, with experience, certain precedents would emerge and general principles would be established. But the evolution was by no means always consistent, the precedents were not always adhered to, and even after a fairly definite principle had emerged, exceptions were not uncommon.

The above pattern was most clearly discernible in the case of paid vacations and shift differentials. Both of these payments had been well developed through collective bargaining prior to the war and the Board simply furthered the trend. On most other fringe issues for which there was some industrial precedent, the Board generally followed industry or area practice although no clear-cut definition of industry or area practice was established and the decisions therefore varied considerably. On fringe issues which had generally been outside of the collective bargaining area prior to the war (e. g. insurance plans or severance pay) the Board acted most conservatively. It broke little new ground. In most of such cases, it refused to order the adoption of the union demand. In the few cases where an order giving effect to the union demand seemed warranted, the Board was careful to specify that no general policy had been set.³³

VIII. SUMMARY AND CONCLUSION

As the preceding discussion indicates, the NWLB was given a relatively free hand in the settlement of wartime labor disputes referred to it. Its predecessor, the National Defense Mediation Board, had consciously refrained from the establishment of substantive principles and had approached each case on its merits. The labor-management conference called by the President to develop a wartime labor program had agreed to the establishment of a board to settle labor disputes without strikes and lockouts but had deadlocked on the only substantive issue, union status, which was seriously considered. The framers of the Executive order establishing the Board had debated the question of principles to guide the new Board but had decided to

³² See ch. 3 for details.

³³ See *The Termination Report*, vol. I, pp. 383, 390, and 392.

leave the Board free to make its own decisions. The Executive order merely set up the machinery.

The Board was urged by its employer members as well as by individuals on the outside immediately to formulate principles at least on the two major issues of the time—union status and wages. But instead of creating principles out of general discussion, it carved out a set of principles in the manner of the common law—through case decisions. While the enactment of wage stabilization legislation imposed some limitations on this approach, the bulk of the wage stabilization principles (there were a few major exceptions) were developed, as the nonwage issues, through the process of settling dispute cases.

It is now relevant to return to the questions which were posed at the start of this chapter. Was the course followed a wise one? Would the Board have been able to do a more effective job of settling wartime labor disputes if guiding principles had been set up in advance, either by Congress, or the President, or the Labor-Management Conference, or the Board itself?

A. INEVITABILITY OF PRINCIPLES

As the Board quickly discovered, the NDMB policy of no policies could not be maintained by an agency whose principal function was to make decisions, not to mediate. Inevitably, the accumulation of cases and decisions led to the making of comparisons, the citing of examples, and the establishment of precedents. Principles served a number of important uses. They informed the employers and unions of the country what action they could reasonably expect from the Board on a given issue and thus served as guides to collective bargaining. The Board, of course, received many cases which probably would have been settled by the parties themselves if there had been no Board. The development of principles helped to reduce this flow. They thus contributed to the more effective and expeditious settlement of disputes. They also added an element of certainty to the industrial relations picture which was a stabilizing factor. When the parties were in doubt about the outcome of a case, as in certain wage cases, there was always the problem of persuading them to accept unpopular decisions. Some of the most critical situations which confronted the Board arose in cases where, for one reason or another, the workers had been led to believe that they would receive a more favorable decision than actually materialized.

Principles also were very useful from the point of view of internal board operations after the establishment of the regional boards and commissions. They served as guides to the board agencies on critical issues and insured a closer equality of treatment throughout the country than would otherwise have occurred. They were essential to

the appeals system which the Board established to afford every employer and union just treatment.

B. NEED FOR GENERAL ACCEPTABILITY

To be useful, principles must be generally acceptable. If principles are to be acceptable, employers and unions must feel that their interests have been justly considered, that they are not being asked to sacrifice more than their opponents or competitors, and that they can apply the principles in a realistic manner to their particular establishment or industry. As chapter 1 has made clear, high worker morale and high production depend in the last analysis upon consent—the willingness of the workers and employers to produce under the conditions which prevail. If the conditions are too unsatisfactory to either side, the results are a poor labor-management relationship, friction, impaired morale, and lowered production.

It is true that a number of the most serious noncompliance cases of the Board arose out of the unwillingness of either a union or an employer to accept one or more of the basic principles. The fact, however, that only relatively few such cases emerged testifies to the widespread recognition that the Board's principles were about as satisfactory as could be expected under the circumstances. As indicated above, principles must be realistic if they are to win consent and to be effective. In the industrial relations field, that means that they must usually be flexible. American industry is so varied and so complex that it is rarely possible to apply a single rigid standard or rule without creating many inequities. Even the maintenance-of-membership principle, which is simple in concept and relatively easy to administer, was found to be inapplicable to certain industries such as the maritime. The Little Steel formula likewise required a variety of special adaptations to be generally applicable. The substandard wage principle also required a different type of application in the laundry industry than it did in the textile industry.

C. TIMING OF PRINCIPLES

The evidence clearly indicates that a war labor board needs principles for deciding labor disputes. A much more difficult question to answer is whether such dispute settlement principles should be set up in advance to guide the Board, as was attempted in World War I, or should be established by the Board itself, as was done in World War II. By "advance" is meant immediately before the establishment of the emergency board, not a considerable period before. No one has seriously proposed the formulation of principles prior to the rise of the emergency. The chief argument in favor of establishing principles "in advance" is that if they are effective principles, they will

eliminate serious controversies which might otherwise arise during a period of policy formation. Few advocates of this course propose the prior establishment of a large number of highly detailed rigid rules which would tie the hands of the Board. The industrial relations world is too complex for this procedure to be successful.

Every dynamic period, however, has a few special problems which are major impediments to industrial peace and industrial production. In World War I the major problem was recognition by the mass production industries of the right of unions to organize and bargain collectively without employer interference. By World War II this right had been embodied in the law of the land. The critical problems of World War II were union security and general wage increases. If it had been possible to establish acceptable principles on these issues before the Board's establishment, it probably would have been sound procedure. Whether it was possible, in the light of the bitter labor-management differences of opinion at the time is impossible to answer. No serious effort was made to do so.

The opponents of the establishment of principles in advance argue that if the principles are general and vague, they serve no useful purpose; they are merely window-dressing. If, on the other hand, the principles are sufficiently specific to serve as workable guides, they are likely to be too restrictive on a board which must apply them to a bewildering variety of situations. Particularly in time of war, conditions may change radically almost overnight and it is essential for the machinery to adjust its policies accordingly. Furthermore, it is argued, the Board itself is much more likely to be able to work out acceptable and realistic principles when confronted by concrete cases than is Congress or the President or a labor-management conference acting in abstract terms. It is also pointed out that it is not always possible to know in advance what the real issues of the emergency will be and that these can be adequately recognized only after concrete incidents have occurred. Moreover, it is argued, that since the major issues in dispute are usually tinged with considerable emotion, lasting agreement could best be achieved through the mechanics of case by case discussion.

These arguments, of course, do not apply to the question of general wage stabilization. Since the decision to institute a national wage stabilization program is intimately linked with a general economic stabilization program and since it affects workers and employers generally, congressional and Presidential action are clearly called for.³⁴

³⁴ British experience provides a contrary answer under conditions significantly different from the American conditions of World War II—namely, a unified, strongly self-disciplined labor movement, widespread union organization throughout the economy, well established employer organizations, a considerable history of stable collective bargaining, and important governmental responsibilities exercised by the unions in the fields of manpower, labor disputes, production, and elsewhere.

Even then the governmentally established principle may well be phrased in general terms.

The decision to leave the establishment of substantive principles governing wage and nonwage issues to the War Labor Board in World War II without any guidance proved to be highly successful in fact. The Board was able, within a comparatively short time, to find workable solutions to the critical issues dividing labor and management without any serious disruption of the war effort. The circumstances of the time played an important part.

In pursuing its pragmatic common law approach, the Board required somewhat less than 8 months to spell out the main principles on which it functioned throughout the war. During this period principles were established (or a firm foundation for their subsequent establishment was laid) for critical issues of union status and the relation of general wage increases to the cost of living as well as for such issues as grievance procedure, equal pay for equal work, and jurisdictional disputes. The main exceptions, such as the principles relating to intra- and inter-plant inequities, grew out of the wage stabilization program, which depended upon factors beyond the control of the Board. Even some of these were developed experimentally and were modified later through case handling.

The Board's approach during this period created a vast amount of debate in the newspapers and in Congress. But in the industrial area, it was a period of substantial peace. In the months January-August 1942 only about 0.06 percent of available working time was lost as a result of strikes.⁸⁵ This outstanding record was, of course, primarily the result of the Nation's response to the shock of Pearl Harbor and the military disasters in the Far East. The entire country reacted with all its energies to the needs of the war. Private interests were subordinated to the national interest more intensely than at any subsequent time during the war. Thus during the primary period of trial and error the Board accomplished much with a minimum of economic dislocation. One of the main risks of the common law approach, the time required for experience and testing, was thereby minimized.

It should be noted that in general the Board did not attempt to pioneer new forms of labor-management relations but rather to extend and consolidate the most acceptable forms then in existence. Under prevailing conditions it was a successful policy because it was most likely to win the consent of the parties. The only dispute case "crisis" in the Board's life came from the refusal of a few employers to accept the maintenance-of-membership principle and the violation

⁸⁵ U. S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, May 1943, p. 962. The percentage of time lost was the lowest since 1930.

of the no-strike pledge by a small number of unions over the application of wage stabilization principles.

D. IF PRINCIPLES ARE TO BE ESTABLISHED IN ADVANCE WHO SHOULD DETERMINE THEM?

The final question to be answered, assuming that it is wise to have certain critical substantive principles established for the guidance of the War Labor Board, is who should determine the principles—Congress, the President, or a special conference of representatives of labor and industry.

In the particular set of conditions existing at the time of the Pearl Harbor attack, it is clear that neither the Congress nor the President was an adequate instrument for the establishment of meaningful industrial relations principles to guide a war labor board in the settlement of labor disputes. On the two major issues, union status and wages, as well as on a number of the less important issues, the accumulated experience essential to meet the basic conditions of consent and realistic flexibility was lacking. Had Congress acted on the Smith bill or similar legislation pending at the time of Pearl Harbor, it would have clearly failed to meet the existing needs. At best Congress or the President could have enunciated general rules which would not have had an unduly restrictive effect upon the operations of the new Board. The labor-management conference composed of the major interest groups, thoroughly experienced in the problems of industrial relations, was a far more suitable device for the establishment of principles.³⁶ However, such a conference, to be successful in the advance establishment of principles, needs a clear-cut directive from the President as to its function and sufficient time to reach a unanimous agreement. The achievement of agreement is its main purpose for being convened. Such agreement can be achieved with respect to controversial issues only after a prolonged period of hard bargaining and compromise.

E. CONCLUSION

The experience under review, therefore, is suggestive but does not provide a conclusive answer to the problems of the chapter. On the whole, it appears that general principles are necessary and that these can be developed better by a tripartite machinery than by the Government acting alone without the participation of labor and management representatives. What actually happened in World War II is that the needed principles were largely developed out of case handling. This worked well for the settlement of dispute issues. When the

³⁶ This would not have been true if wage-price stabilization had been involved since none of the representatives at the conference represented the general public interest.

Government found it necessary to establish compulsory wage stabilization, it formulated the broad principles in advance of case handling, in part by legislation and in part by administrative action. Even then, however, specific policies were largely developed through case decisions. The experience also suggests that the sooner principles were developed, the more useful they were, provided that they were (a) generally accepted, (b) sufficiently realistic, and (c) sufficiently flexible. There is considerable question whether the Labor-Management Conference could have achieved the first two of these standards had it tried to formulate general principles in December 1941. In any case, it would certainly have been necessary for the tripartite board to have had authority to modify or change such principles as conditions changed.

APPENDIX TO CHAPTER 2

A CODE OF NLRB PRINCIPLES USED IN DISPUTE CASES

The Termination Report of the National War Labor Board analyzes the substantive principles of dispute settlement developed by the Board. They are summarized here in their final form. It should be remembered that some of these rules were applied earlier and more rigorously than others.

I. Union Status

A. Except in cases of union irresponsibility (i. e., violation of the no-strike pledge) unions will be awarded a maintenance-of-membership provision with a 15-day escape clause.

1. When the maintenance-of-membership provision is renewed, a new 15-day escape period will be provided.

2. In cases of union irresponsibility maintenance of membership may be awarded after a reasonable period of good behavior on the part of the union.

B. Neither the closed nor the union shop nor any combination of clauses which are the practical equivalent of the closed or union shop will be ordered by the Board where such provisions have not previously been in effect. However, where the closed or union shop has been in effect as a result of collective bargaining, the Board will not deprive the union of this status except in cases of union irresponsibility.

C. The checkoff of union dues and initiation fees will be ordered together with maintenance of membership when requested by the union. Except in certain mass production industries where the checkoff will be made compulsory upon all union members, the voluntary, individual authorization form of checkoff will be ordered.

II. Grievance Procedure

A. Grievances can best be settled by the prompt initial attention of those in the plant who have intimate knowledge of the dispute. The exact procedure for such attention to grievances must be adapted to the needs of the plant and can best be worked out by the parties themselves.

B. Grievance procedures should provide for the final and binding settlement of all grievances not otherwise resolved. For this purpose, provision should be made for the settlement of grievances by an arbitrator under terms and conditions agreed to by the parties. If the Board finds it necessary to order an arbitration clause, it prefers the permanent arbitrator setup, but it will order this type of arbitration only where the employer has expressed no serious opposition or where exceptional circumstances warrant a permanent arbitrator despite management opposition.

C. If the parties cannot agree upon an arbitrator within a specified period of time (usually 10 or 15 days) the Board will appoint one.

D. Even in the absence of established grievance procedures, the Board will expect all parties to settle grievances through direct negotiation and, if necessary, voluntary arbitration. Where the company or union seeks to have a case involving a grievance certified to the Board, the Board will consider the grievance, if at all, primarily from the point of view of the establishment of effective grievance machinery within the plant. As a rule, the Board will refer such unsettled grievances to an arbitrator.

E. The creation of a grievance procedure for a minority union will not be ordered save in the most exceptional circumstances.

F. Such grievance procedure problems as time limits, written versus oral presentation of grievances, the number of union grievance men, and payment for time spent in handling grievance will be determined on an individual case basis.

III. Discharge

A. A disciplinary suspension or discharge alleged to be without just cause should be taken up as a grievance and finally determined under the grievance procedure as speedily as possible. If an existing multistep grievance procedure has been found to be not adapted to the speedy processing of such grievances, a special shortened procedure should be established for this purpose.

1. Grievances which cannot be settled by negotiations should be promptly submitted to an arbitrator or umpire for final and binding decision, with power to order reinstatement and back pay in appropriate cases.

2. Management has the right, in the absence of agreement to the contrary, to direct a discharged or suspended employee to remain away from work until the grievance has been finally determined. A reasonable opportunity should be provided for the employee, before leaving the premises, to report the details of his grievance to the union official authorized to present it.

B. With respect to discharges occurring during a strike, the Board will, as a general rule, order reinstatement of the discharged employees. If disciplinary action should subsequently be taken by management, which does not constitute a circumvention of the order of reinstatement, a dispute concerning such action may be taken up as a grievance, and, if necessary, submitted to arbitration.

IV. Seniority

A. In deciding disputes over questions of seniority rules to be applied in case of layoffs, transfers, or promotions, the Board will attempt in each case to order a clause which most nearly meets the desires of the disputing parties and most completely fills the particular needs of the industrial organization.

V. Contracts.

A. Contracts must be adhered to. The Board will not modify the terms of an unexpired contract.

B. The Board normally will provide that the terms of its order remain in effect for a period of 1 year from the date of the order. However, it may order a contract for more or less than a year because of industry patterns, past practices, or other reasons.

C. In recognition of the fact that the National Wage Policy may change at any time, the Board may direct wage reopening clauses with date prior to the regular expiration date of the contract.

D. The Board will order the terms of an old contract to be continued during negotiations for a new contract.

E. If upon the expiration of a contract, the employer challenges the majority status of the union, the Board will continue to recognize the already established status of the union as the bargaining agency in the absence of a clear showing of a compelling change in circumstances.

VI. Retroactivity

A. The Board will recognize the principle of retroactive payment of wage adjustments.

B. The appropriate date of retroactivity will be:

1. The date agreed upon by the parties or fixed by their contract, or where an existing contract contains a wage reopening clause, the date when the wage issue was actually reopened;

2. In the absence of such agreement, the date of expiration of a previous agreement governing the same bargaining unit;

3. In the absence of any agreement, then the date of certification of the dispute by the United States Conciliation Service or the date of assumption of jurisdiction by the War Labor Board;

4. Some other date if required by special circumstances.

C. Any employee who has either left or been discharged between the retroactive date established by a directive order of the Board and the date of the order will receive the amount of the increase for his classification up to the date on which his employment with the company terminated.

VII. Discrimination

A. The Board will require equal pay for equal quality and quantity of work without regard to race, sex, color, or national origin.

B. The Board will encourage equal opportunity for employment and advancement of all workers without regard to race, sex, color, or national origin.

VIII. Wage Increases*

A. If a group of employees has received increases amounting to 15 percent in their average straight-time rates over the level prevailing on January 1, 1941, the Board will not grant further increases as a correction for maladjustments resulting from the rise in the cost of living (the Little Steel formula).

B. The ability or inability of employers to give wage increases will not be considered a factor in determining wage increases during the war.

C. The Board will adjust wages to correct for substandards of living. (The minimum finally reached by the Board was 55 cents per hour.)

D. In connection with the granting of wage increases to eliminate substandards of living or to give effect to the Little Steel formula the Board will grant wage adjustments for workers in immediately interrelated job classifications to the extent required to keep the minimum differentials between immediately

*No attempt is made to summarize all the detailed wage stabilization principles.

interrelated job classifications necessary for the maintenance of productive efficiency.

E. Interplant wage differentials which are established and stabilized are normal to American industry and will not be disturbed. Where interplant inequities exist, the Board will order increases up to the minimum of the sound and tested going wage rates for the job classifications in the labor market.

F. The Board will order wage rate adjustments to correct intraplant inequities through re-evaluating particular jobs found to be out of line with other jobs.

G. The Board will not order wage increases for the purpose of influencing or directing the flow of manpower except in rare and unusual cases involving the critical needs of war production.

IX. "Fringe" Issues

A. The Board will decide disputes over hours and overtime in terms of the circumstances of each case and the relation to industry and area practice, subject to the limitations of the Fair Labor Standards Act and Executive Order 9240.

B. The Board will not order the adoption of wage incentive plans.

C. The Board will normally order a vacation plan providing for 1 week's paid vacation after 1 year's service and 2 weeks' paid vacation after 5 years' service.

D. The Board will order premium payments for second and third shift work provided that such compensation is not already included in the basic wage rate. (The stabilized limits for shift differentials in noncontinuous industries were set by the Stabilization Director at 4 cents an hour for the second shift and 8 cents an hour for the third shift. In continuous operations, whether rotating or nonrotating shifts, the limits were 4 cents for the second shift and 6 cents for the third shift.)

E. The Board will order payment for holidays not worked on the basis of industry and area practice. (Executive Order 9240 required the payment of time and one-half for work on six holidays—New Year's Day, Independence Day, Labor Day, Thanksgiving Day, Christmas, and either Memorial Day or a similar holiday of greater local importance. It forbade premium payment for any other holidays worked and also prohibited the payment of more than time and a half.)

F. The Board will not order the payment of a nonproduction bonus unless it has been the invariable practice of the company concerned, i. e., an integral part of the wage structure.

G. Except in unusual circumstances, the Board will not order a sick leave or insurance plan or the payment of a severance bonus.

H. Paid meal periods will be ordered only on the basis of industry or area practice.

I. Paid rest periods will be considered on an individual case basis. They will sometimes be ordered when the shifts are excessively long or the work burdensome or on the grounds of industry or area practice. They will be denied where the character of the work does not appear to warrant it or where there is a critical need for uninterrupted war production.

J. In disputes involving payments for time not worked, other than holidays, lunch periods and rest periods, the Board will base its decision on the facts of each case and the criterion of "reasonableness."

1. The Board will normally order from 2 to 4 hours' pay for reporting to work as scheduled when no work is available.

The Development of Wage-Price Policies

By *H. M. Douy*

I. SOME GENERAL FACTORS IN WAGE-PRICE CONTROL

A. INTRODUCTION

When the European conflict began in September 1939, the general economic requirements of modern warfare were widely understood. This was a reflection, in part, of experience in World War I. It reflected, also, additional insight gained in the two decades before the war into the nature of the economy and its operation, together with improvement in the tools for measuring economic changes and economic performance.

At the same time, the concrete measures designed to gear the economy for war could not, in the nature of the case, be clearly foreseen. Measures taken in any emergency are, in part at least, improvisations. Their precise nature and their timing depend upon a complex of circumstances, and the economic measures to meet a war emergency are no exception.

In the case of the United States, the question of our actual involvement in the conflict, and hence the extent of our military and economic commitment, was not irrevocably determined until December 7, 1941. During the preceding 18 months, however, we had been engaged in a defense program of substantial magnitude. As the rate of expenditure under this program mounted, its impact on the structure and stability of the economy became progressively heavier. In consequence, the need for central direction and control became increasingly apparent. But how much planning and control? And by what measures?

The purpose of the present chapter is to inquire into the relation between wage and price control during the defense and war periods and in the immediate postwar era. Although supported by many other measures, these were the major direct controls aimed at securing economic stabilization in the war emergency. The principles of wartime wage stabilization are elucidated elsewhere in this volume.¹ The

¹ Ch. 4.

specific techniques of price control will be discussed only to the extent necessary to clarify the course of price control development.² Emphasis will be placed, instead, upon the timing of controls and their interrelationship.

Extensive preparation for war gives rise to predictable economic consequences. The precise impact of war preparations upon the economy, however, depends not only upon the relative magnitude of the defense or war effort, but also upon the nature and structure of the economy and its level of operation when war preparations are inaugurated. For example, the immediate economic effects of expanding defense or war expenditures will be markedly different under (a) an existing condition of full employment, or (b) substantial unemployment and unused plant capacity. The size and timing of the defense program are plainly important both in themselves and in relation to the underlying economic situation at the time the program is initiated. Clearly these and related factors need to be taken into account in any evaluation of past experiences.

B. WAR EXPENDITURES AND INFLATION

In 1939, the United States possessed relatively large volumes of unused resources. Substantial unemployment had constituted a major problem for almost a decade.³ In the critical steel industry, ingot production in 1939 amounted to 52.8 million tons as compared with existing capacity of approximately 80 million tons.⁴ In the cotton textile industry, to use another example, 92.5 billion spindle hours were utilized in 1939 as compared with 133.4 billion in 1942 although the number of spindles in place was greater in the earlier year.⁵ In substance, the output of the economy in 1939 lent itself to sharp expansion through the addition of unemployed or underemployed workers to existing plant and facilities.⁶

The existence of unused manufacturing capacity and the availability of raw materials meant that a relatively large defense program could be inaugurated without curtailment of the production of consumer goods. In the spring of 1941, at the end of the first year of the defense program, we were using about one-eighth of our productive effort to produce war materials. Production for civilian purposes, however, had not diminished. Indeed, the output of consumer goods

² The most convenient source of reference on price control is found in the series of monographs on the Office of Price Administration published as part of the Government's Historical Reports on War Administration.

³ The Bureau of Labor Statistics estimates average unemployment in 1939 at almost 9.5 million workers. See Stanley Lebergott, "Labor Force, Employment and Unemployment, 1929-39: Estimating Methods", *Monthly Labor Review*, July 1948, pp. 50-53.

⁴ *Iron Age*, January 2, 1941.

⁵ The Cotton-Textile Institute, Inc., *What Is The Truth About The Cotton Textile Situation?* (undated), p. 6.

⁶ George Terborgh, "The Problem of Manufacturing Capacity." *Federal Reserve Bulletin*, July 1940.

had measurably increased. This simultaneous expansion in the production of consumer goods and war goods plainly could not continue past the point of full employment. In fact, the output of some types of consumer goods (e. g., aluminum products) virtually ceased long before this point was reached. Beginning roughly in late 1941 or early 1942, additional output of war materials could be obtained only by the sacrifice of civilian goods production.

The full impact on consumer goods output of the production requirements for World War II may be summarized as follows:

The composition of the national output at the peak of the war effort was different from what it was before the war. * * * Although the dollar volume of consumer expenditures held above prewar levels, there was virtually no production of the most important types of consumers' durable goods, while some nondurable goods became unavailable. Other kinds of consumer goods had deteriorated in quality. At the same time, consumers' services were limited in amount and changed in character.⁷

For example, between 1941 and 1945 expenditures for consumers' durable goods declined from 9.75 billion dollars to 7.98 billion dollars although gross national product rose from 125.3 billion dollars to 213.2 billion dollars.⁸

The expansion of physical output under the defense program induced expansion in national money income. Table 1 indicates the extraordinary increase that occurred in Federal expenditures. This

TABLE 1.—Total Federal expenditures and expenditures for goods and services, 1939-45

[Millions of dollars]

Year	Total expenditures	Goods and services		
		Total ¹	War	Nonwar
1939.....	8,955	1,157	1,258	2,908
1940.....	10,094	6,170	2,223	3,956
1941.....	20,545	16,923	13,794	3,173
1942.....	56,150	52,027	49,567	2,664
1943.....	85,979	81,223	80,334	1,490
1944.....	95,559	89,006	85,615	1,552
1945.....	84,929	74,796	75,923	1,031

¹ Federal expenditures for goods and services less the value of Federal sales of goods. Since the total figure is net, the sum of the war and nonwar components exceeds the total by amounts ranging from 9 million dollars in 1940 to 2,153 million in 1945.

Source: U. S. Department of Commerce, Office of Business Economics.

enormous increase in expenditures for defense and later for war was financed to a substantial extent by debt creation through the banking system.⁹ The new purchasing power thus created flowed through the

⁷ J. Frederic Dewhurst and Associates, *America's Needs and Resources* (New York: Twentieth Century Fund, 1947), p. 11.

⁸ U. S. Department of Commerce, *National Income: Supplement to Survey of Current Business*, July 1947, p. 19.

⁹ Charles O. Hardy and others, *Prices, Wages and Employment* (Washington: Board of Governors, Federal Reserve System, 1946), pp. 8-11.

economy and, to the extent that it was not siphoned off by taxation, represented claims on present or future goods and services.

As long as money income and physical output of goods available for civilian consumption increase at about the same rate, the higher level of money income cannot exert significant general upward pressure on the price structure. In the absence of controls inflation results when purchasing power expands at a more rapid rate than output. Under these conditions, the demand for goods and services at existing prices cannot be satisfied, and prices are bid up. The incidence of inflation affects various sectors of the economy unequally, as evidenced by unequal movements of prices, wages, and salaries, and entrepreneurial and property income.¹⁰

In table 2, selected measures of income are set forth for the period 1939-45. In many ways, the most significant measure for our present purpose is disposable personal income. In 1939, individuals retained

TABLE 2.—*National income, employee compensation, personal income, and disposable personal income, 1939-45*

[Millions of dollars]

Year	National income	Employee compensation ¹	Personal income	Disposable personal income ²
1939.....	72,532	47,820	72,607	70,167
1940.....	81,347	51,786	78,347	75,743
1941.....	103,834	64,280	95,308	92,015
1942.....	136,486	84,689	122,156	116,197
1943.....	168,262	109,102	149,432	131,617
1944.....	182,260	121,184	164,915	146,011
1945.....	182,808	122,872	171,590	150,712

¹ Including supplements to wages and salaries.

² Personal income after Federal, State, and local taxes.

Source: U. S. Department of Commerce, Office of Business Economics.

after taxes about 70,167 million dollars for expenditure on personal consumption or for saving. By 1941, disposable income had increased by 31 percent. The use of yearly totals conceals the rapid rate of increase during 1941. In 1942, disposable personal income stood at 66 percent above the 1939 level. Thereafter, the rate of increase declined sharply.

As the defense program developed, the increase in income available for consumption could not be matched, as we have already seen, by an equivalent increase in civilian goods. In the absence of counteracting forces, therefore, inflationary price rises could be anticipated. As a useful conceptual device, estimates were made for some period in the future of expected consumer expenditures and of the value, at then existing prices, of the expected volume of goods and services.

¹⁰ Frederick C. Mills, *The Structure of Postwar Prices* (New York: National Bureau of Economic Research, 1948), especially pp. 1-16.

that would be available for sale. The difference between these aggregates, in the discussions of the early 1940's, was called the inflationary gap.¹¹ The concept played a role in the hearings on the Emergency Price Control bill. Leon Henderson, wartime price chief, estimated that the supply of civilian goods in June 1942 would be worth 77.2 billion dollars in terms of September 1941 prices, but that civilian demand would amount to 83 billion dollars.¹²

On the surface, the most direct way to eliminate inflationary pressures would appear to be for the Government to take excessive purchasing power in the form of taxes. Sharp increases in personal and corporate income taxes during the war years did, in fact, reduce the money income available for private expenditures. For a variety of reasons, it seems unlikely that in a major war, inflationary pressures can be eliminated through taxation.¹³ Some of these reasons are technical—time is required, for example, to impose and collect new or higher taxes. Of even greater importance, however, is the fact that tax rates would have to be so high as probably to reduce the incentive to work and produce.

The pressure of excess purchasing power can also be lessened if individuals can be persuaded to increase their rate of saving. Saving did increase remarkably during the war period. Thus the ratio of individual saving to the disposable income of individuals rose from less than 9 percent in 1938-39 to more than 23 percent in 1944. The major portion of these savings went into Government bonds, with the remainder held in the form of unspent bank balances or currency.

It is of crucial importance to notice that price control and saving (and, of course, taxation) reinforce and complement each other. There would be little saving if consumers expected constantly increasing prices. If reasonable price stability through price control (supported by rationing to assure an equitable distribution of the available supplies of essential goods) can be achieved, then the incentive to save is immeasurably strengthened. An increase in the rate of saving or taxation, in turn, greatly eases the administrative task of making price control effective.

The preceding discussion indicates in general the case for price control in an emergency situation with a high inflationary potential. Price control is flexible and direct. It can be used to prevent unwar-

¹¹ See the two papers on The Inflationary Gap by Walter Salan and Milton Friedman, *American Economic Review*, XXXII:2 (June 1942), pp. 308-320. The controversy that developed on the nature and significance of the concept, and its measurement, need not detain us.

¹² Emergency Price Control Act, Senate Hearings, 1941, p. 28. The exactness of this or similar estimates is not important for present purposes; the concept is useful in the process of visualizing the nature of the pressures on the general price level as the defense program developed.

¹³ Committee on Public Debt Policy, *Our National Debt After Great Wars* (1946).

ranted price increases in selected commodities that are critical in the emergency situation, and it can contribute powerfully to the maintenance of general price stability.¹⁴ Price control must be supported by appropriate fiscal measures, by intensive efforts to induce individuals to save, by rationing, and by proper consideration of civilian needs in production planning for the duration of the emergency. Experience seems to indicate that price control, to be effective, must be supported also by some form of wage and salary stabilization.

C. WAGES, LABOR COSTS, AND PRICES

From the standpoint of the economy, wages and salaries represent the largest single cost in carrying on productive activity. They also represent, of course, the major component of national income. In 1939, wages and salaries, including supplementary payments, constituted 65.9 percent of national income; this proportion had increased, for a variety of reasons, to 67.2 percent by 1945.

Labor costs are determined primarily by wages per hour in relation to the number of man-hours per unit of product. If wages advance more rapidly than labor output per man-hour, unit labor costs will increase. Increasing labor costs may be offset, in terms of total unit costs, by reductions in other cost factors. In the first year of the defense program, increased utilization of plant and equipment served generally to reduce unit overhead costs, notably in those plants and industries that did not experience major changes in product. Hence, up to a point, wage increases beyond the level indicated by changing labor productivity can be absorbed, in a period of expanding production, out of current or anticipated profits without direct price effects.¹⁵ Whether they will be so absorbed depends on such factors as firm or industry pricing policy, market conditions, and the existence or absence of price control.

In any case, price control can scarcely prove effective in a period of excessive demand if wage rate changes are not brought within the general framework of stabilization.¹⁶ In a period of general labor shortage, the bargaining position of labor is extraordinarily great. This strength is possessed not only by organized workers; it is shared also by unorganized workers through the competitive bidding of employers for the available labor supply. Thus wage rates tend to be bid up, unit labor costs tend to increase, and these increases tend to be re-

¹⁴ From an economic point of view, the initial extent of price control action will depend largely on the condition of the economy at the time of the emergency. Experience in World War II is described in some detail at a later point in this chapter.

¹⁵ The relation of wage changes, labor costs, and prices is complicated. For data on selected individual firms, see Temporary National Economic Committee, monograph No. 5, *Industrial Wage Rates, Labor Costs, and Price Policies* (1940).

¹⁶ It should be noted that emphasis is upon the control of wage rates and not of earnings.

flected in prices. This inflation of the cost structure, in turn, generates purchasing power that supports prices from the demand side.

Wage and salary stabilization, therefore, permits control of a major element of industrial cost. In conjunction with the stabilization of farm prices at a reasonable level, wage stabilization makes industrial price stabilization possible. Stabilization, of course, implies in all instances such measure of administrative flexibility as may be required to remove well-defined inequities in either wages or prices or to serve the ends of economic policy in the emergency period.

D. WAGE-PRICE CONTROL AND RESOURCE ALLOCATION

Another aspect of the relation between price and wage controls and the mobilization of resources for war requires brief consideration.

The defense and war efforts required enormous expansion in some branches of production, with no expansion or even curtailment in others. Great changes were required in the allocation of resources as between, broadly, civilian and military production. These changes could be effected, up to a point, through the normal operation of the price (including the wage) system. Primary reliance, indeed, was placed upon "market incentives" during the defense period. This was possible because of the tempo of the defense program in relation to the underlying economic situation during 1939-41. But in the United States, as in all of the belligerent countries, the full mobilization and specific allocation of resources for war required elaborate schemes of priority controls, direct allocations of materials, manpower control—in a word, production planning by Government on a comprehensive and national basis.¹⁷

The basic reasons for the establishment of direct controls over the use of resources in wartime are succinctly stated by Galbraith:

Market incentives are incapable of producing the comprehensive transfers in resource employment that any considerable mobilization requires. An effort by the Government to monopolize steel supply must necessarily be defeated by the inelasticity of demand for steel by some private buyers. So with other resources. Needless to add, the response to market incentives is uncertain and sellers in imperfect markets who take a comprehensive view of their position do not seek to maximize profits at any given point of time. For this reason, they will not willingly accept a Government order, even though it is immediately more profitable than any alternative, if it promises to impair their long-run position in the market. The automobile industry, in late 1941 and early 1942, was displaying

¹⁷ The objective of this planning has been admirably defined by Galbraith as being designed "to attain maximum resource employment at maximum efficiency, to get the psychologically optimal allocation of resources between military and civilian use and to distribute the former between different kinds of production, present and future, in accordance with a given but not static plan." J. K. Galbraith, *The Disequilibrium System*, *American Economic Review*, XXXVII: 3 (June 1947), p. 288.

normal market behavior in preferring manufacture of automobiles to tanks or aircraft even assuming the latter netted higher returns.¹⁸

Direct controls became imperative when the point of full utilization of all resources was approached. Up to this point, market and income incentives worked reasonably well to effect the resource allocations needed for the defense program. The difficulties tended to be specific rather than general and amenable to selective action. Similarly, the price effects were manageable on a selective basis. With full resource utilization, price and wage controls provided powerful support to the direct controls over the use of resources.

II. WAGE-PRICE CONTROL: FIRST PHASE, 1940-41

A. PRICE AND WAGE MOVEMENTS, 1939-41

Table 3 shows indexes prepared by the Bureau of Labor Statistics of wholesale and consumers' prices from August 1939 to the end of the defense period in December 1941.¹⁹

Until the inauguration of our defense program in the summer of 1940, the war abroad had comparatively little effect on the level of wholesale prices. As table 3 indicates, there was an advance of about 6 percent, largely speculative in character, in the fall of 1939. Wholesale prices turned downward early in 1940 and by August were only 3.2 percent above the level of a year earlier. During the period August 1939-August 1940, the largest advance, 7.5 percent, was registered by the farm products component of the wholesale price index; the average wholesale prices of fuel and lighting materials actually declined during this period. The Bureau of Labor Statistics index of consumers' prices rose about 2 percent during the first year of the European war.

On May 16, 1940, the President reviewed military developments in Europe before a joint session of Congress and called for an immediate appropriation to strengthen the defenses of the United States. Initial funds were made available by the Congress in June. By May 1941, 1 year after the inauguration of the program, defense appropriation and contract authorizations amounted to 37.3 billion dollars;²⁰ actual expenditures, on a monthly basis, had increased from 177 million dollars in July 1940 to 836 million dollars in May 1941. Defense, including lend-lease, expenditures had reached a monthly rate of almost 2 billion dollars by the time of our entrance into the war.

¹⁸ *Ibid.*, p. 288.

¹⁹ BLS indexes of wholesale prices reflect, for the most part, prices in primary markets, such as prices charged by manufacturers or producers or established on organized commodity exchanges. The BLS consumers' price index measures changes in the prices of cost-of-living essentials, including rent, of moderate-income families.

²⁰ Office for Emergency Management, *Defense: 1 Year*, p. 9.

TABLE 3.—Indexes of wholesale and consumers' prices, August 1939–December 1941

[August 1939=100]

Year and month	Wholesale prices	Consumers' prices	Year and month	Wholesale prices	Consumers' prices
1939			1940—Continued		
August.....	100.0	100.0	November.....	106.1	101.5
September.....	105.5	102.0	December.....	106.7	102.1
October.....	105.9		1941		
November.....	105.6		January.....	107.7	102.2
December.....	105.6	101.0	February.....	107.5	102.2
1940			March.....	108.7	102.6
January.....	105.9		April.....	110.9	103.7
February.....	104.9		May.....	113.2	104.4
March.....	104.5	101.2	June.....	116.1	106.1
April.....	104.8		July.....	118.4	106.8
May.....	104.5		August.....	120.4	107.7
June.....	103.3	101.9	September.....	122.4	109.6
July.....	103.6		October.....	123.2	110.9
August.....	103.2		November.....	123.3	111.8
September.....	104.0	101.8	December.....	124.8	112.1
October.....	104.9	101.6			

Source: U. S. Department of Labor, Bureau of Labor Statistics.

The impact of the defense program was reflected in changes in the price structure. Initially, price increases at wholesale were confined largely to commodity markets affected directly by rearmament needs, such as scrap metals and lumber, and to some manufactured products, notably cotton and wool cloth. Beginning about February 1941, the price movement broadened and sharpened. In December 1941, the general level of wholesale prices stood 26 percent above the August 1939 level. Farm products had advanced by 55 percent, foods and textiles by about 35 percent; on the other hand, the average wholesale prices of fuel and lighting materials had increased by only 8 percent and of metals and metal products by 11 percent.

Increases of these magnitudes in primary market prices could not fail to be reflected in the prices of goods at retail. Retail prices began to rise markedly early in 1941 to synchronize with the broadening advance in wholesale prices. By December 1941, the consumers' price index of the Bureau of Labor Statistics was 12 percent above the August 1939 level and almost 10 percent above the level for January 1941. The food component of the index increased 21 percent over the whole defense period; of the 54 foods then included in the index, the retail prices of 9 increased more than 40 percent.²¹ Clothing advanced by 15 percent and housefurnishings by 16 percent; rent, however, rose by less than 4 percent, and the remaining components by less than the average for all items.

In general, the level of both wage rates and earnings in American industry remained stable between 1939 and the spring of 1941. There were some wage rate increases during this period, but nothing in the nature of a broad wage movement. Average earnings as yet were

²¹ Unpublished BLS manuscript.

not greatly affected by longer hours, shifts of employment to high wage industries, and other factors that were to exert a powerful influence on the level of earnings as the defense program gained momentum.²²

TABLE 4.—Indexes of average hourly earnings and estimated wage rates¹, factory production workers, August 1939–December 1941

[August 1939=100]

Year and month	Gross average hourly earnings	Estimated wage rates ¹	Year and month	Gross average hourly earnings	Estimated wage rates ¹
<i>1939</i>			October	106.6	102.3
August.....	100.0	100.0	November.....	107.5	103.4
September.....	100.6	99.8	December.....	108.3	103.4
October.....	101.8	99.7	<i>1941</i>		
November.....	102.9	101.0	January.....	109.5	104.9
December.....	104.5	101.9	February.....	109.8	104.7
<i>1940</i>			March.....	110.4	104.9
January.....	105.0	102.8	April.....	112.5	106.6
February.....	104.8	102.9	May.....	115.5	108.6
March.....	105.3	102.9	June.....	117.3	109.9
April.....	105.1	102.9	July.....	117.8	111.5
May.....	105.8	103.2	August.....	117.9	111.5
June.....	106.1	103.4	September.....	119.9	112.9
July.....	105.4	103.4	October.....	122.0	114.2
August.....	105.8	103.2	November.....	123.9	115.9
September.....	106.3	102.9	December.....	125.5	116.8

¹ Average hourly earnings adjusted to exclude premium pay for overtime at the rate of time and one-half after 40 hours per week and weighted by man-hours of employment in January 1939. This is a rough measure of wage rates, but adequate for the purpose.

Source: U. S. Department of Labor, Bureau of Labor Statistics.

The trend of wages can be established most precisely for factory workers. Table 4 shows indexes for the period 1939–41 of two measures of wages (1) average hourly earnings, including premium pay for overtime, and (2) average hourly earnings adjusted to exclude the influence of overtime premium payments and the shift of workers (during this period) from low- to high-wage industries. This latter series has been designated as “estimated wage rates”; it provides the closest approximation that can be made of changes in the level of wage rates in manufacturing industry.²³

In the 19 months from August 1939 to March 1941, factory wage rates increased, on the average, by less than 6 percent. This increase reflects the influence of scattered wage advances. The spring of 1941, however, witnessed the beginning of a wage movement that was to lift the level of rates by about 10 percent by the end of the year. The bituminous coal miners received an increase of a dollar a day in April; a general increase of 10 cents an hour occurred at about the same time

²² For an analysis of the movement of wage rates and earnings during the defense and early war periods, see H. M. Douty, *Trends in Factory Wages, 1939–43*, Monthly Labor Review, October 1943, pp. 869–884.

²³ For the period beginning January 1941 a more precise measure is available in the form of the urban wage rate index compiled by the Bureau of Labor Statistics.

in steel and automobiles. Wage advances spread throughout industry. Although no casual relationship is implied,²⁴ this wage movement coincided with the upsurge of wholesale and retail prices. (See table 3.) By the summer and fall of 1941 the wage-price situation was clearly dynamic under the powerful pressure of the expanding defense program.

Even in the absence of wage rate increases, the level of earnings (hourly and weekly) would have increased significantly as the defense program developed. As early as the fall of 1940 the level of earnings began to be affected by longer hours of work, more work at premium overtime rates, and by the shift of workers to the relatively high-wage war industries. These factors, and others of lesser importance, continued to influence the level of earnings well into the war period. Even by December 1941 the level of hourly earnings in manufacturing was about 6 cents higher than wage rate changes alone would account for. Because of expanding employment total payrolls increased much more sharply than other earnings.

This brief analysis of the movement of wages and prices during the defense period indicates clearly that the general problem of stabilization did not emerge until the spring or summer of 1941. In terms of the relation between consumer purchasing power and civilian goods output, Leon Henderson, early in 1942, divided the 1939-41 period into three phases: (1) Up to February 1941 "the increase of buying power, generated by exports and our own defense program, was matched by an increase of output and prices remained practically unchanged"; (2) beginning about February 1941 many industries approached capacity operations, and prices began to rise sharply as increased output only partially offset increased demand; (3) by the fall of 1941 the production of consumer goods and services began to decline although total output and purchasing power continued to advance.²⁵

Rising costs do not appear to have been a highly significant factor in price increases in the initial phases of the defense program, although toward the end of 1941 this situation began to change. Food prices responded to higher levels of consumer income and were affected by Government requirements for the expanding Armed Forces and for lend-lease. The farm price support program was a contributing factor.²⁶ Increased prices of farm products other than foods likewise were affected more by demand than by cost factors during this period. In the processing industries, expanding output tended to lower unit overhead costs and to counteract raw material and other cost increases.

²⁴ See discussion below.

²⁵ National War Labor Board, Transcript, Executive Meeting, February 6, 1942, pp. 4-5.

²⁶ Food prices at the beginning of the war were relatively low, prices in August 1939 being about 6.5 percent below the 1935-39 average.

A general summary of the cost-price situation during the defense period is given below :

Increases in cost as such did not play any very important part in the general price rise during the early stages of the war. It is true that direct costs rose substantially in many industries, principally because of higher prices for raw materials. Costs of farm products and imported materials rose most sharply, the latter reflecting increases not only in prices abroad but also in shipping and insurance rates. Labor costs per unit of output also advanced somewhat in a number of industries, especially toward the end of the Defense period when spreading increases in wage rates could no longer be matched by greater labor efficiency. In general, however, these higher direct costs were more than offset by the sharp reduction in unit overhead which accompanied the expansion of productive activity. Of course, this situation could not last indefinitely, and, by the time of Pearl Harbor, costs in a growing range of industry had begun to move upward as capacity output was approached or reached. Nevertheless, viewing the period as a whole, little if any of the increase in prices of most manufactured products can be traced to higher costs.²⁷

With respect specifically to wages as a cost factor, the situation appears to be reasonably clear. Thus, in February 1942 Henderson stated :

Through spring of 1941 the increase of wage rates was more than matched by the increase of productivity and rising wages did not force up labor costs. Since that time, however, the increase of average hourly earnings has been greater than the increase of productivity and labor costs per unit have been rising.²⁸

Henderson's view apparently was that the round of wage increases in the spring of 1941 could, in general, have been absorbed without price effects. This is consistent with the action of the Office of Price Administration and Civilian Supply, immediately following the April 1941 wage increase in steel, in freezing steel prices as of the first quarter of the year, pending a thorough study of cost-price relationships in the industry.²⁹ This general view of the relation of wage increases to prices through the spring of 1941 was shared by Isador Lubin, then Commissioner of Labor Statistics, in testifying in October 1941 on the Emergency Price Control Act.³⁰

By the fall of 1941 there was widespread concern over wages as a cost factor in price. It was felt that, for the duration of the war, the prospects for gains in man-hour output above the 1941 level were

²⁷ U. S. Department of Labor, Bureau of Labor Statistics, Bulletin No. 749, *Wartime Prices. Part 1—August 1939 to Pearl Harbor (1944)*, p. 2.

²⁸ National War Labor Board, Transcript, Executive Meeting, February 6, 1942, p. 3.

²⁹ Minutes of Price Administration Committee, April 14, 1941; William Jerome Willson and others, *The Beginnings of OPA* (Washington, Government Printing Office), pp. 165-168, 207.

³⁰ House Hearings, 1941, pp. 1834-44. Lubin concluded by stating that " * * * it is quite apparent from all of the evidence that such important price increases as have already occurred have in virtually all instances preceded rises in wages. In other words, increases in wages have not been responsible for most of the price increases that have occurred." *Ibid.*, p. 1848.

decidedly poor.³¹ Lubin pointed out in testifying on the Emergency Price Control Act that—

* * * as more and more people have been taken on, as you have had to resort to the employment of less and less skilled people, there has been a tendency for the output of the workers to drop. There has been a very slight drop, but the tendency is already under way * * *.³²

Although information on man-hour output during the war period is not abundant, the available data indicate that, for a variety of reasons, the general level of productivity did not increase during the war in industries manufacturing civilian goods. In 32 nonmunicipalities industries, output per man-hour generally increased from 1939 to 1941, turned downward from 1941 to 1943, leveled off in 1944, and increased in 1945.³³ Dilution of the labor force and of managerial talent, coupled with the difficulty of making normal improvements in technique or even in adequately maintaining existing equipment, contributed largely to arrest gains in man-hour output in civilian goods industries during the war.

B. THE GROWTH OF SELECTIVE PRICE CONTROL

On May 28, 1940, prior to the initial defense appropriation, the President established the National Defense Advisory Commission.³⁴ Two of its seven divisions, price stabilization and consumer protection, had to do particularly with prices.³⁵

Thus, at the very beginning of the defense effort, and approximately a year in advance of the clear emergence of the problem of price stability in generalized form, systematic attention began to be given to the impact of the defense program on the price structure. Henderson states that—

My instructions at the time were to watch prices, to advise the President, to talk with the leaders of American industry, to get their individual consent, so far as possible, to a restraint on prices.³⁶

During the early months of the National Defense Advisory Commission Price Stabilization Division, Henderson and his small staff were occupied by a number of matters that were related only indirectly to price. These matters included Government procurement policy,

³¹ Henderson expressed this belief to the members of the National War Labor Board. See Transcript, Executive Meeting, February 6, 1942, pp. 3-4.

³² House hearings, 1941, p. 1846.

³³ Cella Star Gody and Allan D. Searle, "Productivity Changes Since 1939." *Monthly Labor Review*, December 1946, p. 899. In the production of war equipment, there were tremendous gains in productivity as mass production volume was achieved. In some of the nonmanufacturing industries, such as railroad transportation, electric light and power, and agriculture, sharp gains in man-hour output occurred during the war period. The prewar rate of increase was generally maintained in the mining industries. The article cited contains an excellent summary and analyses of the available information on man-hour output during the war period.

³⁴ See Bureau of the Budget, *The United States At War* (June 1946), pp. 21-25.

³⁵ Wilson and others, *op. cit.*, pp. 25, 177.

³⁶ Emergency Price Control Bill, House hearings, 1941, p. 10.

financing defense plant expansion, and various production and supply problems.³⁷ By the fall of 1940, however, price problems began to appear in scattered areas of the economy. These included pulp and paper, lumber, machine tools, copper, secondary aluminum and aluminum scrap, and steel and steel scrap. Every effort was made to handle these early situations on an informal basis, at least in part, because the authority of the Price Stabilization Division to enforce maximum price orders was questionable. On February 17, 1941, however, the first formal price schedule, relating to second-hand machine tools was issued. The second price schedule, for secondary aluminum and aluminum scrap, was issued on March 21.

The development of price control policy was tentative and experimental throughout the whole defense period. Continuity of development was achieved, however, through continuity of top personnel, despite several organizational changes³⁸ prior to the creation, on January 30, 1942, of a price control agency with statutory authority. The policy that emerged is generally characterized as "selective price control" and this policy carried over into the early war period.

This policy had its roots in the conditions under which the price control program was inaugurated and in which it functioned during the defense period. The establishment of the NDAC Price Control Division in May 1940 was a highly perceptive action. At that time there was no price problem. As the problem did begin to make its appearance, it was in the form of special or selected situations that required action. It obviously made sense to meet these particular problems as they arose. Even when prices began generally to move upward in the spring of 1941, the belief that reasonable stability could be achieved through the control of key or strategic prices was probably unexceptionable. Certainly public opinion was not prepared for comprehensive price control. The political situation was volatile. We were not at war, and the full magnitude of our armament effort could not be predicted. Moreover, Congress had to be persuaded that the price control agency should be given statutory powers. The power to control prices is a very great power. Especially in view of the fact that we were not at war until 4 months after hearings on the Emergency Price Control bill began, selective control undoubtedly appeared more defensible. The hearings on this bill, particularly in the House, were thorough and illuminating.

³⁷ Wilson and others, *op. cit.*, pp. 140-150.

³⁸ The Price Stabilization Division of the National Defense Advisory Commission was superseded by the Office of Price Administration and Civilian Supply on April 11, 1941 (Executive Order 8734); on August 28, 1941, the civilian allocations function was transferred to the Office of Production Management and the prestatutory Office of Price Administration was created (Executive Order 8875).

In purely economic terms, a case for comprehensive control could have been made as early as the fall of 1941.³⁹ Prices were rising generally and the known extent of the defense program made great additional pressure inevitable. In fact, these circumstances were reflected in the actions of the price control agency. As already pointed out, the agency took no formal price action for almost a year. Reliance was placed upon informal methods: persuasion, agreement, warnings, threats. These informal methods were useful and they continued to play an important role all during the prestatutory period. But the limit of their effectiveness is clearly stated in the following passage:

When upward price pressures became appreciable, informal control usually showed signs of breaking down. For those industries most closely dominated by a very small number of firms, informal methods proved more generally effective than in more competitive areas. But even under the most favorable circumstances, success was typically temporary and uncertain. The government could secure voluntary compliance with its requests only within narrow limits. As soon as its requests failed of general acceptance either because they were thought unreasonable under changing cost conditions or because less responsible elements in the industry could not withstand the temptation to secure greater profits, then informal controls proved inadequate and mandatory controls became necessary.⁴⁰

As 1941 wore on, and price pressures multiplied, the tempo of formal price control actions increased. As previously noted, the first formal price schedule was issued on February 17, 1941. During the next 5 months, up to July 10, 1941, only 13 additional schedules were promulgated, including a temporary schedule relating to bituminous coal.⁴¹ During the succeeding 5 months, July 10, 1941, to December 7, 1941 (Pearl Harbor), 33 formal price schedules were issued. In the period of less than 2 months from Pearl Harbor to the passage of the Price Control Act on January 30, 1942, 58 schedules were issued.⁴² Thus the price pressures that became manifest by the spring of 1941 forced ever wider action in the sphere of formal controls. The nature of the situation was clearly recognized by the price control agency. For example, a memorandum prepared by the Office of Price Administration and Civilian Supply and introduced on August 8, 1941, into the House hearing on the Emergency Price Control bill concludes:

The task of avoiding serious price disruption and inflation during the period immediately ahead is exceedingly complex and becomes more difficult each day.

³⁹ The case was made, in fact, by isolated individuals, the most distinguished of whom was Bernard Baruch.

⁴⁰ Wilson and others, *op. cit.*, pp. 204-205.

⁴¹ See memorandum on "The Activities of the Price Stabilization Division and the Office of Price Administration and Civilian Supply," Emergency Price Control bill, House hearings, 1941, tables 14 and 17, pp. 230-281, 288. There is a discrepancy between the totals shown in these two tabulations. Table 14 apparently omits reference to the price schedule for second-hand machinery.

⁴² See Office of Price Administration, Federal Price Control July 1, 1940-February 10, 1942, for a digest of the prestatutory period.

The first waves of a potential inflation are already surging through the channels of manufacture and pounding against retail counters. Every week it becomes imperative that an increasing number of industries and commodities be brought within range of effective price control if disastrous consequences are to be avoided. The problems are intensified because the industries which must increasingly be brought under control are those with numerous sellers and unstandardized goods which do not lend themselves easily to control.

One major tool of effective price control is woefully lacking: adequate power to secure compliance with ceiling schedules. Without such power the price situation will soon be dangerously out of hand. Time is of the essence. Price increases must be prevented before they occur. Any widespread scaling down of prices once they have risen is impossible.⁴³

C. WAGES AND THE NATIONAL DEFENSE MEDIATION BOARD

During this whole period (1940-41), except in the case of shipbuilding, there was no semblance of formal wage stabilization or control.⁴⁴ In the National Defense Advisory Commission, general responsibility for labor supply problems rested with Sidney Hillman, and Hillman's staff subsequently became the Labor Division of the Office of Production Management.⁴⁵ Aside from technical problems on labor supply, attention with respect to labor tended to be focused during this period on the prevention of industrial disputes that would interfere with the defense effort. On March 19, 1941, the National Defense Mediation Board was formed.⁴⁶ The Executive order establishing this agency did not mention wages or any principles of wage settlement.

William H. Davis, chairman during the latter part of the Board's existence, clearly summarizes the problem of the Board with respect to wages: "You see, they [NDMB] were mediating individual cases, as has already been remarked, without any policy, not having any power, really, to make a national policy on wages."⁴⁷ The official report on the work of the Board contains the following analysis of procedure in wage cases:

Roughly speaking, it may be stated that the recommendations, with a few exceptions, proceeded along lines made familiar by arbitration practice. The

⁴³ House hearings, 1941, p. 301.

⁴⁴ On November 27, 1940, the National Defense Advisory Commission created a Shipbuilding Stabilization Committee, composed of representatives of labor, management, and the procurement agencies of the Government. The principal object of the Committee was to stabilize shipyard employment. During 1941 the Committee worked out a series of Zone Standards Agreements providing for substantially uniform wage rates and other basic conditions of employment within each of four broad geographic areas. The agreements provided for wage escalation based on changes in the cost of living. The escalator clauses were deleted in May 1942 at the insistence of the Government as being incompatible with economic stabilization. Wage increases (lesser in amount than the cost-of-living criterion would have permitted) were granted at this time, and annual wage reviews were provided for. Several other approaches on an industry basis to voluntary wage stabilization were made prior to the imposition of formal wage controls in October 1942.

⁴⁵ OPM was created by Executive Order 8629, January 7, 1941.

⁴⁶ Executive Order 8716. The work of this Board in various aspects of dispute settlement is discussed elsewhere in this volume.

⁴⁷ National War Labor Board, Transcript, Executive meeting, February 6, 1942, p. 45.

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.⁴⁸

D. WAGES AND PRICE CONTROL—THE 1941 DEBATE

Although there was no wage control effort during the defense period to parallel the price control program, the relation between price and wage control was given wide consideration. This is revealed notably in the House hearings on the Emergency Price Control bill in the summer and fall of 1941. The bill was introduced on August 1, and hearings began on August 5. The bill as introduced contained no reference to wages; it provided authority for the establishment of commodity price ceilings and for stabilizing rents in defense areas.

The language of the bill was sufficiently broad to provide for either "selective" or "general" price control.⁴⁹ It was explained and defended largely in terms of selective control, partly on administrative grounds, partly in view of the climate of public opinion, and partly in the belief that general price stability could be achieved if the prices of critical commodities could be effectively controlled. Henderson at various points stressed the relationship between prices and wages, but seemed at this time to place primary reliance on voluntary restraint as far as wages were concerned. Lubin was the principal witness on the wage aspects of the control problem.

With respect to wage control, Lubin argued, in short, that collective bargaining could continue to operate within a price control framework. "If you fix prices," he testified, "you are automatically fixing a certain part of your wage structure."⁵⁰ Labor, he believed, would take price ceilings into account in formulating wage strategy. "If labor knows that the price is fixed and that the employer cannot pay it out of profits, that there are not any more profits to pay it out of, and he cannot raise his prices, I think you will find in all of these

⁴⁸ U. S. Department of Labor, Bureau of Labor Statistics, Bulletin No. 714, Report on the Work of the National Defense Mediation Board, March 19, 1941-January 12, 1942, p. 29. This volume contains a summary of the cases handled by the Board. Among the leading wage cases were Marlin Rockwell (No. 39), Bituminous Coal Operators, Appalachian Mines (No. 20), Bituminous Coal Operators, Alabama Mines (No. 20C), General Motors (No. 21), Central States Employers' Negotiating Committee (No. 105).

⁴⁹ At one point, Henderson testified that "the power to establish an over-all ceiling as far as commodity prices are concerned is present in this act." Emergency Price Control bill, House hearings, 1941, p. 863. See also p. 102.

⁵⁰ *Ibid.*, p. 1349.

collective bargaining agreements that those factors are always taken into consideration.”⁵¹

Contrary testimony was presented by Bernard M. Baruch, who argued that an over-all price freeze (with provision, of course, for individual adjustments) was necessary, and Representative Albert Gore, whose substitute bill embodied Baruch's general ideas. Baruch's position stemmed from his experience as Chairman of the War Industries Board in the First World War. He stated categorically: "I do not believe in piecemeal price fixing. I think you have first to put a ceiling over the whole price structure, including wages, rents, and farm prices up to the parity level—and no higher—and then to adjust separate price schedules upward or downward, if necessary, where justice or governmental policy so requires.”⁵² He felt that whether prices and wages were controlled by the same or separate agencies was an administrative detail.⁵³

Representative Gore's bill⁵⁴ provided for a base-date freeze of prices, rents, wages, and salaries. Gore stated his position vigorously before the House Committee.

The House hearings on the bill were concluded on October 23, 1941; the bill passed the House on November 28. Hearings began before the Senate Committee on Banking and Currency on December 9, 2 days after Pearl Harbor. The sense of urgency was very great; the hearings were comparatively brief; and the bill was enacted into law on January 30, 1942.⁵⁵

The Senate hearings developed little that was new with respect to the relation of wage stabilization to price control. Henderson gave an excellent summary of his position as developed before the House committee. He was very clear in his position that “* * * there is as much danger from inflationary wages as there is from inflationary prices,”⁵⁶ that wage stabilization should not be tied administratively

⁵¹ *Ibid.*, pp. 1849–1850. Lubin raised other problems in relation to wage control: (a) wage increases do not necessarily increase labor costs (p. 1858); (b) wage ceilings may affect labor output adversely (pp. 1858–1859); (c) wage ceilings would impede the shift of labor into defense industry, at least in the absence of manpower direction (pp. 1859–1860); (d) wage ceilings would require the fixing of profit ceilings (pp. 1860–1861); (e) collective bargaining contracts stabilize wage rates for the duration of the contract (pp. 1861–1862); (f) in view of the complexity of the American wage structure, the administrative task of establishing ceilings would be extraordinarily formidable (pp. 1862–1865). Most of these points were amplified in the course of the extensive interrogation that followed (pp. 1866–1960, 1983–2016). Of particular interest is Lubin's memorandum on Representative Gore's substitute for the Administration bill (pp. 2035–2042); and Representative Gore's rejoinder (pp. 2043–2049).

⁵² *Ibid.*, p. 990. In part, Baruch's testimony on wage control was confusing. At various points he seemed to feel that wage ceilings were compatible with full collective bargaining. See especially *ibid.*, pp. 1004, 1018.

⁵³ *Ibid.*, p. 997.

⁵⁴ H. R. 6086, 77th Cong., 1st sess.

⁵⁵ Public Law 421, 77th Cong., 2d sess.

⁵⁶ Senate Hearings, 1941, p. 161.

to price control, and that, in general, the problem of wage control should be approached, at least initially, on a voluntary basis and a part of a comprehensive wartime labor policy. Obviously, Henderson in the following passage foreshadows the labor-management conference which convened on December 17, 1941, at the request of the President:

You may recall that during the last war the employers' organizations and the labor organizations came together and worked out a war labor policy. It seems to me that that is something which needs to be explored now. I have high hopes, from what the President has said recently, that this will be the case. I do not believe we have gone far enough in exploring what is possible by means of the general agreements that can come between labor and industry for emergency purposes. I think also that we would be better off if we handled all these questions of jurisdictional strikes, closed shop, open shop, and inflationary wages together. Any attempt on the part of a price administrator to handle a wage increase would lead directly into collective bargaining, conciliation, mediation, prospective stoppages or strikes, and the possibility of reference to arbitration.⁸⁷

III. WAGE-PRICE CONTROL: SECOND PHASE, JANUARY 1942–OCTOBER 1942

A. CREATION OF NATIONAL WAR LABOR BOARD

The situation with respect to wage control at the time of the passage of the Emergency Price Control bill on January 31, 1942, may be summarized briefly.

As finally passed by Congress, the Price Control Act contained a general statement of policy for the guidance of Government agencies dealing with wages. The statement, which was inserted by the Senate, read as follows:

It shall be the policy of those departments and agencies of the Government dealing with wages (including the Department of Labor and its various bureaus, the War Department, the Navy Department, the War Production Board, the National Mediation Board, the National War Labor Board, and others heretofore or hereafter created), within the limits of their authority and jurisdiction, to work toward a stabilization of prices, fair and equitable wages, and cost of production.⁸⁸

This statement, as was brought out clearly in the Senate debate, should be viewed solely as a general injunction to other Government agencies to work "within the limits of their authority and jurisdiction" toward the stabilization of the economy. The act specifically states that it—

* * * shall not be construed to authorize the regulation of (1) compensation paid by an employer to any of his employees. * * *

⁸⁷ *Ibid.*, pp. 161-162.

⁸⁸ Emergency Price Control Act, sec. 1 (a).

⁸⁹ Sec. 302 (c).

In the meantime, the President's Labor-Management Conference in December had arrived at a no-strike, no-lockout agreement for the duration of the war. To implement this agreement, the President, on January 12, 1942, created the National War Labor Board.⁶⁰ The Executive order establishing the Board contained no reference to wages or wage stabilization, although clearly the Board was given authority over wage issues in those disputes over which it assumed jurisdiction. As in the case of the Mediation Board, there was no formulation of wage policy to guide the decisions of the new agency. The hammering out of a basic wage stabilization policy with respect to general wage increases was to prove one of the greatest contributions of the Board to the war effort.⁶¹

B. PRICE AND WAGE MOVEMENTS, DECEMBER 1941—OCTOBER 1942

Our entrance into the war in December 1941 resulted in rapid acceleration of the war production program and of all phases of war activity. Government expenditures for war climbed from a monthly rate of 2 billion dollars in January 1942 to 3 billion in March. The output of civilian goods, which had reached its peak in the summer of 1941, was affected markedly by the imperative needs of war production. The Government issued curtailment orders for many durable goods. By March 1942, civilian consumption had been reduced by an estimated 8 percent from the August 1941 level.⁶² Further reduction clearly could be anticipated.

Table 5 shows the average monthly percentage increases in the general level of wholesale prices, consumer's prices, and estimated wage rates from December 1941 to October 1942. The latter month was marked by the adoption of comprehensive wage control and the grant of increased authority over farm prices to the Office of Price Administration.

Over the whole 10-month period from December 1941 to October 1942, the wholesale price level advanced, on the average, 0.7 percent per month; consumers' prices by a monthly average of 0.8 percent; and wage rates by about the latter percent. If the adoption of the General Maximum Price Regulation in April 1942 is used as a line to divide the period, striking differences in average rates of increase appear. Thus, wholesale prices advanced at an average monthly rate of 1.4 percent between December 1941 and April 1942, and at a

⁶⁰ Executive Order No. 9017.

⁶¹ Dr. George W. Taylor, vice chairman and later Chairman of the Board, has stated: "I will always consider that the formulation of the national wage stabilization policy was the Board's greatest achievement, not only because of the difficulty of the problem, but because the welfare of the Nation was so dependent upon this action." *The Termination Report of the National War Labor Board* (Washington: Government Printing Office), vol. I, p. xix.

⁶² Office of Price Administration, *First Quarterly Report*, p. 27.

monthly rate of 0.2 percent between April 1942 and October 1942. For the same two periods, the average monthly increases in consumers prices were 1.1 and 0.6 percent, respectively. On the other hand wage rates advanced, on the average, 0.6 percent per month in the first period and 1 percent in the second. The more rapid rate of increase in wage rates in the second period is undoubtedly related in part to contract reopenings in the spring of 1942.

TABLE 5.—Average monthly percentage increase in wholesale prices, consumers prices, and estimated manufacturing wage rates, December 1941–October 1942

Period	Average monthly percentage increase in—		
	Wholesale prices	Consumers' prices	Estimated manufacturing wage rates ¹
December 1941–April 1942.....	1.4	1.1	0.6
April 1942–October 1942.....	.2	.6	1.0
December 1941–October 1942.....	.7	.8	.8

¹ Average hourly earnings adjusted by overtime premium pay and weighted by January 1941 man-hours of employment by industry group.

Source: U. S. Department of Labor, Bureau of Labor Statistics.

It was in this general setting that the OPA froze prices under the General Maximum Price Regulation, the National War Labor Board developed the Little Steel formula for general wage increases in dispute cases, and Congress gave the President authority to control virtually all wage and salary rates.

C. G. M. P. R.—THE CHANGE IN PRICE POLICY

During its prestatutory period, OPA brought approximately 30 percent of the value of the commodities in the Bureau of Labor Statistics' wholesale price index under either formal or informal control.⁶³ Its initial effort after the enactment of the Emergency Price Control Bill on January 30, 1942, was to extend selective controls. In the first 3 months of its statutory existence, the agency reissued 105 price schedules and issued 50 additional schedules. The new actions, together with those validated under statutory authority, brought about one-third of the BLS wholesale price index under formal control. Retail prices, up to this time, were completely uncontrolled.

During this period, as we have seen, prices were advancing very rapidly and inflationary pressures were mounting. Selective action could not effectively stem the tide.⁶⁴ The OPA was, in effect, virtually administering an inflation in early 1942.⁶⁵ Under the impact of actual

⁶³ Office of Price Administration, First Quarterly Report, p. 24.

⁶⁴ The staffing and administrative difficulties encountered by any rapidly expanding agency undoubtedly slowed down the extension of control during this period.

⁶⁵ W. W. Rostow, "Some Aspects of Price Control and Rationing," *American Economic Review*, XXXII: 3, p. 487.

war and its economic consequences, the logic of selective control vanished.

On April 28, 1942, OPA issued the General Maximum Price Regulation.⁶⁶ With the exceptions indicated below, this was a general price freeze order. The ceiling for each seller was established at the highest price charged in March 1942 to the same class of consumer. The regulation became effective on May 11, 1942, for manufacturers and wholesalers; May 18, 1942, for retailers; and July 1, 1942, for services. Commodities covered by separate regulations were not included within its terms.

The exceptions to the regulation were (a) exclusions written into the Price Control Act itself, such as books, magazines, and newspapers, (b) some primary raw materials whose prices were indirectly controlled by ceilings at later stages of production, (c) certain commodities with no organized markets, and (d) farm and food products that had not attained the level above parity specified in section 3 (a) of the act. This latter exclusion was by all odds the most important. Throughout the war period, agricultural prices had a persistently unstabilizing influence,⁶⁷ even when they were brought within the general framework of control.

The shift in control policy represented by the General Maximum Price Regulation was decisive. The shift has been explained in these terms:

In view of the overwhelming opinion in favor of selective price control at the time of its adoption, an explanation of the shift to a general ceiling is called for. The answer is that Pearl Harbor completely changed the magnitudes. A defense program was converted into a war program. Given sufficiently flexible fiscal powers, selective price control remains the logical solution to bottleneck inflation. But there is no real likelihood of the severe use of the fiscal weapon that is required to prosecute a modern war. In fact, if the morale factor is taken into account, it is open to question whether or not the over-all prosecution of the war would benefit from the unlimited use of the fiscal powers.

Subsidiary factors affecting the decision were (1) the necessity for moving into the control of retail prices which is far more difficult to handle on a piecemeal basis than is control at the manufacturing level; (2) the fact that a more

⁶⁶ For an appraisal of this regulation, see Doris P. Rothwell, *The General Maximum Price Regulation*, U. S. Department of Labor, Bureau of Labor Statistics, Bulletin No. 879 (1946).

⁶⁷ "Agricultural prices continuously exercised an upward pressure on prices. Neither the October 1942 amendment to the Price Control Act, which reduced the 110 percent of parity rule to 100 percent, nor the President's interpretation of parity as parity less benefit payments, eliminated this pressure, because parity, the ratio of prices received by farmers to prices paid by farmers, is itself affected by this rise. Since a large part of prices paid by farmers is for farm products, any increase in prices received by farmers causes automatically a smaller rise in prices paid by farmers and a consequent increase in the parity ratio. Even if all industrial prices were controlled rigidly, the parity ratio would rise with farm prices. Moreover, the 100 percent rule applied to individual products, not to the general ratio. Thus, a rise to parity in the price of one commodity might necessitate an increase in the price of a second related commodity in order to maintain the proper ratio, even though the price of the latter item was already well above parity." Rothwell, *op. cit.*, pp. 39-40.

adequate staff was available; (3) a frank recognition of the tendency for price to edge upward through personal pressures involved in the wide dispersion of administrative authority.⁶⁸

The General Maximum Price Regulation was an emergency measure. It was, in a real sense, an heroic measure to arrest an inflationary movement that was threatening to get out of bounds. Its economic effects in slowing the rate of increase in prices and living costs were significant.⁶⁹ The extent to which control was exercised over prices was unprecedented.⁷⁰ After the issuance of the regulation, OPA was involved in ironing out inequities, dealing with "hardship" cases, replacing for particular industries or commodities coverage under GMPR by coverage under individual regulations better designed to meet special industry problems, the extension of control to additional commodities (especially after the amendment of the Emergency Price Control Act in October 1942), and the host of problems incident to rationing and subsidies. It is unnecessary to examine the details of this rich experience in the methods and problems of general price control.⁷¹

D. GENERAL PRICE CONTROL AND WAGES

The adoption of a general price control policy in the spring of 1942 meant inevitably that the question of wage control would become of critical importance. However, aside from the general injunction with respect to wages in the Emergency Price Control Act,⁷² the NWLB had no specific authority to stabilize wages in the early months of its existence. Its basic function was the settlement of labor disputes. The agency could deal with wages only to the extent that wages were at issue in the dispute cases that came before it, and it had no stabilization criteria for guidance in such cases. Nevertheless, the shadow of the steel case was on the Board from the beginning.⁷³

An early formulation of wage policy occurred in the *International Harvester Co.* case, decided April 15, 1942.⁷⁴ This case involved several CIO and AFL unions and had been inherited from the National

⁶⁸ Don D. Humphrey: "Price Control in Outline," *American Economic Review*, XXXII: 4, December 1942, p. 745.

⁶⁹ For some of the evidence, see Rothwell, *op. cit.*, pp. 46-49.

⁷⁰ About 76 percent of the commodities and services in the BLS wholesale price index, and about 48 percent in the consumers' price index were under OPA control by mid-May 1942; these percentages were 83 and 71, respectively, by mid-October 1942; and 94 and 82, respectively, by the end of the war. In addition, the prices of certain items in the consumers' price index not under OPA control were controlled by other Federal or State agencies. See Doris P. Rothwell, "Price Control Since the General Maximum Price Regulation" *Monthly Labor Review*, October 1945, p. 684.

⁷¹ See the group of report (Washington: Government Printing Office) dealing with OPA issued as part of the Historical Reports on War Administration, particularly *Problems in Price Control: Pricing Techniques; Problems in Price Control: Changing Production Patterns; Problems in Price Control: Pricing Standards.*

⁷² See above, sec. III: A.

⁷³ National War Labor Board, Transcript, Executive Meeting, February 6, 1942, p. 1.

⁷⁴ War Labor Reports, vol. I, pp. 112-130.

Defense Mediation Board. In its opinion in the case, the Board declared—

* * * that for the duration of the war the following basic principles should be considered minimum guaranties in any wage issues considered by the National War Labor Board * * *.

First, all workmen shall receive wages sufficiently high to enable them to maintain a standard of living compatible with health and decency.

Second, the real wage levels which have been previously arrived at through the channels of collective bargaining and which do not impede maximum production of war materials shall be reasonably protected. This does not mean that labor can expect to receive throughout the war upward changes in its wage structure which will enable it to keep pace with upward changes in the cost of living. On the other hand, every attempt should be made to protect the real wages of labor to the point that they do not drop below a standard of living sufficient to maintain health and decency. Without doubt wages in substandard brackets should not only be increased to meet changes in cost of living, but, whenever possible, they should be raised to the standard level.

Third, to the extent that it can be done without inflationary effects, labor should be encouraged to negotiate through the processes of collective bargaining for fair and reasonable upward wage adjustments as an offset against increases in the cost of living * * *.”

This statement contains many germs of later wage stabilization policy and is of great interest as representing a stage in the thinking of the Board. The opinion embodies, in essence, a series of concepts that had been expressed in memoranda to the President during the preceding several weeks. For example, on March 30, 1942, Chairman William H. Davis submitted, at the President's request, a memorandum of wage policy.⁷⁶ He divided wage earners into two groups: (a) Those who had attained “fair and equitable” wages through collective bargaining or otherwise, and (b) those whose wages were substandard. The real wages of the first group should be maintained although the—

* * * diversion of production to win the war may have to be carried to a point where it is impossible to maintain the level of real wages for the standard wage earners.

The real wages of the second group, the substandard workers, should in any case be maintained and increased. Davis proposed that the Board determine “in each wage dispute” whether existing rates were fair and equitable. It should be the aim of the Board to stabilize the purchasing power of “standard” rates (i. e., grant cost of living adjustments if warranted). “Substandard” rates would be corrected insofar as possible.

⁷⁶ *Ibid.*, p. 120. The majority opinion was written by Wayne L. Morse, public member, and concurred in by the remaining three public members; labor members concurred in the directive order in the case but not in the language of the majority opinion; employer members prepared a dissenting opinion on the union security issue.

⁷⁷ Davis submitted the memorandum as his own and not as a policy formulation of the Board.

On April 13, 1942, the Secretary of Labor submitted a memorandum on wage policy to the President; on the following day a memorandum broadly similar in content to his statement of March 30 was submitted by Chairman Davis. Neither suggested control over voluntary wage adjustments. Chairman Davis went somewhat farther than the Secretary in suggesting that July 1, 1941, be fixed as a stabilization date, with "standard" wages established before that date subject to a cost of living adjustment to compensate for increased prices up to that time. It is not clear whether subsequent cost of living adjustments were contemplated. In each memorandum "standard wages" were defined as wages established by collective bargaining, with certain exceptions. These memoranda were obviously intended for use by the President in preparing his forthcoming message to Congress.⁷⁷

Less than 2 weeks after the decision in the *Harvester* case, the President addressed a message to the Congress on the economic situation. This message, on April 27, 1942, preceded by one day the issuance of the General Maximum Price Regulation. The President pointed out that—

the rise in the cost of living during this war has begun to parallel the last. The time has definitely come to stop the spiral. And we can face the fact that there must be a drastic reduction in our standard of living.

The President outlined a Seven-Point program to stabilize the cost of living. The third point in this program called for the stabilization of—

* * * the remuneration received by individuals for their work.

With respect to this item, the President stated that—

* * * legislation is not required under present circumstances. I believe that stabilizing the cost of living will mean that wages in general can and should be kept at existing scales * * * all stabilization or adjustment of wages will be settled by the War Labor Board machinery which has been generally accepted by industry and labor for the settlement of all disputes.

The Board will—

* * * continue to give due consideration to inequalities and the elimination of substandards of living.

The President's message did not, of course, confer added authority on the Board.⁷⁸ It did serve, however, to sharpen its responsibilities in dealing with wage issues in dispute cases. This was clearly understood by the Board members. Apparently some of the President's

⁷⁷ The text of these memoranda is given by David R. Roberts, *The Development of Wage Stabilization Policy During World War II*, unpublished manuscript, National Archives, pp. 16-23.

⁷⁸ National War Labor Board, Transcript, Executive Meeting, May 5, 1942, p. 23.

advisors, if not the President himself, believed that labor and industry, following the message of April 27, should voluntarily agree—

* * * that all wages are frozen as is * * *

The conclusion of the Board, as expressed by Chairman Davis, was that—

* * * our job is to effect that stabilization [called for in the President's message] by deciding cases that come before us.⁸⁰

E. THE PROBLEM OF VOLUNTARY WAGE INCREASES

But the acuteness of the wage problem in general, and not only in relation to dispute cases, persistently forced itself upon the attention of the Board. The problem of voluntary wage increases, which under the circumstances could not be directly affected by Board action, threatened to erase any stabilization line that the Board might draw. Thus, Chairman Davis stated that—

* * * It is a fact that this voluntary wage increase business is going to kick the bottom out of the bucket. There is no doubt about that.⁸¹

Shortly after the delivery of the President's message, an interagency committee met to discuss its implementation with respect to wages.⁸² This committee⁸³ met at various times over a period of several months, and discussed various methods of achieving the stabilization of wages called for in the President's message. Among the expedients considered were (a) voluntary stabilization agreements industry-by-industry through labor-management conferences, (b) the refusal of OPA to take post-April 28 wage increases into account as a basis for price increases, (c) the disallowance by the procurement agencies of post-April 28 wage increases in settlements under cost-plus contracts, (d) the withholding by WPB and WMC of materials and labor from firms which did not stabilize their wage rates, (e) the extension of authority to the NWLB or the War Manpower Commission to control voluntary wage increases.⁸⁴ On June 15, 1942, a memorandum from the NWLB to the participating agencies summarized the functions of the committee and the status of the discussions. With respect to voluntary wage adjustments, the "committee was merely to choose the best way of stabilizing wages by collective bargaining processes with Government participation * * *."⁸⁵ It seems clear that this high-level committee made comparatively little positive progress

⁸⁰ *Ibid.*, p. 13.

⁸¹ *Ibid.*, p. 23.

⁸² *Ibid.*, June 4, 1942, p. 246.

⁸³ The meeting was called by Chairman Davis of the NWLB, an action that was violently objected to by one of the labor members of the Board. *Ibid.*, May 5, 1942, pp. 13 ff.

⁸⁴ The committee included the heads of the War Labor Board, War Production Board, War Manpower Commission, Labor Department, War Department, and Navy Department.

⁸⁵ See Roberts, *op. cit.*, pp. 50-51.

⁸⁶ *Ibid.*, p. 53.

toward a national wartime wage policy, although unquestionably its consideration of various alternatives was valuable in terms of eventual clarity in this difficult field.

On the following day, the question of control of voluntary increases came up for discussion within the Board. One of the employer members presented a resolution on June 16 that called upon the Board, in effect, to propose the establishment of comprehensive wage controls. The resolution stated, in part, that—

* * * wage increases voluntarily agreed upon may defeat the objective set forth by the President of keeping the cost of living down.

It urged that—

* * * this Board call the President's attention to the situation created by uncontrolled and voluntary wage increases made without reference to the War Labor Board * * *

and that the Board request the President—

* * * to amend Executive Order No. 9017 to permit the National War Labor Board to review and pass upon all questions of general increases in salaries and wages regardless of whether an actual labor dispute is in progress.*

This resolution was discussed extensively with the Board but did not come to a vote. Vice Chairman Taylor explained that he did not want to vote on the resolution in view of the pending decisions in the steel and automobile cases, where a stabilization pattern might be set. There was a general feeling to the effect that the Board gradually was evolving a wage policy, and there was some sentiment for a new labor-management conference on wage stabilization.

The Board was, in fact, developing a wage policy to govern the settlement of disputes which came before it, and in the *Little Steel* case⁸⁷ the cornerstone of wartime wage stabilization was laid. In this case, decided on July 16, 1942, a limit was set to general increases in wage rates, and an answer was provided to the question of—

* * * whether or not there would be another round, or an unlimited succession of rounds, of wage increases in a vain effort to keep up with a steadily increasing cost of living.⁸⁸

The formula provided that establishments which had not had an increase of 15 percent in average straight-time hourly earnings since January 1941 (equivalent to the rise in living costs between January 1941 and May 1942) should be permitted to increase wages to this

⁸⁶ National War Labor Board, Transcript, Executive Meeting, June 16, 1942, pp. 9-10.

⁸⁷ War Labor Reports, vol. I, pp. 325-398.

⁸⁸ Opinion by Dr. George W. Taylor. War Labor Reports, vol. I, p. 336. A number of leading cases decided between July 16, 1942, and October 2, 1942, clarify the Board's application of the Little Steel formula. See particularly the *Remington Rand Co.* case (War Labor Reports, vol. II, pp. 137-142); *General Cable Co.* case (War Labor Reports, vol. II, pp. 228-236); *Aluminum and Magnesium Cos.* cases (War Labor Reports, vol. II, pp. 311-345).

amount. In the months after the President's April 27 message, the Board also felt its way toward definitions of the terms "inequalities" and "substandards," mentioned in the President's message as basis for wage adjustments.⁸⁹

On July 29, 1942, Chairman Davis of the War Labor Board in a letter to the President stated that the interagency approach to the problem of voluntary increases had been ineffective. Davis stated:

The pressure of a competitive labor market might lead to voluntary wage increase of an amount and scope sufficient to break all effective wage stabilization. The War Labor Board has no control of these voluntary increases. The powers of the various Government agencies concerned with wages have not been effectively used for lack of agreement among them, and in the absence of Executive direction. This should be corrected by an Executive order.

In the same letter, Davis, in behalf of the entire Board, requested the President not to depart—

* * * from the democratic principle of a tripartite board set up in accordance with the labor-industry agreement of last December.⁹⁰

Although the letter is not entirely clear, the Board appears to be asking the President to extend its authority to voluntary wage adjustments.⁹¹ And this, of course, was an event of first-rate significance. It meant relinquishment for the war period of the tenaciously held belief in free bargaining in the labor market, and full recognition of the intimate relation between wage and price control under conditions of excess demand. It reflected, as the Chairman's letter indicates, the failure of the several agencies to agree on a national wage policy and the means for its implementation, and the genuine need for executive direction. Very importantly, as the reference to the maintenance of tripartitism shows, the pressure for comprehensive wage control had given rise to serious consideration of the establishment of a wage control agency outside of the Board. In a second letter to the President on July 29, the Board expressed—

* * * its deep concern over reports that the procedure and authority of stabilizing wages by the War Labor Board machinery may be drastically modified.⁹²

Also on the same day Dr. Frank P. Graham, public member of the Board, wrote to Vice President Wallace to the same effect.⁹³

In a letter dated August 10, 1942, to Judge Samuel J. Rosenman at the White House, Chairman Davis stated:

We are more and more impressed with the urgent necessity for prompt action to stabilize wages. We feel that if the discussion continues much longer increases

⁸⁹ Roberts, *op. cit.*, pp. 29-41.

⁹⁰ Cited by Roberts, *op. cit.*, p. 58.

⁹¹ This is Roberts' interpretation, and appears to be justified by additional correspondence to Judge Samuel Rosenman, one of the President's advisers, a few days later.

⁹² The text of this letter is given in Roberts, *op. cit.*, pp. 59-60.

⁹³ *Ibid.*, p. 59.

will have been made which will make it impossible to stabilize wages within the limits of the anti-inflation program.

Attached to the letter was a draft of an Executive order enlarging the authority of the War Labor Board to include voluntary wage increases. This draft differs considerably from the wage provisions of the Executive order issued on October 3, 1942, after the passage of the Stabilization Act, although some of its provisions are similar. It was, in fact only one of a number of efforts that were made at about this time, by other agencies as well as the Board, to draft an acceptable Executive order in the uncharted field of comprehensive wage control. The final product reflected the work of many minds.

Undoubtedly there was widespread dissatisfaction by this time with the lack of a stabilization policy applicable to all wage adjustments. Even the Board's wage policy as expressed in the Little Steel case was under attack.⁶⁴ The functions of OPA, in particular, were affected by the steady rise in the level of wage rates that continued after the President's April 27 message and the issuance of the General Maximum Price Regulation.

In fact, the role of OPA on the question of wage stabilization in this critical period was by no means passive. The lack of effective wage stabilization constituted one of the two major threats to the price program. The agency reported that wage increases were producing " * * * powerful pressure on price ceilings,"⁶⁶ comparable with the pressure exerted by uncontrolled farm prices. Despite the stabilization effort of the NWLB in dispute cases, and the efforts in a few industries, including construction,⁶⁶ at voluntary stabilization—

* * * wage increases continued to be granted in all industries and in all parts of the country.⁶⁷

As early as February 5, 1942, 5 days after the passage of the Emergency Price Control bill, Henderson addressed a letter to the President on "Why Wages Must Be Stabilized." The letter dealt with the economic case for stabilization and did not suggest legislation; it was prompted by indications of the development of a round of wage increases similar to the round that had occurred in the spring of 1941. At an executive meeting of the NWLB in June 1942, the effort of OPA to take a strong line on the adjustment of prices on the basis

⁶⁴ *Ibid.*, pp. 58, 60-61.

⁶⁵ Office of Price Administration, Second Quarterly Report, p. 17.

⁶⁶ In May 1942, an agreement was entered into between the Government agencies charged with defense construction and the Building Trades Department of the American Federation of Labor. The agreement provided that wage rates paid under collective bargaining agreements as of July 1, 1942, were to remain in effect on all Government construction for at least 1 year or until modified by a wage adjustment board to be created under the terms of the agreement. Another effort at voluntary stabilization occurred in the tool and die industry in the Detroit area early in 1942. This particular effort failed, but effective stabilization was later achieved under War Labor Board auspices.

⁶⁷ Office of Price Administration, Second Quarterly Report, p. 21.

of voluntary wage increases was reported.⁸⁸ Early in July 1942, OPA intervened forcefully in the conference on wages in the west coast aircraft industry.⁸⁹ There was a measure of drama in this situation that undoubtedly helped to bring the wage problem to a head. On July 18, Henderson sent the President a rough draft of a joint resolution designed to give the President broad power to control salaries and wages as well as farm prices. Four days later, in another memorandum to the President, Henderson suggested that the Federal agencies dealing with wages be notified to suspend action while the next move in wage policy was being considered. On August 5, the general counsel of OPA addressed a memorandum to Judge Rosenman expressing the position of the agency with respect to some details of wage policy. It is clear, in summary, that OPA exercised a very appreciable influence in the formulation of Government economic stabilization policy that culminated in the President's message to Congress of September 7, calling for, among other things, the power to stabilize all wages and salaries.

F. THE STABILIZATION ACT OF OCTOBER 2, 1942

On September 7, 1942, the President again addressed a message to the Congress. The President, in part, stated:

Our experience during the last 4 months has proved that general control of prices is possible—but only if that control is all inclusive. If, however, the costs of production, including labor, are left free to rise indiscriminately, or if other major elements in the costs of living are left unregulated, price control becomes impossible. If markets are flooded with purchasing power in excess of available goods, without taking adequate measures to siphon off the excess purchasing power, price control becomes likewise impossible.

It is impossible for the cost of living to be stabilized while farm prices continue to rise. You cannot expect the laborer to maintain a fixed wage level if everything he wears and eats begins to go up drastically in price. On the other hand, it is impossible to keep any prices stable—farm prices or other prices—if wage rates, one of the most important elements in the cost of production, continue to increase.

Therefore, I ask the Congress to pass legislation under which the President would be specifically authorized to stabilize the cost of living, including the price of all farm commodities. The purpose should be to hold farm prices at parity, or at levels of a recent date, whichever is higher.

At the same time that farm prices are stabilized, wages can and will be stabilized also. This I will do.

⁸⁸ National War Labor Board, Transcript, Executive Meeting, June 16, 1942, pp. 14-15.

⁸⁹ See War Labor Reports, X, pp. 581 ff., and Richard Feise, "Aircraft—A Mass Production Industry," in Colston E. Warne (editor), Yearbook of American Labor (New York: Philosophical Library, 1945), pp. 251 ff.

On October 2, 1942, less than 1 month after the President's message Congress passed the Stabilization Act of 1942,¹⁰⁰ in the form of an amendment to the Emergency Price Control Act. This act authorized and directed the President "on or before November 1, 1942, to issue a general order stabilizing prices, wages, and salaries, affecting the cost of living; and, except as otherwise provided in this act, such stabilization shall so far as practicable be on the basis of the level which existed on September 15, 1942." Scope was provided for the adjustment of prices, wages, and salaries "* * * to aid in the effective prosecution of the war or to correct gross inequities." The measure provided for the regulation of farm prices on a basis that would make effective control possible. Thus, 3 years after the beginning of the war in Europe, more than 2 years after the beginning of our defense program, and almost 10 months after our entry into the war, a firm statutory base was created for the stabilization of the price and wage structure.

On October 3, 1942, the President issued Executive Order 9250 giving to the NWLB control over all changes in wage rates. The Executive order provided that:

No increases in wage rates granted as a result of voluntary agreement, collective bargaining, conciliation, arbitration, or otherwise and no decreases in wage rates, shall be authorized unless notice of such increases or decreases shall have been filed with the National War Labor Board, and unless the National War Labor Board has approved such increases or decreases.

The Executive order also provided that the Board should not approve—

* * * any increase in the wage rates prevailing on September 15, 1942, unless such increase is necessary to correct maladjustments or inequalities, to eliminate substandards of living, to correct gross inequities, or to aid in the effective prosecution of the war.

This same Executive order created an Office of Economic Stabilization with authority, subject to approval by the President, to—

* * * formulate and develop a comprehensive national economic policy relating to the control of civilian purchasing power, prices, rents, wages, salaries, profits, rationing, subsidies, and all related matters—all for the purpose of preventing avoidable increases in the cost of living, cooperating in minimizing the unnecessary migration of labor from one business, industry, or region to another, and facilitating the prosecution of the war. To give effect to this comprehensive national economic policy the Director [of Economic Stabilization] shall have power to issue directives on policy to the Federal departments and agencies concerned.¹⁰¹

The organizational structure for economic stabilization that was to endure, with relatively minor changes, for 3 years of war con-

¹⁰⁰ Public Law No. 729, 77th Cong., 2d sess.

¹⁰¹ See chs. 2 and 4 for indications of the reaction of industry and labor to wage policies developed by the Board and the Office of Economic Stabilization.

sisted basically, therefore, of the Office of Price Administration, the National War Labor Board, and the Office of Economic Stabilization, with the latter agency designed to coordinate price and wage policy and to integrate the activities of other Government agencies whose functions affected the stability of the economy.

IV. WAGE-PRICE CONTROL: THIRD PHASE, OCTOBER 1942–AUGUST 1945

A. COMPREHENSIVE CONTROL AND WAGE-PRICE STABILITY

With the passage of the Stabilization Act of October 1942, the period of comprehensive control of wages and prices began. The NWLB until the end of the war in August 1945 had jurisdiction over most wage adjustments in the American industrial economy except agriculture and railroads.¹⁰² During this period, decisions affecting wages were made on the basis of hundreds of thousands of applications for approval of voluntary adjustments and in thousands of dispute cases. The case load of the Board, and the decisions in these cases, are no real measure of its contribution because many requests for wage adjustments were not even made by the parties because they were recognized as being outside the limits of stabilization policy.

OPA, during the same period, had control of the prices of most of the commodities and services purchased by American consumers. Both agencies had difficult problems of staffing and administration, both had problems of enforcement, and both had to give concrete meaning to the general directives under which they functioned. Both had to face up to the stabilization crisis in the spring of 1943 that called forth the hold-the-line order.¹⁰³ Both experienced a wide variety of pressures that were inevitable in the nature of the situation.

It is sufficient for the purposes of this chapter to emphasize the fact that both wage and price controls were flexible rather than rigid. The Stabilization Act directed that wages and prices be stabilized, so far as practicable, at the levels prevailing on September 15, 1942. This language recognized the fact that various types of inequities existed within the structures of wages and prices that should not be frozen—and in many instances could not be frozen without harm to the production effort—for the duration of the war. Hence, the wage stabilization that was sought, for example, provided tolerances for the correction of defined inequities. An analysis of the nature of these inequities, the limits that were established for their correction, and the way in which these limits were administered falls largely outside the scope of the present discussion.

¹⁰² A precise accounting of the wage jurisdiction of the Board is given in ch. 7.

¹⁰³ Executive Order 9328, April 8, 1943.

A brief analysis of the circumstances of the "hold-the-line" order is necessary, however. Many factors contributed to the crisis in the stabilization effort that led to the issuance of this order.¹⁰⁴ It is sufficient to note here that wages and prices continued to increase significantly in the months following the Stabilization Act of October 3, 1942. In the 6-month period between October 1942 and April 1943 the level of wage rates in manufacturing increased by 3 percent; during the same period, the level of consumers' prices advanced more than 4 percent.

Executive Order 9328 directed the Price Administrator and the Food Administrator " * * * to place ceilings on all commodities affecting the cost of living * * * to reduce prices which were excessively high, unfair, or inequitable * * *", and, in the future to grant price increases only to the " * * * minimum extent required by law."

With respect to the NWLB (and the Commissioner of Internal Revenue), the order provided that no further increases in wages and salaries were to be authorized except those clearly necessary to correct substandards of living or to compensate for the rise in the cost of living between January 1, 1941, and May 1, 1942 (the Little Steel formula). The exact significance of this order, as it related to the War Labor Board, requires brief explanation.

It has already been pointed out that the Board, in the period preceding the Stabilization Act, and particularly after the President's message of April 27, 1942, made considerable progress in defining the conditions under which wage adjustments could be made within a stabilization framework. The Little Steel formula is the outstanding example, but progress had also been made in the definition of other types of wage inequities. When jurisdiction over the vast majority of wage adjustments in the American economy was given to the Board after the passage of the Stabilization Act, a more precise formulation of the conditions under which wage adjustments would be approved or ordered had to be made.¹⁰⁵ On November 6, 1942, the Board issued a policy statement which incorporated the Little Steel formula and specified other general criteria for deciding dispute and voluntary wage cases. Dr. George W. Taylor does not exaggerate in contending that this policy statement was a singular achievement of the tripartite board.¹⁰⁶

Up to this point—indeed, up to the hold-the-line order—the Board controlled stabilization policy. The Board had made the rules (within

¹⁰⁴ For a brief but excellent analysis of the situation that gave rise to Executive Order 9328, see Bureau of the Budget, *The United States at War*, pp. 386-389.

¹⁰⁵ See ch. 2 for a fuller discussion of this point.

¹⁰⁶ *The Termination Report*, vol. I, pp. XX-XXI; for text of policy statement see *ibid.*, II, appendix. J-27.

the general framework of the Stabilization Act and Executive Order 9250), and the Board could modify the rules. Under Executive Order 9328 the Board lost its authority to modify the criteria under which wage adjustments could be approved.

The new order provided that the Board could authorize wage increases only in accordance with the Little Steel formula as theretofore defined by the Board or to correct substandards of living. By this time, adjustments allowable under the Little Steel formula had, for the most part, been exhausted. The order meant in effect, therefore, that the Board could authorize no further wage adjustments except to correct substandards of living. In the months preceding the hold-the-line order, the great bulk of the Board's cases had been decided on the basis of inequalities in rates as between the subject establishment and other establishments in the industry or labor market. In its practical application, the inequalities doctrine, which was not in any case very clearly defined, permitted wage adjustments that threatened to defeat the objectives of stabilization policy. It was to this situation, insofar as wages were concerned, that the hold-the-line order was primarily directed.

The hold-the-line order produced an internal crisis within the Board. Aside from the change effected by the order in the authority of the Board over the stabilization program, the order was unrealistic in denying the Board authority to approve any wage adjustments on interplant inequity or inequality grounds. The Board and the Director of Economic Stabilization jointly devised a new approach to the problem of interplant inequalities, which avoided the unstabilizing effects of the former approach. The new policy was embodied in a clarifying directive from the Director of Economic Stabilization dated May 12, 1943.

It is now pertinent to look briefly at the extent to which stability was achieved during the period of comprehensive wage and price control, and particularly after April 1943. Table 6 presents a few basic figures for the 34-month period from October 1942 to August 1945 and, for purposes of contrast, for the 21-month period from January 1941 to October 1942.

The contrast is striking. Between January 1941 and October 1942, wage rates in manufacturing and the general level of consumers' prices increased by 17 and 18 percent, respectively, or at rates approaching 1 percent per month. The level of wholesale prices advanced almost 24 percent, or at the rate of 1.1 percent a month. During the 34-month period from October 1942 to August 1945, the increases in wage rates and consumers' prices were approximately 14 and 9 percent, respectively, with monthly rates of less than 0.5 percent. Wholesale prices advanced about 5.7 percent, or at the rate of less than 0.2 percent per month.

TABLE 6.—Percentage changes in wholesale prices, consumers' prices, and manufacturing wage rates, selected periods January 1941–August 1945

Period	Wholesale prices	Consumers' prices	Manufacturing wage rates ¹
Percentage increase			
January 1941–October 1942.....	23.8	18.1	17.1
October 1942–August 1945.....	5.7	8.7	13.1
October 1942–April 1943.....	3.7	4.3	3.1
April 1943–August 1945.....	1.9	4.2	10.1
Average increase per month			
January 1941–October 1942.....	1.1	0.86	0.8
October 1942–August 1945.....	.17	.26	.4
October 1942–April 1943.....	.62	.72	.5
April 1943–August 1945.....	.06	.15	.38

¹ BLS urban wage rate index for manufacturing. For nature of index, see Robert J. Myers and others "Wartime Wage Movements and Urban Wage-Rate Changes," *Monthly Labor Review*, October 1944, pp. 684-704; for movement of index within stabilization period see Frances Jones Clero and Eleanor K. Buschman, "Trends in Urban Wage Rates, September 1947," *Monthly Labor Review*, January 1948, pp. 45-50.

Source: U. S. Department of Labor, Bureau of Labor Statistics.

The statistical picture is even more impressive if measurement is made from April 1943, the date of the hold-the-line order. Thus, the level of consumers' prices increased only 4.2 percent in the 28-month period from April 1943 until the end of the war, an average rate per month of less than 0.2 percent.¹⁰⁷ The stabilization of wholesale prices was even more successful. The rate of increase in wages declined slightly.¹⁰⁸

In view of the magnitude of the defense and war efforts, the extent to which wages and prices were stabilized represents a significant achievement of direct controls supplemented by fiscal measures. It is possible to argue, at least with the advantage of hindsight, that an even better job could have been done. The timing of controls might have been better, and their administration might have been more effective. The fact remains, however, that we came to the end of the war with price and wage structures that had been affected, but not seriously distorted, by inflation. Moreover, an enormously successful production effort was made within the framework of price and wage controls. It appears reasonable to conclude that the success of the production effort was related to the maintenance of reasonable stability.

¹⁰⁷ For a complete account of the wartime controversy over the BLS consumers' price index, see Office of Economic Stabilization, Report of the President's Committee on the Cost of Living (Government Printing Office, 1945).

¹⁰⁸ See ch. 4 for a more extensive evaluation of wage stabilization program. See also National War Labor Board, Wage Report to the President (February 22, 1945), and Termination Report, I, ch. 46.

B. THE RELATIONSHIP OF OPA AND NWLB

The nexus between NWLB and OPA was the Office of Economic Stabilization. Executive Order 9250 provided that:

* * * where the National War Labor Board or the Price Administrator shall have reason to believe that a proposed wage increase will require a change in the price ceiling of the commodity or service involved, such proposed increase, if approved by the National War Labor Board, shall become effective only if also approved by the Director [of Economic Stabilization].

This provision of the Executive order required some form of systematic collaboration between the NWLB and the OPA. The mechanics of the procedures that were devised need not be explored.¹⁰⁹ In substance, the NLWB decided cases on the basis of wage stabilization criteria, without regard to the price consequences of the decisions. However, in both voluntary and dispute cases, employers were required to indicate whether Board approval or order of a wage adjustment would result in application for price relief; where affirmative answers were given, employers were also required to file an appropriate application, with supporting data, with the OPA within a specific time in relation to the initiation of the wage action. Upon receipt of this application, the OPA determined whether price relief was warranted in terms of price stabilization criteria. If price relief was not warranted, the Board was so notified, and an approved wage increase could be made effective. If OPA determined that price relief was required, the wage increase could not become effective until approved by the Director of Economic Stabilization.

It seems perfectly clear that the Board itself could not be expected to take price aspects formally into account in making its wage decisions. It does not appear to have been the intent of Executive Order 9250 that the Board should do this, and the Board itself would have been most reluctant to have had its decisions in particular cases influenced by price considerations.¹¹⁰ Uniformity in the application of wage policy would not have been feasible in such circumstances. Some inquiry should be directed, indeed, to the question of whether the requirement for approval by the Director of Economic Stabilization of wage decisions in price relief cases served a useful purpose.

The facts in the situation can be summarized briefly. Only about one-half of 1 percent of all cases in which the Board approved or ordered wage adjustments were reviewed by the Director of Economic

¹⁰⁹ See National War Labor Board, *Manual of Operations*, various revisions, and *Research and Statistics Report No. 21* (April 27, 1944) for procedure in handling price relief cases; also *Office of Price Administration, Administrative Supplementary Order No. 28*, November 18, 1942 (revised May 28, 1943), and *Operating Order No. 7*, January 11, 1943.

¹¹⁰ There was extensive discussion of the problem in the early stabilization period. See *National War Labor Board, Transcript, Executive Session, October 30, 1942*, p. 628 ff.

Stabilization. Of the 1,457 such cases¹¹¹ between October 2, 1942, and August 18, 1945, the Director approved the wage actions in almost 99 percent.¹¹² In addition, the Director gave advance approval to specified types of wage adjustments in some categories of cases, even if price relief was involved.¹¹³ Advance approval was given in September 1943 for wage increases granted in accordance with the Little Steel formula, or to correct substandards of living or interplant inequities, even though increased costs to government procurement agencies were involved.¹¹⁴

Virtually no wage adjustments, in short, were denied on price grounds, and the volume of price or production cost cases was small in relation to the total number of cases. Did the review function of the Office of Economic Stabilization have any significance? The answer is emphatically "yes." In several ways the review function served to strengthen the stabilization program. First, the review of cases gave the OES insight into Board application of wage increase criteria and into OPA application of pricing standards. Second, the review requirement undoubtedly made for more careful application of wage policy by the Board in price relief cases and, hence, tended to raise the general level of wage administration. Third, some of the individual cases that required OES approval were of industry-wide or area-wide significance, and these cases merited and received thorough review in terms not only of wage-price relationships, but also, in some instances, of manpower and production problems associated with wage and price structures. In short, the review function, by providing the Director of Economic Stabilization with veto power over wage actions immediately affecting price, enabled him to exercise a more direct influence on policy application than might otherwise have been the case. This influence is difficult to appraise, but it was real.

In considering the relation of approved wage adjustments to price increases, the number or nature of the cases in which price relief was granted as an immediate consequence of wage increases does not reveal the full impact of NWLB wage actions on prices. Wage adjustments not accompanied by applications for price relief could be reflected in increased prices if an industry or firm, at some later time

¹¹¹ Including a small number of production cost and airframe reclassification cases. See footnote 114 below.

¹¹² The Termination Report, I, p. 563. During the wartime stabilization period, employers indicated that they would file for price relief in more than 8,000 cases. It is estimated that in about 70 percent of these cases, the employers either failed to file applications with OPA or OPA found that wage adjustments did not require price increases.

¹¹³ *Ibid.*, II, appendix C.

¹¹⁴ *Ibid.* In his policy directive of May 12, 1943, the Director of Economic Stabilization extended his review of NWLB wage adjustments to those cases involving increased cost to government procurement agencies. On July 26, 1943, reclassification cases in the airframe industry were brought under review.

applied for and could qualify for price relief under OPA pricing standards. Thus, "the fact that an employer has not filed such an application or petition [for price relief or amendment of price regulation] will not preclude recognition by the Office of Price Administration of the increased cost resulting from the wage or salary increase in considering any later application for adjustment or petition for amendment based on subsequent changes in circumstances."¹¹⁵ It is impossible to appraise statistically the extent to which approved wage increases were subsequently reflected in price increases during the war period.¹¹⁶

The relations between the two major control agencies were not intimate in an operating sense. Nor does this appear to have been necessary. The work of each agency conditioned the work of the other. At the same time, the spheres of activity, and the special criteria, problems, and pressures were reasonably distinct. If the Board performed its stabilization task effectively, powerful support was provided for effective price stabilization. Effective price stabilization, in turn, served to reduce the pressure for general wage rate revision. But it was not necessary for the price control agency to become involved in the day-to-day administration of wage control, or for the wage control agency to be concerned with the routine conduct of the price control function.

C. THE ROLE OF THE OFFICE OF ECONOMIC STABILIZATION

It will be recalled that Executive Order 9250 gave to the Director of Economic Stabilization the function of formulating and developing "a comprehensive national economic policy" for the prevention of inflation and the more effective prosecution of the war. He was given also certain specific functions, such as the review of wage cases involving price relief, as described above.¹¹⁷

The existence of an agency such as the Office of Economic Stabilization was essential to the effectiveness of the stabilization program. This is true despite the fact that wartime economic policy was reasonably well formulated by the time the Office of Economic Stabilization was established. It was not so much policy formation as coordination, direction, and general supervision of the economic control agencies that gave OES its importance. Moreover, as a practical matter the existence of OES served to direct some of the pressures the full

¹¹⁵ Office of Price Administration, Administrative Supplementary Order No. 28 (November 18, 1942).

¹¹⁶ The basic steel industry, where both price and wage control were highly effective, provides nevertheless an interesting study in the relation of wages, labor costs, and prices during the war. Addison T. Cutler, "Price Control in Steel" in *Studies in Industrial Price Control* (Washington: Government Printing Office, 1947), pp. 37-85.

¹¹⁷ On April 8, 1943, the President in Executive Order 9328 delegated to the Office of Economic Stabilization all of the authority given to him by the Stabilization Act.

force of which would otherwise have been experienced by the direct control agencies.

Judge Fred M. Vinson, who succeeded Justice Byrnes as Stabilization Director in May 1943, in describing the functions of the Office of Economic Stabilization, pointed out that—

* * * differences in emphasis among the various agencies [concerned with stabilization] sometimes lead to differences of opinion and even on occasion to differences in policy. There was need for team play. We must have basic policies which take into account all the relevant factors, and an agency authorized to formulate these basic policies and to settle such differences of opinion as may arise in connection with their application.¹¹⁸

William H. Davis, who succeeded Judge Vinson as Stabilization Director, stated—

* * * the functions of that Office [Office of Economic Stabilization] are of two kinds: administrative functions, which consist really in settling the conflicts or disputes that arise between the procurement agencies of the Government * * * and the price control agencies * * * and then these difficulties that arise between the War Labor Board and OPA, conflict of decision and so on [and] * * * to formulate the rules which are to be followed by these agencies to make effective the purpose of the Stabilization Act of October 2, 1942.¹¹⁹

The Office of Economic Stabilization did play an important and positive role in the direction of stabilization policy. The outstanding action of the Director of Economic Stabilization affecting both the NWLB and OPA undoubtedly was the formulation of the "hold-the-line" order (Executive Order 9328) which was issued on April 8, 1943.

The "hold-the-line" order, which marked the assumption by the Office of Economic Stabilization of a positive role in policy direction and determination, unquestionably strengthened the stabilization effort. It made for a more effective wage control program.¹²⁰ The order also resulted in a greatly improved price control program which, with the introduction of subsidies and price roll-backs, held basic living costs stable for the remainder of the war period. Recognition of the relation between the price and wage portions of the order are essential in its interpretation.

The role of the Office of Economic Stabilization in controlling and prescribing limits to wartime wage control policy is illustrated also with respect to "fringe" adjustments—vacations, shift differentials,

¹¹⁸ Extension of Emergency Price Control bill, House hearings, 1944, p. 2330.

¹¹⁹ Stabilization Extension Act, House hearings, 1945, pp. 1064-1065.

¹²⁰ The intervention of the Office of Economic Stabilization was not welcomed by the tripartite Board. This is reflected in the analysis of the period by Dr. George W. Taylor, *Government Regulation of Industrial Relations* (New York: Prentice-Hall, Inc., 1948), pp. 171-196. For example, Dr. Taylor writes that "Under the new [hold-the-line] order, wage disputes could no longer be arbitrated." It is difficult to understand, however, how an effective wage stabilization program and the latitude required for arbitration can be reconciled, at least in the kind of period now under review.

and the like. The liberalization of such adjustments operated as a safety valve to reduce the pressure for general wage rate increases. Liberalization might have gotten out of hand, however, in the absence of an agency such as OES to establish general limitations on the extent to which the process could go. At the same time, the existence of OES removed from the NWLB some of the pressure for policy liberalization. In general, the price control agency was aided and strengthened in similar fashion. The significance of the OES authority to review price relief cases has already been described.

Finally, the Office of Economic Stabilization did serve as a sort of court of appeals in the conflicts and problems of policy coordination that inevitably arose from time to time among agencies that were administering related programs. When a relatively rounded program was finally achieved, considerable skill was required to get the parts to mesh and to function with relative smoothness. OES contributed greatly to this end.

V. PRICE-WAGE CONTROL: FOURTH PHASE, AUGUST 1945–NOVEMBER 1946

A. SOME DETERMINANTS OF RECONVERSION STABILIZATION POLICY

The fourth and final phase in the relation between wage and price controls came with the end of the war. The peak of the production effort for war came in 1944. After the victory over Germany in May 1945, industrial reconversion began on a limited scale. The level of war output remained high, however, for the date of the Japanese capitulation obviously could not be predicted.

Attention had been given to many facets of reconversion economic policy prior to VE-day. At the request of the Office of War Mobilization, a unit under the direction of Bernard M. Baruch was formed to study reconversion problems. The Baruch-Hancock report, dealing mainly with the financial aspects of reconversion, was issued early in 1944.¹²¹ In October 1944 the Office of War Mobilization and Reconversion was established by Congress and was given responsibility for many phases of reconversion.¹²² By this time, a number of the war agencies had formulated plans looking toward the end of the war in Europe.¹²³

¹²¹ Bernard M. Baruch and John M. Hancock, Report on War and Postwar Adjustment Policy (S. Doc. No. 154, 78th Cong., 2d sess.).

¹²² The functions of the Office of War Mobilization, created by Executive Order No. 9847 on May 27, 1943, were transferred to the new agency.

¹²³ A summary of such plans, together with material relating specifically to wage problems after VE-day, was prepared for the National War Labor Board by its Research and Statistics Branch. Memorandum to the Board from Carroll R. Daugherty, Post-European-War Reconversion Problems, October 6, 1944.

OPA, on May 11, 1945, announced its policy on the pricing of products that had been out of production during the war period. Briefly, prices on reconversion products were established at 1941-42 levels, with adjustments for legitimate increases in cost since that time. Cost adjustments were to be calculated on an industry-wide basis or, in some situations, on an individual firm basis.¹²⁴

At the same time, the NWLB announced a wage policy applicable to plants converting from war to civilian goods production.¹²⁵ The Board made clear the fact that the—

* * * present statement is not to be construed * * * as a substantive change in the stabilization program.

In short, the policy provided that wage structures in converted plants (negotiated through collective bargaining or, in the absence of unionization, established by the employer) could be put into effect without advance approval by the Board provided that the new wage structures did not furnish the basis for a request for an increase in the prices set by OPA under its reconversion pricing policy. Post-review by the Board was provided for.

After VE-day, much attention was also devoted to the larger problem of reconversion stabilization policy, basically the question of the controls that would be required for a smooth economic transition from war to peace. There was fairly general agreement, at least in governmental circles, that OPA should carry on into the postwar period essentially unchanged, with gradual decontrol beginning with items of minor significance in the cost of living. In his Budget message in January 1945 the President had pointed out that—

* * * many businesses and individuals have ample funds for a buying spree * * *

and that—

the balance between incomes, savings, and expenditures will still be precarious during the reconversion period.

The attitude toward wage control was by no means as forthright. There was a general disposition to believe that wartime wage controls could, at the very least, be modified substantially at the end of the war. Very early in the post VE-day period, the NWLB discussed a proposed reconversion wage stabilization policy that provided for the removal of controls on voluntary wage increases where price relief was not involved. This and some other elements of the proposed

¹²⁴ Office of Price Administration, Fourteenth Quarterly Report, pp. 2-4; Fifteenth Quarterly Report, pp. 2-5.

¹²⁵ National War Labor Board, Statement in Regard to the Determination of Appropriate Wage Rate Structures for Plants Converting From War Production to the Production of Civilian Goods, May 10, 1945.

policy found their way into the policy actually adopted immediately after VJ-day.¹²⁶

There were several inter-agency meetings of great interest on the general subject of reconversion wage policy in the summer of 1945, attended by members of the NWLB and ranking representatives of OPA, OES, the Office of War Mobilization and Reconversion, the Federal Reserve Board, and other agencies. At these meetings, OPA representatives argued strongly for a firm wage control policy in the reconversion period, on the ground that any other policy would undermine price control.¹²⁷ Representatives of the other agencies were inclined to the opinion that postwar economic conditions would be such that wage controls could be modified considerably. This opinion was shared by the public members of the NWLB.

A number of factors contributed to the belief that wage controls could be substantially relaxed in the immediate postwar period.

In the first place, it was clear before the end of the war that the major labor organizations would press for appreciable wage advances at the conclusion of hostilities. Organized labor had never accepted the barrier to general wage rate increases embodied in the Little Steel formula. The labor members of the Board sought to obtain modification of the formula within the framework of the Board and of wage policy during the war period.¹²⁸ These efforts failed. It was plain that a new situation would exist at the close of hostilities when the no-strike, no-lockout policy would expire. Undoubtedly an effort, and possibly a successful effort, could have been made to prepare the way for the maintenance of a comprehensive wage control policy, with some modification of wartime criteria, into the reconversion period. The effort, however, was not made.

Second, business on the whole favored the speedy removal of all wartime controls. Whereas organized labor favored the maintenance of price controls for as long a period as might be needed, management was decidedly restive under OPA regulation. This attitude extended to wage controls as well as to other forms of wartime planning.

A general factor of very great importance, in the third place, was the assumption (which subsequently proved erroneous) of large-scale unemployment in the immediate post war period.¹²⁹ With particular reference to wage policy, the assumption was that a "loose" labor

¹²⁶ These policy proposals were discussed within the Board and with the Regional Board chairmen. See Transcript, National War Labor Board, Conference of Regional War Labor Board Chairman, June 1-2, 1945.

¹²⁷ Based upon recollection of the writer.

¹²⁸ See National War Labor Board, Wage Report to the President (February 22, 1945). The case for modification of the formula as presented by the AFL members may be found on pp. 97-107; the CIO case on pp. 109-129.

¹²⁹ See W. S. Woytinsky, "What Was Wrong in Forecasts of Postwar Depression?" *Journal of Political Economy*, April 1947.

market would provide protection against inflationary wage increases. These assumptions were not universal; they were dominant, and they were influential in policy determination. At the same time, postwar inflationary factors were also recognized, particularly the shortages of many types of durable consumers' goods and the large accumulation of liquid assets during the war period. Hence, the general outlook appeared to be for a mixture of conflicting tendencies; the problem of policy was to assure conditions that would make for as smooth a transition as possible.

Fourth, only 3 months intervened between victory over Germany and the Japanese surrender. A considerably longer period—something in the neighborhood of a year—had been generally assumed in policy planning. This longer period, had it materialized, would have permitted a more gradual reconversion accompanied by gradual relaxation of controls. Instead, basic decisions had to be made virtually overnight.

B. INITIAL RECONVERSION STABILIZATION POLICY

Between Tuesday evening, August 14, 1945, when the surrender of Japan was announced and Friday morning, August 17, when the country returned to work after a double holiday, a transition stabilization program was formulated and announced.¹²⁰

This program reflected the influence of the factors cited above. It had been formulated, actually, in the innumerable policy discussions that had taken place after, and to some extent even before, VE-day. It undoubtedly reflected the consensus of those responsible for stabilization policy, although it is equally clear that this opinion was by no means unanimous.

The new wage-price policy was expressed in Executive Order 9599 issued on August 18, 1945. This order was amended on October 30, 1945, by Executive Order 9691. Comprehensive regulations for the guidance of the stabilization agencies were issued on December 6, 1945.¹²¹

The new policy sought to maintain price stability through continuation of comprehensive control. The Price Administrator and the Secretary of Agriculture (in the exercise of his price responsibilities under the Stabilization Act) were directed to—

* * * take all necessary steps to assure that the cost of living and the general level of prices shall not rise.

¹²⁰ John T. Dunlop, "The Decontrol of Wages and Prices" in Colston E. Warne (editor), *Labor in Postwar America* (New York: Remson Press, 1949). This chapter contains an excellent account of the transition in wage-price policy.

¹²¹ See U. S. Department of Labor, *The National Wage Stabilization Board* (Washington: Government Printing Office, 1948), ch. 4.

Moreover, the order provided that the Price Administrator and the Secretary of Agriculture should—

* * * improve or tighten price controls in those fields which are important in relation to production costs or the costs of living in which in their judgment the controls have heretofore been insufficiently effective.”¹³²

In contrast to policy on price control, Executive Order 9599 permitted employers to make wage increases of any magnitude without governmental approval, provided such increases were not used as the basis for an increase in price ceilings or to increase the cost of goods or services furnished the United States under procurement agency contracts.¹³³ In short, freedom of action was restored to employers and workers with respect to those upward wage adjustments that could be made within the existing framework of prices and costs to the Government.¹³⁴ Subsequently, by Executive Order 9651, the Price Administrator was authorized to take unapproved wage or salary increases into account for price purposes, after such increases had been in effect normally for at least 6 months.

Under Executive Orders 9599 and 9651, proposed wage increases that would provide immediate bases for applications for price relief remained subject to governmental approval. Approval of wage increases in price relief cases could be granted (a) if increases in straight-time average hourly earnings since January 1941 in the appropriate unit had failed to equal the increase in living costs between January 1941 and September 1945, (b) if inequities in wage or salary rates existed among plants in the same industry or locality, (c) if wages were inadequate for the recruitment of needed manpower in industries designated as essential to reconversion, (d) if the proposed increases satisfied standards in effect prior to August 18, 1945.

The basic assumption in the new wage policy was that many employers were in a position to grant increases in basic rates of pay within existing price ceilings and that, in general, the magnitude of the increases could be determined through collective bargaining without work stoppages.¹³⁵ Many such increases were, in fact, granted. In important instances, however, no agreement was reached between employers and unions on the magnitude of the wage increases that could be made under the wage-price policy. No agency for the final deter-

¹³² Decontrol on a modest scale began after VJ-day. Thus, between August 15 and August 31, 1945, 184 decontrol actions were taken, removing from control a variety of items unimportant in the cost of living or in business cost.

¹³³ Except in the construction industry, where all voluntary wage adjustments remained subject to the approval of the Wage Adjustment Board. Adjustments of intra-plant wage-rate inequities in basic steel industry also continued to be subject to approval of the Board's Steel Commission.

¹³⁴ All wage reductions remained subject to control by the terms of the Emergency Price Control Act, as amended by Public Debt Act of April 10, 1943.

¹³⁵ An additional assumption was that such increases would not be inflationary from the demand side.

mination of these disputes existed in the absence of a renewal of the no-strike, no-lockout pledge after VJ-day. The National Wage Stabilization Board had control, as previously indicated, only over certain categories of voluntary cases.¹³⁶ When collective bargaining broke down and the parties could not agree to submit the issues to arbitration, recourse to economic power was to be expected. In the fall and early winter of 1945-46, important wage disputes occurred in petroleum refining, automobiles, steel, meatpacking, farm machinery, and other industries. The wave of labor disputes that began in the fall of 1945 reached a peak in February 1946, when a direct loss of approximately 23,000,000 man days of work was recorded.

C. THE POSTWAR WAGE MOVEMENT AND REVISION OF STABILIZATION POLICY

These disputes and their settlement broke the stabilization policy embodied in Executive Orders 9599 and 9651.

A brief summary of the impact of those disputes on wage policy is necessary.¹³⁷ In the more important of the stoppages, the Government appointed boards to determine the facts in each dispute and to make recommendations for settlement within wage-price policy. The first two boards to report (petroleum and General Motors) each recommended wage increases that, in their opinions, could be paid without price relief. The recommended rate increase in oil was 18 percent; in General Motors 19.5 cents (about 17.5 percent). In steel, the President¹³⁸ himself recommended a settlement of 18.5 cents (about 17.5 percent). The United States Steel Corporation refused to agree to the recommended wage settlement until price relief had been assured. This case was complicated by the fact that some price adjustment was required in steel even in the absence of a wage increase. The price increase finally negotiated between the corporation and the Government was in excess of that recommended by OPA.¹³⁹ Even on the view that the steel settlement was made within the framework of wage-price policy, which is questionable, it is clear that this settlement contributed to a change in wage policy. The similarity of the wage award to those made in the petroleum and General Motors cases suggested a pattern approach to wage change.

¹³⁶ In a statement on August 16, 1945, the President announced that the NWLB would be terminated as soon as practicable after the conclusion of a forthcoming Labor-Management Conference on Industrial Relations. The Board was actually terminated on December 31, 1945 (Executive Order 9672), at which time the National Wage Stabilization Board was established. The Labor-Management Conference, which adjourned on November 30, 1945, failed to agree on machinery to effect the settlement of labor disputes where collective bargaining and conciliation had been unable to produce agreement.

¹³⁷ See H. M. Douty, *Wage Policy and the Role of Fact-Finding Boards*, *Monthly Labor Review*, April 1948, pp. 537-549.

¹³⁸ In the steel case, the fact-finding board as such made no recommendations.

¹³⁹ For details, see Addison T. Cutler, "Price Control in Steel" in *Studies in Industrial Price Control* (Washington: Government Printing Office, 1947), pp. 60-76.

The outcome of the meat-packing dispute was decisive. Price relief was clearly involved in this case. The fact-finding board decided that a wage increase of 16 cents per hour was fair and equitable. It found that 11 cents of this increase was approvable under existing Executive orders and regulations of the Stabilization Director and was therefore the basis for price relief. It also determined that the companies had the capacity to absorb the remaining increase of 5 cents. This recommendation helped to confirm a pattern of wage adjustments that the General Motors board had described as characteristic of the higher wage-paying group of employers voluntarily granting wage increases since VJ-day.

The impact of these and related developments was reflected in Executive Order 9697 issued on February 14, 1946. This order directed the National Wage Stabilization Board to—

* * * approve any wage or salary increase, or part thereof, which it finds is consistent with the general pattern of wage or salary adjustments which has been established in the industry or local labor market area between August 18, 1945, and the effective date of this order. * * *

Several other criteria for the approval of wage increases where price relief was indicated were set forth in the order. The general effect of the new order was to establish a framework within which more nearly uniform wage increases within industries, between related industries, and within local labor-market areas could be approved for price-relief purposes. It was hoped that a new stabilization line would be established on the basis of the adjustments thus made.

At the same time, the provision in Executive Order 9651, by which the Price Administrator was authorized to take unapproved wage increases into account for price purposes after such increases had been in effect for a trial period (normally 6 months) was removed in Executive Order 9697, apparently in the hope of strengthening the position of the Board. Beginning with the effective date of this order, the making of an unapproved wage adjustment was deemed to—

* * * constitute a waiver of any right of the employer to use such increase, at any time during continuation of the stabilization laws, as a basis for seeking an increase in price or rent ceilings or, in the case of products or services being furnished under contract with a Federal procurement agency, as a basis for increasing costs to the United States.

D. THE END OF CONTROL

Within 6 months after the issuance of Executive Order 9697, wage and price control, for practical purposes, ceased to exist. On June 29, 1946, the President vetoed the bill passed by Congress amending and extending the stabilization acts. The effect of the amendments, for the most part, undoubtedly would have been seriously to dilute

the ability of OPA to control prices. For more than 3 weeks there was no legal restraint on price or wage movements. A great upsurge occurred in the level of both wholesale and consumers' prices during this period, with the upward rise continuing after the reimposition of controls. On July 25, 1946, the President signed an extension act from which some of the more objectionable features of the previous bill had been removed. By this time, however, the end was clearly in sight. In the following months, the process of decontrol was accelerated, and on November 9, 1946, the President announced the removal of virtually all price ceilings except on rents, and of all wage and salary controls.

There is no single factor that explains the stabilization debacle. The break-through in wages in February was undoubtedly a contributing factor of great importance, and this break-through, in turn, was unquestionably linked closely with the failure after VJ-day to retain comprehensive control over wages coupled with the absence of machinery for the adjudication of wage disputes within a policy framework. It is clear in perspective that the policy of differentiated wage changes implicit in Executive Order 9599 was not calculated to provide the measure of wage stability needed for the effective administration of a comprehensive price-control program.

The break-through in February conceivably could have been contained on the basis of a comparatively modest advance in the level of prices. But the February policy changes, and the events that produced those changes, gave great impetus to the furious attack upon price control by business groups in the spring of 1946. Organized labor, which was still in the process of carrying a major wage movement to completion, was not strategically in a strong position to mobilize public opinion for a tight price control program. Moreover, there was no assurance that the wage line based upon pattern adjustments could be held.

Even in the absence of these factors, a determined effort probably would have been made to secure substantial relaxation or abandonment of price control when the legislation came up for renewal in the spring of 1946. Business was impatient of controls in a boom market, the war was beginning to recede into the background, and there undoubtedly were technical problems in the application of price control in the reconversion period that were difficult of solution. But certainly the chances of holding the inflation barrier would have been better if comprehensive wage control, even with some liberalization of wartime criteria, had been extended into the postwar era.

E. PRICE AND WAGE MOVEMENT, AUGUST 1945–NOVEMBER 1946

The period of postwar wage and price control, as we have seen, may be broken down conveniently into three parts: (a) August

1945–February 1946, during which wage-price policy as formulated in Executive Order 9599 (as amended by Executive Order 9651) was applicable; (b) February–June 1946, marked by the revision of policy embodied in Executive Order 9697; (c) June–November 1946, during which stabilization policy was emasculated and then abandoned. Table 7 summarizes the broad price and wage movements during these periods.

In the first period, covering the 6 months from August 1945 to February 1946, the level of wholesale prices edged upward by almost 2 percent; the level of consumers' prices (including rent) remained practically stable; wage rates in manufacturing advanced approximately 6 percent.

In the 4 months from February to June 1946, after the reformulation of wage-price policy, wholesale prices, on the average, increased by almost 5 percent, consumers' prices by about 3 percent, and manufacturing wage rates by almost 8 percent. In each of these periods, or in the two periods considered as a whole, the increase in manufacturing wage rates was considerably greater than the advance in either wholesale or consumers' prices.

The third period was strikingly different. From June 1946 the last month before the temporary lapse of price and wage controls to November 1946, when controls, except for rent, were finally abandoned, the level of wholesale prices jumped by almost 24 percent while consumers' prices, on the average, rose 14 percent. The tail end of the first postwar round of wage increases lifted the level of wage rates in manufacturing by 3.5 percent.

Over the whole period, August 1945 to November 1946, the increase in wage rates barely exceeded the increase in consumers' prices. The level of prices at wholesale increased much more sharply than either wage rates or consumers' prices.

TABLE 7.—Percentage changes in wholesale prices, consumers' price and manufacturing wage rates, specified periods, August 1945–November 1946

Period	Percentage change in—		
	Wholesale prices	Consumers' prices	Manufacturing wage rates ¹
August 1945–February 1946.....	1.9	0.2	6.1
February–June 1946.....	4.8	2.9	7.9
June–November 1946.....	23.7	14.2	3.5
August 1945–November 1946.....	32.1	17.7	13.5

¹ Partly estimated.

Source: U. S. Department of Labor, Bureau of Labor Statistics.

VI. SUMMARY AND CONCLUSIONS

This chapter has sought to describe and analyze the general development of wage and price controls in the defense, war, and reconversion periods. Except incidentally, no attention has been given to the techniques of control, to the problems that arose in their application, to questions of alternative control standards, or to questions of equity. Administrative and operating problems have been almost wholly ignored. Only general statistics have been utilized to describe the general characteristics of wage and price behavior within the period from 1939 to 1946 with which we are concerned.

The chapter may be summarized briefly as follows:

1. When expenditures under the defense program began in the summer of 1940, the economic system in the United States was operating at a level substantially below capacity. Because of the nature of the underlying economic situation, a relatively large defense output was achieved without curtailment of the production of consumer goods. In fact, the output of civilian goods measurably increased during the first year of the defense program. Thereafter, additional output of war goods could be obtained only by the sacrifice of civilian goods production.

2. Economic controls in the World War II emergency had, in a sense, an organic growth. This was due partly to our lack of experience with comprehensive economic controls, partly to the fact that we had preparatory time and an initial economic situation that permitted a substantial defense program to get under way without immediate curtailment of civilian production and partly to the lack of public readiness to accept controls. In the early defense period, the problem of price control was selective rather than general in character. Genuine foresight was exhibited by the Government in making provision for systematic attention to price problems at the very beginning of the defense period (May 1940).

3. The general level of prices and wages began to rise in the spring of 1941, and on economic grounds a case could have been made for comprehensive control of both prices and wages by the fall of that year, particularly in view of the known rate at which defense expenditures were increasing. However, the country was not at war, public opinion was divided, and the full extent of our economic commitment could not be foreseen. On a selective basis, and without firm legal authority, the price control agency performed an energetic and creative job during this period. The introduction of the Emergency Price Control bill in Congress (August 1, 1941) reflected increasing concern with the price situation.

4. The testimony on the Emergency Price Control bill, even after Pearl Harbor, was predominantly in terms of selective rather than general control. Wage control was not part of the proposed legislation. There was wide recognition in the testimony that price control would have to be supported by reasonable wage stability. Aside from an admirable reluctance to interfere with free collective bargaining, the belief was expressed that price control would yield indirect wage control. It was also believed that voluntary wage stabilization agreements might be developed on a broad scale as an alternative to control. The lack of any clear principles of wage control probably was important. The fact that price and wage controls required different skills, and could not be administered jointly, was frequently cited in the testimony on the Emergency Price Control bill.

5. The Price Control bill was enacted into law on January 31, 1942, almost 2 months after we entered the war. After labor and management had given a no-strike, no-lockout pledge for the duration of the conflict, the NWLB was established (January 12, 1942), as a successor agency to the NDMB. The new Board had no authority over wages except in those dispute cases involving wages that came before it.

6. Inflationary pressures increased after we entered the conflict. Selective price control was clearly no longer sufficient. The OPA issued its General Maximum Price Regulation on April 28, 1942. On the preceding day, the President had outlined a seven-point stabilization program, the third point of which called for the stabilization of “* * * the remuneration received by individuals for their work.” No legislation was proposed. The NWLB in the *Little Steel* case (decided July 16, 1942) established a policy on general wage increases that was to serve as the cornerstone of wartime wage control policy. But the Board had no control over voluntary wage adjustments, and such adjustments, in conjunction with the farm price situation, threatened to destroy the price-control program.

7. By the summer of 1942, there was wide realization of the need for legal control over all wage and salary changes in the interest of general economic stabilization. This was reflected in the changing attitude of the NWLB toward the question of general wage control. OPA played an active role in the policy debate.

8. After the President's message of September 7, 1942, Congress passed the Stabilization Act of October 2, 1942, providing among other things, for comprehensive wage control. This function was delegated to the NWLB. Hence, for the first time provision was made for the comprehensive control over both prices and wages.

9. Especially after the stabilization crisis in the spring of 1943, prices and wages were stabilized with reasonable effectiveness for the

duration of the war. In view of the inflationary pressures, indeed the success of this effort was remarkable.

10. In the immediate postwar period, comprehensive control of wages was abandoned, and no agency existed for the adjudication of wage disputes within a policy framework. These developments contributed significantly to the collapse of the whole stabilization effort in the reconversion period.

A few conclusions may be ventured on the basis of the analysis in this chapter of the development of price and wage control in the World War II period.

1. Excessive purchasing power (in terms of the available supply of civilian goods and services at the current level of prices) tends to be generated by extensive preparations for war or by war itself. This is the basic condition for inflation. For a variety of reasons, only a part of this excess of purchasing power can be siphoned off by taxation. Hence, the need for direct and comprehensive price control and rationing, supplemented by high taxation and a high level of savings.

2. In a period of general excess in demand, comprehensive price control, to be effective, must be supported by comprehensive wage control. Rationing is required to assure the equitable distribution of essential consumer goods in short supply. Such controls tend to reduce inflationary pressures from both the cost and demand sides.

3. From an economic point of view, comprehensive wage-price controls might well have been initiated immediately after our entrance into the war, and perhaps even earlier. Practically, however, in a democratic society, the effectiveness of such controls depends upon general recognition of the problem and willingness of the public to accept such controls.

4. Economic stabilization provides a desirable underpinning to the use of direct controls (materials allocation and the like) to secure an optimum allocation of resources as between war and civilian uses. It also permits direct controls to be supplemented, to a limited extent, by financial (wage and profit) incentives.

5. Strong considerations made separate administration of wage and price controls desirable. The wartime experience indicates, moreover, that wage and price control can be successfully administered by separate agencies. A coordinating and policy-making agency, such as the wartime Office of Economic Stabilization, appears to be essential, however, to give direction to the entire stabilization effort (including the contributions of agencies, such as the Treasury, that are not primarily engaged in direct control functions).

An Appraisal of Wage Stabilization Policies

By John T. Dunlop

As shown in chapter 3 the wage stabilization program, and indeed the entire wartime system of controls, was not the result of elaborate blueprints. It did not spring full-blown. It was improvised as problems became acute. It had no single architect. It was adapted to the shifting phases of the wartime economy—a defense program, the tooling-up stage in war production, a full-scale war economy, demobilization and reconversion. The program did not, on the other hand, “just grow” like Topsy. It was molded by persistent convictions and constituted in retrospect an integrated structure.

I. BASIC FEATURES OF THE WAGE STABILIZATION PROGRAM

Any account of the development of wartime wage stabilization tends inevitably to hide its basic features. This section is concerned with the fundamental policy decisions which were responsible for the main contours of the program. The standards governing the program are outlined in chapter 3 and are described in detail in the termination reports of the NWLB and the NWSB.

A. GOVERNMENTAL REGULATION

The wage stabilization program involved the direct limitation on wage changes through a governmental administrative agency, albeit tripartite. It may be contended that the point is trivial and that wage

stabilization necessarily must involve governmental regulation. Yet England carried through an effective wartime stabilization program which did not include a governmental system of wage regulation. Voluntary restraint through collective bargaining in the face of the national crisis was thought to be preferable to a system of formal public regulations.

The English situation was quite different from our own, yet the experience indicates that it was possible to operate a wage stabilization program on a basis diametrically opposed to ours. Among the conditions which facilitated the English program were the following: the high degree of organization of both employers and workingmen, industry-wide institutions of collective bargaining, the centralization of authority to speak for all significant trade-unions, the absence of dualism within the labor movement, the strong tradition of voluntary acceptance of responsibility and labor participation in the Government.

In both countries the labor movements acquiesced to wage stabilization as a wartime necessity. In England the labor movement accepted the responsibility through collective bargaining to prevent serious inflationary pressures arising from wage changes. In the United States the labor movement generally joined in the administration of a governmental program of wage stabilization while protesting all the while (at least after April 1943) the equity of the wage standards. The decision for explicit governmental regulations, as opposed to voluntary administration under collective bargaining, was a basic feature of our wage stabilization program.

B. SEPARATION OF WAGE AND PRICE CONTROLS

The wage stabilization program prior to VJ-day involved the virtually complete separation of wage and price controls. This principle had two distinct facets. (a) The stabilization of the general level of wages was made independent of the stabilization of the level of prices; wages were not adjusted automatically in accordance with changes in the cost of living as in the wage stabilization programs of most countries. To use the language of the act of October 2, 1942, the Board's task was to stabilize the level of wage rates "* * * so far as practicable * * * on the basis of the levels which existed on September 15, 1942." (b) A wage change appropriate under wage stabilization standards was not in fact denied on account of probable consequences to price ceilings.

It is significant that the NWLB, and the other stabilization agencies, at the outset of the war confidently expected a decline in real wages during the war. Such a decline had taken place in some previous wars and was thought to be necessary to bear the real costs of

the larger conflict. This view that wages could not be expected to keep pace with prices was partially responsible for the doctrine that wage and price controls had to be separated.¹

In the early formulation of the stabilization program, the only exception to this doctrine of austerity was made for workers receiving substandard wages who suffered doubly because of low wage rates and the fact that the rise in agricultural prices was more serious for low income groups among whom food constitutes a larger proportion of total expenditures. As early as February 6, 1942, at a policy discussion of the NWLB Leon Henderson, the Price Administrator, argued that it would be physically impossible to maintain the level of real hourly wages during wartime. While recognizing that the cost of living might be made the basis of wage policy for substandard income levels, Henderson pointed out to the Board that these substandard groups would be most fearfully prejudiced by any program in which the entire wage scale was tied to prices while taxes and compulsory savings were used to close the inflationary gap.²

In the *International Harvester* and *Little Steel* cases the Board concluded that the automatic adjustment of wage rates to living costs would only feed the inflationary spiral. The Little Steel formula did not tie wage rates to the cost of living. It was intended to accomplish quite the opposite. The Board had observed that wage levels had been fairly steady during 1939 and 1940. The impact of the defense boom during 1941 and early 1942 had not increased wage rates in all plants and industries to the same extent. The Little Steel formula was intended to permit to employees in laggard plants an increase in wage rates equal to the rise in the cost of living between January 1941 and May 1942, an increase which had been received by a majority of industrial wage earners at the time the Little Steel formula was enunciated in July 1942.

The attempt to create a complete separation between wage and price controls, as will be discussed later in this chapter, was a unique feature of the American stabilization program. In most countries the wage level was explicitly tied to the cost of living. The separation in the American program had several consequences which may be noted briefly. In the first place, as the cost of living continued to rise, with the Little Steel formula unchanged, wage earners and union leaders felt that they were suffering an injustice. It mattered not that gross average hourly earnings or weekly earnings for all employees as a group increased as rapidly as living costs. The unchanged formula became a symbol of a grievance which grew in irri-

¹ It must be observed in passing that these expectations of a decline in the real wage rate were not realized for the wartime period.

² National War Labor Board, Transcript, Executive Meeting, February 6, 1942, pp. 50 ff.

tation. Moreover, by the time wage standards were relaxed after VJ-day there were groups of employees, although a small minority who had received increases of hourly earnings of only 15 percent while the cost of living had increased at least 30 percent over January 1941. The Little Steel formula, which severed the tie between wages and consumer prices in the wage stabilization program, no doubt contributed to the severity of the problem of reconciling the various interest groups after VJ-day. In the second place, the decision to separate wage and price controls withdrew, or certainly weakened one of the strongest supports for price stabilization to judge by the experience of other countries. Where wages are tied to the cost of living, the farm and business interests are more keenly aware of the consequences of price increases.

Under title II of Executive Order 9250 and the policy directive of the Director of Economic Stabilization dated May 12, 1943, the Board was instructed that no wage adjustment requiring a change in price ceiling could become effective without the approval of the Director of Economic Stabilization. The Director of Economic Stabilization in fact approved all but a few insignificant cases. Wage changes within the existing wage stabilization standards were virtually never disapproved on account of possible price consequences. The Office of Economic Stabilization developed the principle of advance approval of certain groups of cases clearly within the wage stabilization standards even though they involved possible price ceiling adjustments. Thus wage stabilization was administratively separated from price controls during the period of hostilities.

After VJ-day the principle of the separation of wage and price controls encountered difficulties. Wage stabilization then remained only for cases of wage increases to be used as a basis for seeking revision in price ceilings. The reduced profit margins of the later war years and the uncertainties of reconversion meant that a larger proportion of wage cases would involve price relief. The wage increases required to settle industrial disputes could not be approved within the existing wage stabilization standards and companies would rather take a strike than absorb the increase. The failure to maintain the separation of wage and price stabilization, or to establish a single agency capable of handling both simultaneously, resulted in the stabilization impasse of January and February 1946.³

C. STABILIZATION OF WAGE RATES NOT EARNINGS

The wage stabilization program did not set as its objective the stabilization of gross hourly or weekly earnings. The total earnings of all wage earners considered as a whole did increase, quite apart

³ See ch. 3, for elaboration of this point.

from any change in the wage rate structure, as a result of many factors—an expansion in the number of workers employed, an increase in the hours of work, a shift in employment toward high wage occupations, plants, and industries, and an increase in output under piece-work systems of payment. The stabilization agencies concluded that increases in money incomes from these sources were directly the consequence of increased production. To stabilize earnings would be to inhibit wartime output.

A limitation on earnings with an increase in output would have required a reduction in wage rates, a highly impracticable policy. Moreover, the additional income created by the factors noted above was only a small part of the larger problem of imbalance between available goods for civilian consumption and disposable income. The stabilization program hence concentrated on setting limitations to increases in labor income arising from a change in the price of labor services.

D. ESTABLISHMENT OF A SERIES OF LIMITS

The wage stabilization program involved the establishment of a series of limits for various elements in the wage rate structure. Stabilization consisted in fixing definite limits for each dimension of the wage rate. Wage increases in themselves were not conceived by the Board as unstabilizing provided they involved bringing particular minority groups of employees up to specified stabilized limits.

The Little Steel formula provided the limit to general or across-the-board wage rate increases. The substandard wage, determined by the Board to be initially 40 cents per hour in 1943 and finally 55 cents in February 1945, provided the limit to increases on the special equity of substandards of living. The bracket system provided a limitation to increases based upon interplant wage comparisons. Even in rare and unusual cases involving critical needs of war production, the Board prescribed detailed procedures to assure that the wage change was part of a comprehensive governmental attack on the bottleneck. Finally, the principle of stabilizing limits was extended to fringe wage adjustments such as shift premiums, vacations with pay, merit increase and progression plans, and job evaluation plans or other methods of ordering the internal wage structure of a plant.

The first limit established was that for general wage rate increases on account of increases in the cost of living (maladjustment). The last set of stabilized limits concerned "fringe adjustments." This progression has been varyingly interpreted. In many quarters each successive limit was depicted as a "loophole" or evasion of the Little Steel formula. In other circles the development of these different

standards is portrayed as an example of the flexibility of the wage stabilization program. A rigid program involving a virtual freeze on wages would have been too brittle.

The succession of stabilized limits primarily reflected the fact that employers and unions shifted the focus of their applications and demands as other avenues for wage adjustment were exhausted. By the end of 1943 cost-of-living adjustments under the Little Steel formula had been substantially exhausted. The ratio between applications decided by the Board involving claims of gross inequities (wage bracket standard) and those involving the Little Steel formula had reached almost five to one.⁴ The inflationary pressures which had been sealed at one point tended to take other forms. In a democratic and ingenious community, administrative agencies can count on new forms of requests for wage increases. Thus, the wage stabilization program involved the study and formulation of a new limit as the focus of the inflationary pressures shifted. It would have been difficult, if not impossible, in advance to formulate a comprehensive system of stabilized limits.

A complete wage freeze throughout the varying phases of the war economy would have been impossible viewed solely from the perspective of the most effective prosecution of the war. In the first place, the war economy required different wage differentials among job classifications, plants, localities and industries than those inherited from the prewar economy with substantial unemployment. In the second place, it would have been impossible to anticipate all of the various forms of wage adjustments created by the resourceful parties to collective bargaining. The gradual development in turn of the Little Steel formula, wage brackets and fringe limits really constituted an adaptation to the shifting inflationary pressures. The wage stabilization process involved the construction of successive stabilizing limits. Moreover, a complete wage freeze would have created such obvious cases of injustice as to be seriously damaging to morale and output. A complete freeze would have been politically impossible.

E. USE OF DELAY

The wage stabilization program involved the skillful use of delay in making changes in policy. Since a program of absolute wage freeze was impracticable, if not impossible, the difference between wage stabilization and wage inflation is simply the rate of wage change. One of the principal objectives of stabilization is to slow down the rate of change. This involved the skillful use of delay. A distinction must be made between delay in the processing of cases under an established policy and delay in the change in any policy. The Board

⁴ Memorandum from George W. Taylor to Hon. Fred M. Vinson, March 13, 1944.

sought to speed up the action in cases under an existing policy. Changes in policy were handled with great caution.

Delay in the handling of cases may involve heavy risks. Industrial relations may be kept stable if the parties are satisfied that their cases are being processed and that they will not suffer by delay. The retroactive policy of the Board assumed that the interests of the parties would not suffer by resort to orderly processes. Yet any conscious stalling would have been explosive in its consequences. Disputes which are allowed to remain for prolonged periods may fester and create great unrest.

The use of delay as a stabilization technique is a subtle process requiring the most skillful administrator. The series of steps by which decision on the request to change the Little Steel formula was prolonged played a significant role in the wartime wage stabilization program. The Congress of Industrial Organizations pressed a series of dispute cases in 1943 and 1944 containing wage demands which could be granted only under a liberalized wage stabilization program. The American Federation of Labor petitioned on February 9, 1944, for relaxation of the Little Steel formula. Both organizations conducted persistent campaigns charging the inadequacy of the Bureau of Labor Statistics cost-of-living index on which the Little Steel formula was based. The final step was not taken by the Board in this matter until its report to the President in February 1945. Throughout the period a succession of procedural steps were taken; yet the basic decision was delayed.

It is exceedingly difficult to determine how large a part of the delay was a conscious policy and how much the result of inertia and administrative complexities. In the hands of a skillful executive the distinction may not be important. A good deal of stabilization was delay, or more accurately, simply slow motion.

F. STABILIZATION AND DISPUTE SETTLEMENT

The wage stabilization program was an integral part of machinery to decide wartime labor disputes. The wage stabilization program was significantly shaped by its being administered by the same agency charged with primary responsibility for maintaining industrial peace. The NWLB always had in mind the double objectives of industrial peace and wage stabilization. At times these objectives were conflicting and wage stabilization interfered with dispute settlement. On other occasions the requirements of industrial peace resulted in some sacrifice of the stabilization objectives.

An administrative separation of these two responsibilities would not have been practicable. Wage issues constitute one of the most

important subjects of industrial dispute. Constant confusion and friction would undoubtedly have resulted if the settlements of one Government agency, charged with responsibility to maintain industrial peace, were disapproved by another agency, charged with wage stabilization responsibilities. The effective settlement of disputes would soon have gravitated to the agency with the real authority to approve the wage adjustment. The combination of dispute settlement and wage stabilization authority placed in one organization the delicate problems of balance between these objectives.

The railroad wage dispute of 1943 offers a striking example of the difficulties inherent in divided administrative responsibility. The railroad industry was one of the few major areas not under the jurisdiction of the NWLB. It had its own dispute settlement and wage stabilization machinery. Wage changes in the industry, however, were required to conform to stabilization rules as formulated by the Director of Economic Stabilization and the NWLB. In 1943, a major crisis developed when the Stabilization Director disapproved a wage settlement for the railroad industry resulting from a recommendation of an Emergency Board. The disapproval was based upon the ground that the settlement exceeded the amount allowable under the Little Steel formula which had been evolved by the NWLB. The Stabilization Director's decision was followed by protests from the railroad unions, a threatened railroad strike, Government seizure of the railroads, a vote by the United States Senate favoring the position of the unions, the appointment of two additional Emergency Boards, and direct intervention by the President as mediator and arbitrator. In the end, after months of confusion and danger to the war program, the dispute was resolved by a settlement which exceeded the award originally disapproved by the Stabilization Director.⁵

The NWLB, as a matter of policy, refrained from consulting with the Director of Economic Stabilization regarding particular cases prior to the decision of the Board. The Board as a tripartite body did discuss several cases with the Director (the *Southern California Aircraft* and the *Big Four Meatpacking* cases) in early 1943. The experience proved mutually unsatisfactory and was not utilized thereafter. Such conferences on particular cases tended to destroy confidence in the Board as a dispute-settling agency of the last resort and to shift responsibility to the Stabilization Director. The public members of the Board did, however, thereafter continue to consult with the Director on issues of stabilization policy.

⁵ For a detailed discussion of the railroad dispute, see Colston E. Warne (editor), *Yearbook of American Labor* (New York; Philosophical Library, 1945), ch. XVII. The larger figure of the final decision included an amount regarded as compensation for the unions agreement to forego premium overtime pay for the duration of the war.

II. ADMINISTRATIVE TECHNIQUES OF THE STABILIZATION PROGRAM

It was observed above that the wage stabilization program defined limits for each of the principal elements in the wage structure. The effectiveness of the program depended in considerable degree upon the main techniques used to establish and administer this series of limits.

A. THE LITTLE STEEL FORMULA

The Little Steel formula was intended to set a limit to the increase in the general level of wages arising from across-the-board increases applicable to all employees in a bargaining unit, plant, industry, or other customary area of wage setting. The Little Steel formula permitted an increase in straight-time hourly earnings of 15 percent over the January 1941 levels. It was intended to permit laggard groups of employees to receive increases already obtained by the majority of workers. In postwar language, it was intended to complete a round of wage increases.

The 15 percent figure in the Little Steel formula was derived from the percentage increase in the cost of living despite the fact that the wage stabilization program fundamentally involved a separation of wage and price controls, with the announced intention of stabilizing both at, or as near as practicable, their September 1942 levels. Since wage and price controls were to be separated, it might have been more convincing if the allowable increase under such a formula had not been related to cost-of-living changes. It might have been possible, for example, to adopt a figure (in cents per hour) based upon the average increase in the wage rate of employees who had received increases between January 1941 and May 1942.

The attempt to separate wage and price controls is itself open to question, as had been noted. The device of tying wages to prices explicitly, at least within some limits, has the advantage of intensifying the interest of other economic groups in the community, such as industrial management and agriculture, in the stabilization of the cost of living.

The use of a percentage figure in the Little Steel formula had the effect of providing larger cents per hour increases for employees in higher-paid establishments than for lower-paid groups. In a period when the economic forces at work in the labor market were operating to narrow wage rate differentials, it was unfortunate that the Little Steel formula should have operated to have increased the cents per hour differentials among different groups of workers. If the formula

had been expressed in cents per hour this limitation might have been avoided.

The adoption of any limitation on across-the-board increases inevitably tended to create the notion of a right to such increases. Stabilization essentially involved holding the higher wage rates and narrowing the differentials among lower-paid employees starting from a period in which differentials reflected labor markets with substantial unemployment. The Little Steel formula tended to create in the minds of the highest paid employees a right to an increase, thus making more difficult the task of holding the top rates.

B. BRACKET POLICY FOR INTERPLANT INEQUITIES

The initial policy of the Board with respect to correcting interplant inequities had been loose⁶ and the President's "hold-the-line" order of April 8, 1943, provided for removal of authority to make such wage adjustments. The device of wage brackets was developed between April 8, 1943, and May 12, 1943, after the NWLB convinced the Director of Economic Stabilization that it was economically and politically undesirable to freeze all interplant wage relationships. As described in chapter 5, the conduct of the war under conditions of a tight labor market required the narrowing of some of these differentials. The wage bracket idea was derived from the notion that wage stabilization under wartime conditions had to give greater weight in wage setting to the locality or community factors than to the industry influences. A sound and tested minimum rate was thus established for each principal occupation in an industry in a locality.

The experience of the bracket program clearly demonstrated that there were large areas of the wage structure which had to be handled upon an industry rather than a locality basis. Industry influences predominate in many sectors of the economy, such as coal, railroads, and basic steel. The locality approach to wage stabilization can in fact be applied only to a portion of all wage rates.⁷

The bracket approach also had to recognize eventually that in many localities there were only a few firms in particular industries; many firms did not readily fall into any industrial classification. In these circumstances the appropriate bracket was virtually impossible to establish. Consider, for example, a macaroni factory in a small textile town, or a plant making glass tubing for penicillin in any community. The experience under the bracket program emphasized the difficulty of determining the appropriate sound and tested rates in many small communities and for many relatively unique plants.

⁶ See U. S. Department of Labor, *The Termination Report of the National War Labor Board (1948)*, vol. I, ch. 20.

⁷ See ch. 5 for detailed discussion of the conflicting pulls of industry and area factors.

The bracket program also encountered a problem in the community in which virtually all plants operated under union conditions with standard rates. Under such circumstances it became increasingly difficult to refuse to bring a few laggard plants up to the standard union rates, despite the fact that the bracket minimum ordinarily was supposed to be set at a point below the "prevailing rate."

Nevertheless, there can be little doubt that the bracket approach was an effective technique of wage stabilization for local industries in communities in which a number of plants were found in an industry. As conditions varied from these circumstances under which the bracket program was conceived, the task of determining inter-plant wage rate differentials became more difficult, and more frequently the new rates were the product of judgment and bargaining among Board members.

C. SUBSTANDARDS

The policy of providing for the approval of wage-rate increases on the ground of substandard of living encountered two groups of problems. In the first place, the determination of the level, in cents per hour, up to which wage increases could be approved naturally evoked controversy between labor and management representatives. The relation between figures used by the NWLB (55 cents finally) and the 40 cents per hour in the Fair Labor Standards Act raised questions in Congress. The determination of substandard levels was never related to minimum budget costs for wage-earner families. The use of the term "substandards of living" consequently created some ambiguity. The levels selected by the NWLB were always a judgment based upon the structure of wage rates.

In the second place, the adjustment of wage rates above the minimum following an increase in substandard wage rates proved to be a perplexing problem. In general, increases at the lower end of the wage scale in a plant could not be used as a basis for equal wage increases all the way up the line to the top. The wage-stabilization policy insisted upon "tapered increases" under which successively smaller increases were applied, and finally no increase at all, proceeding up the wage rate scale. This policy resulted in the dislocation of normal wage-rate relationships between job classifications. In some cases, such as the cotton textile and railroad industries, these changes proved so impracticable that subsequent increases had to be granted to higher-paid employees to restore the differentials between job classifications.

From the beginning of the stabilization period it was generally agreed that special consideration should be given to the lowest wage groups. Despite the problems mentioned above, the substandard policy of the Board was never seriously challenged.

D. PROMOTIONS AND RECLASSIFICATIONS

Perhaps the most difficult task of the wage-stabilization program was to set standards for increases which took the form of promotions reclassifications, and merit increases. Every wage rate in the country might be frozen but substantial increases in labor income and labor costs could occur if employees were frequently promoted and reclassified without regard to the actual work which they performed. The task of setting limits in this area was difficult not only because it involved the detailed supervision of the handling of millions of individual employees but also because it was difficult to distinguish between promotions and reclassifications and merit increases which reflected increased skill and those changes which were intended as evasions of the wage-stabilization program. The war effort required considerable dilution in the labor force. Still many promotions were no doubt a form of evasion.

It is easy to criticize this phase of the work of the National War Labor Board as represented by General Order No. 31. It is difficult, however, to provide a ready alternative. Any wage-stabilization program must attempt to deal with these problems of individual promotions and reclassifications, or the whole program can readily be undermined. It is a problem which has its counterpart in price stabilization, the low end item.

The setting of limits in the area of promotions and reclassifications might have been simplified if the establishment of new rate ranges had been discouraged and if the rules in this area had been established at an early date in the wage-stabilization program. The problems became acute as other forms of wage increases were exhausted, and the rules in this area had to be imposed after the situation had substantially deteriorated. A more vigorous and independent program of enforcement also might have improved the record of stabilization in this regard.

E. FRINGE ISSUES

The inflationary pressures under the wage-stabilization program shifted during 1944 and 1945 toward "fringe" items as other forms of wage increases were exhausted under the stabilized limits. Standards were developed for vacations with pay, shift premiums, and other forms of benefits. As in the case of any stabilizing limit, these fringe standards came to create in the minds of labor leaders and workers the notion that they were entitled to such benefits as a matter of right. It became increasingly difficult to deny such increases to any group of employees.

The establishment of separate standards for each form of fringe benefit made it difficult to consider the group or "package" of such

benefits as a whole. In the normal collective-bargaining process one type of benefit may be traded for another. The parties for separate reasons may prefer one form of benefit to another. Yet the wage-stabilization program did not recognize these bargains over a total "package." It appraised each fringe issue on its independent and isolated merits. Thus the parties might prefer 3 weeks' vacation and no shift premium. The standards established in the wage-stabilization program, however, might compel them to adopt 2 weeks' vacation and a shift premium. The standards on these fringe benefits established in the wage-stabilization program substantially distorted the bargaining process which would have considered the package of benefits as a whole.

F. ADMINISTRATIVE RESPONSIBILITIES

In addition to the above comments on the main administrative techniques utilized in the wage stabilization program some brief attention must be directed to the administrative division of responsibility for the total program. As is described in chapter 7 on jurisdiction, the Bureau of Internal Revenue had the responsibility for stabilizing most of the higher salaries; the Department of Agriculture concerned itself with agricultural wages; the National Railway Labor Panel had the responsibility for employees under the Railway Labor Act; the Army and Navy were delegated responsibility for wage stabilization among the civilian employees. Other Government departments were delegated similar authority over their employees. They were supposed to conform to Board criteria and their actions were subject to Board review. There was little attempt on the part of the Office of Economic Stabilization to coordinate the activities of these various stabilizing agencies. As a result there were serious differences in the ways in which wage stabilization standards were applied.

The relative inactivity in the stabilization of agricultural wages perhaps had some justification because these wage rates started from exceedingly low levels which were a consequence of the large excess of labor supply on farms at the outset of the war period. The differential between farm and industrial wage rates was narrowed throughout the period of hostilities. More vigorous and active wage stabilization in agriculture would have been required were it not for the high level of industrial wages. The separation in administration might have been more serious under circumstances of a tight labor market from the start.

The division in administrative responsibility arose primarily from political considerations. The salaries of executives could not appropriately be limited by an agency tripartite in character. More-

over, the special problems of executive compensation were familiar to the Bureau of Internal Revenue. While wage setting in the railroads is in part isolated from the rest of the industrial community, it is doubtful if an entirely separate administrative agency was required. There is little doubt that the railroad industry had a special legislative position, as was evidenced by the action of Congress calling for an approval of the 8-cents-an-hour increase disallowed by the Director of Economic Stabilization in 1943.

G. SELF-ADMINISTERED RULES

The NWLB provided that in certain respects the wage stabilization program should be self-administered. Firms with eight or fewer employees were, with some exceptions, excluded from the program for purposes of administrative convenience. Approval of individual wage increases in conformance with an established plan of merit rating or progression was provided by general order. Wage increases up to specified minimum levels were also approved in advance by general order. In general, however, the War Labor Board made relatively little use of such self-administering rules. It is likely that more could have been done in this respect. Such a step would have lightened the Board's load.

H. COLLECTING WAGE DATA

The wage stabilization program required comprehensive occupational wage rate data on a local labor market and industry basis. These data became particularly important after the May 12, 1943, Policy Directive required the establishment of "brackets," occupation by occupation, for the correction of interplant wage inequities. There were two principal sources of wage information—those data provided by the parties, and wage information compiled by the Bureau of Labor Statistics. A distinction must always be drawn between the collection and compilation of wage data, and the use of wage statistics as standards in a stabilization program. The labor and industry members of the War Labor Board came to have a real interest in the process of securing wage information. The selection of labor market areas, the definition of job classifications and the grouping of firms into industries were certain to influence the wage data applicable to a particular case. The National War Labor Board contracted to the Bureau of Labor Statistics the collection and presentation of wage data. The details of the program of collecting wage information, however, were worked out in conference with representatives of the NWLB. The arrangement was a sound one. Unfortunately the sudden development of the brackets policy imposed

a Herculean burden upon the Bureau which could not be dealt with as speedily as was desired.

III. STANDARDS FOR APPRAISAL OF WAGE STABILIZATION

An appraisal of the wage stabilization program must commence with the standards against which the performance of the stabilization program is to be compared or tested. A tight system of wage control may facilitate price stabilization but may make industrial peace and the movement of wage earners to war production plants more difficult. Is wage stabilization to be appraised by its effects on wage rates, on industrial peace, or on war production? Similarly, a normal administrative agency might produce more stable and consistent application of wage stabilization criteria, but the institutions of collective bargaining would tend to be more seriously impaired for postwar industrial relations than under a tripartite system. Is wartime wage stabilization to be judged in terms of its postwar consequences?

Clearly there are a variety of standards which may be utilized to evaluate wartime stabilization. This section is intended to identify some of the more significant of the possible tests and to appraise the program in terms of these norms. Any final judgment of the wartime wage stabilization program must designate the relative importance of the various objectives of the program.

A. CONTROLS VERSUS NO CONTROLS

Wage stabilization may be appraised by comparison to what would have happened in the absence of a program of controls. This standard need not receive much attention here since it is generally conceded that in wartime, in the absence of a comprehensive system of price, wage, and production controls, resources may readily be diverted to nonwar purposes and that cumulative inflation may seriously reduce and disrupt the national effort.

A comparison of wage⁸ and price movements in previous war periods with the experience during World War II provides some basis for judgment on what would have happened in the absence of controls. In the Civil War and World War I the cost of living increased by a much larger percentage than during the recent hostilities. The percentage increases in hourly earnings and the cost of living for these three war periods are as follows:⁹

⁸ Since wage rate data are not available, average hourly earnings are used.

⁹ Alvin H. Hansen, "Factors Affecting the Trend of Real Wages." *American Economic Review*, vol. XV, March 1925, pp. 27-42; and Bureau of Labor Statistics.

	<i>Average hourly earnings</i>	<i>Cost of living</i>
Civil War (1861-65)-----	54. 4	149. 3
First World War:		
1914-20-----	142. 0	100. 0
1917-20-----	72. 9	48. 4
Second World War:		
1939-47-----	67. 5	52. 0
1941-45-----	40. 2	22. 5

The recent record of stabilization is the more outstanding when account is taken of the fact that production for war purposes constituted so much larger a share of total output during the recent conflict. The proportion of the national output diverted to war at the peak of the effort in World War II was at least twice that at the peak of World War I.

The absence of price and wage controls would not only have meant a much greater increase in the cost of living but most probably also a greater relative rise in prices and consequently a fall in real hourly earnings, as occurred in the Civil War period. It is true that much of the rise in the real hourly earnings had to take the form of savings—since goods were not available—which were expended in the post-war period, 1946-48, when prices had increased. Nonetheless, no wage or price controls would have meant a rapid deterioration in the real wage rate or serious labor difficulties.

B. TRANSFER OF LABOR

Wage stabilization may be appraised in terms of its contribution to the transfer of labor to war purposes. The central task of a war economy is to transfer resources of all types from unemployment or from peacetime uses to war purposes. In the case of labor services, manpower may also be recruited from those normally outside the labor force. When dispensable peacetime goods and services have been reduced to a minimum, the task becomes the transfer of resources from less to more critical needs of the war economy. The reallocation of the civilian labor force is a vital aspect of the maximization of the war potential of the community. The wage structure may assist, be neutral in, or hinder the transfer of the labor force.

There has been some tendency to underestimate the role which changes in the wage structure had during the war period to facilitate the reallocation of the labor force. This underemphasis arises in part from the fact that the most significant changes in wage structure for these purposes took place before the formal wage stabilization program went into effect in October 1942. Furthermore, many

changes in wage structure which were approved on a variety of grounds other than manpower actually facilitated the distribution of the work force required by the war. Yet the stabilization agencies were naturally reticent to place the grounds for approval explicitly on the important needs of the war effort. Such exceptions were reserved for genuinely critical cases.

During 1941 and the first half of 1942 workers in the shipbuilding and the aircraft industries received very substantial wage increases relative to other industries. These favorable wage structures, during the period of most rapid expansion of the two industries, provided a pull attracting manpower. Other factors such as the longer hours of work at overtime pay, the draft, and the opportunity for patriotic service all played a part. Yet these wage differentials were conducive to, and no doubt facilitated, the manpower flows required by a rapid expansion in these two basic wartime industries.

The coal industry received much larger than average increases in the industrial wage rate structure during the war period. The industry moved up relatively to a position near the top of the wage rate structure at the end of the war era. The status of these increases under the stabilization program was subject to some uncertainty and suspicion. Relative increases were continued into the postwar period, 1946-48, so that wages in coal mining came to rank virtually at the top of the wage rate structure. The change in the position of coal mining fundamentally reflected the world-wide shortage of coal and the fact that the prewar wage was the product of 20 years of depressed conditions in the industry. This relative change in wage structure was instrumental in holding men in the industry during the war and securing requisite replacements.

The cotton textile industry received very substantial increases, measured in percentage terms, on the ground of the substandard wage criteria. These increases were vital to man an industry whose internal wage structure and relative level reflected depressed conditions and large stagnant pools of labor in mill towns adjacent to rural areas, particularly in the South. Wages in the industry, relative to others, had to rise in order to secure and retain the requisite manpower for civilian and military production.

The textile industry case is illustrative of the general proposition that all wage differentials will be narrower under conditions of high level employment. The prewar wage structure of the country, including the differentials among firms by area, job classification, and industry, had developed during a period of considerable unemployment. The wage structure appropriate to high level employment, quite apart

from war conditions, must be different from the wage structure developed in the normal times as we have known them over the past century. The war period saw such a narrowing of wage differentials, at least when measured in percentage terms.

Chapter 5 of this report evaluates the manpower consequences of the work of the Board and the specific standard in the wage stabilization program which provided for exceptional increases in rare and unusual cases involving the critical needs of war production. The significant point here is that wage changes made before the Stabilization Act of October 1942 and the application of wage standards other than the rare and unusual case produced a wage structure for the country which facilitated war production. In the main, other wage standards were so administered as to eliminate differentials which were peculiarly the product of a depressed economy and to produce a wage structure more appropriate to a period of high level employment.

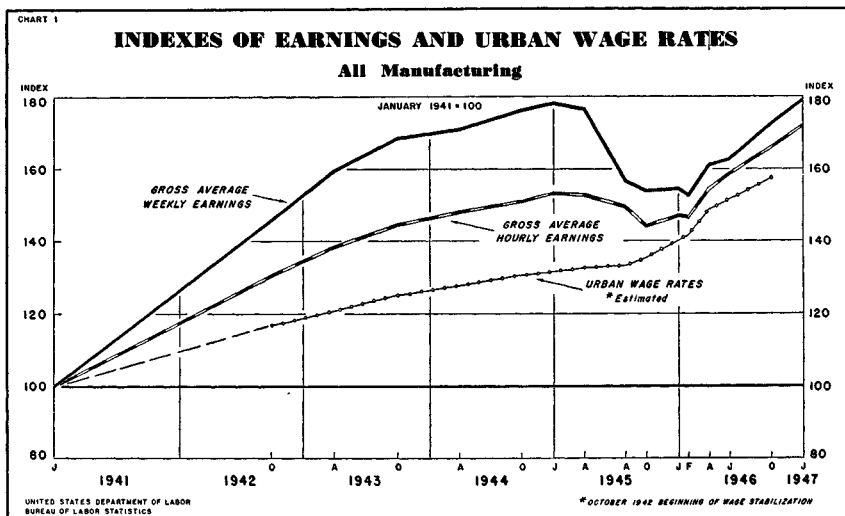
The above analysis should not be construed to imply that wage rate differentials in themselves are normally, or even under war conditions, a highly effective device to secure rapid movements and adjustments in the labor force among areas, localities, industries, and occupations. There is a considerable body of evidence¹⁰ to show that wage differentials are normally, in short periods, not an effective stimulant to movement of workers between jobs.

It is true, however, that the role of wage differentials in inducing movement is greater in tight labor markets than in areas of substantial unemployment. The structure of wage differentials may facilitate or retard movements in the labor force. There is considerable basis for the judgment, some of it outlined above, that the changes in wage structure prior to October 1942 and to a lesser extent during the wage stabilization program, facilitated the transfer of wage earners required by the war effort. The point is not that wage changes were used extensively to transfer workers. Rather, wage structures which were serious impediments to desired movement were modified to permit other factors inducing movement to operate. Obsolete wage structure, such as cited in the case of coal and textiles, would have seriously impeded war production. The wage adjustments created a more favorable environment for active factors to direct the flow of manpower from other uses, from unemployment and from outside the labor force.

¹⁰ W. Rupert MacLaurin and Charles A. Myers, *Wages and the Movement of Factory Labor*, *Quarterly Journal of Economics*, XLII (February 1943), pp. 241-264; Gladys L. Palmer, *Research Planning Memorandum on Labor Mobility* (New York: Social Science Research Council, 1947); Lloyd G. Reynolds in *A Survey of Contemporary Economics*, edited by Howard S. Ellis (Philadelphia: The Blakiston Co., 1948), pp. 255-287.

C. EFFECT UPON WAGE STRUCTURE ¹¹

The wage stabilization program may be appraised in terms of its effects upon the level and structure of wage rates and earnings. Any analysis of the wartime movement of wage rates and earnings must commence with an examination of the various possible measures of wages and earnings. Chart I indicates the movement of urban wage rates, gross average hourly earnings and average weekly earnings in the period 1941-47.



Urban wage rates reflect general changes in hourly or piece rates, changes in the rates for individual job classifications and the effect of output changes under piece rate methods of wage payment. Straight-time hourly earnings (adjusted) further reflect changes in the composition of the labor force as among high and low paying occupations, firms and localities and the effect of shift premiums. Gross hourly earnings include, in addition to these factors, the impact of changes in the amount of overtime premium work. Gross weekly earnings further include the effect of changes in the weekly hours of work.

Between January 1941 and July 1945 basic wage rates increased 24 percent; urban wage rates increased 32.4 percent; and estimated straight-time hourly earnings (adjusted) increased 70.6 percent. The rise in the cost of living, corrected as recommended by the President's

¹¹ The Termination Report, vol. I, pp. 547-559.

committee on the cost of living, increased 33.3 percent in this same period.

The wage stabilization program, as has been noted, was directed toward controlling the structure of wage rates rather than of weekly earnings. The weekly earnings of manufacturing employees increased from \$26.64 in January 1941 to \$45.45 in July 1945. The following table indicates the relative importance of the various components which produced this increase in earnings.

	<i>Amount</i>	<i>Percent of total increase</i>
Weekly earnings, January 1941.....	\$26. 64	
Increase due to—		
Changes in basic wage rates ¹	\$6. 22	33
Liberal administration of merit increases, piece-rate adjustments, etc., and changes in output of piece-rate workers ¹	2. 17	12
Changes in distribution of workers as between regions, occupations, and shifts; and changes in provisions for premium pay for overtime work and for work on extra shifts ¹	2. 10	11
Changes in distribution of workers as between industries ¹	1. 40	7
Extension of workweek ²	4. 85	26
Additional premium payment for overtime work.....	2. 07	11
Total increase.....	18. 81	100
Weekly earnings, July 1945.....	45. 45	

¹ At January 1941 hours.

² At July 1945 straight-time rates.

Source of data: The Termination Report, vol. 1, p. 553.

The level of weekly earnings of wage earners was substantially increased during the war period as indicated in the table above. Probably two-thirds of the increase, however, was associated with expansion in war production. Only a third of the increase in weekly earnings represented a rise in basic wage rates. Some part of even these adjustments was required to adapt wage structures to the war economy for manpower reasons. Had basic wage rates been permitted to increase significantly more than they did, unit labor costs would have increased still more, thereby greatly increasing the pressure on prices.

D. EFFECT ON DISTRIBUTION OF INCOME

The wage stabilization program may be appraised in terms of the equity of its effects on various groups in the community. The stabilization program as a whole decisively affected the allocation of the real costs of the war. The wage stabilization program may be evalu-

ated (*a*) in terms of its effects on the relative position of major economic groups in the country and (*b*) by its impact upon the relative status of various groups of wage earners.

(*a*) There are a variety of ways in which the relative economic status of wage earners during the war period can be tested. The share of the compensation of employees in national income rose from 63.7 percent in 1940 and 61.9 percent in 1941 to 67.6 percent in 1945 and then declined to 65.4 in 1946, 63.0 in 1947, and to 62.0 percent in 1948.¹² The small drop at the outset of the war and the larger wartime bulge in the share of national income going in the form of the compensation of employees is typical of developments in other countries. The wartime increase can probably be attributed primarily to the relatively greater expansion of industries, such as the metal manufacturing area, in which the ratio of labor's participation in income is relatively higher than in other industries.

The comparison of the movements of wage rates and corporate profits during the war period has been the subject of extensive controversy.¹³ The choice of a base period and the use of profits before or after taxes have figured prominently in the differences between spokesmen for industry and labor unions. The Nathan report,¹⁴ for example, emphasized that corporate income before taxes rose by approximately 275 percent between 1939 and 1944 while wages and salaries from private employment rose by only 138 percent. The choice of a 1941 base, the Machinery and Allied Products Institute emphasized,¹⁵ will show that wages rose by a greater percentage than profits. Spokesmen for industry suggest that profits be measured as a percentage of national income while labor representatives stress the ratio of profits to net worth. The conclusion is inescapable that there is no generally accepted base from which to appraise the relative movements of wages and profits in wartime. Moreover, it is highly doubtful if wages and profits ought to be tied together in any short period or that either side would really consistently prefer such a policy.

There is little doubt that during the war period agricultural income rose by a greater percentage than the income of other sectors. Agricultural prices rose more sharply than others. It has been contended, however, that at the outbreak of the war the relative position of agriculture was less favorable than other major economic groups in the

¹² Midyear Economic Report of the President, July 1948, p. 79.

¹³ For a summary and evaluation, see "Symposium: Wage Policy" in Review of Economic Statistics, XXXIX (August 1947), pp. 137-160.

¹⁴ Robert R. Nathan and Oscar Gass, A National Wage Policy for 1947 (Washington, December 1946).

¹⁵ Machinery and Allied Products Institute, Bulletin No. 1965, An Analysis of the Nathan Report Entitled, "A National Wage Policy for 1947," December 1946.

community. Agriculture had been relatively depressed during the 1920's and 1930's.

(b) The wage stabilization program had effects upon the relative economic status of different groups of wage earners. The lowest paid groups received substantially larger percentage increases of wages under the substandard criterion. The general narrowing of wage differentials among areas and among firms in the same industry tended to produce the same result. Differentials were not always narrowed in dollar terms, particularly when considering the differentials among industries. The war period provided a greater relative increase in income to those sectors of the working force in which there had been considerable unemployment during the late 1930's or which had the lowest rates.

E. COMPARISON WITH OTHER COUNTRIES

Wage stabilization in the United States may be appraised by comparison with the results of wage stabilization programs in other countries. Any such standard for evaluation must commence by recognizing that there are always fundamental differences in institutions and, incidentally, statistics, among various countries. Yet these nations were confronted with many of the same, or at least similar, problems of wartime stabilization. Chart II indicates the comparative movements of average weekly earnings, the cost of living, and real average weekly earnings for the United States, Britain, Sweden, Canada, and Australia.¹⁶ In all these countries wage stabilization was part of a wider program of inflation control. In each, to a greater extent than in the United States, wage stabilization was made to depend upon price stabilization. Stability in the cost of living was conceived to be the primary objective; wage stabilization could not be reasonably expected if the cost of living was allowed to rise.

In three of the countries—England, Sweden, and Australia—wage stabilization was made effective through collective bargaining or governmental machinery of long standing. The collective bargaining mechanisms were the sole formal machinery in England and Sweden. The labor court was utilized in Australia. These institutions were so well established and so comprehensive as to be readily adaptable by informal means, as in Sweden and England, or by Government order, as in Australia, to the wartime task of wage stabilization.

In three of the countries—Sweden, Australia, and Canada—the wage level was formally tied to the cost of living for at least part of the period. In Canada and Sweden the connection was broken as the

¹⁶ Some of the more important characteristics of wage stabilization in these countries are described in Appendix A of this chapter.

stabilization task became more acute. In both cases price stabilization was made increasingly effective with the separation.

In none of the four countries was there any attempt to gear closely together wage stabilization and the function of manpower allocation. In fact, there is little evidence of any systematic attempt to use wage changes to influence the flow of manpower even to such limited extent as exemplified by rare and unusual cases under the NWLB in the United States. In all countries, however, there is evidence of a narrowing of prewar wage rate differentials of all types as labor markets became tighter.

In all of the four countries the wartime system of controls, including wage stabilization, was continued for a longer period than in the United States with the result that the cost of living did not increase so rapidly after the war. In all of the countries, however, there were substantial rises in wages and prices with the problems of adjustment to a postwar world.

F. POSTWAR EFFECTS

Wage stabilization during wartime may be appraised in terms of its contribution to postwar industrial relations and wage structures. Whatever its effects upon wartime conditions, the wage stabilization program had longer run consequences. These more distant implications of a wartime program were frequently among the most difficult problems confronting wartime policy making.

The wage stabilization program contributed to more satisfactory postwar relations in a variety of ways. A large number of top labor and industry representatives came to know each other, to trust each other personally, and to work well together. A large number of younger men received invaluable experience and have since served in public capacities as arbitrators, mediators, and fact-finders. The personnel of the field was very significantly enriched. A great deal of wage information was collected for the first time and methods of collection and analysis were developed which have made a permanent contribution to our understanding of wage issues.

The wage stabilization program provided the postwar world with a lower wage rate level than would otherwise have existed. It is no doubt a close and debatable question whether postwar industrial relations would have been improved by an earlier relaxation in the standards for the general wage level. On the one hand, it can be held that the Little Steel formula became a symbol which had to be destroyed by the unions; it created a sense of injustice and contributed to the postwar period of industrial strife. On the other hand, it may be held that the stabilization program was a precarious balance at best and any further relaxation of wage controls during the war

period would have resulted in retreat to a much higher level of prices by virtue of the pressure from farmers and the business community.

The wage stabilization program made a permanent contribution to the development of more orderly internal wage structures. While a good deal of the interest in internal rate alignments was derived from a desire to secure increases made impossible by other wage controls, the intraplant wage structure was important in itself for promotions, grievances, and job analysis. The careful programs initiated under the guidance of the Board for changes in wage structures on an industry scale in basic steel, meat packing, and cotton textiles constituted significant constructive steps toward improved relations and management. At the same time there were, no doubt, many job evaluation plans introduced which served no purpose other than granting a wage increase.

The wage stabilization program gave great impetus, no doubt unintentionally, to the growth of fringe benefits. It has been noted earlier that when the inflationary pressures were checked on the wage level and occupational rates, they created demands for fringe benefits which were widely adopted. The wage stabilization program provided a significant stimulus for the rapid extension of many of these forms of benefits—vacations, shift premiums, sick leave, holidays with pay, group insurance, pensions, etc. Some of these provisions, such as shift premiums in continuous operations, might otherwise never have become widespread. In most cases the wage stabilization program simply speeded up their development and extension.

IV. STRATEGIC FACTORS IN THE WAGE STABILIZATION PROGRAM

As noted at the outset of this chapter, the wage stabilization program did not spring full-blown from a blueprint. The preceding pages have indicated that it was molded and shaped to meet the evolving problems of an economy moving from defense to war to reconversion. It was fashioned in the light of a particular wartime environment. A different environment would no doubt have produced a different wage stabilization program. This concluding section calls attention to the features of the wartime community which were particularly decisive in producing the wage stabilization policies appraised in this chapter.

A. CONDITION OF THE ECONOMY

The war effort commenced in an economy with substantial unemployment. In the early phases of the war, production was increased by placing unemployed manpower to work. Later, new accessions to the

labor force were important in meeting civilian requirements. Only toward the end of the war was it necessary to depend in large measure upon transfers from less essential to more essential work to meet manpower requirements. While some transfers did take place from the outset, the particular manpower situations at the outset of the war were decisive in shaping the wage stabilization program.

From June 1940 to June 1944 unemployment fell 7.4 millions. Seventy percent of this decrease took place within 6 months of the outbreak of war (by June 1942) and nearly 95 percent took place within 18 months (by July 1943). The exhaustion of this reservoir was to an extent mitigated by the large increase in the labor force. The total labor force, including the Armed Forces, rose 10.3 millions between June 1940 and June 1944. Forty percent of this increase had occurred by June 1942 and 85 percent by June 1943.

The essential point is that the economy entered the war period with substantial slack in the labor market. The upward pressure on wage rates was mitigated, or was less severe, by virtue of this fact. In the period prior to mid-1943 the wage stabilization program facilitated the manpower movements out of unemployment and into the labor force. When labor markets quite generally became tight and transfers of wage earners became the primary means of increasing most essential output, the wage stabilization program became much tighter following the hold-the-line order in April 1943. The wage stabilization program, in fact the whole program of wartime controls, was shaped by the early slack in the system.

B. NATURE OF COLLECTIVE BARGAINING RELATIONS

The degree of maturity of collective bargaining relationships influenced the form of the wage stabilization program. It has been noted that well-established collective bargaining, and more particularly effective Nation-wide machinery on both sides, was used to achieve wage stabilization in Sweden and England. Formal governmental agencies were not created for wage stabilization purposes as in the United States. The fact that in this country collective bargaining was not more widespread, that the labor movement was divided, and that there was not available effective national machinery with discipline and internal control on both sides precluded a policy of utilizing collective bargaining institutions alone for wage stabilization. Organization had not proceeded far enough on both sides to bear the heavy strain of wage stabilization. A governmental agency was the only practicable form of administering wage stabilization.

C. LOYALTIES OF PARTIES

There was no question of the complete loyalty of all parties in collective bargaining to the cause of the country. The labor movement

and organized management were united in this respect. There was little possibility of one faction seeking to gain an advantage by criticizing leaders who were devoted to the war effort. By and large, however, organized labor and management accepted or tolerated the wage stabilization program and actually assisted in its development, administration, and enforcement.

The absence of division within the labor movement over the ideology behind the hostilities and the tacit acceptance of wage stabilization permitted a tripartite agency to function effectively. A no-strike, no-lockout pledge provided the basis for the peaceful settlement of labor disputes. Serious division within the labor movement over the hostilities and the war aims of the country would no doubt have made the no-strike, no-lockout agreement impossible of achievement and would have precluded thereby any effective tripartite agency for dispute settlement or wage stabilization.

D. ABILITY TO MAINTAIN LIVING STANDARDS

The requirements of war production, the industrial capacity of the country, and the expansion in the labor force resulted in a situation in which probably no actual sacrifice of living standards was required for wage earners on the average or for any other major economic group. It cannot be denied that particular groups, such as those dependent upon fixed incomes, did suffer a loss of real income. It cannot be denied either that particular goods were unavailable. But on the whole there was probably no real decline, a result contrary to pronounced expectations at the outset of the war. The major economic groups may be said to have made subjective sacrifices in the sense of foregoing the conjectural greater gains that might have been achieved in an unrestricted arena of economic struggle. They may have had to acquire liquid assets instead of current consumption.

It is well to remember that the stabilization program was never put to the test of operating under conditions of a general reduction in living standards for all groups or for a large and influential group within the community. The stabilization program never had to face these greater strains. Such strains could not have been avoided if two-thirds or three-quarters, instead of one-half of aggregate output had been devoted to war production. It is impossible to determine whether the stabilization program would have been adequate in such circumstances.

E. LEVEL OF PROFITS

The expansion in output associated with the war created profit levels which absorbed much of the gradual rise in wage structures during the war period. On the whole, profit margins were fairly satisfactory in

1940 and 1941. The great expansion in industrial output from these levels very substantially increased profits. From 1943 until the end of the period of hostilities, higher wages and other costs gradually began to eat into these profit levels. The very rapid rise in profit levels in the defense and early war years permitted some absorption of higher wage costs without political complications. The separation of wage from price stabilization was made possible by these profit margins in the early days of the war. If profit margins had been narrower or had been relatively constant for some period, such absorption would have been more difficult.

F. POLITICAL EQUILIBRIUM

The stabilization program constituted a delicate political balance among labor, industry and farm groups. The central strategy of stabilization became that of establishing a political equilibrium or basic compromise among competing economic groups which would permit and be compatible with the stabilization of economic forces in the economy.¹⁷ The process of formulating the stabilization program in the period 1940-42 involved the delicate balancing of the political forces reflecting the interests of labor, industry and agriculture. The capstone of the stabilization program, the hold-the-line order, which achieved stability in the cost of living for the remaining 2½ years of hostilities, constituted a brilliant political compromise. The failure to achieve such a compromise at a moderately higher level of wages and prices after VJ-day was responsible for considerable inflation. Political accommodation of the major economic groups of the community is requisite to economic stabilization.

APPENDIX A

WAGE STABILIZATION IN FOUR FOREIGN COUNTRIES

A. BRITAIN

The British white paper on price stabilization and industrial policy issued in July 1941 stated that a hadl and fast policy of cost-of-living controls was intended to remove the pressure for wage demands. A strict control over prices and comprehensive rationing of the limited supply of the principal items in the budget of the household were instituted in lieu of any formal interference with normal channels of collective bargaining. The white paper admonished that both wage earners and employers should bear in mind, particularly when dealing with general wage applications, that the policy of price stabilization

¹⁷ Philip H. Coombs, "Central Problems of Political-Economic Management in the Stabilization Program," lecture delivered at the Industrial College of the Armed Forces, Washington, June 17, 1947.

will be made impossible and increases of wage rates will defeat their own object, unless such increases are regulated in a manner that makes it possible to keep prices and inflationary tendencies under control.

In July 1940, the National Arbitration Tribunal was set up to decide wage disputes which could not be settled under existing machinery and which were referred to it by the Minister of Labour and National Service. But there were never any criteria issued for determining wage adjustments comparable to Executive Orders 9250 and 9328. Wage decisions were made on an individual case-by-case basis. In addition, voluntary wage increases, granted by unilateral action of the employer or as the result of collective bargaining agreements, did not require any government approval. The movement of wages in this system was left to be determined by the relative strength of the parties to collective bargaining, the degree to which they heeded the warnings of the stabilization white paper, and the pressure of wartime manpower needs.

Average weekly earnings in Britain rose 82 percent from October 1938 to July 1944, at which time the index declined, rising again at the end of 1945 to a high point of 90 percent over the base period. The average workweek increased by $3\frac{1}{2}$ hours, from 46.5 in October 1938 to 50 in July 1943, after which it gradually declined to a level below the prewar average in January 1946. About half of the increase in weekly earnings can be assigned to increased wage rates; the index of wage rates reached 142 in 1944 (October 1938=100) and continued to rise much more rapidly than did our controlled basic rates. Comparison of the weekly earnings' trends for the United States and the United Kingdom shows a marked similarity, the result of Britain's smaller increase in hours and the larger increase in average hourly earnings and wage rates. The English cost-of-living index rose slightly higher than ours in the early war years, to 128 in 1941 and to 130 in 1944, but from then on it did not fluctuate by more than 1 point until May of 1946, when it went up to 132. In real terms, American workers experienced a greater increase in real weekly earnings, but a much smaller increase in real wage rates by the end of the war. (These series have serious limitations on account of rationing, distribution and supply problems, and differences in the areas of price control in the two countries.)¹

Since the end of the war the real weekly earnings of the British worker have improved while there has been a decline in this country. The difference does not lie in the movements of money wages but rather as a consequence of the greater success in the United Kingdom

¹ Wages (a) General Report, Report VI, International Labour Conference, Thirty-first Session, 1948; "Wartime Hours and Earnings in the United States and Great Britain," *Monthly Labor Review*, July 1944, p. 153; "Great Britain: Wage Trends and Policies, 1938-47," *Monthly Labor Review*, September 1947, p. 285.

in stemming the tide of postwar price inflation. This success probably can be directly related to the slower rate of abandonment of wartime controls and anti-inflationary measures.

B. CANADA

Canadian wage controls paralleled the American Wage stabilization program in important respects and yielded similar results. At the end of 1941 wage rates were stabilized at the level of November 24, 1941, with cost-of-living bonuses to be ordered as determined by the Canadian War Labor Board. At the end of 1943 the Wartime Wage Control Order incorporated previous cost-of-living bonuses into the basic wage rate and limited future adjustments to changes necessary to rectify a gross inequality or gross injustice. The Canadian price control program began in the fall of 1941 and included a widespread subsidies program.

The movement of wages in wartime Canada resembled that in this country. The average weekly earnings index (1939=100) reached a high point of 153.8 in 1944, when real weekly earnings had risen by 31.4 percent over 1939. As in the case of both Great Britain and the United States, there were changes in the wage structure. Differentials were narrowed between the average hourly earnings for men and women, among industries, and among different Provinces.

C. SWEDEN

Comparison with neutral Sweden is somewhat questionable since the production and manpower requirements of a belligerent nation were not present. The basic labor agreements (recommendations to member organizations) between the Swedish Employers' Confederation and the Confederation of Swedish Trade Unions were the major instrument of wage stabilization through the war. In 1939 these organizations agreed upon, and renewed each year through 1946, a plan for adjustment of wage rates according to changes in the official cost-of-living index. As a safeguard against an uncontrolled wage-price spiral, however, wage adjustments were not to be kept on a parity with increases in the price index. In 1940 wages rose by an amount representing 75 percent of the rise in living costs; in 1941, 50 percent; in 1942, 60 to 70 percent. At the beginning of 1943, the confederations agreed to hold off any further wage increases until the cost-of-living index should reach 249 (July 1914=100, January 1943=239). Shortly before this level was reached the government announced a general price freeze which continued until the last quarter of 1946.

The success of this program and the degree to which the basic agreements were observed is evidenced by the fact that average weekly

earnings rose by 45.7 percent from 1939 to 1945, while the cost-of-living index rose 43 percent in the same period. (Taxes are included in the cost of living.) There was virtually no change in the average length of the workweek and no movement into higher paying war industries as in the other countries. Real earnings fell temporarily after 1939. The low point came at 89.2 in 1941, after which it rose to 98.6 for 1945 and 105.9 in 1946.²

Sweden like England concentrated upon direct government controls over prices and commodity rationing. Wage demands were most likely to result from unstabilized prices and an inequitable distribution of short supplies. The striking stability of real wages under an essentially voluntary system of basic wage agreements must be related to the prewar history of effective negotiation of national basic agreements by the employers' and workers' confederations.

D. AUSTRALIA

Australia entered the war with a highly developed and centralized system of basic wage determination machinery in operation. The Commonwealth Arbitration Court fixed basic rates (minima) for unskilled workers and differentials for skills and other special conditions. This machinery was carried over, with little modification, into the wartime stabilization system. In 1940, the award rates for certain skilled categories were made maximum as well as minimum rates, and in February 1942, the same principle was extended to all employees. These maximum rates were pegged at the February 10, 1942, levels. Australian wage controls may seem roughly parallel to the American measures. But the basic Australian wage was tied directly to the cost of living by automatic adjustments of the base rate each quarter as these prices changed. The Price Commissioner recognized increases in award wages as justifiable grounds for price increases. In July 1943, the government began reimbursement by subsidies to employers who granted wage increases on account of living-cost changes.

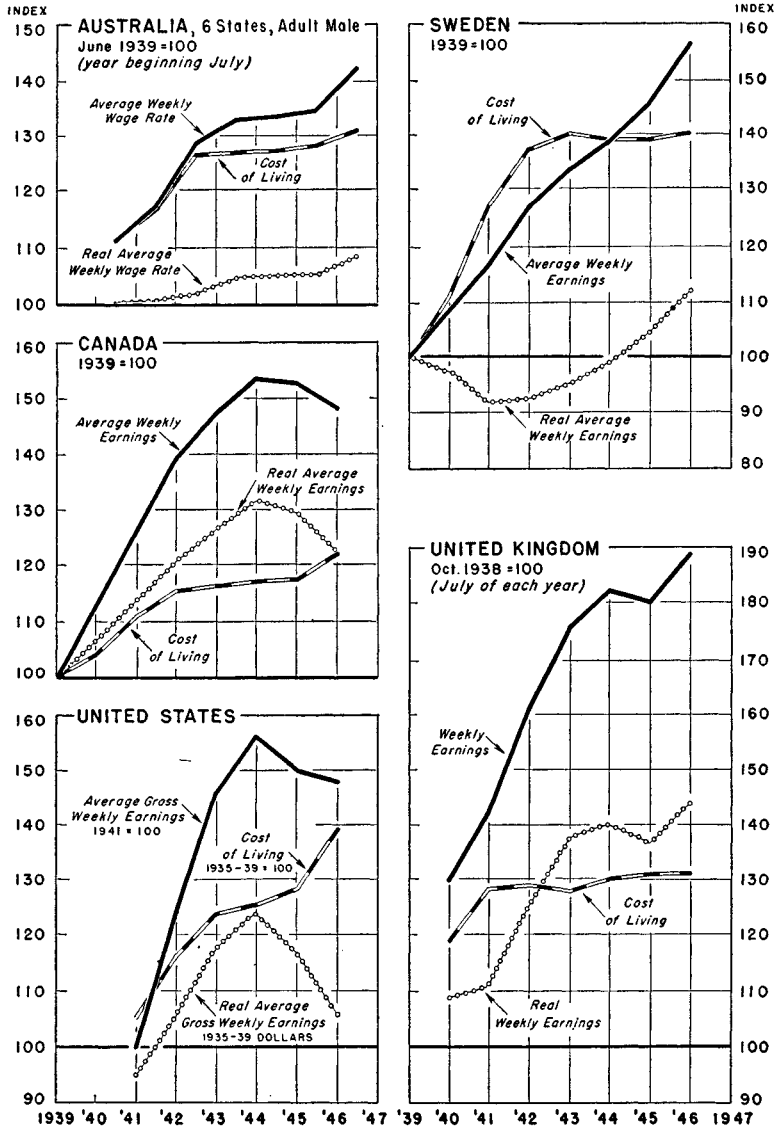
In spite of the difficulties experienced by the Commonwealth Government in stabilizing prices, the program as a whole was quite successful in maintaining real wages and preventing an uncontrolled spiral. From 1939 to 1945 the index of hourly wage rates rose from 109 to 137 (1937=100) for male workers. This increase was only 4 percent more than the rise in the cost of living in the same period. As a result of increased overtime and steady employment during the war, average weekly earnings of all male workers rose 18 percent in the years 1941-44. As in other countries, the structure of wage differentials was changed as women's wage rates rose relatively.

² "Sweden: Wage Trends and Wage Policies, 1939-47," *Monthly Labor Review*, October 1947, p. 431.

CHART 2

WARTIME TRENDS IN WAGE EARNINGS AND COST OF LIVING

Five Countries



UNITED STATES DEPARTMENT OF LABOR
BUREAU OF LABOR STATISTICS

WARTIME TRENDS IN WAGE EARNINGS AND COST OF LIVING—FIVE COUNTRIES

Australia :

1. Average weekly wage rate index, six states, adult males, annual averages for 12 months beginning July of each year; average of 3 years ended June 1939=100. Source: Monthly Review of Business Statistics, Canberra, March 1948, p. 22.
2. Cost-of-living index (retail price index), six capital cities; average 3 years ended June 1939=100. Source: As above.
3. Real average weekly wage rate index, six states, adult males; series (1) divided by series (2). Source: As above.

Canada :

1. Average weekly earnings index; 1939=100; data not available for 1940 and 1941. Source: Monthly Labor Review, October 1947, p. 427.
2. Cost-of-living index; 1939=100. Source: As above.
3. Real average weekly earnings index; 1939=100; data not available for 1940 and 1941. Source: As above.

Sweden :

1. Average weekly earnings index; 1939=100. Source: Monthly Labor Review, October 1947, p. 433, from Sweden, Royal Social Board.
2. Cost-of-living index (excluding direct taxes paid); 1939=100. Source: As above.
3. Real average weekly earnings index; series (1) divided by series (2).

United Kingdom :

1. Weekly earnings index; the figures for July of each year are taken as representative of the year; October 1938=100. Source: Monthly Labor Review, September 1947, p. 236, from Ministry of Labor and National Service, Central Statistical Office.
2. Cost-of-living index; October 1938=100. Source: As above.
3. Real weekly earnings index; series (1) divided by series (2); the figures for July of each year are taken as representative of the year.

United States :

1. Average gross weekly earnings index; index of annual averages, 1941=100. Source: Bureau of Labor Statistics.
2. Cost-of-living index, annual averages; 1935-39 average=100. Source: Bureau of Labor Statistics.
3. Real average gross weekly earnings index; index of annual averages, series (1) divided by series (2).

Relation of Wage Control to Manpower Problems

By John B. Parrish

I. INTRODUCTION

THIS CHAPTER is concerned with the relationship of wartime wage controls to the flow of manpower. This relationship may in some cases be very direct and easily recognized and in other cases be very indirect and difficult to determine. Wage adjustments¹ under some conditions may be a primary factor in the flow of manpower; under other conditions, very secondary. At times, such adjustments may have immediate effects on labor mobility, yet at other times they may not be felt for relatively long periods of time. Further, it is often difficult to isolate the wage factor from the many other factors which may cause workers to accept or reject job offers. Nonwage factors, such as home ties, climate, job security, length of workweek, community facilities, and transportation are always important in influencing the flow of labor. The confusion and overwhelming pressures of military mobilization add additional pushes and pulls to the labor market. The effect of these nonwage factors is not analyzed in this chapter, since they were beyond the control of the NWLB. Analysis of the effect of fringe adjustments is also excluded, because they are believed to be of relatively minor importance with respect to the flow of manpower.

¹ By "wage adjustments" is meant wage rate adjustments, including incentive rates. The term does not include adjustments in the so-called fringe issues.

Wage adjustments may affect manpower flow in at least four important respects. In the first place, they may influence the movement of workers from plant to plant within the local labor market. Other things being equal, labor will flow from low- to high-wage plants in a period of expanding employment. A second type of mobility may take place between labor markets; i. e., from low-wage areas of limited opportunity to high-wage areas of greater opportunity. This type of mobility is generally referred to as migration.

A third type of wage-manpower relationships concerns intraplant mobility. Normally workers advance with experience and training from low-wage to high-wage jobs in accordance with aptitudes. They may not do so if narrow job differentials provide no incentive. They may be dissatisfied to remain where they are if rate differences do not reflect differences in job content. This dissatisfaction takes the form of rising quit rates and restricted output.

A fourth type concerns the effect of wage levels on the proportion of the community's population in the labor force. Some persons not ordinarily in the labor market may be induced to enter if wages are sufficiently attractive (although low family incomes drive others to seek employment).

II. EARLY MANPOWER TRENDS

Although the central interest of this chapter is NWLB wage policy as related to manpower, it is important to note briefly wage differential and labor supply problems as they existed during the early stages of the defense and war program.

Between 1940 and 1943, some 7,000,000 unemployed were absorbed. At least 8,000,000 new workers entered the labor market in response to high wages and a great variety of opportunities.

Several million workers transferred from less to more essential wartime jobs under pressure of Selective Service. Millions migrated voluntarily from regions of labor adequacy to war-production centers. One out of every four families changed address at least once. The workweek was lengthened by 15 to 20 percent on the average, adding the equivalent of several million workers to the labor force.

With this tremendous and unprecedented voluntary activity going on, those who opposed compulsory direction of labor had the whip hand in Washington. National service legislation was proposed but never got much support either in Congress or the White House.

Labor mobilization during this early period was accomplished by thousands of individual employers using their own devices for hiring,

training, upgrading and dismissal and drawing from the same labor supplies as civilian Government agencies and the military services. Labor flowed voluntarily into wartime industries because wage rates were generally higher, more overtime was offered, opportunities for advancement were greater and there was greater likelihood of avoiding the draft.

The War and Navy Department procurement branches systematically established wages in Government-owned plants (whether operated privately or by the Government) at rates well above prevailing local market levels. Had the Nation entered the war with full employment this procedure would have raised immediate problems. But so slack was the labor market in 1941 that essential private industry could still recruit successfully in spite of wage increases elsewhere.

III. DEVELOPMENT OF MANPOWER CONTROLS

The development of a manpower program came more slowly than the formulation of wage stabilization policies. When NWLB was created in January 1942, aggregate labor supply was considered adequate. About this time a great many different Federal agencies acquired or assumed an interest in manpower as a result of other responsibilities. The United States Employment Service, with its 48 affiliated State services, recruited labor for both defense and non-defense employers. Selective Service drafted men for the armed services. The War and Navy Departments recruited men for military service, hired civilians for directly operated plants and aided contract employers in hiring civilian labor. Six agencies were active in training programs of one kind or another. Numerous others were concerned with specialized types of recruitment. All were supposed to be under the general direction of the National Defense Advisory Commission and subsequently the Labor Division of the Office of Production Management. This over-all control was more in name than fact. Coordination with the military services and Selective Service was negligible. Thus, from the very beginning, manpower administration was disconnected and dispersed among many well-entrenched agencies, each with its own special responsibilities and political support. The confusion and overlapping was compounded by top-heavy administrative structures in some of the agencies. Such a development was permitted because labor supply was not critical in the defense period and few could see that it would become so.

The War Manpower Commission was created in April 1942, on the assumption that an over-all manpower program might be needed. It was superimposed on the United States Employment Service but had

no operational authority at this time. It was essentially a policy forum. Finding itself without real authority, WMC did little except make public pronouncements and consider its own internal staff problems. In December 1942, WMC was given operational authority through Executive Order 9279. Under this authority it could regulate hiring of workers in critical areas and request other agencies to take specific complementary action. Selective Service was transferred administratively to WMC, though it actually remained independent.²

In April 1943, an attempt was made by WMC through General Order 4 to control the causes of Nation-wide turn-over. Workers in 35 essential industries were required to obtain certificates of availability before leaving their jobs to seek employment elsewhere. The objective was to reduce the transfer of workers from essential industries. Inability to obtain adequate enforcement of General Order 4 and failure to coordinate its objective with NWLB wage policy doomed the order to limited effectiveness from the start. Unilateral action in this field could not possibly be fully effective.

Meanwhile WMC had experimented (in late 1942 and early 1943) with local employment stabilization plans involving carefully supervised controlled hiring and priority placement. The local plans were not very effective. Workers continued to move into higher-wage plants. Only the fact that the high-priority plants tended to have the highest wages saved these efforts from complete breakdown. When WMC attempted to direct workers to low-wage plants it found itself helpless.

There were other weaknesses in WMC's local efforts. Who was to say what local products were most urgently needed in the over-all war effort? Certainly not WMC. This decision could be made only by WPB in cooperation with the armed services. WMC and WPB debated this issue month after month. Meanwhile the unregulated labor market went on its way, with both favorable and unfavorable results.

In June 1943, a coordinated WMC-WPB priorities plan was begun in Buffalo. Hiring was controlled and referrals were on a priority basis. In November more elaborate joint agency controls were applied in five west coast cities through local WPB Production Urgency and WMC Manpower Priorities Committees. Principal features included: (a) WPB determination of production priorities paralleled by WMC referrals on the same priority basis, (b) WPB review of all new contracts to determine feasibility and adjustment of existing contracts when necessary to balance labor supplies, (c) employment ceilings set by WMC and WPB, (d) control of hiring by WMC and (e) Selective Service deferment of workers in high-priority plants.

² Selective Service was removed from WMC in December 1943.

The west coast plan did not result in reducing existing contracts but did prevent additional over-letting. It aided recruitment in high-priority plants and brought about more realistic appraisal of future labor needs. (Some shortages turned out to be statistical deficits.) Turn-over was not significantly reduced although it was better directed. Nothing was done to curtail or reduce low-priority contracts.

The basic principles of the west coast program, i. e., priorities, employment ceilings and controlled referrals, were extended in part or in whole to 10 other areas by the middle of 1944. This action just about completed the development of manpower controls. It should be noted that the various local employment stabilization plans were totally unrelated to wage policies except where special inter-agency programing was effected, as in Seattle. This fact limited the effectiveness of both manpower and wage policies. WMC was forced time and again to appeal to NWLB for assistance. NWLB was forced time and again to recognize manpower aspects in particular cases and industries and eventually in general. This will be discussed further in the next section.

In summary, WMC's stabilization programs were limited to a few areas and varied greatly in effectiveness. Had the war worsened, they would have provided the framework for more effective regulation. As it was, centralized manpower controls were never achieved out of the "pull and tug of the twenty-some Government agencies in the labor supply field * * *."³

IV. NWLB APPROACH TO MANPOWER PROBLEMS

In the months immediately following the Pearl Harbor attack, labor supplies tightened somewhat but the belief was still current that labor supply was the least threatening of all factors limiting production. As a generalization, this was probably correct. Scores of areas still had surplus labor. Workers were flowing into war industries at an accelerating rate. Citing this fact, both management and labor stood firm against rigid manpower controls.

Yet the satisfaction with the flow of manpower was somewhat illusory. Underemployment had largely disappeared, and unemployment had declined sharply. Labor shortages had developed in many areas, while large surpluses remained in others. There was no machinery for seeking out secondary workers. Turn-over was rising with dangerous rapidity.

³ U. S. Bureau of Budget, *The United States at War*, Historical Report No. 1 (1946), p. 183.

The voluntary quit rate for manufacturing industries (per 100 employees) as measured by the United States Bureau of Labor Statistics was less than 1 percent per month throughout most of 1939. The quit rate rose rapidly to around 2 percent in 1941, then to 3 percent in 1942, and reached the excessively high range of 4 to 6 percent per month during most of 1943-44. In general terms this meant that in 1943, of 100 employees at the beginning of the year, only about 40 would be left at the year's end if no accessions were made. Fortunately much of the turn-over involved the same individuals constantly shopping the market. Even assuming, however, that many plants retained a reasonably stable hard core of employees (by no means always the case) the high turn-over was wasteful and a serious drag on the rate of production. There were numerous reports of labor hoarding and underutilization.

Bottlenecks of production gradually began to be paralleled by bottlenecks of manpower. By the fall of 1942, manpower problems began to be important enough to be given consideration in N.W.L.B. discussions, but not critical enough to be integrated into Board policy. In fact, manpower problems probably could not have been incorporated into N.W.L.B. policy at this time. In the first place, the Government had no over-all manpower policy. Secondly, there was no effective over-all manpower agency. Rather there were twenty-odd agencies in the manpower field, whose energies were largely taken up by efforts to clarify jurisdictional authority.

Since the Board had no official authority to deal with manpower problems (except indirectly through its power to approve wage changes necessary to promote the effective prosecution of the war) it was technically correct in saying it would not use wage adjustments to influence manpower flow. More important, the Board did not believe it was desirable to mobilize manpower through wage manipulation. Further, the Board did not believe it would be necessary to have strong manpower controls at all. The approach to wage controls, therefore, was one of securing as much equity as possible within a stabilization program. Both the labor and industry members wanted the N.W.L.B. to stay as far away as possible from manpower problems. They wanted their constituents to be free to criticize and, if possible, prevent governmental direction of labor. The labor members repeatedly said they would never support either national service legislation or wage controls based on manpower flow unless the emergency was much greater than anything visualized in 1941 and 1942. Industry members were just as emphatic in saying they were unwaveringly opposed to Government interference with private hiring and discharge.

In this connection it should be remembered that the background of all three sides of the N.W.L.B. table was collective bargaining either as

participants or as mediators and arbitrators. None of the Board members had had experience with general recruitment, training, and placement of labor supplies. None wanted this experience.

Able as the Board members were, they could not foresee the length of the war, the eventual size of the armed services and the degree of labor stringency in some areas. Board discussion at this time still included the threat of a postwar labor surplus and suggested that the less scrambling of labor during the war, the less unscrambling at the end.

Rightly or wrongly, the Board wanted to avoid manpower considerations wherever possible. Had the war not intensified, this approach would have succeeded. Since this was not to be the case, the Board erred in its assumption that it could avoid dealing at least indirectly with manpower problems except in unusual cases.

This conclusion is based on a general observation of labor market characteristics. As long as labor supplies are adequate, extremely wide interindustry and interplant wage differentials in a given market are of secondary importance in determining the adequacy of labor supplies for individual plants. As labor becomes more scarce, wage differentials become more and more important as determinants of manpower flow. As the market becomes increasingly tight the low-wage plants are subjected to greater pressures to narrow differentials with the higher plants. This assumes of course that nonwage factors are approximately equal. Obviously a high-wage plant in an inaccessible location may be at a disadvantage with lower-wage plants ideally located to transportation, housing, service industries, etc. Likewise working conditions, amount of working time offered, promotional opportunities, stability of employment and many other factors may affect the flow of labor. A large number of labor markets did become so stringent by 1943 that wage differentials directly affected the ability of some plants to recruit and retain workers.

With this background in mind we shall turn directly to the application of the Board's four main policy criteria, starting with the most important of all from the manpower standpoint, the inequity doctrine.

V. THE INEQUITY DOCTRINE AS RELATED TO MANPOWER

In adopting a policy that it would grant wage increases to correct wage inequities, the Board recognized two types: (a) interplant and (b) intraplant. The second of these will be considered later in a more detailed discussion of internal wage-rationalization policy.

The phrase "interplant inequity" was defined in very general terms. It was described as an unusual or unreasonable difference in wage rates so discriminatory as to constitute a manifest injustice.⁴ The vagueness of the language called for the exercise of judgment in each case—an approach which the Board thought necessary at that time. Labor wanted to avoid the rigidities that would have followed from setting down specific and standardized criteria. The industry members wanted to hold wages in general, but to make exceptions where necessary. The public members wanted a flexible policy in which to turn around. They could give here and hold there while still maintaining, in general, a stabilization program.

Between January 1942 and April 1943 the Board was free to apply the doctrine pretty much as it pleased. A plant with wages below the average in a given labor market (or industry) could be raised to the average. Plants with wages above prevailing community practice could often receive wage increases on the ground that the lower-wage plants were noncomparable. In practice this meant that the Board granted inequity adjustments for plants with nearly all levels of wages except the very highest in each community. As the low-wage plants moved up, a new prevailing average was created which served as the basis for still additional inequity claims. It was creeping wage escalation with no terminal point.

Had employers opposed wage increases to counterbalance the pressures of unions, the policy might have worked fairly well. This did not occur. Instead, the Board was swamped with voluntary applications for increases from employers with and without unions. Why the sudden shift of management out of its traditional role in wage negotiations?

Before the war American management operated under considerable price competition in most industries. It kept its eye always on the product market where profits were made or lost on the volume of sales. Wages reflected in part the ability to pay of individual industries and plants. The effects of depressed product markets in the 1930's resulted in widely varying rates between and within plants for comparable jobs. Labor moved with difficulty from low- to high-wage plants in a time of labor surplus. Management was, therefore, under no urgent compulsion to correct wide differentials on comparable jobs.

After 1941, costs were no longer the limiting factor to production. Many Government orders were placed on a cost-plus or fixed-fee basis. Labor could now move readily to high-wage jobs. Plants with low or even average wage levels found themselves unable to hire or retain

⁴ Wage Stabilization Policy of the National War Labor Board, November 6, 1942, The Termination Report, vol. II, p. 681.

workers at a time when labor was the key to production. In this environment, normal prewar differentials suddenly became serious inequities to both management and labor.

What effect did the liberal inequity policy have on the distribution of manpower? In some relatively loose labor markets in which there were only a few large war plants, the effects were probably favorable, since they tended to give higher wage levels to war plants than to less essential industries. In other loose labor markets with many types of industries, it created slowly rising inflationary pressures, but created only minor manpower problems.

To the extent that many inequitable interplant rate differentials were corrected, the results were favorable. On numerous occasions however, increases were granted to alter differentials which were not actually inequitable from a job-content viewpoint. Such action generated slow inflationary pressures and encouraged labor and management to seek more and more adjustments to no real end as far as war production was concerned. The announcement in the local press of a substantial wage increase for Plant A, already high, was highly disturbing regardless of a skillfully worded rationale. The manpower problems of low-wage plants were made correspondingly more difficult. The basic weakness of the inequity policy was that it had no end and left both labor and management in a state of confusion and expectancy.

In stringent labor markets the effects of the inequity doctrine were least favorable from the standpoint of manpower mobilization. Some insight into the impact of inequity policy in such labor markets may be obtained by reviewing the operation of this policy in the South Bend area, which was the subject of detailed study by the Board's research division late in 1942 and early in 1943.⁵

In the spring of 1943 there were approximately 180 manufacturers in South Bend. About 30 employed over 100 workers each. Nine employed over 1,000 each. Practically all were engaged on war contracts or on other work essential to the war effort.

Two companies dominated the area by sheer size, Studebaker with 12,000 employees and Bendix Aviation with 10,000. These two companies employed about one out of every six workers in the community. For many years, wage negotiations in other South Bend plants (with a few exceptions such as apparel and rubber) were conducted with reference to Studebaker and Bendix. Differentials between the leaders and the other plants were narrow in some cases, very wide in others. As long as adequate supplies of labor were available these different plant wage levels could exist side by side. They caused

⁵ National War Labor Board, Wage Stabilization Division, Research and Statistics Report No. 7 (July 30, 1943).

constant difficulties in negotiations, but as one manager said, "we could live with the situation."

By the fall of 1942 the labor market had become very tight. Every employer was trying to hire. Community facilities were strained by the influx of 10,000 workers. In December the Board received a request from Studebaker Co. and its UAW-CIO local for a 4-cent increase. The application gave as a reason: "inequality with Detroit rates." It was claimed that it had become customary after 1935 for Studebaker to grant adjustments agreed to by General Motors and the UAW in Detroit. The record casts considerable doubt as to the validity of this claim. The parties stated that they were entitled to 4 cents because the Board had granted this amount to GM. If to GM, why not to Studebaker? It would aid management to recruit labor and maintain morale. It would increase the prestige of local union leadership and bring its accomplishments in line with those of the Detroit negotiators.

The Board unanimously granted the increase. The Board's transcript reveals little consideration of the effects on manpower flow or the creation of new inequities. From the standpoint of community wage levels, the 4-cent increase was not considered to be inflationary or unstabilizing.

The actual effects of the decision in relation to manpower were far-reaching. They were far greater than anyone foresaw at the time. The union at Bendix immediately claimed an inequality with Studebaker. Then began an ever-increasing stream of inequity cases from South Bend. Investigation revealed that nearly all were pure and simple manpower cases, which were aggravated by the Board's grant to the highest-wage plant in the area. Within 5 months, five motor car or parts companies asked for increases, claiming loss of skilled mechanics to Studebaker. A low-wage steel range company making Army field equipment applied for a 4-cent increase. Its workers were embittered by a denial in March of 1943. As one worker said:

I have been working at the plant for 10 years and I am now making 87½ cents per hour on day work with no chance to participate in an incentive system. My daughter-in-law started at Studebaker a few months ago, and she is now working as an inspector and is making \$1.15 an hour.

A sample study of hires at Studebaker revealed that one-third of the workers came from companies with critical war contracts.

Serious loss of workers was experienced by the peripheral towns within the South Bend labor-market area. Traditionally, wages had been somewhat lower in nearby communities such as Elkhart, Goshen, and Mishawaka, so that normally a flow of manpower into Studebaker and Bendix would have taken place under conditions of full employment. The Studebaker inequality decision, however, adver-

tised and thereby accelerated the movement out of the low-wage communities, many of which had war contracts as essential as Studebaker's. In fact, the latter was held up on bomber production one full evening because of production failure due to labor shortage in a nearby plant claiming loss of workers to Studebaker.

Loss of manpower encouraged low-wage plants to increase earnings of workers by the use of methods beyond or outside the control of the NWLB. Management resorted to over-classification, excessive upgrading and promotion, and loose timing of incentive jobs. Wage stabilization violations undoubtedly occurred.⁶

Another undesirable effect of the Studebaker action was reported by the War Manpower Commission in its effort to bring secondary workers into the labor market. When asked if they would help out in the war effort, these workers replied, "Yes, but we'll wait 'til we can get work at Studebaker or Bendix. Why take a job in a low-wage plant?" Had the WMC shut off hires at the high-wage plants until the low-wage plants were adequately staffed, many of these workers would never have come into the labor market at all.

Although only a single instance, the experience in the South Bend labor market suggests a number of conclusions:

(a) In a stringent local labor market, interplant wage differentials affect manpower flow rather directly, if other factors are approximately equal. Therefore more consideration should have been given to manpower effects of wage increases in such areas.

(b) It was not practical to increase prewar differentials where these were extreme. To do so without strong manpower control was to create impossible manpower problems in low-wage plants. To have done so with strong manpower controls would have been intolerably inequitable and unworkable.

(c) Industry-wide or company-wide wage adjustments should not be attempted without careful consideration of their effects in given labor markets, for such action can be highly disturbing with reference to local manpower problems.

(d) Successful wage stabilization must be severely applied to high-wage plants. Otherwise there is no end to inequity claims and neither wage nor manpower stabilization can be readily effected.

Should NWLB be held responsible for all the manpower consequences of the Studebaker decision and others like it in the period prior to April 1943? The Board said it was not responsible for the flow of manpower. But it was not operating in a vacuum. A decision to grant or withhold a wage increase could determine the ability of a plant to recruit or retain labor. The Board should have

⁶ See ch. 10 for further discussion.

probed deeper into the manpower consequences of some of its inequity decisions.

The May 12th policy directive set forth a new inequity bracket policy which greatly tightened the granting of adjustments. Instead of increases to the prevailing market average, low-rate jobs could be raised only to the first substantial cluster of going and tested rates, except in rare and unusual cases.

Insofar as the bracket policy greatly restricted wage increases, particularly in the high-wage plants, it reduced the constant disturbance to local wage structures that occurred under the previous policy. Many manpower problems that would have been created for essential low-wage plants were thus avoided. Plants which had gotten under the wire and obtained increases before the hold-the-line order were comparatively well off. Some of those which did not, found themselves in difficulty. Had local wage differentials actually been well adjusted at the time of the order, the results would have been almost entirely favorable. As it was, many areas had badly distorted interplant wage relationships due in part to NWLB's own actions. Had the bracket policy been adopted earlier, some of these distortions would have been avoided.

The bracket policy succeeded in part because the Nation started with tremendous reserves of labor and the job of hiring had been done in many areas before the May 12th policy directive, and in part because of the great flexibility exercised by skillful national and regional Board members in applying the policy. This flexibility extended to the point of recognizing manpower pressures without officially doing so.

VI. THE EFFECTIVE PROSECUTION OF THE WAR POLICY

A. JANUARY TO OCTOBER 1942

In the foregoing discussion we have indicated that manpower problems played a large part in the Board's inequity decisions. What then were the cases labeled manpower during the pre-stabilization period, January-October 1942?

Some of the manpower cases arose in labor markets in which the inequity doctrine based on interplant or interindustry differentials could not be applied. Plants with unique operations or large plants located in areas with no comparable plants or industries gave rise to this type of case. Other manpower cases were those in which the applicants pleaded manpower shortage as the sole issue. Still others were cases which other Government agencies had identified as manpower and specifically asked the Board to provide a solution on that

ground. The difference between so-called manpower cases and many others was one of degree rather than kind. This is not to say, of course, that there were many inequity cases which did not involve manpower consideration.

Faced with specific manpower cases, what was NWLB policy? No official policy statement was issued. Each case was considered on its own merits. During this 9-month period, the Board decided nine cases specifically called manpower. Increases were granted in eight out of the nine. In the ninth, the newly created WMC indicated that there was no real shortage, to give the Board a score of 100 percent approval where labor shortage was demonstrated.

What kinds of manpower problems were involved? In one case a union claimed discrimination because rates were low and its members frozen by an anti-pirating agreement.⁷ The Board agreed that if workers' freedom to change jobs was restricted, such workers were in equity entitled to the going wage for comparable work in the area. Actually at this early date the public members did not regard such cases as important or precedent-setting. The labor members, however, were quick to see the opportunity for spiraling wage increases on the basis of just such decisions.

In a second and much more important case the Board was confronted with the migration of workers from the isolated properties of a large nonferrous mining company.⁸ No doubt unfavorable wage differentials were a primary factor in the exodus. The Board recognized that there was no solution to the problem except to grant a wage increase, since no labor reserves were available in western mining towns.

It must be remembered that at this time (June 1942) the Nation relied solely on the voluntary flow of labor to man the industries vital to war production. Observers noting the mass migration from marginal farms in Arkansas and Oklahoma to West Coast airframe and shipbuilding companies were highly pleased with this voluntary flow. But little attention was paid to the fact that the same forces were also pulling workers out of the copper mines. The consequences of prewar interindustry differentials under conditions of labor shortage were to prove a continuing problem throughout the war.

In two other cases the flow of workers was out of low-wage New England textile companies⁹ and Pacific Northwest foundries.¹⁰ The Board granted increases. In the *Pacific Northwest Foundries* case the Board frankly noted the relationship of wages to manpower. It said:

⁷ *Ranger Aircraft Engine Division*, case No. 24 (June 12, 1942).

⁸ *Phelps Dodge Corp.*, case Nos. 5 and 114 (June 24, 1942).

⁹ *New England Textile Operators*, case No. 147 (July 7, 1942).

¹⁰ *Pacific Northwest Foundry Industry*, case No. 2415-CS-D (August 28, 1942).

Whatever scheme is eventually contrived by other branches of Government to enable war industries to obtain and retain workers will come too late if it comes at all to provide for the requirements of this day, for this industry, in this area. The experience of these foundries * * * shows * * * qualified men are constantly being taken into better paid jobs * * * labor turn-over has been appalling * * *

The acute general shortages of later months had already arrived by mid-1942 in certain localities and certain industries. The Board did not adopt officially a special critical area policy, yet used one in the above case. The remaining manpower cases were similar and do not need review.

Summarizing this early period, the Board had few manpower cases. These were all granted wage increases. There was no special policy, but neither was there much need.

B. OCTOBER 1942 TO APRIL 1943

Under Executive Order 9250 in October 1942 the Board was given authority to grant increases necessary to promote the effective prosecution of the war. The effective prosecution of the war criterion was intended to enable the Board to grant wage increases for manpower and production purposes where the other criteria were inapplicable.

In only 14 cases out of thousands coming to the Board between October 1942 and April 1943 was manpower recognized as the key issue. The number was small only because of the large element of manpower significance in many of the straight inequity cases.

Of the 14 manpower cases, 2 involving thousands of workers warrant brief review.

One of these was the *Nonferrous* case.¹¹ In the spring of 1942 workers started leaving the nonferrous mining areas of Utah, Nevada, and Arizona for higher-wage war jobs under better working conditions. The migration was especially heavy to California and Oregon. By summer the loss was serious. In August an Interdepartmental Nonferrous Metals Committee was established at the insistence of the WPB Copper Branch. The nonferrous industry was falling behind schedule. In September and October action was taken by six major agencies as a result of prodding by the committee. Only two of these actions were very effective. The War Department furloughed 4,500 soldiers with mining experience. NWLB granted a substantial wage increase solely on manpower grounds. These two actions were helpful. WMC began an intensified interstate recruitment campaign with very little success. Who would want to accept arduous work in the copper mines under great pressure and at high temperature in isolated communities with poor facilities for \$1.20 an hour, if he could get the same rate working in Oregon shipyards? WMC then took a more

¹¹ *Nonferrous Metals* case No. 185 et al. (October 23, 1942).

drastic step by declaring the nonferrous mining areas as critical. Workers were required to obtain certificates of availability before leaving to accept other employment. Many workers, anticipating the freeze, left in advance. Others left afterward, for the order could not be strictly enforced. WPB closed the gold mines to release miners for nonferrous work. The action was not too helpful. Many miners could not or would not move. Selective Service instructed local boards to grant deferments to all miners. Some local boards did; some did not. Interagency action was completed when a joint OPA-WPB committee agreed to adjust copper quotas and prices whenever costs rose because of wage increases.

The *Nonferrous* case illustrated many things about our early war program. It pointed to the inseparability of wage and manpower problems under certain labor-market conditions. It emphasized the inadequacy of coordination between Federal agencies with an interest in manpower. It called attention to the dangers in general policies based on an adequate total labor supply without due regard for acute shortage problems in limited areas. Under existing labor controls, the programs of other Federal agencies were sometimes ineffective in coping with the manpower problem without the support of NWLB action. This applied particularly in areas with no male reserves for jobs ill adapted to the use of women workers.

What evaluation should be placed on the NWLB action in this case? It came late. When it did come, the Board's decision was technically competent and realistic. It narrowed the unfavorable or "inequitable" differential between nonferrous mining and other industries. The Board's industry members opposed approval, fearing it would create an "outbreak of unstabilizing manpower wage demands." The facts were that the Board already had a considerable load of just such cases, albeit not quite so critical, under the guise of "inequities."

The other major "manpower" case between October 1942 and April 1943 involved the Pacific Northwest fir and pine companies.¹² The circumstances were similar to the *Nonferrous Metals* case. Workers were leaving the lumber camps for higher-wage areas. The number of loggers was reported by private industry to have decreased from 16,000 in 1940 to 11,000 in 1942. There were no effective manpower controls to stop the exodus (although WMC "froze" the loggers in September). There were no reserves of labor that could be effectively tapped.

Again the problem was tackled by an interagency committee (WPB, WMC, NWLB, and Selective Service). Again each agency did what it could. And again all efforts were of limited help until the NWLB

¹² *The Fir* cases Nos. 285 et al. (December 17, 1942) and *The Pine* cases Nos. 321 et al. (January 4, 1943).

West Coast Lumber Commission acted. The only practical solution was to narrow the differentials between lumbering and shipbuilding. The differential in entrance rates was reduced from 20 to 5 cents by increasing the lower lumber rates. The rationale of the decision was realistic. Workers would continue to migrate unless the unfavorable wage differential was narrowed. If workers obeyed the WMC order to stay in lumber, thus giving up traditional liberty, they were entitled to higher pay.

The other "manpower" cases during this period do not require special review. The Board proceeded to narrow interplant and interindustry differentials in order to prevent manpower flow. In 5 of the 14 cases the Board denied adjustments on the grounds that interplant or interindustry differentials were not sufficiently serious. In the denials, interestingly enough, the Board reiterated its desire not to use wage manipulation for manpower purposes unless other Government agencies showed it to be of "controlling importance." This was clearly in accordance with executive authority. Yet every day the Board, with and without the aid of other agencies, influenced the flow of manpower through the inequity doctrine. In one denial the majority Board opinion said:

After all, the supply of the Nation's manpower is limited, and it is not for the War Labor Board to say whether workmen should remain at a plant processing soybeans or should go to a magnesium plant * * *."

The opinion went on to say that if workers are expected by manpower authorities to remain in a low-wage plant, rather than take jobs in a nearby high-wage plant, then NWLB would have to consider raising the low-wage employees on grounds of inequity or effective prosecution of the war. But it would do so only if other agencies demonstrated the need for such action. Since WMC and WPB were ineffective at the local level in establishing priorities, this meant in practice that NWLB would do the deciding, either by approving or denying an increase. An essential plant losing manpower because of low wages usually had to justify a wage request on other than manpower grounds. This seemed confusing to both management and workers in such a plant. One Federal agency asked more production. Another admitted production was slow because the plant could not keep workers with its low wages. A third, NWLB, said it would ignore the manpower consideration. The lack of more general interagency coordination was a serious weakness.

C. MAY 12, 1943, TO AUGUST 19, 1945

As previously stated, the May 12th policy directive and the bracket policy therein approved greatly restricted interplant and interindus-

* *Staley Manufacturing Co.* case No. WA-12 (November 3, 1942).

try inequity adjustments. The phrase "effective prosecution of the war" was dropped at this point. Almost all manufacturing had become essential to the war effort or civilian needs. Instead the criterion of "rare and unusual" was adopted in the May 12th policy directive for those manpower cases which could not be handled under other policies.

Because of their strategic importance several of the "rare and unusual" decisions deserve brief review. The Thirty Northern Michigan and Wisconsin Lumber Cos. decision was one of these.¹⁴ The industry suffered from out-migration of workers. Its wage rates were 25 to 30 cents an hour lower than in other industries in the region. A conference of interested agencies (NWLB, WPB, WMC, Army, Navy) recommended a wage increase as the principal solution to the industry's problem. The Board granted an increase on grounds of raising lumber rates to the "sound and tested" levels in the region as determined by other industries. Stabilization Director Vinson rejected this adjustment, pointing out that the bracket system was an intraindustry, labor-market area concept designed specifically to stop "levelling-up" between industries. The Board subsequently approved the increase under the "rare and unusual" concept. In his opinion, public member George Taylor called the lumber industry's wage structure "obsolete." While this was quite true it was not different from many other wage structures which lagged in recovering from the distortions of 1930's depressed labor market. Had a period of full employment preceded our entry into war, this type of wage structure probably would not have been present.

The most publicized decision of all "rare and unusual" cases involved the Boeing Aircraft Co. in Seattle.¹⁵ In August 1943, the company was badly behind schedule in the production of the Flying Fortress. Its wage structure was high for the airframe industry. But the plant was located in Seattle, called by WMC "about the tightest labor market in the country," due chiefly to the overwhelming expansion of shipbuilding. Labor turn-over at Boeing was described as "appalling." Since Pearl Harbor, the company had hired 250,000 workers but in August had just 35,000 on the payroll. WLB granted Boeing a 7-cent an hour average increase and raised some highly skilled job rates to the highest level in the Seattle area. The results of the NWLB action, coupled with the program of several other agencies, was successful. Boeing's labor supply problems improved from there on in. It should be noted that the wage increase for Boeing was accompanied by cutbacks in shipyard contracts. Boeing got the ma-

¹⁴ Case Nos. 11-31-C et al. (July 8, 1943).

¹⁵ Case No. 2685-D (September 4, 1943).

jority of the released workers but some were permitted to go to other essential plants. Thus the position of the other plants did not deteriorate but rather remained about the same or in a few instances slightly improved after the interagency program raised Boeing's drawing power and reduced that of the shipyards.

Several aspects of this case deserve special comment. The principal cause of Boeing's trouble was the level of its wage structure. But there were other nonwage factors that accounted for much of the turn-over and which justified the Board's contention that wages alone cannot solve manpower problems. In Boeing's case these other factors included (a) poor personnel policies, (b) bad plant location necessitating much inconvenient travel time, (c) inadequate community facilities including housing, eating and laundry services, and (d) the placement of too many war contracts in the Seattle area. The case provided an illustration of how nonwage factors must first be corrected in order to make wage rates effective in regulating the flow of manpower.

The *Boeing* case illustrates once more the lack of coordination between Federal agencies at the local level. After much delay a joint program, working through the WPB Production Urgency and the WMC Labor Supply Priority Committees, was finally effected. It included: (a) a controlled hiring plan for Seattle with Boeing placed in class I, (b) release of workers for Boeing from other plants through cutbacks ordered by WPB, Army and Maritime Commission, and (c) improvement in community facilities through efforts of the local chamber of commerce. Action in the Boeing case should have been taken much more quickly. The NWLB decision was 6 months in process. WPB action took even longer. The *Boeing* case suggests that some central agency should have had authority to prevent the pile-up of war contracts and to develop a unified program of action. This authority might not necessarily have ordered a particularly type of action but it should have been able to secure action by each specialized agency of the Government.

The *Boeing* case also revealed a basic weakness in our wartime administration in not coordinating plant location and production schedules with labor supply. Top procurement officials were warned early in 1943 about placing additional contracts in Seattle which already was struggling under the mistake of both airframe and shipbuilding locations in the same market area. They paid a high price for this poor planning.

A third case which warrants review under the "rare and unusual" doctrine is the *Los Angeles Railway* case.¹⁶ The company provided transportation services for 150,000 workers in the Los Angeles area.

¹⁶ *Los Angeles Railway Corp.* case No. 10-5417 (October 24, 1943).

The services were gradually reduced during the summer and fall of 1943 because of inability to hire and retain workers. The company's wage structure was relatively low compared with some war plants but higher than others. In its industry the company was fairly high. Hours were long—53 hours a week with no overtime. The cost of uniforms and equipment was considerable and split shifts of 14 hours were unattractive. As an inequity case alone, there was no basis for granting an increase. The Board, in a decision on July 19, 1943, denied a union-management request for an upward adjustment. Thereupon a strike of 1 day occurred, tying up all war production in the area. The Board agreed to reconsider the case and advised other Government agencies to substantiate the need for a wage increase if they desired. WPB, WMC, Army, and Navy officials supported the claim for an increase at special hearings. On October 24, 1943, the Board reversed itself and granted an increase on the ground of manpower under the "rare and unusual" doctrine.

The case illustrates a number of problems. It showed once more, of course, the need for coordination at the local or regional level between interested agencies. This lack permitted the workers to force the Government's hand by a 1-day strike. Yet had the Government used the powers of national service, it is not at all certain it could have prevented the strike. Because of delays at the regional and then the national levels, tempers rose high and distrust was widespread. Whether the workers in this case actually suffered a "manifest injustice" is beside the point. Their position was probably not different from workers in other areas. But the relationships between the workers and the war agencies had deteriorated to the point where a wage increase was the only way out. The Board's final approval was sign of weakness. It detracted from the Board's stature. It encouraged workers to engage in quickie strikes in order to get action.

The case called attention to the fact that the differentials between war and nonwar employments were favorable in the beginning to promote the movement of workers into temporary war jobs. But once labor became short, the differentials became unfavorable, for there was no way of stopping the process.

The case illustrates also the limitations of the bracket system based on interplant relationships. There was only one streetcar and bus system in Los Angeles. There could be no area bracket. Later the Board did work out a separate treatment for local transit companies, but this did not overcome the weakness inherent in the application of stabilization policy to other unique establishments in acute labor markets.

If the Board had not tried to play hide-and-peek with manpower it might not have gone through such an embarrassing and face-saving

decision as Los Angeles Railway. Clearly the key to the situation was whether the decline in transportation was serious enough to warrant a wage adjustment. On wage inequity grounds, it was not. On the decline in service because of turn-over, it apparently was. Some authority should have assumed responsibility in critical areas for determining priority of production and services as guides for all agencies dealing with the labor market.

The Board faced much the same problem in the case of the Associated Laundries of Portland, Oreg.¹⁷ These 12 laundries paid low wages, worked a 60-hour week and offered relatively poor working conditions. In labor-short Seattle they could not hire or retain labor. Was it essential to the war effort to keep labor in these laundries? Such a question in 1941 would have seemed ridiculous. But when in the summer of 1943 workers did not show up at war plants because their laundry was not available, the matter was not so easily dismissed. Laundries became an essential service. In its decision the Board attempted to shadow-box with the problem by avoiding all discussion of "manpower." Its approval of a large increase cited substandards and interindustry inequities. The Stabilization Director joined the shadow-boxing by asking the Board to approve the wage adjustment on intraindustry bracket principles. The Board approved the increases on this basis. It was a simple case of narrowing an interindustry differential for a low-wage industry that had become essential in a stringent labor market. The issue was manpower, pure and simple.

One other case deserves mention. In the fall of 1943 the Board had to establish rates for a new plant of the Wright Aeronautical Corp. located in the labor-shortage area of New Jersey.¹⁸ The location of this plant in such an area indicated poor planning in the first place. The Board had to step into a bad spot. Assuming WMC held labor in existing essential plants, where was the labor for the Wright plant to come from? In setting the new rates the Board established them not at the minimum of the bracket but somewhat above the middle so as to draw manpower from "nonessential industries and * * * the home." This was one of the few decisions in which the Board gave recognition to the fact that in shortage areas rates must be set relatively high to attract new secondary workers. The decision was realistic.

The foregoing discussion considers some of the leading cases in which the manpower element was clearly identified even though sometimes not outwardly recognized in the Board's decision. It should be noted, however, that the manpower element was important in thou-

¹⁷ Case No. 12-329 (June 5, 1943).

¹⁸ *Wright Aeronautical Corp.* case No. 111-1375-D (October 3, 1943).

sands of inequity cases processed during the stabilization period. Its importance varied from very slight to very substantial but there is no way of determining its relative weight, for the applicants themselves sought grounds other than manpower as a basis for proposed adjustments.

VII. COST-OF-LIVING ADJUSTMENTS AND MANPOWER

Ordinarily the application of the Little Steel formula did not affect manpower flow one way or the other since it was "given all the way around." But in some labor markets even this type of wage adjustment had its effects on manpower flow. The Muncie, Ind., labor market will serve as illustration.

In the summer of 1942 there were 16 plants with over 300 employees each in the Muncie area. Almost all were engaged in war work and the remainder in work essential to the war effort. As the labor market tightened, the manpower problems became increasingly difficult in plants at the lower end of the wage structure, especially in those whose jobs were not easily adaptable to the use of women workers.

The two General Motors plants had traditionally been the wage leaders in the community. As in South Bend, no serious problems resulted from the interplant disparity as long as labor supplies were adequate.

In October 1942 the National Board granted a wage increase of 4 cents an hour to the 300,000 workers in 70 plants of General Motors. Two of the plants were in Muncie. The grant of 4 cents was based on the Little Steel formula. It was something that was "coming to everybody." The entrance rate at GM was already 10-20 cents an hour above other companies before the grant. Now the gap was further widened by 4 cents. Management and labor in the other establishments found it difficult to understand an NWLB act granting an increase to the GM plants which already had the highest rates. Several workers wrote to the Board, "That's one hell of a way to stabilize." Management in the low wage plants found it more difficult to recruit. This decision raised manpower problems similar to those created in South Bend by the Studebaker decision discussed above.

The National Board based its decision on the cost-of-living criterion. But that did not ease the difficulties it created in such a labor market as Muncie. The fact that many of the other plants had already exhausted their cost-of-living increases made the problem more difficult.

In another type of case¹⁹ involving Lever Bros. Co., the Board refused a cost-of-living increase on grounds that it would unstabilize area rates. The fact that there was no union involved in Lever Bros. gave rise to criticism of the Board for unstabilizing in union towns like Muncie while holding down a nonunion plant under similar circumstances. The Board should, of course, have been consistent. The conflict between equity in terms of cost of living and stabilization of local wage structure is probably irresolvable. In applying the Little Steel formula generally, there was disturbance of some labor markets which intensified the race for inequity adjustments.

VIII. THE SUBSTANDARD POLICY AND MANPOWER

The correction of substandard wages was an integral part of wartime wage controls throughout the Board's history. In the first months of its use the substandard policy was described as an "excursion into social reform." It was based on the conviction that in wartime as well as in peace, workers "ought not in justice" to be asked to work at wages which would not permit "health and decency" standards of living. As such, it was not directly related to manpower. Yet in practice it soon became, like most other Board policies, directly or indirectly related to manpower.

The term "substandard" was never defined. It was not used in the Stabilization Act of October 2, 1942, but was used in the President's anti-inflation speech of April 27, 1942, in subsequent Executive orders and in the Board policy statement of November 6, 1942, without clarification. The Board never defined it. In fact, the Board on several occasions said it would not "measure substandards of living by any fixed wage rate * * *. Cases will be considered on their individual merit."²⁰ In a general order early in 1943 the Board set 40 cents an hour as a level to which employers could raise wages without individual approval. This was raised to 50 cents in 1944. In individual cases the national Board later granted up to 55 cents, and regional boards were permitted to do the same.

How was the substandard policy related to manpower? It provided another means by which the Board might grant wage adjustments for manpower needs. Illustrative were cases in the textile industry.

On February 20, 1945, the Board issued an order affecting 54 leading cotton and rayon textile companies in the South, Middle

¹⁹ Case Nos. 2276 and 2303-CS-D (September 2, 1942).

²⁰ NWLB, Wage Stabilization Policy, March 6, 1942.

Atlantic, and New England States.²¹ The basic provision was a 55-cent hourly minimum rate to correct substandards, supplemented by a 5-cent hourly increase in all rates above the 50-cent level to "maintain the minimum differential between immediately interrelated job classifications." One of the basic considerations of the Board's decision was the manpower problem. In its decision the Board said:

Various manpower devices have been tried in cotton textiles including the use of soldiers * * * but they have been insufficient to turn the tide of continually declining output * * *. Other Government agencies make it very clear that output * * * has been falling far short of the amount needed for war purposes and for essential civilian uses.

Undoubtedly the manpower difficulties cannot be eradicated by wage adjustments. There is neither rhyme nor reason, however, to make the crucial manpower and production problems *virtually impossible of solution* by continuing a \$0.50 minimum wage and by limping along under grossly unbalanced rate structures. [Italics added.]

The loss of workers from the textile industry had occurred since the beginning of the war. Even with the above substantial grants, wage levels remained unattractive. The basis of management's requests, however, for substandard increases was not so much social justice as labor shortage. The Board's use of the concept was not inflationary and alleviated to some extent the problems of a low-wage industry. Had there been no substandard policy the pressure on the other criteria would have been just so much greater.

The textile cases illustrate a basic issue. Suppose the military services had been granted control over national service regulations. Suppose they had adopted a hard-boiled attitude toward labor turnover in critical industries and forced workers to remain at their jobs. Employers would probably have urged manpower authorities to freeze the workers in the textile towns. Then there would have been no need to press for wage increases in order to secure or hold manpower. Under these conditions the textile worker, as one union leader said, would have been "stuck real good." They would have had no opportunity to move into high-wage war production centers. Morale would have sunk to a very low level. Any democratic government would have had to grant substantial increases on "equity" grounds as compensation for workers' loss of freedom to seek the best jobs in the best places.

Thus national service legislation might not have changed many of the basic problems of interindustry differentials in wartime. It would have meant that unions would have had to carry more of the

²¹ 23 *Southern Cotton Textile Companies* case Nos. 111-5110-D, et al., 25 *New England Cotton & Rayon Companies* case Nos. 111-7739-D et al., 6 *New York and Pennsylvania Rayon Companies* case Nos. 111-7107-D et al., decision of February 20, 1945, released on March 9, 1945.

burden for correction of inequitable situations instead of having the strong support of management in low-wage industries.

National service legislation would have made the task of a wage control agency even tougher. For the decisions would have involved greater amounts of judgment unsupported by such concrete evidence as out-migration of labor. It was easy to convince management of an "inequity" when labor was leaving the industry. It would not be so easy if the workers could not leave without permission. Apprehension over just this problem was one reason why labor fought national service legislation to the bitter end.

In contrast to the textile cases, the Board went out of its way in some instances to avoid official recognition of manpower aspects of sub-standard cases. *The Associated Laundries* case discussed earlier in the chapter is an instance in point.

IX. INTRA-PLANT WAGE POLICY AND MANPOWER PROBLEMS

The extent to which large segments of American industry had failed to develop systematic and rational internal wage structures became apparent to the Board at a very early date. Intraplant inequity claims, some bona fide, some not, poured into the Board at an astounding rate.

The correction of intraplant inequities was not just a matter of justice. It was also a matter of proper manpower utilization. Inequitable rate differentials between workers doing the same or similar work obviously created dissatisfaction which in turn led to slowdowns, time-consuming grievances, work stoppages, and quits. Inequitable wage structures made it difficult for some plants to recruit when it was known that "there's always trouble there."

There were various other types of intraplant inequities. If the differential between the lower and higher skilled jobs was too wide the former became difficult to fill. If differentials between the unskilled and the skilled were too narrow workers refused promotion. "Why take on twice as much responsibility for an extra nickel an hour?" If there were too many job titles workers were confused and suspected arbitrary management discrimination in promotions. If there were only a few classifications each covering a wide range of job duties, workers felt they were getting "equal pay for unequal work." When earnings of incentive workers rose more rapidly than those on non-incentive jobs, dissatisfaction was created. For example, when housewives without previous experience were placed on loosely timed incentive jobs and acquired earnings in excess of old experienced journey-

men who set up the machines "there was hell to pay in the plant and in the home."

Board policy in dealing with these internal inequities was as varied as the problems themselves. It was developed through individual decisions and in General Orders 16 and 31. The Board tended to establish general guides and leave technical details up to the applicants, for, as one Board member said, no Government agency should attempt to work out intraplant details.²² The Board's insistence on equal pay for equal work and rate differentials based on differences in job content was fundamental to any good industrial relations program. In general, the Board required the applicant to describe both existing and proposed wage structures. In the descriptive process itself, inequities became apparent and their proper adjustment indicated. In plants without formal classification and grading of jobs, the Board required such action in awarding increases. By exacting something in the way of internal improvements in return for moderate increases, the Board displayed great ingenuity. Such grants seldom jeopardized stabilization, yet the parties "got something to work with" while improving rate relationships.

It is not possible to illustrate here many of the Board's decisions, but a few may be cited to reveal the types of problems. A well-known case was the West Coast Airframe Cos. decision.²³ Manpower utilization in this vital industry was appallingly bad. Turn-over was holding back production. Rate structures were described as "chaotic." New workers were sometimes paid higher than experienced personnel. New jobs were sometimes assigned rates unrelated to other job rates. The Board ordered a job evaluation plan adopted by all plants to bring about standardization and simplification. Job titles were reduced from over 1,000 to less than 300. Labor grades were reduced to 10.

In cases involving the wage schedules of Atlantic coast shipyards for 1943-44,²⁴ the Shipbuilding Commission followed a pattern that resulted in substantial standardization of rates for similar classifications in all of the major shipyards of the region.

Sex differentials on comparable jobs were consistently eliminated or greatly reduced.²⁵ If, when women were assigned jobs normally performed by men, some job dilution was actually necessary; the Board approved some sex differential.²⁶ An internal problem of great com-

²² George W. Taylor, address before American Economic Association and the American Political Science Association, Washington, D. C., January 22, 1944.

²³ *West Coast Airframe Cos.* case No. 174, et al. (March 3, 1943).

²⁴ E. g., *New York Shipbuilding Corp.* case No. 111-2277-D (April 8, 1944).

²⁵ For example, *Brown & Sharpe Manufacturing Co.* case No. 101 (September 25, 1942).

²⁶ *General Electric Co.* case No. 111-17208-D and *Westinghouse Electric & Manufacturing Co.* case No. 111-17809-D (December 12, 1945).

plexity, arising directly from wartime changes, occurred when the earnings of incentive workers arose much more rapidly than those of hourly paid workers. If the disparity became excessive, the Board generally granted an adjustment to narrow the gap.²⁷ If the disparity was moderate, the Board generally refused an adjustment on the ground that there normally exists a differential in favor of incentive workers.²⁸

In this connection the Board approved many incentive plans designed to permit the indirect workers to share in the gains of production workers.²⁹ High technical competence characterized the Board's handling of these complicated issues. Especially noteworthy was action designed to regularize and rationalize incentive earnings.³⁰

For example in the *Jamestown Steel Partition Co.* case the Board ordered specific guaranteed minima to protect workers against widely fluctuating piecework earnings. In the *J. I. Case Co.* case the Board established guaranteed earnings for incentive workers not in a position to secure adequate incentive earnings due to downtime, set-up time, experimental work, material shortage or temporary transfer. In other cases the Board directed that incentive systems must provide a reasonable bonus, often specified as between 20 to 25 percent.

General Order 16 permitted any employer to eliminate sex differentials on the same or similar work without Board approval. General Order 31 prescribed a model plan for wage-rate increases to individual employees which might be adopted without specific Board approval. The objective was to get intraplant jobs properly classified and provide orderly and systematic upgrading within the classified structure. Limitations were imposed on the rate of progression within rate ranges.

The effect of General Order 31 on American industry was tremendously constructive. It served as a guide for the correction of thousands of haphazard and illogical rate structures, the establishment of orderly wage administration and efficient internal manpower management. As one executive said:

* * * some of the things that Order 31 sets up for us to do are things that any well-managed company should have done a long time ago of its own volition. If we retain only that part that is good * * * we will have derived some benefit from this indirect attempt on the part of the Government, while aiming at stabilization * * * to bring some order out of chaos in the rate structures of companies in this country.³¹

²⁷ *Spicer Manufacturing Co.* case No. 2669-D (July 17, 1943).

²⁸ *Electric Auto-Lite* case No. 111-568-D (August 1, 1944).

²⁹ *Grumman Aircraft Engineering Corp.* case No. 13-235 (September 14, 1943).

³⁰ *Jamestown Steel Partition Co. and Dahlstrom Don Co.* case Nos. 2558-D and 2559-D (January 19, 1943), *J. I. Case Co.* case No. 2257-D (December 23, 1942), and *Mariin Rockwell Corp.* case No. 2881-D (April 2, 1943).

³¹ National Industrial Conference Board, *Studies in Personnel Policy*, No. 62, April 1944.

While the confines of this chapter do not permit further discussion, it should be noted that the Board's internal rationalization policies occasionally conflicted to some extent with its stabilization program. For example, the Board had authority to correct substandard rates and to taper the interrelated jobs rates above the substandard level. In plants with very wide rate structures, the tapering procedure (designed to protect stabilization) distorted the higher classifications and created internal dissension.

The application of the Little Steel formula also affected internal manpower administration adversely in some situations. The Little Steel formula permitted increases up to 15 percent in the average straight time hourly wage rate in individual establishments. Its application to any particular establishment was calculated by determining the straight time average hourly wage (weighted arithmetic average rate) of workers to be covered by an award, taking 15 percent of this amount and applying the amount so computed in cents per hour to each wage rate established in the plant. This procedure therefore gave the largest percentage increase to the lowest hourly wage rate classification and tended to narrow wage rate differentials in any given wage schedule. Exceptions were occasionally made to the procedure indicated above, but not in a sufficient number of cases to constitute a significant departure from the general principle. Dissatisfaction was created in plants where various groups of skilled workers wanted to be treated separately rather than included in plant-wide increases.

The applications of the bracket policy also clashed at times with the needs of internal alinement. Regional boards, after some experience, abandoned the device of granting an increase to each occupation up to its appropriate area bracket yardstick because of the internal plant difficulties created. Instead they frequently granted lump-sum, plant-wide increases based on averaging of adjustments due under bracket policy. The Board cannot be criticized for these difficulties. The conflict between stabilization and rationalization required compromises. Intraplant correctives were rarely responsible for increases in prices.

In general, NWLB's policy of correcting intraplant inequities was a first-rate performance. The Board made a real contribution to internal wage and manpower administration in this country. While no data are available for prewar years, Nation-wide studies in 1946-47 in selected metalworking industries,²² revealed that as high as 80 percent of all plants had formalized wage structures and systematic administration. Probably half of them acquired their wage plans during World War II.

²² Unpublished data, U. S. Bureau of Labor Statistics.

X. INTERAGENCY RELATIONS IN DEALING WITH "MANPOWER" PROBLEMS

The Board's relations with other agencies interested in manpower took four different forms. One was the participation of other agencies in individual NWLB decisions. A second was through special industry procedures. A third was through general interagency procedures for coordinating action on given manpower problems. A fourth was the informal exchange of information and views between key personnel. This latter was important, but difficult to evaluate because it was so sporadic and will not be discussed.

A. INDIVIDUAL DECISIONS

The participation of other agencies in individual NWLB decisions has already been discussed in a general way in preceding paragraphs. It may be summarized in terms of the following nine leading decisions:

Prestabilization period, January–October 1942:

Phelps Dodge Corp., June 2, 1942 (WPB).

Pacific Northwest Foundries, August 28 (WPB, Navy, Maritime Commission).

J. H. Williams Co., September 18 (WMC).

Stabilization period, first phase, October 1942–April 1943:

Nonferrous Metals, October 23, 1942 (unofficial interdepartment committee, WPB, WMC, OPA, Bureau of Mines, SS, Army, Navy, Maritime Commission).

Pacific Northwest Lumber, December 17, 1942, and January 4, 1943 (unofficial interagency committee, WPB, WMC).

California Processors and Growers, February 8, 1943 (unofficial interagency committee, USDA, OPA, WMC).

Stabilization period, second phase, May 12, 1943–August 19, 1945:

Thirty Michigan and Northern Wisconsin Lumber Cos., July 8, 1943 (unofficial interagency conference, OPA, WMC, WPB, Army, Navy).

Boeing Aircraft, September 4, 1943 (official WPB–WMC Interagency Production Urgency and Labor Supply Committees, WPB, WMC, Selective Service, Army, Navy, Maritime Commission).

Los Angeles Railway, July 19, October 24, and November 17, 1943 (WMC, Army, Navy).

What may be said of the effectiveness of this type of coordination? It was obviously limited to a relatively few cases. It was largely a hit or miss affair with no single person or persons assigned sole responsibility. Delays were inevitable. There were no official procedures.

Almost all actions taken in these cases were dependent on NWLB willingness to grant wage increases. Yet the Board was not able to insist upon minimum nonwage actions. In those cases in which well-rounded programs were worked out and applied, the results were usually good, albeit always late. As in the case of nonferrous metals, lumber, flourspar and others, action came after a crisis had developed. Missing was preventive programming between agencies.

The solutions were case-by-case improvisations. The nine cases illustrated what could be done. Less recognized is what was not done in many areas, with the result that local situations deteriorated needlessly because they failed to get to the attention of top personnel in time. The need of centralized responsibility for spotting and programming difficult local market problems is a lesson to be learned from these cases.

B. SPECIAL INDUSTRY PROCEDURES

The second type of interagency relations, i. e., special industry procedures, were limited to a few industries including foundries, laundries, flourspar, work gloves, canneries. The procedures for the foundry industry will illustrate the problem, the methods and the results.

In late 1943 and early 1944 production and procurement officials reported that one of the principal bottlenecks to production was lagging output from foundries and forge shops. The problem was not materials but manpower shortage. Efforts by WPB, WMC, and the armed services to stop the steady decrease in foundry workers and to secure new recruits fell far short of needs. In February 1943, WMC and WPB representatives talked with Board members about the growing crisis in this bottleneck industry.

NWLB pointed out that it was processing dozens of foundry cases every week under its usual procedures. If foundries were in trouble, let them apply for adjustments. But foundry labor supplies continued downward. In the following months the pressures of WPB and WMC increased to the point where an interagency agreement was reached on April 18, 1944. It provided simply that NWLB would (a) give preferential treatment to foundry applications, (b) ask regional boards to issue interim orders on the most acute aspects of complex cases, and (c) ask regional boards to establish brackets immediately wherever they had not already done so. The agreement was supplemented on July 19, 1944, as follows: (a) A public member would work with WMC and WPB to secure prompt action under the "rare and unusual" doctrine and (b) employers and unions interested in adopting "sound" incentive plans to speed up production would be advised to consult with WPB.

By the summer of 1944 the Board announced it had disposed of almost 90 percent of 2,000 foundry cases filed in the previous 10 months. It had approved 8 out of 10 requests. The remaining 200 cases, however, included many of the country's most important foundries in key production areas. WPB and WMC joined by the Army and Navy pressed for greater speed.

On November 20, 1944, under some urging by the Director of Economic Stabilization, the Board adopted a streamlined procedural system formally and officially incorporating joint action with WPB and WMC and designed to complete action on all remaining critical foundry cases. The procedures included several steps. (a) WPB and WMC would determine "critical foundries." WPB was to determine which foundries were of greatest importance to the war effort and were short on manpower in relation to production schedules. WMC was to certify that all nonwage WMC efforts had failed, that a wage increase was needed, and that if workers transferred to foundries because of NWLB action, such transfer would be approved by WMC as in the interest of the war effort. (b) Critical foundries cited by WPB and WMC would be placed by NWLB on a special blanket certification list. (c) All cases on this "blue ribbon" list would be approved by NWLB up to 10 cents an hour as "rare and unusual" cases. Within 60 days after adoption of this procedure, most of the critical foundries had been so certified and wage adjustments approved. This helped relieve the manpower problem.

What was the reason for the manpower problems of the foundry industry? The lowest-classified jobs were generally rated as common labor, although actually considerable skill was involved. Not only were the rates low, but in many plants the processes were inefficient and incentive earnings were low. The work was heavy, disagreeable, and hazardous. It offered little chance for promotion. When workers left foundries for easier higher-wage jobs, it was impossible to recruit from the normal civilian labor force. (Some Central Americans were brought in by WMC with considerable success.) Women were not adapted to foundry work. The low level of rates reflected a carry-over from depression days when labor was plentiful and interplant competition drove profit margins down. Under such conditions the conflict between wage stabilization and the desired flow of manpower was inevitable. One or the other had to give way.

What can be said of the Board's policy in this situation? While it was slightly inflationary, it was probably the only realistic policy that could be followed. In some labor markets it was necessary to pay premium rates above other jobs normally considered comparable in order to compensate for the undesirable working conditions. It took

higher wages to recruit new workers than to hold old workers. The bracket principle had to be set aside in recognition of manpower needs. This was the price Government agencies had to pay for not tackling the problem sooner.

What can be said of interagency procedures that were developed to meet the problem? NWLB displayed a characteristic reluctance to have either WPB or WMC, especially at the local level participate in wage-adjustment decisions. The procedures were cumbersome in the beginning and too slow. If the Board was justified in its misgivings about the possible actions of local WMC personnel—it was afraid they would rely solely on wages to influence manpower—it should have taken more positive steps to work out safeguards with top WMC officials. If NWLB was to agree with the principle of no compulsion in the labor market and at the same time hold to a policy of “no wage increases for manpower purposes,” it should have taken more positive steps to determine the effects of its own decisions at the local level.

C. SEVERAL PROCEDURES

The third form of interagency relationship came through general procedures established by NWLB for working with WMC and other agencies.

1. *Period of no procedures, October 1942 to June 1943.*—Throughout 1942, despite developing spot shortages, there were no NWLB-WMC procedures. In February 1943 NWLB, under pressure from topside policy makers, felt it desirable to issue instructions regarding field relations with WMC. This was not easy. WMC had little authority. It had only a small field staff. The National Board issued instructions to its regional boards pointing out that “there exist no procedures” for joint handling of manpower cases. The regional boards were instructed to act as follows:

Until such (manpower) principles and procedures have been worked out, the regional office * * * will have to refrain from deciding cases on solely manpower grounds.

Occasionally, however, manpower cases may be processed as such and recommendations made to the National Board, when in the judgment of the regional office, the manpower issue is of predominant importance and must be squarely faced.³³

When manpower cases were received, regional boards were advised to obtain information from local WMC offices on (a) the relationship of the applicant's business to the war effort and (b) the efforts made by the applicant to solve his manpower problems by certain nonwage methods such as “recruiting new workers from reserves of women and

³³ NWLB, Wage Stabilization Division, *Manual of Analysis*, February 1943, p. 26. (Mimeographed for staff use.)

minority groups, diluting and upgrading labor, increasing productivity and resorting to overtime."

In practice, the regional boards at this time seldom obtained this type of information from WMC because (a) it was time-consuming (b) the boards handled almost all cases under the inequity doctrine

2. *Consultation procedures, June 1943-April 1944.*—On April 17 1943, WMC instituted Nation-wide control of turn-over in 35 essential industries. In May, NWLB began operations under its new bracket policy in which manpower cases were to be handled as rare and unusual cases. At the behest of the Director of Economic Stabilization NWLB on June 1, 1943, issued interagency procedures intended to facilitate collaboration, primarily with WMC, but also with such agencies as WPB, the War Department and the Navy. The instructions³⁴ provided for (a) processing manpower cases under the rare and unusual doctrine and (b) defining rare and unusual cases as:

Those * * * cases * * * where, in the judgment of the regional board, approval of * * * [a wage] adjustment is highly essential to the success of the war effort or for the correction of grossly inequitable conditions

Essentiality of a plant was described as:

The establishment should be engaged primarily in an activity included in the War Manpower Commission's List of Essential Activities [85] or covered by the WMC's designation of locally needed activities.

The establishment must have been in compliance with all the War Manpower's regulations and policies with respect to recruitment, training, and utilization of labor and with respect to operation on a minimum wartime workweek (as defined in sec. 4 of WMC Regulation No. 3).

There should be proper statements or certification from appropriate Government agencies with respect to the above matters.

These procedures provided not so much for joint study of difficult manpower problems as for official presentation of evidence to NWLB from other agencies on manpower needs. An example was the handling of the radio industry by the Chicago Regional Board. WMC, the Army, and the Navy recommended a wage increase for this relatively low-wage industry. The low wages resulted, it was claimed, in inability to recruit labor and in excessive turnover. All nonwage steps had been taken. A substantial wage increase was granted on rare and unusual grounds. Yet the evidence was conflicting, as NWLB public members warned it often would be. Some of the lowest-wage plants had less turn-over than some of the high-wage plants. Factors other than wages were involved. A wage increase would not correct them.

³⁴ NWLB, Memorandum of Instructions to Regional Boards entitled "Processing of 'Rare and Unusual' Cases," under the Supplementary Directive of May 12, 1943. June 1, 1943.

What in general can be said of these early procedures for rare and unusual cases? They were obviously better than none. They came late in acute shortage areas or industries. They were vague as to just what kind of wage adjustments were called for and what kind of evidence should be supplied by other agencies. Some of the increases granted were in excess of the amounts required and caused considerable dissatisfaction in other industries.

Testimony by other agencies in manpower cases was easily given. It saved them from the painful process of doing something about the nonwage factors, which is precisely what the National Board feared might happen. What was needed, of course, was a clear understanding between top staff officials of the Washington agencies as to just what types of nonwage action an employer would have to take before the local representatives of the interested war agencies would support a request for a wage increase on manpower grounds.

3. *Certification and expediting procedures, April 29, 1944.*—As a result of continued pressure from WMC, WPB and the Director of Economic Stabilization, interagency discussions were held in the spring of 1944. These discussions culminated in the first formal recognition of other agencies in supporting wage action in manpower cases. The agreement covered two types of action: (a) expedition of urgent cases and (b) certification of cases as rare and unusual.³⁵ The expedition of cases was to be handled at the regional level through formal requests of interested agencies to the Board—such requests to include detailed justification for special treatment.

The certification procedure was a roundabout, four-step, paper-heavy affair. A local WMC office could make a request through its Washington office, which would presumably evaluate the merits of the claim and forward it to the National Board. Before doing so, however, WMC would notify other interested agencies, which could join the certification, take no action, or file objections. The National Board would then evaluate the merits of the proposal and forward to a regional board. The latter would evaluate the proposal and act on its own judgment, with or without special hearings. If the proposal was deemed sound, the regional board was free to approve it on rare and unusual grounds, which meant that it could fix wages above the limits applicable in other cases, i. e., above the minimum of the bracket. WMC certification had to include evidence to demonstrate that (a) the need was urgent and (b) all nonwage actions had been taken. The procedures spelled out the evidence required from WMC, WPB, and the procurement agencies in great detail. From WMC this information included (a) length of workweek, (b) recruitment and assign-

³⁵ NWLB, Release B-1482, April 29, 1944.

ment practices, (c) training and upgrading programs, (d) extent of job dilution, (e) working conditions, (f) measures to reduce turnover and absenteeism, (g) collective bargaining relations, (h) use of women, Negroes, part-time and handicapped workers, (i) adequacy of housing, transportation, schools, and medical care as these affected manpower, and (j) from what sources additional labor would be drawn if a wage increase were approved.

Why were the procedures so laborious? The Stabilization Director and NWLB feared WMC and other agencies would rely too much on the easy expedient of wage increases rather than the harder task of improving manpower utilization through nonwage techniques. By placing obstacles in the path of certification, all but the most urgent cases would be eliminated.

The NWLB agreed to cooperate with other agencies for a number of reasons. One reason was the clear inapplicability of the bracket principle in the case of low-wage plants whose products were urgently needed but which were faced with the problem of hiring labor in acute shortage areas. Secondly, the issue of national service legislation had been practically settled by this date. There would be none. The labor members looked with more favor on WMC's requests, since they would result in wage increases not otherwise allowable under bracket policy. The procedure tied in for the first time WMC, WPB, and the armed services in determining the all-important question: "Is this plant's output the most urgent in the area at this time?" Without such determination there could be no intelligent wage-manpower policy. Before this date it was claimed that other agencies were not in a position to provide the necessary information. This was probably true. Centralized planning was not conspicuous in World War II.

The procedures as finally effected were tortuous. They were called "denial of manpower increases by delay." They did, however, constructively set down the minimum nonwage requirements which should be met before resort to wage increases. They did officially coordinate, albeit late in the war, the efforts of wage and manpower regulation. They did provide a way to side-step the bracket policy where urgently needed.

No record is available of the number of cases handled under the certification procedures, but it was comparatively small. The job of allocating manpower was done, except for a few critical areas, by the time the interagency agreement was consummated. Had it come earlier, it would have been helpful. Previous discussion has indicated that the special industry procedures for foundries were developed still later, i. e., in November 1944, and provided almost automatic approval of manpower wage adjustments on a greatly speeded-up

procedural basis. Had this been done early in World War II the deterioration in such industries as nonferrous mining would never have occurred.

XI. NWLB-WMC RELATIONS AND THE GENERAL CONTROL OF INTERPLANT TRANSFER

The control of turn-over was basic to WMC's local employment stabilization programs. When WMC's first antipirating program was instituted in the summer of 1942, WMC regulations permitted transfers out of jobs with rates below prevailing levels. The lack of adequate wage data meant that transfers were allowed except from the very high wage plants. WMC labor controls received their first real strength from Executive Order 9328, issued on April 8, 1943. This order greatly restricted transfer out of low-wage industries except when approved by WMC. Workers could not transfer to get higher wages unless in the interests of the war effort. Labor protested strongly and pointed to the inconsistency with the Board's bracket policy. In August, WMC issued new regulations tying in with NWLB's bracket policy. These permitted workers to move out of jobs whose rates were below the bracket minimum or the substandard level, whichever was higher. It was difficult, if not impossible, to enforce even this restriction. Workers had too many ways of getting around the regulations. They continued to move into high-wage plants. Wage levels and manpower regulation must be synchronized to make manpower controls fully effective. This is extremely difficult because of the changing nature of the criteria of essentiality.

Until Executive Order 9328, WMC ordered preferential referral treatment to essential war industries, i. e., munitions, aircraft, ship-building and other types of direct war production. The transfer out of nonwar industries was not only approved, but encouraged. By the spring of 1943, such industries as restaurants, laundries, hotels, food and fuel distribution, and local transportation, in war production centers had been seriously drained of manpower. Authorities realized that minimum community services had to be maintained or direct war production would decline. The nonessential became essential. WMC on May 25, 1943, issued regulations providing for the designation of "locally needed activities" in critical areas. Cafeteria and laundry workers became as important as riveters in a bomber plant.

NWLB did not officially adopt a special policy for critical areas as did WMC. In effect, some regional boards did so through the flexibility of the bracket principle. A special policy might have been developed which would have proved more effective. The nature of such a policy is discussed later in this chapter.

XII. THE WPB PRODUCTION DRIVE THROUGH WAGE INCENTIVES

Some critical labor markets experienced declines in total labor supply in mid-1943 at a time when demand from the military was still rising. WPB turned to greater productivity per worker as one way out. The WPB management Consultant Division undertook a Nation-wide campaign to promote adoption of wage incentive systems. The drive was indirectly aided by the tightening of the wage-stabilization program, which made it more difficult to get approval of wage-rate increases. Labor and management both saw incentives as a possible way to "give the workers something" within the stabilization program.

At first, NWLB was slow either to advocate or discourage WPB efforts to popularize incentive plans. The labor members stressed labor's traditional opposition to incentive systems of wage payment. Their hostility gradually softened, however, when the public members agreed to minimum safeguards.

After several exploratory decisions, in which the Board tested out the feasibility of approving incentive systems while still protecting the stabilization line, it announced certain principles as guides for parties proposing new incentive systems.

- (a) The plan must not substantially increase production costs.
- (b) It must be carefully outlined in detail.
- (c) Responsibility for technical details must be assumed by the applicant.
- (d) The plan must be approvable under the stabilization policy, i. e., must not provide increased earnings unrelated to worker effort.
- (e) It must be concurred in by unions in organized plants.
- (f) Protection must be provided against the usual hazards of incentives, such as changes in specifications or processes.

It is not possible to examine leading Board decisions on incentive plans in detail. The Board's handling of these complex cases was of a very high order. The Board denied crude or poorly developed incentive plans and schemes based on factors other than worker effort.

How were NWLB actions related to those of WPB in this incentive campaign? The latter organization placed management consultants in each regional office and urged management to utilize their services. WPB reported it handled over 1,000 inquiries in 1943. Employers were assisted in technical matters and in the preparation of applications to NWLB. In several regions, joint NWLB-WPB review of proposed plans was adopted. The interagency cooperation on incentives at the regional level, while informal, was in general good.

It is difficult to estimate how much manpower was saved by the adoption of incentive plans because sufficient data are not available.

NWLB reported it had 800 incentive applications between April and September 1943, of which about half were approved. Several spot checks on results were reported by J. W. Nickerson, Director of the WPB Management Consultant Division.³⁶ He reviewed 50 plans approved in the New York region and reported that the increase in output per worker over past performance ranged from 10 to 100 percent with the average around 25 percent. He reported later on 86 plans approved by the Chicago regional board in which average productivity had risen 46 percent. In terms of production it is possible that the equivalent of at least 100,000 workers was added to critical industries in late 1943 and early 1944 by this method.³⁷ More might have been done if efforts had been concentrated in a few critical industries rather than scattered through many industries, some of which were already meeting production schedules.

XIII. SUMMARY AND CONCLUSIONS

The relatively successful mobilization of manpower and the stabilization of wages in World War II was the result more of favorable labor market conditions than of good planning.

The nearly 12 million civilian replacements for workers drawn into the armed services came from the Nation's tremendous labor reserves accumulated in a period of widespread unemployment and underemployment. The flow of these reserves into war production was achieved under conditions of a relatively free labor market through favorable wage differentials, overtime and promotional opportunities in new and converted production facilities. Specific Government direction of individual workers was fortunately not required except in a few areas. The manpower job was largely done by the voluntary action of individual employers, workers, and unions.

The foregoing serves to explain the most striking feature of World War II wage and manpower controls, namely, the almost complete lack of coordination between them until the closing months of the war. Wage controls were comprehensive and were developed early under the general threat of inflation. Manpower controls were limited in scope and were developed much later when labor was still adequate in general but short in particular.

Wage controls were centralized in the NWLB. Manpower controls were never centralized. In fact, an over-all manpower policy

³⁶ War Production Board, Management Consultant Division, *Wage Incentive Plans and Labor-Management Relationships*, October 1944.

³⁷ Estimate of author based on WPB data. (See footnote 36.)

was never achieved. Manpower authority was dispersed through many agencies.

The NWLB was one of the agencies whose responsibilities with respect to manpower was implicit rather than explicit. It inevitably came as a responsibility to the Board because of two fundamental facts: (a) A large part of the pressure for wage increases (particularly from employers) came from the desire to improve the relative drawing power of the particular plant in the labor market, and (b) the effect of any wage increase was to improve the relative drawing power of that plant as compared to others in the same labor market.

But important though this consideration was, it was not the directly assigned obligation of the Board. Rather, the Board was assigned to settle industrial disputes, and to stabilize wages against inflation. As we have noted, the application of these objectives caused manpower problems wherever the achievement of either or both objectives ran counter to the needs for the guidance of manpower flow.

Most important of the Board's standard wage criteria from the manpower standpoint was the "inequity" policy. The first phase of this policy (October 1942–April 1943) represented an industrial relations approach to wage adjustments based on achieving equity through give-and-take within a flexible program of stabilization.

The inequity policy in its first phase had a favorable effect on manpower flow in loose labor markets. Rising wage levels in war plants combined with other influences to attract workers from less essential jobs and from nonworker status. In stringent labor markets the policy was often highly disturbing. The "prevailing" level was constantly raised. This encouraged "job shopping." Increases were occasionally granted to the highest-wage plants, which widened hiring differentials with low-wage plants of equal essentiality. The manpower problems of the latter were unnecessarily intensified. The Board should have considered the effects of its decisions on manpower in such labor markets.

The second phase of inequity policy, that of area-wide occupational brackets, created fewer new manpower problems. However, it tended to perpetuate some of the unfavorably wide differentials made, or at least not corrected, in the previous phase. Had the bracket policy, or something like it, been adopted much earlier, it would have retarded the rush up the "inequity" ladder, and the correction of inequitable rate differentials could have been done once instead of many times.

Two maxims of the inequity policy—"no wage increases to influence manpower" and "no disturbance of normal differentials"—were useful devices in the hands of skillful public members in protecting the stabilization line. But they were not always practical under wartime market conditions, and were occasionally disregarded in key decisions.

The so-called normal prewar differentials represented in part the laggard distortions of depression that would inevitably have narrowed under conditions of full employment. Part of the difficulties with the inequity doctrine stemmed from these distortions in wage structures carried over from years of depressed labor and product markets. Serious manpower problems were certain to arise in low-wage industries and plants as the Nation moved toward full employment.

Part of the manpower difficulties also came from the timing of wage controls. Wage rates in some industries had moved up considerably by October 1942, while in others the advance had been slight. These differences in timing caused increasing strain in some centers as labor became stringent. Had wage controls been instituted earlier, some manpower problems could have been avoided.

The lack of NWLB control over incentive earnings caused some difficulties. Day-work plants often were unable to hire effectively in competition with plants which operated very loose incentive systems. Some effort should have been made to control the extreme cases which upset local labor-market structures.

The Board's cost-of-living and substandard criteria were generally well applied. Their occasional disturbance of manpower could not well have been avoided. NWLB's handling of internal wage rationalization problems was an outstanding performance which greatly aided the efficient utilization of labor.

The most serious weakness of wage-manpower policies lay outside the authority of both NWLB and WMC. It consisted of topside failure to provide centralized direction for the agencies involved and to assign formally to the Board some responsibility for the manpower program. Such an action would have required the Board to recognize more definitely than it did the effect of wage changes on manpower flow. The Board would then have had to work out a better balance between the three functions of wage stabilization, dispute settlement, and the guidance of manpower flow.³⁷

With respect to manpower flow, four primary considerations would have been involved: (a) The determination of a current priority rating for each production facility; (b) certification of the extent to which each facility had met manpower needs by utilization of non-wage techniques (such as the longer workweek, modernized recruitment, selection, training and upgrading programs, the degree of job dilution, the employment of women, minority groups and handicapped workers, the provision of eating and laundry services, etc.); (c) introduction of wage adjustments required to retain or recruit needed

³⁷ It should be noted that the complex factors affecting the movement of labor still require considerable study and that many generalizations about manpower flow must be of a tentative character.

labor; and (d) consideration of the effects of any proposed wage adjustments on the production schedule of other local plants.

The integration of these considerations with the Board's functions would have posed some extremely difficult problems for the Board as well as for the other cooperating agencies such as WMC, WPB, and the armed services. As our study has shown, the Board frequently found that a decision which helped to accomplish one of the three functions adversely affected another. Each time, for example, that the Board made a "rare and unusual" decision, it promoted manpower flow at the expense of wage stabilization. Each time that the Board ordered an industry-wide wage change, it promoted industrial relations at the expense of possible local manpower considerations. The basic problem was one of securing a balance.

One of the main questions arising from the manpower considerations listed above would have been how to relate wage adjustments to current priority ratings for production facilities which fluctuated considerably throughout the war. Such ratings were made by WPB and the armed services but not very effectively. A literal application of this approach would have required frequent increases and decreases of wages in many plants often in close proximity to each other. From an industrial relations point of view this would have had serious effects upon morale and production. While the higher priority plant might have gained additional employees, the plants with lower priority ratings but whose products were also important to the war effort would have been faced with insuperable morale problems. In addition, if the high priority plant was later reduced in priority standing and had to suffer a reduction in wages, it too would have encountered critical industrial problems. Nothing in the experience of World War II suggests that this type of approach would have been feasible. If, on the other hand, the priority rating approach involved only upward wage adjustments and did not require wage reduction with a reduction in rating, it would have had serious inflationary effects because of the large number of changes in priorities required by the war production program.

Another important problem would have been how to assess the need for wage adjustments as compared to nonwage techniques to meet manpower needs. Both WMC and WPB had made efforts to utilize various nonwage techniques but these were poorly coordinated and not extensively applied on a systematic basis. In general, it would have been better to utilize systematically all possible nonwage techniques before attempting wage adjustments so as to minimize inflationary effects. Where such measures were inadequate, then the Board would have been called upon to grant wage adjust-

ments. Indeed, as earlier noted, this was a procedure encouraged by the Board. It must be recognized, however, that it was not always feasible to utilize many nonwage techniques in a given situation in the time required. This again posed a problem of balance, in this case between the wage program of the Board and the nonwage programs of other governmental agencies. Careful coordination of the various agencies would have been required.

The practical effects of the formal assignment of responsibility to the Board to help guide manpower flow by the adjustment of wages would have been twofold:

(a) more frequent and better coordinated use of the rare and unusual principle, and

(b) greater recognition in the application of the inequity and other wage policies of their impact upon manpower flow.

It would have been helpful if the Board had established a manpower division. Its purpose could have been threefold. In the first place, it could have advised other agencies on minimum standards of nonwage action required as a prerequisite to considering wage applications with manpower significance. Secondly, it would have kept the Board informed of the deterioration of wage-manpower situations in critical manpower areas so that speedier action could have been taken where needed. Thirdly, it could have served as a focal point for all the numerous agencies in Washington with an interest in manpower cases.

Tripartitism

By William H. McPherson

IN ESTABLISHING the NDMB, the NWLB, and the NWSB, one of the major questions involved the composition of the agency. In each of these three cases it was decided that the Board should be organized on a tripartite basis, i. e., that some of the membership should be selected to represent labor, an equal number selected to represent management and others selected as neutral persons. The first two groups may be referred to as the "interest" or "partisan" members, while the last group is usually referred to as the "public" members. The experience of these three agencies constitutes the outstanding example of tripartite organization in the history of American government. It is, therefore, the purpose of this chapter to analyze that experience in order to evaluate tripartitism as a method for the settlement of labor disputes and the administration of wage stabilization, and to determine whether, if the method was to be employed at all, the scope of tripartite action in these agencies should have been broader or narrower.

I. EARLIER EXPERIENCE

Contrary to widespread impression, these three agencies were not the first to be established as tripartite organizations in the governmental regulation of labor relations. Three earlier experiences offered to the persons responsible for the creation of the NDMB some basis for a limited judgment on the effectiveness of the tripartite principle.

The most recent instance of tripartitism at that time was to be found in the composition of the minimum wage boards, which con-

stituted the central procedural step in determining specific minimum rates for certain individual industries under the laws of many States and under the Federal Fair Labor Standards Act. The experience with these tripartite boards, dating back over a period of several years, had been quite satisfactory. No appreciable amount of discussion had been evoked regarding the appropriateness of tripartite membership for this purpose, and the continued use of this machinery had never been a significant issue.

This experience, however, was of little value in deciding the composition of the NDMB, for the problems in the two cases were significantly different. In the first place the decisions of the minimum wage boards constituted only a recommendation that was offered for acceptance or rejection by a regular Government official. Secondly, each of the wage boards was convened on a temporary basis and usually completed its task and disbanded within a few days, whereas the NDMB members were expected to work together as an effective team for an indefinite period. Thirdly, the interests of the labor and industry members were less divergent on the wage boards than on the NDMB. Although it might at first be supposed that the industry representatives on the wage boards would oppose any increase in the minimum wage, most of the firms in an industry stood to benefit by the setting of a minimum wage that would bring the labor costs of the remaining firms more nearly up to a level with their own. Fourthly, the wage boards had little to do with policy formulation. The policy with reference to minimum wage determination was embodied in the controlling legislation and the standards of the administering agencies. The NDMB, on the other hand, was expected to determine for itself nearly all policies relating to its operation and recommendations. For these various reasons the experience with tripartitism under minimum-wage administration was of little assistance to those who determined the organization of the NDMB.

A second and more relevant experience with various forms of tripartitism was the organization of the several labor boards under the National Recovery Administration. The National Labor Board was composed of three representatives each of labor and industry and an impartial chairman.¹ It was appointed by the President upon the joint recommendation of the Industrial and Labor Advisory Boards, and its partisan members were separately nominated by those two boards.

¹ Such a form of organization has not usually been considered as tripartitism, yet it is fundamentally a tripartite structure. The influence and vote of the public members is equally decisive whether there are one or more. Numerical equality between the public members and each of the other two groups is surely not essential to tripartitism, for this did not exist in the NDMB. Nor can the presence of more than one public member be a distinguishing characteristic, for it would be unrealistic to conclude that the National Labor Board became tripartite only at the later date when two additional representatives from each of three groups were added to its membership.

This Board had a stormy existence during its 10-month life. Its assumed and eventually assigned function was to settle labor disputes involving interpretation of the President's Reemployment Agreement or of industry codes. Its principal cases involved questions of introducing employee representation in plants that had been unorganized. It operated quite successfully for a short time, but was soon wrecked, primarily by serious cases of employer defiance.²

The composition of the special labor boards established for several individual industries varied widely. The Steel and Petroleum Labor Boards had an all-public membership, while there were various forms of tripartite membership on the boards in automobiles, cotton textiles, and bituminous coal. Unfortunately, no comparative study is available of the relative effectiveness of these different types of organization in meeting the somewhat similar problems faced by these boards.

Certainly the NRA experience with tripartitism could give no real support to those who urged that this composition be adopted for the NDMB or the NWLB. The lack of success of the National Labor Board, however, was largely due to factors other than the nature of its membership. It faced special difficulties in that (a) its legal foundation was insecure, (b) the principle of collective bargaining which it sought to enforce was widely and vigorously challenged at that time, and (c) there was no danger of international warfare to mitigate internal conflicts.

The Railroad Labor Board, established by the Transportation Act of 1920, offered another experience with tripartitism in the settlement of labor disputes. It consisted of three representatives each of the industry, the employees, and the public. Its experience was not a happy one. Its decisions were frequently disregarded. As a result of the combined efforts of labor and management in the industry, its life was finally terminated by the Railway Labor Act of 1926. The experience of this Board was far from conclusive with reference to the merits of tripartitism. The following analysis of the reasons for its failure implies that its tripartite structure was not one of the major factors:

* * * in spite of the prodigious volume of work of good quality performed by the Board it had come to be regarded as a failure long before 1925, and there was an insistent demand for its abolition, especially by organized labor. The dissatisfaction was due in part to some unfortunate appointments made to the Board, in part also to pronouncements made by one of its chairmen and to a demand for more power to be vested in it. Another factor * * * [was that a] large number of the disputes should never have come to the Board at all. * * * Again, the Board and its decisions were imposed upon the parties immediately interested; they sought and found ways of avoiding rulings, or frequently ignored

² Louis L. Lorwin and Arthur Wubnig, *Labor Relations Boards* (Washington: the Brookings Institution, 1935), ch. 4.

them. * * * In times of deflation arbitration machinery is likely to be wrecked.

* * * Peace was maintained until 1922, when the shopmen struck against a decision rendered. From that time on, and partly because of incidents in the behavior of some of its members, the Board was sadly undermined.³

Although the experience of this Board was inconclusive regarding tripartitism, it may suggest that this form of organization is unlikely to succeed when based on statute rather than agreement of labor and industry.

A fourth experience with tripartitism was to be found still earlier in the history of the National War Labor Board of World War I. This Board has sometimes been described as having had a two-party (labor and industry) organization, but in reality it was tripartite in character, as were the temporary groups whose recommendations led to its appointment. The initial organizational step leading to the establishment of the first War Labor Board was the appointment of a special tripartite Advisory Council to the Secretary of Labor, consisting of two labor and two industry representatives and three others. The council's function was to suggest means for effectuating the coordination of labor administration that had been ordered by President Wilson.⁴ Among other things, it recommended the naming of a tripartite board to agree on policies for improving labor-management relations and preventing work stoppages.⁵

In creating this War Labor Conference Board, the Secretary of Labor requested the American Federation of Labor and the National Industrial Conference Board to name five members representing labor and industry respectively. In his letters to these organizations, he stated that the five representatives named by each "will be asked to name a sixth who will represent the general public."⁶ The labor representatives selected Frank P. Walsh and the industry representatives named William Howard Taft. Thus the War Labor Conference Board was composed of two public members plus five representatives each of industry and labor.

This Board recommended that the task of mediation and voluntary arbitration of labor disputes be the function of a national war labor board having the same number of members as the War Labor Conference Board, and with those members appointed in the same manner. President Wilson thereupon decided to appoint the same individuals to the new National War Labor Board. In his proclamation of April

³ H. A. Mills and R. E. Montgomery, *Organized Labor* (vol. III of *The Economics of Labor*) (New York: McGraw-Hill Book Co., 1945), pp. 736-737.

⁴ Gordon S. Watkins, "Labor Problems and Labor Administration in the United States during the World War," *University of Illinois Studies in the Social Sciences*, VIII: 3 and 4 (September and December 1919), p. 18.

⁵ U. S. Department of Labor, Bureau of Labor Statistics, *The National War Labor Board*, Bull. No. 287 (1921), p. 30 and Watkins, *op. cit.*, pp. 162-163.

⁶ U. S. Department of Labor, *op. cit.*, p. 31.

8, 1918, establishing the new Board, he appointed Mr. Taft and Mr. Walsh as "representatives of the general public of the United States."⁷ The two public members served as alternating chairmen of the Board.

The question may well be raised as to whether the chairmen could properly be regarded as public representatives—and the Board properly regarded as tripartite in view of their separate selection by the labor and industry members. However, both the prominence of these two men as public servants and their conduct as members of the Board indicate that they did serve, in fact as well as in name, as true public members. This conclusion is supported by the fact that in only three instances during the Board's 16 months of existence was a decision precluded by disagreement between the two chairmen.⁸

Although the Board was tripartite in organization, its individual actions were frequently not tripartite, due to the procedures that it followed. In describing these procedures, a distinction must be drawn between cases that were handled by mediation and those that were handled by voluntary arbitration. When a complaint was received from one party, the other party was asked to join in the case and agree in advance to accept the Board's decision. Whenever voluntary arbitration was thus accepted, the Board's decision was reached only by unanimous vote. If the members could not reach agreement, the Board then named an umpire, whose decision was final. Thus the public members did not have the decisive votes, but were rather required to serve as mediators within the Board. When an umpire was appointed there was no final tripartite action, since his decision was not subject to Board review.

In 85 percent of all cases acceptance of voluntary arbitration was not obtained. In these instances the Board acted by majority vote, but its action constituted a recommendation rather than an award. Most of these cases were handled by a two-man section, consisting of one labor and one industry representative or—particularly in public-utility disputes—the two public members. In a very few cases a four-man section was used consisting of two public members and one from each of the other groups. Only in these last instances was the action of the section tripartite in character. The recommendation of the section was usually reviewed by the full Board, but the Board's consideration was generally perfunctory where the action of the section was unanimous. The public members had the decisive vote only in action by four-man sections or by the full Board on mediation cases.

The experience of the first National War Labor Board was one of considerable success.⁹ Although vast changes had taken place be-

⁷ *Ibid.*, p. 34.

⁸ *Ibid.*, p. 17.

⁹ *Watkins, op. cit.*, pp. 168-172.

tween World Wars I and II in the prevalence of collective bargaining and the nature of the principal dispute issues, there was little reason to suppose that tripartitism would operate any less successfully in 1941 than it had in 1918. The most significant difference in the situations was that 1941 was a "defense period" rather than wartime, so that there was less assurance that industry and labor would submerge their disagreements in the interest of national security.

II. TRIPARTITISM ON THE NDMB

During the defense period of 1940-41, the work of the Conciliation Service in the settlement of labor disputes was initially supplemented by labor and management representatives serving as mediators on the staff of Sidney Hillman, head of the Labor Division of the Advisory Commission to the Council of National Defense (later known as the Labor Division of the Office for Production Management). The War and Navy Departments and the Maritime Commission also sought to mediate disputes in plants operating under Government contract. As the problem of work stoppages grew increasingly serious and the mediators attached to the various Government agencies appeared unable to cope adequately with the situation, thought was given to the establishment of a national board. Harry A. Millis, William Leiserson, and William H. Davis were among the most prominent advocates of a board, although they differed considerably in their views as to the functions and organization of such a body.

In this instance, unlike the procedure followed in connection with both the first and second National War Labor Boards, the establishment of the board was preceded by no formal consultation with labor or industry. Some clearing was done informally by Frances Perkins, Sidney Hillman, and William Knudson, all of whom supported, for various reasons, the proposal for a tripartite mediation board. The President accepted the suggestion that the new board should be tripartite. Executive Order No. 8716 establishing the NDMB provided for participation by four representatives each of labor and industry and three representatives of the public.

The decision regarding the Board's composition was based largely upon the insistence of certain prominent union officials. More fundamentally, it was consistent with the scope of the Board's functions. In addition to serving as a mediator, the Board could issue recommendations which might be enforced, in effect, by other agencies of the Government. George W. Taylor suggests that tripartite organization was adopted to provide some safeguards to labor and industry in view of the fact that the Board's operations would constitute a considerable

interference with free collective bargaining.¹⁰ A further reason for adopting a tripartite structure perhaps lay in the limited authority of the Board. Its lack of any real power made it especially dependent on the acquiescence of labor and industry. Presumably a final consideration was the lack of any formal advance approval from labor or industry. Failure to consult openly with these two groups in advance made it especially important to give them each a voice on the Board.

Under tripartitism the Board acted successfully for 6 or 7 months. In all but three cases final action was taken by a tripartite panel of three members, without referral to the full Board. Panel action was unanimous on all but four cases.¹¹

In November 1941, however, the CIO members resigned in protest over the Board's recommendation in the "captive mines" case. This instance is an excellent illustration of some of the strengths and weaknesses of tripartitism. All CIO cases were withdrawn from Board consideration by the unions involved. The Board considered that it still retained jurisdiction over these cases, but it took no further action on them. Its effectiveness was sharply reduced during the 2 months between its loss of the CIO members and its replacement by the NWLB, although some new cases were certified to it and it continued to act where no CIO union was involved. On the other hand, the CIO unions found themselves in a difficult position, having no access to emergency mediation facilities at a time when the national peril made labor reluctant to resort to strike action in order to enforce demands. CIO officials found that they had undermined the Board, but only at considerable cost to their unions.

Under these circumstances it was but natural that informal negotiations were soon begun with a view toward achieving the resumption of CIO participation in the work of the Board. These negotiations were spurred by congressional consideration of antistrike legislation. Just prior to the Pearl Harbor attack, Philip Murray wrote to President Roosevelt that the CIO would return to the Board provided the Board would reaffirm its policy that previous decisions would not be considered as precedents and provided neither the AFL nor the CIO members would participate in the voting on each other's cases.¹² With the outbreak of war, however, it was decided to discontinue these negotiations and approach the problem anew through the convening of a national labor-management conference.

The CIO withdrawal proved that tripartitism does give to the partisan members a genuine veto power on Board actions. Under

¹⁰ Government Regulation of Industrial Relations (New York: Prentice-Hall, 1948), p. 98.

¹¹ U. S. Department of Labor, Bureau of Labor Statistics, Bull. No. 714, Report on the Work of the National Defense Mediation Board (1942), p. 7.

¹² National Defense Mediation Board, Transcript, Executive Meeting, December 11, 1941, pp. 3-4.

tripartite organization either labor or industry can halt the whole procedure by withdrawal. The public members will, of course, seek to avoid any danger of withdrawal by serving in a mediatory capacity. Thus labor and industry can be assured that the positions of the public members on all major issues will not be arbitrary, but rather will be carefully considered in an effort to find a solution that will be at least acceptable to both sides.

On the other hand, the experience of the NDMB made it equally clear that the veto power would not be exercised in any similar new agency with regard to any issue that was not of absolutely fundamental importance. In the first place, withdrawal by either management or labor at a time of national emergency would be regarded as an unpatriotic act and would tend to alienate public opinion. Secondly, at a time when, because of patriotism or the fear of incurring public disapproval, free use could not be made of the strike weapon, the existence of a special dispute-settlement agency would be particularly important to the unions. Thirdly, the veto by withdrawal probably could not be used more than once, since a second use would be possible only if there should be a return to participation in the interim. It would not be exercised unless dissatisfaction with the agency's action were so keen and basic as to make more attractive the probable alternative to the agency's continuation. Only if legislative action should appear preferable to labor or to management, could either afford to disrupt the agency. Most important of all is the consideration that the withdrawal of industry or labor at a time of national emergency would probably result in the establishment of a board with similar or stronger powers and one that would not include representatives of industry or labor.¹³

III. ESTABLISHMENT OF THE NWLB

The foundations for the NWLB were laid during the discussions of the Labor-Management Conference of December 1941. The establishment of some such board was a necessary concomitant of the no-strike, no-lockout agreement.¹⁴ The recommendations of this conference regarding the number and selection of the NWLB members were much less specific than the recommendations made by the War Labor Conference Board of 1918. The 1941 conference recommended only that a "proper" board be established. There is, however, no doubt but that

¹³ Since the basic nature of tripartitism was much the same in both the NDMB and the NWLB, further evaluation of it will be deferred to later sections of this chapter.

¹⁴ For discussion of this agreement and its relation to tripartitism, see ch. 1.

the conference members considered a tripartite organization to be desirable. Both of the proposals separately submitted by the labor and industry members provided for tripartite composition. One reason why the final wording was vague was that the labor proposal called for a single public member while the management proposal called for three. The President and his advisors apparently decided that future withdrawals from a tripartite agency were unlikely in view of the conference agreement, the Pearl Harbor attack, the difficulty of the CIO unions in settling their disputes satisfactorily after their withdrawal from the NDMB, and the resulting interest that the CIO had shown in returning to that Board. Whatever their reasoning may have been, they determined to constitute the NWLB on exactly the same basis as the NDMB with the single exception of adding a fourth public member, so that each party should have an equal number of representatives on a 12-man board.

IV. FUNCTIONS OF PARTISAN MEMBERS ON THE NWLB

A first step toward evaluating the experience of the NWLB with tripartitism must be a survey of the numerous aspects of the activities of the labor and industry members. In reviewing the various types of activities of the partisan members, it should be kept in mind that their principal function from their own point of view was to represent with maximum effectiveness the interests of their constituents and to obtain for their principals as favorable a decision as possible, insofar as this did not run counter to the interest of their constituents as a whole. This partisanship was tempered to a greater or lesser extent by the individual labor and industry members, depending upon the sincerity with which each one viewed his position as a Government official.¹⁵ It was also tempered, especially on the National Board, by the interest and responsibility that each member had in assuring full observance of the no-strike, no-lockout agreement.

A. IN DISPUTE CASES

Nearly all dispute cases were decided in the first instance by the regional boards or industry commissions, but the National Board took initial jurisdiction in cases covering more than one region (providing no appropriate commission existed) and in a few other cases of major significance.

The first step in the substantive consideration of a dispute case was the conduct of a hearing of the parties (except in the very few cases

¹⁵ For further discussion of this point, see p. 251 of this chapter.

where the parties waived a hearing). Partisan members nearly always participated in the conduct of these hearings. Most of the cases assigned to the regional boards were heard by ad hoc tripartite panels, whose function it was to recommend to the Board the terms of a decision (unless they settled the case by mediation). The commissions generally held their own hearings, and made infrequent use of panels. The National Board used standing panels in a few industries and ad hoc panels in other cases.

The only deviation from the tripartite conduct of a hearing came in those instances where the parties agreed to present their case to a hearing officer, who would then make recommendations to the National Board or its appropriate agency.

In the hearings it was the function of the partisan members of the panels or commissions to assure that their party presented its case as effectively as possible. When a partisan member saw any opportunity for strengthening a case, he would question the parties to elicit the information that he sought. The ingenuity of some partisan members in the phrasing of leading questions was truly remarkable.

The second major step in the processing of a typical dispute case was its discussion in executive session of the panel and determination of the recommendations to be presented. The following step was consideration and decision of the case in executive session by the National Board or a regional board on the basis of the recommendations of its panel or hearing officer, or by a commission on the basis of the hearing that it had held.

The functions of the partisan members were much the same, whether the discussion was that of a panel (step 2) or of the National Board or one of its permanent agencies (step 3). Their chief purpose in both instances was to obtain a decision as favorable as possible to their party. The partisan members on each side therefore sought to persuade those on the other side and especially the public members of the logic of their own position. Where the partisan members were uncompromising there was little prospect of their reaching agreement with those on the other side of the table in order to achieve a unanimous decision. In such cases they therefore centered their attention on the persuasion of the public members in an effort to obtain a favorable majority vote. Those who were more objective usually took a more moderate position and directed their efforts also toward persuasion of the other partisan members.

The partisan members who argued their case on a factual and analytical basis were the most effective and performed a real service. Those who habitually resorted to shouting and table-thumping were generally ineffective and merely wasted the time of all concerned. Many of these latter soon realized the futility of their methods and

became valuable participants in the discussion, but a few seemed satisfied to pride themselves on their nuisance value.

During case discussions the partisan members were often of real assistance to the public members in supplying technical information regarding the industry. This service was especially important because of the compromise character of the decisions in most of the dispute cases. Any impracticability in the position of either party was usually brought out by the other party during the hearing; but, since the positions of the parties on most disputed issues were at opposite extremes and the appropriate settlement appeared to lie somewhere between, the public members had to suggest, in executive session, various possible solutions that had not been argued at the hearing and could not readily be checked for practicability except on the basis of the knowledge of the partisan members. The technical information of these members was therefore valuable as a check on whether a proposed decision was feasible and would meet the problem. This service was of greatest significance in the discussions of the industry commissions, since in these instances the partisan members were specialists in the operations that were under discussion; but even on the regional boards the public members concluded that this was one of the greatest benefits of tripartitism.¹⁶

The partisan members themselves sometimes suggested realistic compromise solutions. They seldom advanced such proposals in executive session, partly from fear of weakening their "bargaining position." They occasionally performed this function in private discussions with the public members. In such informal conferences a partisan member could state more candidly the realities of the dispute and discuss more frankly the possible bases for a satisfactory solution. This method was especially useful when the management or labor representative wished to propose a settlement that he regarded as fair, but one that he was not willing to support publicly with his vote.

The partisan members performed another valuable function in indicating to the public members, by the intensity of their argument and the degree of their emotionalism, the relative significance of various issues to the parties concerned. The members who were equally emotional on all issues were of no service in this respect, but the many who demonstrated a clear ability to distinguish between the important and unimportant were very useful to their public colleagues and their constituents. When they showed great concern over a particular issue, it was clear that that the proposed decision was extremely distasteful to their constituents, either because of its impracticability or because some basic principle was at stake.

¹⁶ U. S. Department of Labor, *The Termination Report* (1948), vol. I, p. 581.

The degree of contact between a partisan member and his constituent in any particular case was an important determinant of his ability to supply useful information or to reflect the attitudes of the party. In many cases the partisan members kept in fairly close touch with the parties involved and often checked confidentially on the acceptability of a proposed decision. It was not unusual for further discussion of a particular case to be deferred until the following meeting in order to give the partisan members an opportunity to obtain from the parties certain desired additional information.

A further function of the partisan members in dispute cases was participation in the balloting on proposed decisions. Frequently all the members were in fairly close agreement regarding the appropriateness of a proposed decision. In some of these instances decision was by unanimous vote. In the others, the members of one of the partisan groups were reluctant to vote in favor of the proposal and preferred to register a dissent in order to protect their relations with their constituents. On most issues, one group or the other was particularly dissatisfied, so that the dissents were generally vigorous rather than pro forma. In some cases both of the partisan groups, because of the irreconcilability of the position of the two parties, were very dissatisfied with the disposition proposed by the public members. The public members thus sometimes had difficulty in obtaining a majority vote. Such instances, however, seldom created a serious problem. When the public members were convinced of the desirability of a particular decision but could get no initial support, they usually first decided which of the partisan groups could most reasonably be expected to concur in the decision, and then proceeded to force such concurrence by threatening to vote for a less favorable decision unless concurrence was forthcoming. However, in a few instances where there was sharp disagreement on issues of outstanding importance, there was great difficulty in obtaining support from either side for a solution that was acceptable to the public members. The possibility that the public members might be outvoted by the partisan members seldom arose in dispute cases.¹⁷

The comments in the preceding paragraphs regarding the participation of the partisan members in the decision of dispute cases by panels, commissions, and the boards apply equally to the handling of appeals by the Appeals Committee and the National Board.

In a small proportion of dispute cases, the Board had to face the further problem of obtaining compliance of the parties with a decision. Since this problem is discussed in detail in chapter 1, it will suffice to emphasize here that tripartitism contributed in three ways toward obtaining compliance. In the first place, the participation of the

¹⁷ This problem is discussed on p. 258 of this chapter.

partisan members in the original determination of the case decreased the possibility that the decision might be so distasteful as to be totally unacceptable to either of the parties.

Secondly, the partisan members, in their contacts with their constituents, often prepared them for announcement of the decision. Merely the receipt of advance indication as to the probable nature of a decision helped to preclude any revolt by union or management officials. More important was the usual practice of accompanying such information with an explanation of the reasons for the decision. This information gave the parties assurance both that their case had been given thorough consideration and that there were strong reasons why a more favorable decision could not be obtained. The contacts of the partisan members with their constituents were not close enough to permit advance information in more than a fraction of all dispute cases, but it is certain that these included nearly all of the instances in which there was any danger of noncompliance. In some instances, because of inaccuracy or misunderstanding, advance notification proved to be a liability rather than an asset. It was also unfortunate if only one party received advance notification, since the other party then obtained initial information about the Board's action from a source other than the Board.

Thirdly, the partisan members were of service to the Board in obtaining compliance in some instances where it was not immediately forthcoming. They were in a much stronger position than the public members to use effective persuasion, because they could speak as prominent members of the group (labor or management) to which the recalcitrant person belonged and could discuss the question more convincingly in terms of his ultimate interest. They used their influence in nearly all instances where they foresaw any possibility of success. These efforts were exerted not only during strike hearings or compliance hearings, but often in direct private discussion with the recalcitrant party. As is necessary to the success of a tripartite organization, the members of the Board almost invariably took the position that a majority decision was the responsibility of them all. Even those members who had dissented from a particular decision practically always cooperated in every effort to obtain compliance.

B. IN JURISDICTIONAL DISPUTES

It was early decided that tripartite action was inappropriate in the case of disputes as to which union had jurisdiction over a particular type of work, since these were disputes between unions rather than between a union and an employer. Because such disputes were essentially interunion quarrels the industry members were well satis-

fied to abstain from participation in their decision. The first step in processing these cases was to refer them to the labor members of the National Board, who attempted to work out a solution with the top officers of the unions involved. These efforts were not always successful.

William Green and Philip Murray reached an agreement with the Board that unresolved cases would be referred for decision by persons whom they would appoint in each instance. Several efforts to follow this procedure resulted in an inability of the appointees to settle the dispute. The Board then adopted the general policy of referring unresolved jurisdictional disputes to an umpire for final decision that was not subject to review by the Board. Thus the only elements of tripartitism in the Board's handling of jurisdictional disputes lay in the unanimous agreement on a procedure and in the fact that the umpire named to settle such a dispute, like the umpires appointed in all other cases by the Board, had been previously approved by both the labor and industry members.

C. IN WAGE STABILIZATION

The primary function of the Board during its first 9 months was the settlement of labor disputes, although, like certain other agencies, it was vested by the Emergency Price Control Act with general responsibility to promote stabilization of prices and production costs. As has been indicated in chapter 2, no set of principles had been prescribed in advance, so that the Board was free to develop its own policies. Its action in the individual dispute cases constituted the process of policy formation. For example, the Little Steel formula, discussed in chapter 4, was the product of such tripartite action.

With the advent of a formal Government wage stabilization program in October 1942, greater limitations were placed on the freedom of Board action on wage-adjustment issues. In spite of these limitations there still remained a considerable scope for determination of the Board's wage policies, since the limitations were of a general character and required interpretation. Thus the Board's partisan members acquired a new function in their influence upon wage stabilization policy in the administration of the new program. They had, for example, full participation in the adoption of the general orders, which set forth the various types of wage adjustments that could be made without individual Board approval. Their action on individual cases helped to shape Board policy on the formulation and application of such criteria as inequities, substandards, and rare and unusual. Moreover, in the execution of the minimum-of-the-bracket policy, the determination of specific bracket rates was made by tripartite committees of the regional boards and in some instances was the subject of tripartite review by the National Board.

In addition to their influence on the Board's stabilization policy, the partisan members also had an appreciable influence on the various aspects of the over-all Government program. Whenever the public members were called into consultation by Federal executive officers or congressional committees, their advice was inevitably affected by their intimate knowledge of the attitudes of the industry and labor representatives. Probably the most striking instance of the influence of the partisan members upon the Government program is to be found in the clarification (or moderation) of the hold-the-line order by the Director of Economic Stabilization on May 12, 1943. Partisan members sometimes participated in the conferences with other Government officials, but this was often not the case. When not invited to participate, they vehemently objected to having only an indirect influence on the over-all Government program.

The adoption of an official stabilization program brought the introduction of the Form 10 application for approval of a voluntary (undisputed) wage adjustment. The National Board and its agencies took tripartite action on a number of these applications during the early months of the stabilization program. As soon as the regional boards got into operation, nearly all applications were handled by them and the commissions, and reached the National Board only on appeal.

After the Board's stabilization policies began to crystallize, the growing flood of Form 10 applications forced the regional boards and commissions to delegate to a staff member (the head of the wage stabilization or case analysis unit) authority to act on most of these applications. Once the partisan members had participated in the formulation of policies that narrowed the scope for individual judgment in the processing of wage applications, they generally took little interest in participating personally in the individual decisions on these voluntary cases. Only in some of the industry commissions, where the partisan members were well informed on the conditions in the various establishments, did they show any reluctance to delegate this authority. Even in these few instances the authority was eventually delegated, though an informal review of staff decisions was sometimes made by individual partisan members, primarily to check the staff action.

The Board agencies placed different types of limitations on this delegation of authority and modified their limitations from time to time to increase the proportion of cases that would be disposed of by the staff. The limitation was usually stated in terms of the number of employees involved. The nature of the industry and the basis for approval were also occasionally used as criteria to define the scope of the authorization. In some instances the responsible staff member was given complete discretion and instructed to bring to the Board only cases regarding which he was in doubt.

Although nearly all of the Form 10 cases were decided by authorized staff members,¹⁸ the National Board and its agencies took action on them in case of appeal. The initial appeal was from the staff action to the Board agency, with final appeal to the National Board. Tripartite action on Form 10 appeals brought increasing clarification to the Board's wage-stabilization policies and resolved borderline cases.

The experience of the Board and its agencies in passing on Form 10 applications seems to indicate that there is little need for or interest in tripartite action in dealing with individual cases where the decision is largely predetermined by adopted or prescribed policies.

Participation in enforcement procedures was another function of the partisan members in relation to the wage stabilization program. This chapter will include only a brief reference to the tripartite aspects of the enforcement program, since a detailed analysis of enforcement policies—including tripartite participation—is presented in chapter 10. Each of the regional boards had a tripartite enforcement division, whose duty it was to review instances of violation of wage-stabilization regulations in order to determine how much of a penalty, if any, should be assessed against the violator. This was probably the most unwelcome of any of the functions assumed by the partisan members. The labor members throughout the Board had little interest in penalizing employers for granting unauthorized wage increases, except to reduce dissatisfaction on the part of employees whose rates were held within the limitations of the stabilization program. The industry members, although they were strongly opposed to the granting of unauthorized increases by individual employers, were loathe to participate in the penalization of a fellow employer except in instances of deliberate and flagrant violation. The Twelfth Regional Board voted unanimously that its enforcement division should consist only of public members.¹⁹ This decision, however, was countermanded by the National Board.

It was surely appropriate that the National Board should establish enforcement policies and consider enforcement appeals on a tripartite basis. On the other hand, the practice of tripartite participation in the initial decisions on enforcement cases had disadvantages that perhaps outweighed its advantages.

There were two principal alternatives to the use of tripartite enforcement divisions. One was the possibility of initial decisions by staff members, subject to appeal to the regional board and the National Board. Such a procedure would correspond to the usual staff action on Form 10 cases. The impossibility of developing clear standards

¹⁸ Of some 200,000 applications for voluntary wage or salary adjustments determined by the regional boards from July 1, 1944, to August 17, 1945, nearly 96 percent were decided by the Wage Stabilization Directors (*The Termination Report*, vol. I, p. 818).

¹⁹ *Ibid.*, p. 765.

governing the extent of the penalty and the consequent wide range for individual judgment made delegation of such authority to staff members inadvisable.

A more feasible alternative was the use of all-public enforcement divisions. The relative merits of these various alternatives are discussed briefly in the paragraphs that follow.

It has been generally reported that the partisan members of the enforcement divisions performed their tasks conscientiously and that division actions were unanimous in the vast majority of cases.²⁰ It seems clear, however, that there is less justification for tripartitism in the consideration of individual enforcement cases than in the performance of the rest of the Board's functions. The opinions of Board and staff members who had experience with the enforcement program differ sharply on the question of whether, nevertheless, the assets still outweighed the liabilities on this point.

Probably a majority of these persons believe that tripartite action on individual enforcement cases was desirable. They point out (*a*) that the severity of the maximum penalties required great moderation in their application; (*b*) that tripartitism lessened the danger of the corruption of members of the enforcement staff; (*c*) that it served to win public approval of the enforcement program and to obtain acceptance of the penalties by the parties, which was especially important when a rollback of wage rates was involved; and (*d*) that the wide area inevitably left for discretion in determining the amount of the penalty made tripartite consideration desirable.

The writer, however, believes that the Twelfth Regional Board acted wisely in proposing that its enforcement division consist entirely of public members. Moderation of the assessment of penalties was certainly desirable, but could surely have been obtained without tripartite divisions, especially since general enforcement policies and action on appeals were in any case subject to tripartite determination. While the danger of corruption might have been greater if the authority had been delegated to a staff member, this would not have been the case if the decisions had been placed in the hands of an all-public division. It seems probable that public approval of the enforcement program was little influenced by the procedure of individual tripartite decision. It is at least possible that the acceptance of the penalties by the parties would still have been satisfactory so long as the enforcement program had the general support of the tripartite Board. The wide area left to discretion would have made it more difficult to delegate the task to a staff member, but did not make an all-public division less appropriate than a tripartite one for this task.

The very nature of the enforcement problem made it inappropriate

²⁰ *Ibid.*, pp. 583-584.

for detailed tripartite operation. Tripartitism made its chief contribution in the development of reasonable policies and the application of technical information to the practical solution of a complex problem of labor-management relations. For these purposes a close relationship to the parties was useful. Tripartitism, however, was unsuited to a judicial procedure, where a complete detachment from the parties was desirable. The partisan members were placed in the difficult, if not improper, position of serving both as advocate and as judge.

It must be recognized, however, that general support of the partisan members was essential to the success of the enforcement program. If that support could be obtained only on condition of tripartite participation in the decision of each case, then there was no better alternative than the enforcement procedures actually followed by the Board. It is here suggested that the partisan members of the Twelfth Regional Board showed statesmanship in their willingness to support the program without complete tripartite participation. It is further suggested that it was unfortunate that some of the partisan members of the National Board refused to concur in the decision of their colleagues in the twelfth region. However, no criticism of the public members of the National Board is here implied, for, given the nonconcurrence of some of the partisan members, they had no alternative other than to assure the continuance of partisan support by voting to veto the decision of the regional board.

The conclusion here reached is that the tripartite enforcement procedure had but slight, if any, advantage over an all-public division. It had, on the other hand, the serious disadvantage of inconsistency in the severity of the penalties imposed. This inconsistency arose from the difficulty of judging the deliberateness of the violation and the consequent difficulty of disregarding considerations that were irrelevant to the case. The partisan members were clearly more subject to undue influence by the parties than were the public members. It seems probable that detailed tripartite administration of the enforcement program was not in the best interest of labor or management, that it placed on certain partisan members an unpleasant obligation that they should not have been asked to shoulder, and that the handling of individual enforcement cases should have been placed in the hands of all-public divisions appointed by the national and regional boards. That the enforcement program was as successful as it actually was is indeed a high tribute to the integrity and courage of the partisan members.

D. IN THE ADMINISTRATIVE PROCESS

One of the most significant of the administrative functions performed by the partisan members of the National Board was their approval of the appointments of all public members to the Board's va-

rious agencies. No public member was appointed to any of the agencies without unanimous approval by the National Board. This procedure assured that every nonpartisan member who had a vote in the decision of cases anywhere within the Board's organization had, initially at least, the confidence of the partisan members of the National Board.

This authority could have been abused, but it was exercised with restraint and in good faith. Instances of the rejection of apparently well qualified persons by the partisan members of the National Board were surprisingly rare. This procedure was particularly desirable because it increased the effectiveness of the public members of the Board agencies in their relations with their partisan colleagues and protected them from careless charges of partiality.

The partisan members of the regional boards had a similar function of approving appointments to the list of public panel members. This procedure had corresponding advantages for the appointees. It operated, however, less satisfactorily than on the National Board. The public members of a few regional boards thought that many well qualified nominees were rejected by one or more partisan members for minor reasons of personal prejudice.

Final tripartite action in the appointment of staff members was practiced to varying degrees on the National Board and its agencies. The extent of this practice on the National Board varied from time to time. During the Board's early days, it voted to authorize the top staff member to make staff appointments at the lower professional levels and to authorize one of its public members to act on all staff appointments at the higher levels. This policy, however, did not remain long in operation. For some time, final action on appointments to staff positions carrying a salary in excess of \$3,800 was taken by the full Board. Although there was no serious disadvantage to this practice, since the recommendations of the public members were seldom rejected and since only an insignificant part of the Board's time was devoted to consideration of appointments, it would have been more appropriate if tripartite clearance had been applied only to division chiefs and not to any of their subordinates. In fact, as time went on the National Board did increasingly confine its review to appointments to the major positions.

One real advantage in the procedure of tripartite approval of the appointments of public members and staff members was the protection that it afforded against external pressures of politicians seeking to influence appointments. The partisan members felt entirely free from such pressure, and did not hesitate to rebuff the efforts that were occasionally made to obtain the appointment of persons whose qualifications for a position appeared questionable. The knowledge

that tripartite approval was requisite discouraged any serious attempt of politicians to dictate staff appointments. It also precluded any effort by labor or management to initiate appointments.

On the regional boards and industry agencies full administrative authority was typically vested in the chairman by acquiescence or common consent. In a few instances, however, the partisan members insisted on review of all proposed major staff appointments, including promotions. This practice gave rise to much more difficulty in these particular regional boards than it did on the National Board. The public members in a few of these agencies felt that much valuable time was wasted in discussion of personnel problems and that some partisan members acted quite unreasonably in rejecting merited appointments or promotions.

Another function of an administrative character performed by the partisan members was their consultation with parties who wished to inquire about the status of their cases or to present personally arguments supporting their position, particularly in instances where no hearing was held. The public members received many such visitors, but their time would have been very largely occupied by these conferences had not the partisan members shouldered the major part of this load. Such conferences frequently gave the partisan members a clearer understanding of the details of a particular case and as a result were of real value to the entire board.

A staff member was appointed to assist each group of partisan members of the national and regional boards in maintaining their contacts with their constituents and in preparing their cases for argument in executive session. In some agencies the AFL and CIO members each had an assistant; sometimes they shared one. In each case the assistant was selected by the persons he would aid. The partisan members frequently chose someone from the staff of the agency who had had experience in analyzing cases. These assistants were of great value. They enabled the partisan members to fulfill their functions much better than would otherwise have been possible.

Although administrative problems were often discussed in meetings of the National Board, many important types of administrative questions were delegated to small committees that included a few of the partisan members. The final revisions of general orders and stabilization instructions were among the problems handled in this way.

Some other types of decisions were delegated by the National Board to tripartite committees that had their own regular partisan and public members named by the Board. This structure was used, for example, on the New Case Committee, which decided whether each new dispute case had been properly referred to the Board and which of the Board agencies should deal with it. This form of organization

was also used on the Postdirective Committee, whose function it was to reply to inquiries regarding the interpretation or intent of Board decisions. Another illustration was the Appeals Committee, which took preliminary action by formulation of recommendations on each appeal before it was referred to the National Board for final determination. A further instance was the Review Committee, whose responsibility it was to review reports of panels, hearing officers, and arbitrators on cases before the National Board and to recommend to that Board appropriate action on these nonappeal cases.

These illustrations will serve to demonstrate how completely the policy of tripartitism was followed in all decision-making activities of the Board.

V. THE FUNCTIONS OF PARTISAN MEMBERS ON THE NWSB

The functions of the partisan members on the NWSB were the same as they had been on the NWLB with the vital exception that the functions of the Board were limited to the administration of the wage-stabilization program and did not include settlement of labor disputes. It has been indicated earlier in this chapter and will be developed more fully in the subsequent sections that the benefits of tripartitism were much greater in dispute settlement than in wage-stabilization administration. Consequently the appropriateness of tripartitism is less certain in the case of the NWSB than in the case of the NWLB. Its success in the NWSB was probably due largely to the thorough experience with tripartitism that the members of this Board had had as members of the earlier agency.²¹

VI. SELECTION OF PARTISAN MEMBERS

The selection of the industry and labor members involved several problems, some of which continued to be subjects of considerable controversy throughout the life of the three boards.

A. ABSENCE OF GOVERNMENT CONTROL OVER APPOINTMENTS

Half of the original labor members of the NWLB were named by the President on the recommendation of top officials of the AFL and half on corresponding recommendations from the CIO. The industry appointments were based on the recommendations of prominent in-

²¹ For further analysis see U. S. Department of Labor, *The National Wage Stabilization Board (1948)*, pp. 302-306.

dustrialists affiliated with the United States Chamber of Commerce or the National Association of Manufacturers. The industry group and each of the two labor groups had in effect full authority to select the persons to fill any vacancies arising in their respective ranks.²² They also separately named their counterparts on all of the Board agencies. The industry, the CIO, and the AFL members of the regional boards in turn selected their own counterparts on all regional panels.

The review of public-member appointments to Board agencies by the partisan members of the National Board (discussed on pp. 245-6 of this chapter) was not matched by any corresponding review of partisan appointments by the public members. This was probably a sound procedure. The effectiveness of the partisan members in the performance of their functions was largely dependent on the extent to which they had the confidence of their constituents. Any veto over such appointments by the public members might have given employers or employees the impression that only their less forceful representatives were being accepted. There might also have been a tendency for the partisan members to protect themselves from such charges by adopting a more militant and less useful attitude in board meetings.

A second reason why a public check on partisan appointments would have been undesirable was the impossibility of accurate advance judgment of the ability of any particular individual to perform his functions effectively. Both the nature of the job and its general setting were quite new to a great many of the partisan appointees.²³

B. DETERMINATION OF THE SELECTING ORGANIZATIONS

Although the partisan members of the regional boards and industry agencies were named by the corresponding members of the National Board, the selections were in fact largely made by their respective organizations, i. e., the CIO, the AFL, the NAM, and the Chamber of Commerce. Thus the selection of the partisan members of a particular regional board was made by the representatives of the labor federations and councils of the States within the jurisdiction of that Board and by the similarly located branches of the employer's organizations.

The partisan members of the National Board had a final check on these selections, and the formal appointments were made by the full Board.

²² Since these vacancies were filled on appointment by the President, there was at least the possibility of the rejection of a recommendation.

²³ It was, of course, equally difficult to judge the abilities of the public members at the time of their initial appointment. The review of proposed public members by the partisan members was chiefly a check on impartiality. There was no reason for a similar check on proposed partisan members.

As a general rule, the labor members on the commissions and regional boards were drawn only from AFL and CIO unions and were equally divided between the two. This was invariably the case on the regional boards, but there were several exceptions to it on the commissions. The labor membership of each commission was tailor-made to fit the conditions in the particular industry. For example, on the Telephone Commission both of the regular members and four of the five alternate members belonged to independent unions. On the Meat Packing Commission there was one labor member from each of the three national unions in that industry, one of which was an independent.²⁴ On the Trucking Commission all the labor members were drawn from the AFL.

Various independent unions made repeated attempts to obtain representation among the regular labor members of the boards. This demand was consistently rejected by the National Board because (a) the addition of independent union representatives would greatly complicate the Board's structure, (b) there was no central organization that could speak for all or most of the independents, (c) there would be no place to draw the line in deciding which of the independents should have representation, (d) the AFL and CIO were very insistent upon retaining the exclusive right to select the labor member of the Board's decision-making agencies, and (e) the Board was convinced that the independent unions were receiving fair treatment in Board decisions.

The National Board early decided that the disadvantages of independent union representation did not apply to the panels named by its agencies to hold hearings on a particular case and present recommendations regarding its settlement. Since panels were organized to act on a single case, their membership could be planned to fit any special situation. Moreover, there was little danger in using persons closely related to the parties, because the panel had no authority to take definitive action. The Board therefore gave many independent unions assurance that any panel established to deal with a case to which the independent was a party would contain as its labor member a person satisfactory to the independent. This did not mean that the labor member would necessarily be drawn from the membership of the independent, although this was usually the case in actual practice.

C. REPRESENTATIVENESS OF PARTISAN MEMBERS

The partisan members were, in general, representative of the organizations that influenced their selection, but this was somewhat less

²⁴ This commission also differed from the others in that it contained an unequal number of labor, industry, and public members. There were two public members and five regular industry members—one from each of the major companies. For voting procedure, see *The Termination Report*, vol. I, p. 1051.

true of the industry than of the labor members. The industry members generally considered themselves as representing the interests of management in general and only incidentally the policies of the Chamber of Commerce and the NAM. A close relationship was maintained however, between the industry members of the National Board and the top officials of those two organizations. After the early months, a senior member of the staff of both organizations usually attended the meetings held weekly by the industry members of the National Board to discuss issues and policies. At these meetings an effort was made to reach unanimity, but the individual members were not committed to the judgment of the majority when persuasion did not result in agreement.

Some industry members found that they were subjected to rather strong pressure from their organizations, their business associates, or their fellow-members on the Board whenever their votes differed sharply from the general policies of organized management. They differed in their susceptibility to such pressure, depending upon their individual prominence and prestige, the nature of their business position, and the circumstances surrounding their appointment. In spite of group meetings and occasional pressures, the industry representatives did not always vote in unison.

Split votes were probably more rare among the labor than the industry members. The other labor members were usually inclined to follow the lead of the one who was most closely related to the union involved in the case. A division of the labor vote usually occurred only when the issue involved a clash of interest between AFL and CIO unions.

The labor members of the National Board and its agencies frequently asserted that it was their responsibility not to represent merely the AFL and CIO but to represent all workers. Most of them represented quite conscientiously the workers belonging to independent unions. Few, however, could muster any enthusiasm in the Form 10 cases involving unorganized employees. Argument by the labor members in these cases probably resulted chiefly from the realization that each case might well set some precedent for later cases.

VII. POSITION OF PARTISAN MEMBERS

The appointment of partisan members to a Government agency in other than a purely advisory capacity has been rare, in spite of the precedents cited early in this chapter. Therefore, an analysis of the nature of their position is of special interest.

A. THEIR DUAL ROLE

To some extent the partisan members were subject to conflicting loyalties. As Government employees they had some obligation to keep in mind the public interest; and as partisan members they were certainly expected to present the point of view of their constituents. These interests might well be inconsistent in some instances. It is probable that many of the partisan members were seldom conscious of any such conflict. Some members of each group undoubtedly believed that, in representing the interests and policies of their organizations, they were promoting rather than endangering the public interest. There were, on the other hand, many who recognized that this was not necessarily the case and who sometimes had great difficulty in deciding what position they should take on particular issues.

A sharp conflict of loyalties would frequently have arisen if the industry members had felt a responsibility to support in full the position of the individual employer in each particular case or if the labor members had felt a similar responsibility toward the demand of each individual local union. The partisan members, however, considered themselves as representatives primarily of their respective groups rather than the parties. In addition, their membership on the Board was a symbol of the acceptance by their respective groups of a responsibility to achieve the maximum of industrial peace and to prevent serious inflation. Because of these general group interests the likelihood of sharp conflict between the partisan and public interest was considerably reduced.

The most striking illustration of the difference between the general and individual interest of management or of labor is seen in the position of the industry members with reference to requests from individual employers for approval of wage increases. The desire of many employers to effectuate a large wage increase was regarded as contrary to the general interest of management in strict wage stabilization. Industry members were, therefore, usually more reluctant than public members to approve wage increases.²⁵ Industry members undoubtedly felt that they were voting equally in the interest of management and of the public in their efforts to prevent an increase in the general level of wage rates.

The position of the labor members on the question of wage stabilization is not quite so clear. In general, they accepted the necessity of a wage-stabilization program. Although they argued vigorously against some of the policies adopted by the Board to limit the extent of wage adjustments—in particular, the Little Steel formula—they seldom advocated the complete discontinuance of wage stabilization

²⁵ Some notable exceptions to this generalization created a problem discussed on pp. 258-259 of this chapter.

On the other hand, they usually tried to obtain higher rates in decisions on individual cases. There were, however, many instances in dispute cases where the labor members did not support all of the demands made by the local union. Most of these instances must have been ones in which it was felt that the union demand was inconsistent with the public interest.

Although it may well be recognized that there were cases of incompatibility between the partisan and the public interest and that in such cases the public interest was not always kept uppermost in mind, this fact probably had little influence upon the Board's decisions. With the exception of rare instances to be noted on pages 258-259 of this chapter, the public members invariably cast the deciding votes. In general, the votes of the partisan members were not decisive, so that the presence of such members on the Board—even when they occasionally seemed to disregard their responsibility toward the general public—seldom constituted any threat to the public interest, at least so far as the substance of the decisions was concerned.

B. DISQUALIFICATION OF PARTISAN MEMBERS

The foregoing discussion has indicated that the industry and labor members showed varying degrees of objectivity and that their helpfulness was greatest when they exercised some restraint. These considerations led the Board to attempt to avoid instances in which a partisan member who was participating in the decision of a case had more than a general interest in one of the parties involved.

The policy was reaffirmed in detail following the passage of the War Labor Disputes Act, which contained the provision that—

no member of the Board shall be permitted to participate in any decision in which such member has a direct interest as an officer, employee, or representative of either party to the dispute.

In interpreting this provision the Board's general counsel concluded that a labor member was disqualified from participation in the decision of a dispute if he was a member or employee of a local union involved, or was an officer or employee of a national or international union that was directly involved, or had participated in the negotiations preceding the certification of the case.²⁶ Industry members were disqualified under corresponding circumstances.

There was one apparent deviation from the usual practice. On the Meat Packing Commission, for example, both the labor member and the industry member who acted on a particular case were customarily directly representative of the union and the company that were parties to the case. This was regarded as a suitable procedure because that Commission was established to supervise the application of a sweeping decision that had been made by the National Board.

²⁶ The Termination Report, vol. II, pp. 422-426 (appendix H-2).

No objection was raised to a close relation to the parties in the case of panel membership, since the action of panels constituted a recommendation to a board agency rather than final action upon the case. Thus the panel procedure was used in some instances where direct relationship was considered unavoidable or at least desirable. For example, it was impossible to obtain well qualified industry representatives in the maritime industry who were unaffiliated with a company that was party to the dispute. For this reason, among others, this industry was placed under the jurisdiction of the War Shipping Panel rather than a commission.

C. RELEASE OF CONFIDENTIAL INFORMATION

Although the partiality of the labor and industry members seldom created any problems regarding the substance of decisions, their special interests sometimes created problems regarding the release of information. As indicated on page 240 of this chapter, unofficial advance notification to the parties regarding Board action was often desirable. Instances occasionally arose, however, where the members of the National Board or one of its agencies agreed that decision should remain confidential until officially released. In a number of these cases the Partisan interests of some members unfortunately were so strong as to result in breach of the agreement.

Equally embarrassing to the Board was the occasional unofficial release by a single member of news regarding the nature of the discussions on unresolved major problems, including predictions as to what decision would eventually be reached. While it was generally supposed that certain of the partisan members were especially susceptible to the wiles of the journalists, it should in fairness be said that they were not the only ones and that similar disclosures occur in nontripartite governmental agencies.

A third type of disclosure involved the contents of confidential internal records of the Board and its agencies. This happened most frequently in connection with the analyses of individual cases prepared by the staff for the information of the Board members. Sometimes an analysis reached one of the parties even before it was presented to the Board. If such instances had occurred more frequently, it might have become necessary to send all analyses to both parties for comment before the case was considered by the Board. Such a procedure would have aggravated the problem of delay in Board decisions.

VIII. EFFECTIVENESS OF PARTISAN MEMBERS

The functions of the partisan members were discussed earlier in this chapter. It was seen that several of these functions were vital

to the successful operation of the Board and could not be performed adequately by the members of an all-public agency. Some indications were given regarding variations in the adequacy with which certain of these functions were actually performed but it remains to analyze more thoroughly the effectiveness of the labor and industry members.

A. EFFECT ON PUBLIC-MEMBER DECISIONS

So far as can be determined from a study of The Termination Report, there is agreement among the public members of the Board that the nature of Board policies and the substance of case decisions were considerably influenced by the participation of the partisan members. It is further agreed by nearly all that the influence was a favorable one. As a result of it, decisions were more realistic, more practicable, and more acceptable to the parties than could otherwise have been the case. There was a stronger tendency to adjust the decision to fit the needs of each particular case.

The public interest required that labor disputes be settled without detriment to production and without significant impetus to inflationary forces. On the other hand, the maintenance of high employee morale and productive efficiency necessitated some gradual improvement rather than a freezing of the terms of employment. The tripartite structure was well suited to the achievement of these objectives. Partisan participation gave the public members a clearer picture than they could otherwise have obtained as to which of the alternative possible decisions would best settle a controversy and as to when and where some modest modification of policy was essential to the maintenance of morale.

The influence of the partisan members on policy formation and case decisions was exerted in several ways. Sometimes their contribution took the form of supplying pertinent information about technical operations, industry practices, or the attitudes of the parties. Such contributions were of great value to the public members.

More often the partisan participation took the form of argument and discussion. The argument usually helped to protect the public members from misinterpretation of the facts. In some instances, on the other hand, it probably involved an effort to distort the facts.

The discussion assured that attention was given to all the relevant considerations. Usually it was pertinent. Occasionally it became impertinent. As in negotiations directly between two parties, the discussion occasionally degenerated into vituperation and loose talk.²⁷ Actually, the form of collective bargaining was being transplanted to within a Government agency where the public members could listen

²⁷ For a lively, if somewhat exaggerated, account of this aspect of Board activity, see Dexter M. Keezer, "Observations on the Operations of the National War Labor Board," *American Economic Review*, XXXVI, 3 (June 1946), pp. 233-257.

in and participate as conciliators or arbitrators. The essential difference between this procedure and collective bargaining was that the outcome rested on the judgment of the public members, with little regard to the relative economic force of the parties. It is generally agreed that the result of collective bargaining usually gives the best solution to a labor dispute. Tripartite case decision approaches that result, with the difference that the decision is certain to be based more upon the relative merits of the issues and less on the relative power of the parties.

On very rare occasions the efforts to influence the decisions of the public members took the form of threats by one group or the other to withdraw from National Board membership. Sometimes it seemed clear that these threats were not made seriously, but on three occasions during the 4 years of the Board's life the public members were concerned about the possibility of withdrawal. One instance occurred during the first weeks after establishment of the Board and involved the opposition of the industry members toward awarding union security. The second, a few months later, concerned the hostility of the labor members toward the adoption of the Little Steel formula. The third occurred about a year later as a protest of the labor members against the issuance of the "hold-the-line" order, and was thus directed at the new national wage policy rather than at any proposed action of the Board.

It now seems probable that withdrawal was not really considered on at least the first two of these occasions. Subsequent to the conclusion of the Board's activity, prominent labor and industry members have stated that at no time did their respective groups seriously contemplate withdrawal as a result of Board decisions. Nevertheless, withdrawal from the NDMB had actually occurred, and was always present in the minds of the National Board's public members as a possibility that should be avoided as long as this could be done without sacrifice of the public interest. The presence of this eventuality served to assure that the Board's policies and decisions would be kept within the limits of partisan acquiescence.

A second instance of actual withdrawal did occur during the life of the NWSB. The two industry members submitted their resignations on July 18, 1946, but acquiesced in the request of President Truman that they prolong their service. On October 9 they renewed their resignations. This action, however, was not taken in protest against any action of the NWSB. They attributed their decision to their beliefs that continuation of wage controls was not feasible and that tripartite administration was inappropriate in time of peace.²⁸ Although on one occasion they indicated that the latter reason was the

²⁸ This latter aspect of the incident is considered later in sec. IX of this chapter.

dominant one, their other statements and information from other sources give reason to believe that they were motivated chiefly by a desire to expedite the termination of price and wage controls. Industry members from seven of the regional boards jointly urged the President to appoint new industry members and offered to recommend persons for appointment. The President appointed those whom they suggested, and the Board continued to function on a tripartite basis.²⁹ The important point to note for the purpose of the present discussion is not so much the failure of these resignations to achieve their purpose as the fact that they were aimed at influencing general Government policy rather than the decisions of the Board's public members and were not accompanied by heated argument in Board meetings.

A few public members of the regional boards, though admitting the benefits of tripartitism, believed that the disadvantages of lengthy wrangling in executive sessions outweighed these benefits. In spite of these few dissenting voices, nearly all of the public members reached the conclusion that the guidance obtained from the partisan members was more than worth the waste of time and nervous energy involved in the process. Many of them had grave doubts of the net value of tripartitism at the outset of their services on the Board or its agencies, but these doubts were almost invariably dispelled by experience. An all-public membership could certainly have settled cases more expeditiously, but the decisions would frequently have been less practicable. It seems clear that those who had "lived" with tripartite procedures are almost unanimous in concluding that the extra time for full discussion was well spent in order to assure the realism and acceptability of the Board's actions. In their minds the danger of disruption of the Board by the withdrawal of a partisan group was much less serious than the danger that an all-public board would lose its effectiveness because of some serious errors of judgment of Government officials forced to make their decisions without the tedious and trying process of obtaining intimate insight into the issues through partisan participation.

Another criticism that was made of partisan participation in policy and case determination was the danger that the vote of the public members might be unduly influenced by pressure from one side or the other. There was, indeed, some possibility that an inexperienced member might misinterpret the occasional vehemence of a partisan member. The danger, however, was too slight to warrant serious concern. For one reason, any special pressure emanating from one side was promptly balanced by corresponding pressure from across the table. Secondly, if a public member had been unduly influenced by pressure, that fact would soon have become clear to his colleagues. The

²⁹ For the official correspondence regarding this incident see the NWSB report, pp. 52-55.

inevitable results would have been a loss of his effectiveness and prompt complaints from one or both groups of partisan members to the National Board, followed probably by eventual transfer to a less influential position. The appeals procedure was a further safeguard against such a mistake.

B. THE POSSIBILITY OF OUTVOTING THE PUBLIC MEMBERS

Tripartite action inevitably presented some danger that the impartial members, who were especially responsible for representing the public interest, might occasionally find themselves in the dissenting minority. There was, of course, the possibility of poor judgment on the part of the public members, so that each instance of outvoting cannot be considered *prima facie* as a reverse for the public interest.

There were few instances of outvoting in the processing of dispute cases. Here the interests of the parties were diverse, and there was no likelihood that the partisan members could find a common ground that would be unsatisfactory to the public members. For a time on one of the Board agencies the partisan members often conferred on cases in advance of the discussion in executive session. By a process of bargaining they reached agreement regarding their decision on many of the issues. The public members in this situation had only the choice of concurrence or dissent. In most instances they readily concurred. When they thought the agreement ran counter to the stabilization program and could not persuade the partisan members to reconsider their preliminary decision, their remedy was to request the public members of the National Board to call the case up for review.

The real danger that the public members might be overridden lay in the voting on voluntary applications for approval of wage increases. Even this possibility seldom became an actuality. As mentioned earlier in this chapter (p. 252), the industry members on the National Board and most of its agencies quite consistently opposed any wage increase that would be inconsistent with the Board's stabilization policies. The reports of the chairmen of the Board agencies, published in volume I, part II of the Termination Report, indicate that in most of these agencies the public members were not outvoted more than a half-dozen times in approximately 3 years. One of the chairmen reports, however, that this happened on a few early key cases that set an unfortunate precedent for later actions.³⁰

When outvoted, the public members of regional boards usually let the matter rest, if they thought that the issue was of little consequence or that there was enough room for individual judgment so that the decision was not clearly in error. To take care of the other instances, the National Board provided that cases could be forwarded,

³⁰ The Termination Report, vol. I, p. 601.

at the request of the dissenting public members, to the National Board for review before the release of the decision. This practice was followed frequently in one of the regions.³¹ This procedure was likely to correct any serious error, for the partisan members of the National Board were persons of exceptional standing who took their public responsibility seriously. So far as can be determined, there were not more than three or four instances in which the public members of the National Board were outvoted. If this had been a real problem, it might have become necessary for the President to transfer elsewhere the function of administering wage stabilization.

Outvoting of the public members was a somewhat more frequent occurrence on the regional boards of the NWSB, especially in connection with cases involving a wage increase based on a collective bargaining agreement. However, the referral of cases to the National Wage Stabilization Board for preview resulted in sustaining the judgment of the public members in all major cases.³²

C. EFFECT ON STAFF ACTIONS

The general effect of tripartitism on the activities of the Board's personnel was to make the staff members especially careful to avoid any partiality. Any evidence of partiality was certain to cause prompt complaint.

There were occasional instances in which a partisan member attempted to influence a staff member. These usually involved an effort to obtain special priority in the processing of a particular case or to obtain favorable action by a Wage Stabilization Director in a Form 10 case. In general the policies of the public members and the self-restraint of the partisan members gave the staff adequate protection from subjection to influence, though there were some instances where the promotion of a staff member was blocked by a partisan member, whose displeasure he had incurred.

D. FACTORS INFLUENCING EFFECTIVENESS

The extent to which the effectiveness of each partisan member was influenced by his methods and temperament has already been discussed. The importance of his having full knowledge of industry practices has also been emphasized. The desirability of his having had considerable experience in collective bargaining is too obvious to need elaboration. Labor members were certain to have such experience, but many prominent employers who might have been considered for appointment had had little or no such experience, either because their plants were unorganized or because they personally specialized in other aspects of managerial operations.

³¹ *Ibid.*, p. 741.

³² The NWSB Report, pp. 304-305.

One of the most important determinants of effectiveness and the one that was most difficult to provide was regularity of participation. Regular attendance was desirable for several reasons. In the first place, experience showed that considerable experience as a member of a board or commission was a prerequisite for constructive participation. The necessary length of time varied with the individual, but full effectiveness could not be achieved in less than several weeks. This much time was necessary to become familiar with Board procedures and policies and with the precedents established by earlier cases. Secondly, any interruption of service soon left a member out of date, since policies and procedures were in a state of constant flux and development. Thirdly, many dispute cases had to be discussed in a number of meetings, often stretching over a considerable period of time, before final decision on all the issues could be reached. If the partisan members who attended the hearing or had made a special study of the case were not in attendance when the case was ready for the docket, it was necessary either to defer consideration or to use members who were less familiar with the details of the case. When the issues were complicated, such unfamiliarity was a very serious handicap. Fourthly, irregular attendance weakened a member's contacts with his colleagues and with his constituents. Lastly, interruptions in service made it impossible to determine which member should be consulted for prior discussion of a particular case. The partisan members of some Board agencies frequently gave some of their counterparts on the National Board full information regarding an important case that was coming up on appeal, only to learn later that these members had not been in attendance when the case was decided.

Although the partisan members all recognized its importance to themselves and their constituents, regular attendance was never widely achieved. Only a modest improvement in this respect was obtained as time went on. Just when prominent management and union officials were wanted for service with the Board or its agencies, these people found that their regular positions and other wartime activities were making unusual demands on their time. The unions increasingly assigned some of their officials to full-time work with the Board, but management made little progress in this respect.

IX. INTEREST OF LABOR AND INDUSTRY IN PARTICIPATION

Since the most important determinant of the success of any governmental machinery for the settlement of labor disputes is the acceptance of that machinery by the parties, the merits of tripartitism cannot be adequately assessed without consideration of the attitude of labor and industry toward this form of organization.

On this point there is no room for doubt. Tripartitism was strongly preferred to any alternative organization not only by the top officials of unions and, to a lesser extent, of employers' associations, but also by local unions and individual employers. This conclusion is supported by the experience of all the Board agencies in their efforts to encourage parties to hold their hearings before a hearing officer rather than a tripartite panel. Hearing officers were used only with the consent of the parties. As an inducement to such consent, it was widely known that decision of a case could usually be obtained somewhat faster if a hearing officer were accepted. Also, the hearing officer would conduct the session at the site of the dispute, thus saving the parties the expense of travel to the agency office. Nevertheless, every agency found that in a vast majority of the cases the parties refused to accept a hearing officer, although they knew that in either case the final decision of the issues would be made by the tripartite agency. In other words, most of the parties wanted tripartitism not only at the final stage, but at every stage of the procedure.

Another indication of this preference is to be seen in the history of the West Coast Lumber Commission. Its original partisan members were persons not directly connected with the industry. This practice was subsequently discontinued.³³

The conviction of industrial leaders as to the desirability of tripartitism was well attested by the fact that all eight of the industry members of the National Board joined in a letter to the editor of the *New York Times* to refute an editorial attack on partisan participation in administration of the wage-stabilization program. They defended tripartitism as the only means of obtaining the full cooperation of labor and industry that is essential to maximum production. The letter continued:

But above all, and why we plead for the tripartite principle in a war labor board such as ours is this: It brings to one table representatives of management and labor. It gives to every member the right to speak his piece and to find out why the other fellow disagrees. No one can serve on any tripartite labor board without learning plenty, including tolerance. Discussion across the table develops truth, exposes fallacies. It is democracy working in the raw.

With all due respect to the public members of the national and regional boards, they, too, need the education which management and labor can give them and which they would not get if they sat alone without the voting check of management and labor.³⁴

As indicated in the preceding section, this unanimity of industry support for the tripartite principle did not continue throughout the postwar readjustment period. In submitting their original resignations, the two industry members of the NWSB said that one of their

³³ *The Termination Report*, vol. I, pp. 1064-1065, 1067.

³⁴ *New York Times*, March 28, 1943, sec. 4, p. 8.

reasons was “* * * because in our considered judgment, the continuance of the so-called tripartite arrangement of this and similar boards is inadvisable.”⁵⁵ In their letters agreeing to prolong their services, each said:

* * * My letter of July 18 was motivated principally by a feeling that a tripartite system of law administration had outlived its usefulness and * * * should be terminated. I believe that this system, however justified in wartime is inconsistent with the normal precepts of the administration of Government in peacetime.⁵⁶

It developed, however, that these views were shared by few of the industry members of the regional boards. The industry members of the Second Regional Board released a statement that read, in part, as follows:

We believe that industry generally throughout the country is in agreement that all price and wage controls should be terminated forthwith. However, while OPA continues, reasonable wage controls must also continue. A wage-control board in our opinion is strengthened and the public interest is better served with American industry actively represented on that board.⁵⁷

Industry members from 7 of the 11 regions—some of the members of the more distant boards were unable to attend the meeting and a few refused to—declared that the statement just quoted “* * * represents the considered judgment of employers and employer associations in their regions.”⁵⁸ Thus nearly all of the industry members preferred to continue tripartitism even in peacetime as long as wage controls remained in effect. This difference of opinion in industry circles regarding the desirability of tripartitism has continued to the present time.

Some experts in arbitration have suggested that public membership on a Government agency is an absurd redundancy and that the NWLB structure was inconsistent with established practices in labor arbitration. On the contrary, a similar composition is often used in private arbitration. The use of arbitration boards is far from novel. Some arbitrators prefer to serve on them; some prefer to serve alone. It is especially significant that the parties frequently prefer to use such a board in spite of its additional cost. At least, there is no absurdity in transplanting this structure from private to governmental arbitration. Its importance in the latter case is much greater, for it is there the requisite to obtaining at least some considerable degree of voluntarism.

In still another respect management and labor had a mutual interest in tripartitism. Many of the partisan members believed that

⁵⁵ The NWSB Report, p. 52.

⁵⁶ *Ibid.*, p. 53.

⁵⁷ *Ibid.*, p. 54.

⁵⁸ *Ibid.*, p. 55.

their experience on the Board and their close association with the members of the other side of the table would give all of them a better understanding of the problems of labor-management relations and would contribute toward a more constructive relationship in the post-war era. With reference to this particular consideration, the rotation and turnover, among the partisan membership was a blessing rather than a misfortune.

X. ALTERNATIVES TO TRIPARTITISM

The most obvious alternative to tripartitism is an all-public board. The relative advantages and disadvantages of this alternative have been discussed at several places earlier in this chapter. There seems little doubt about the preferability of tripartitism in dispute settlement, but somewhat more doubt regarding its use in wage control.³⁹

A second alternative is an all-public board with a bipartisan advisory council, as used in the War Manpower Commission. It seems very doubtful that such a form of organization would have been successful in the work of the NWLB. An advisory council, meeting occasionally, could not provide the technical information and guidance that contributed to the practicability of Board decisions in individual cases. It could offer counsel regarding major policy decisions, but such advice would surely be less valuable than if offered by the same persons when they were participating fully in the work of the Board. It is almost impossible at occasional meetings for an advisory group to gain a complete understanding of the problems confronting an agency.

Moreover, serious problems are likely to arise if the advice offered by such a group is not followed closely. It seems clear that compliance and enforcement would have deteriorated seriously in such a situation. Thus the members of an advisory council might become virtual dictators of policy without having any real public responsibility. A New York Times editorial of March 28, 1943, advocating administration of wage control by an all-public board with bipartisan advisors said: "* * * public powers of compulsion should be placed in the last analysis in representatives of the public alone." It is, however, possible that the public members had in effect more

³⁹ In fact, the administration of salary control was on an all-public basis under the Commissioner of Internal Revenue. Adjustment of salaries of \$5,000 or more per year and of lower salaries paid to unorganized executive, administrative, or professional personnel were under the control of that official. This experience, however, cannot be compared usefully with that of the NWLB. There is nothing to be gained by the use of tripartitism for wage control of unorganized employees unless their compensation is directly related to that of other employees who are subject to tripartite control.

authority under tripartitism than they would have had under the advisory-council form of organization.

The use of advisory councils representing groups intimately affected by Government orders seems better suited to Government programs that can be readily enforced than to agencies that have a delicate problem of compliance and enforcement. Such organization would also be more feasible in an agency with a definitely prescribed program than in one that must formulate most of its own policies, for in the former case the scope of the advice would be more definitely delimited. Thus an advisory council might have been a more acceptable alternative to tripartitism on the NWLB, if the Board had been given at the outset a detailed list of principles, instead of having to work out all its policies on a case-by-case basis; but, as was indicated in chapter 2, this approach would have been impractical.

A third possibility is to use partisan representatives as continuously as under tripartitism, but to deprive them of the vote and restrict them to advisory functions. This alternative would have the advantage of providing the desired guidance in the consideration of individual cases as well as in the determination of major policies. However, it would not reduce the wrangling in Board meetings or shorten them. It would help but little in obtaining acceptance of the general program by management and labor or acceptance of individual decisions by the parties. It might well result in less constructive participation by the partisan members, for an advisory group is sure to feel less responsibility than a voting group.

It is even doubtful whether such a structure could long be kept intact. It would be difficult, and perhaps impossible, to persuade labor and industry leaders to accept advisory positions that would require so much of their time. In addition, the problem of protest resignation would be more serious because there would be less to lose by withdrawal. Individual resignations might well occur from frustration. It has been indicated that partisan members in a tripartite structure, in spite of their considerable accomplishments, face considerable frustration from being frequently outvoted by the public members. This reaction would surely be much stronger if there were no safety valve of at least casting an official vote and occasionally writing a dissenting opinion. Without this possibility, the dissents would then be voiced unofficially and in different language.

XI. CONDITIONS FAVORABLE TO TRIPARTITISM

The success of the Board's experience with tripartitism was undoubtedly due in part to several favorable background conditions.

In the first place, labor relations were on a somewhat more stable level than they had been during most of the preceding decade. The general nature of these relations had been undergoing rapid change since 1933, but by 1942 the pattern was taking shape. The task of mediation and arbitration is especially difficult when relations are in the midst of a major transition, because of the absence of definite criteria on which to base decisions. The basic change occurring in labor relations in the early thirties was one of the factors that made the tasks of the NRA labor boards too difficult for satisfactory accomplishment.

Secondly, the existence of a grave national emergency made the partisan members more willing to work smoothly together for a common purpose. The experience of the NDMB and the NWSB gives some indication that tripartite agencies may have more difficulty in maintaining unity in times of peace.

Thirdly, all of the members of the Board and its agencies were in complete support of the objectives of the war effort, in which the Board was playing a vital role. The presence of any disloyal members, of course, would have been intolerable.

Fourthly, moderate inflation is probably the business condition most conducive to successful tripartite settlement of labor disputes. An environment of deflation might give rise to bitter conflict among the members over wage reductions. Under rapid inflation, the operations of any arbitration agency are likely to be disrupted by the constant shifting of wage rates and other terms of employment, leading to instability in the criteria used in case decisions. During a period of slight inflation, workers can be awarded occasional improvement in their terms of employment without serious opposition from management and without harm to the public interest. The NWLB operated under favorable circumstances in this respect so long as the price-control program was fairly effective and the wage-stabilization program not too rigid.

In one respect, the NWLB suffered a serious handicap. The availability of an adequate supply of impartial persons experienced in mediation and arbitration to serve as skillful public members is a factor favorable to successful tripartite action. The NWLB did not have this advantage. Many public members on Board agencies and panels had to be trained on the job. Nearly all of the Board agencies contained more than one public member, so that there was usually a master craftsman present to train the apprentice. The partisan members also were of great assistance in this respect. In fact, many of them contributed so much to the education and training of new public members that this service should be listed as one of their major functions. The overcoming of the handicap of inexperienced personnel by the NWLB shows more clearly the strength of tripartitism.

XII. CONCLUSIONS

The major conclusions that have been reached in the course of the preceding discussion may be summarized as follows:

a. Voluntary acceptance of, or acquiescence in, a dispute-settlement or wage-stabilization program by management and labor is essential to its success.

b. Such acceptance can be obtained most fully under tripartite operation.

c. Tripartitism gave labor and management a genuine veto power but one that could be used only at a considerable sacrifice.

d. The greatest benefit of tripartitism was its contribution to compliance.

e. A benefit of nearly equal importance, though one not obtained in all Board agencies, was its contribution to a complete understanding of each case by the public members and the consequent assurance of practicable decisions. This result of course also contributed to compliance.

f. Other benefits included protection against appointments by political pressure and added assurance that case action on the part of staff and public members would not be partial to either of the parties.

g. The scope of tripartite action properly included policy determination, the decision of dispute cases and Form 10 appeals, and the approval of appointments to public membership. It properly excluded action on routine voluntary wage applications after enough had been processed to establish clearly the standards for decision. It should not have included staff personnel administration. It also is concluded here that it should not have included the preliminary consideration of enforcement cases.

h. The disadvantages and dangers inherent in tripartitism were appreciable, but were far outweighed by the advantages. The dangers included outvoting of the public members, undue influence on the staff or on the public members, disclosure of confidential information, and withdrawal from participation. There was less danger of withdrawal from a tripartite board than of withdrawal from an advisory board or of loss of effectiveness on the part of an all-public board.

i. The most serious disadvantages of tripartitism were its time-consuming character and the difficulty of obtaining regular partisan attendance.

j. During the period covered by this study labor and management strongly preferred tripartitism to any of its alternatives.

Jurisdiction

By Jack G. Day

I. INTRODUCTION

JURISDICTION in the sense of this chapter is simply authority to act. This is to be distinguished from policy or power to act in a particular way. Because of the delegated character of Federal powers and because the authority of Federal agencies is under consideration, a jurisdictional analysis should logically encompass the constitutional basis for authority. However, since it is reasonably clear that the war powers would have sustained the Government's labor program had a direct constitutional test arisen,¹ this chapter deals only with the delegation and limitation of power by Executive order and statute and the administration of jurisdiction by the agencies themselves in the exercise of the inherent authority and duty to determine the scope of granted powers. It is important to recognize that in practice, the application of the inherent power may involve either an affirmation of jurisdiction or declination to accept decisional obligations in a particular case or type of cases. Such rejection would arise, not from lack of power to act, but rather as a matter of self-restraint motivated by policy considerations, such as a desire to avoid possible complications with agencies having an impinging jurisdiction or the wish to avoid cases of relatively little importance to main objectives even though clearly authorized.

¹ *Billings v. Truesdale*, 321 U. S. 524 (1944); *Falbo v. United States*, 320 U. S. 549 (1944); *Estep v. United States*, 327 U. S. 114 (1946); *Hirabayashi v. United States*, 320 U. S. 81 (1943); *Korematsu v. United States*, 323 U. S. 214 (1944); *Yakus v. United States*, 321 U. S. 414 (1944); *Bowles v. Willingham*, 321 U. S. 503 (1944); *Woods v. The Cloyd Miller Co. et al.*, 333 U. S. 138 (1948); *Prize cases*, 2 Black 635; *Duncan v. Kahanamoku*, 327 U. S. 304 (1946).

Critical approaches to the jurisdictional problem, as distinguished from the merely descriptive, soon become involved with issues beyond the questions of how much and what authority. For the critic the main question will be what the scope of jurisdiction ought to be. Although the quick and apparent generalization in response to this question lies in the purpose of the agency and an estimate of the power requirements for that purpose, realism will insist that political feasibility must be a constant qualifier in any decision respecting jurisdiction, just as it is in any other policy decision in Government.

II. THE JURISDICTION OF THE NDMB

Executive Order No. 8716, establishing the NDMB, contained no complicated jurisdictional factors. Paragraph 2, the heart of the order, recited only two jurisdictional qualifications, both procedural. The controversy had to be certified by the Secretary of Labor and incapable of adjustment by the conciliation commissioners in the Department of Labor. On the substantive side, the order granted authority over a dispute or controversy "which threatens to burden or obstruct the production or transportation of equipment or materials essential to national defense," but limited the power by excluding disputes within the Railway Labor Act. A further restriction was implicit in paragraph 2 (e), providing that disputes over "the appropriate unit or appropriate representatives to be designated for purposes of collective bargaining" were to be handled by way of request to the National Labor Relations Board to expedite the necessary determinations. The Board was empowered to refer to the Department of Labor uncertified disputes which might come to its notice, but it had no power to take such cases on its own motion.

The Board ordinarily treated certification by the Secretary of Labor as conclusive of jurisdiction. The one exception arose when a dispute, primarily between rival unions at Busch-Sulzer Bros. Diesel Engine Co. was closed for want of jurisdiction. According to the report on the work of the Board, the ground for refusal was that the dispute was not between an employer and employees.² This reasoning fits in with the description of jurisdiction in paragraph 2 of Executive Order 8716. But both the rationalization of the action in the *Busch-Sulzer Bros.* case and the language of the order are difficult to reconcile with

² U. S. Department of Labor, Bureau of Labor Statistics, Report on the Work of the National Defense Mediation Board, Bulletin No. 714 (1942), p. 5 (hereinafter referred to as The NDMB Report). There is no intention to suggest here that the question whether a "labor dispute" existed in the technical legal sense was a material consideration in the Board's decision.

a later willingness to act in the *Consolidated Edison Co.* case.³ That case, like the earlier one, involved a work-jurisdiction dispute. Both disputes were characterized by a lack of employer-employee relationship. One difference of importance to the Board was the intrafederation character of the dispute in the *Busch-Sulzer Bros.* case, in contrast to the affiliated union versus independent union aspects of the *Consolidated Edison* case.⁴ For this distinction one may admit a certain realism and political expediency without attempting a logical reconciliation between the *Consolidated Edison* case and the language of the Executive order. In any event, the Board did accept extramural jurisdictional controversies. Usually these involved representation questions and were handled by persuading the workers to resume production in exchange for an attempt by the Board to expedite NLRB proceedings.⁵

NDMB jurisdiction to accept and act in a dispute was not limited because the issues concerned were within the bailiwick of the NLRB. What Executive Order 8716 did limit, at least by implication, was the disposition to be made in a case involving appropriate unit or representation questions. No similar qualification, expressed or implied, was made for unfair labor practice problems in disputes which might be certified to the NDMB.⁶

Generally, however, the Board conducted with restraint those of its affairs touching questions under the NLRA. Apparently the Executive order contemplated the handling of representation questions by the NLRB. This contemplation was consistently honored by the reference of representation questions to that Board, and a comparable deference was also exhibited in affairs involving unfair labor practices. In addition, close cooperative relationships were maintained even on the interpretive level. The NDMB made a practice of checking with NLRB sources, both formally and informally, on matters before it which could involve NLRA policy questions. There were instances of accommodation by each agency to the requirements of

³ *Ibid.*, p. 209.

⁴ The case histories attached to The NDMB Report at pp. 147 and 209-210 suggest a possible additional distinction. The Mediation Board may have regarded the Busch-Sulzer Bros. dispute as primarily between unions, and the Consolidated Edison Co. controversy as primarily between employer and employee. However, the report in the latter case reveals local 3 of the International Brotherhood of Electrical Workers as the active union disputant. The members of local 3 were not employees of the company and were disputing a work-jurisdictional point affecting two unions and paralleling the Busch-Sulzer Bros. dispute so closely as to sap the distinction of much difference.

⁵ On at least one occasion the Board did not respect an NLRB order directing a company not to bargain with a union. This was distinguished by two exceptional factors—cessation of production and the absence of a competing union. Cornell-Dubliner Electric Corp., The NDMB Report, p. 95. The case history does not discuss the exceptional factors, but see *ibid.*, pp. 34-35 for general discussion of Board handling of questions involving the National Labor Relations Act.

⁶ Sec. 2 (e). However, there may be some room for doubt whether, even in time of emergency, the President could place authority in an agency of his creation when that same authority had been vested elsewhere by the Congress.

the other. The relationship has been characterized as "altogether harmonious."⁷ The importance of this type of relationship between governmental authorities with contiguous powers can hardly be overstated.⁸

In three respects of jurisdictional significance, the authority of the NDMB differed from that of the NWLB. The NDMB had no power to take a case on its own motion for any purpose. However, once in charge of a controversy, it could mediate broadly with relatively insignificant limitations. On the other hand, it had no authority to decide an issue, but could only recommend.⁹

III. THE JURISDICTION OF THE NWLB

A. DISPUTES JURISDICTION FROM EXECUTIVE ORDER 9017 TO EXECUTIVE ORDER 9599

The jurisdictional propositions in Executive Order 9017 establishing the NWLB, were stated in very general terms. The conferring sections provided techniques for settling labor disputes "which might interrupt work which contributes to the effective prosecution of the war,"¹⁰ but excepted all labor disputes subject to existing alternative procedures for adjustment or settlement until those procedures had been exhausted. On the strength of the "whereas" clauses it is possible to interpret the authority over disputes broadly, limited only by its effect on the prosecution of the war. These clauses recited the national interest in no interruption in any kind of work contributing to the effective prosecution of the war. They also referred to the agreements of the labor-management conference covering the elimination of strikes and lockouts, the settlement of all labor disputes by peaceful means, and the creation of a national board for the peaceful adjustment of disputes.

Procedural prerequisites to certification of a dispute to the Board by the Secretary of Labor included collective bargaining and the intervention of the Conciliation Service. But the Board was given

⁷ The NDMB Report, p. 35.

⁸ See also the Duquesne Light Co., The NDMB Report, p. 166, where similar restraint was demonstrated in relation to a State agency with jurisdiction of representation questions.

⁹ However, even in the mediation phase of emergency labor relations handling, the Army and Navy were just offstage, as evidenced by four seizures during the life of the NDMB. Cf., *ibid.*, p. 2 and pt. V.

¹⁰ Subsequently, Executive Order 9599 (post VJ-day) provided that officials administering labor-dispute settlements in accordance with Executive Order 9017 and sec. 7 of the War Labor Disputes Act consider "that labor disputes which would interrupt work contributing to the production of military supplies or interfere with effective transition to a peacetime economy are disputes which interrupt work contributing to the effective prosecution of the war." This enlargement evidently was aimed at forestalling controversy over the Board's jurisdiction after the shooting war had ended.

discretionary authority to take cases on its own motion after consultation with the Secretary. After the vesting of jurisdiction, the widest latitude was allowed the Board in determining the dispute. Mediation, voluntary arbitration, or arbitration under its own rules were permissible modes of settlement. A conforming clause provided that nothing in the order should be construed as superseding or in conflict with existing labor laws.¹¹

Thus was the framework for the disputes function of the Board established. Ultimately it was to be extended by Executive Order 9250 to cover "all industries and all employees"¹² in disputes concerning wage adjustments.

The Board's jurisdiction was further extended by the War Labor Disputes Act, which added a specialized disputes function for seizure cases.

The NWLB delineated its own jurisdiction under the Executive Orders and Statutes.¹³ In determining its jurisdiction the Board took the broad view.

Determinations respecting jurisdiction were probably influenced favorably to a broad interpretation by the Board's concept that its orders were mere "declarations of the equities" in labor disputes and were therefore not subject to judicial review or restraint. Fully aware that this condition drew after it the impossibility of judicial recourse for the enforcement of its orders, the Board nevertheless regarded this lack of enforcement power as a point of strength. Whatever paradox this seems to raise can be resolved in the light of the Board's firm belief in keeping labor relations on a voluntary basis and out of court. This conviction went deeply enough for the Board to work actively to persuade Congress to omit from the War Labor Disputes Act any provision for judicial enforcement or review.¹⁴ Working solutions, not legal niceties, provided the cutting edge in Board operations.

¹¹ The statutes specified were the Railway Labor Act of 1926, as amended, the National Labor Relations Act of 1935, the Fair Labor Standards Act of 1938, the Public Contracts Act, approved June 30, 1936, and the act amending the act of March 3, 1931, relating to the rate of wages for laborers and mechanics approved August 30, 1935 (Davis-Bacon Act). For a decision turning on the conformance clause, see *Allis-Chalmers Manufacturing Co.* case No. 111-3511-D (October 12, 1943). In effect, matters vested in other governmental agencies under statutes mentioned in the conforming clause were interpreted by the NWLB as exclusively within the cognizance of those agencies and therefore beyond the authority of the Board. Cf. *Potlatch Forests, Inc.*, cases No. 412 and 2540-CS-D (March 14, 1945).

¹² Title III, sec. 1. The Board's view of this section was that it extended jurisdiction, at least in wage dispute matters, to "all industries and all employees * * * whatever the relation of the companies' business to the prosecution of the war may be." *Security Title and Guaranty Co.*, case No. 646 (November 13, 1942).

¹³ For a holding that the parties could not by agreement affect the Board's jurisdiction, see *Pure Oil Co.*, case No. 5-D-737 (August 25, 1944).

¹⁴ See NWLB General Counsel's Memorandum Legislative History of Provisions for Judicial Review of War Labor Board Orders, especially Chairman William H. Davis' letter at the end. The Termination Report, vol. II, pp. 452-462.

In deciding what disputes affected the prosecution of the war, considerable weight was given to civilian morale, the location of a dispute in a large industrial area, and the contagious effect of strikes.¹⁵ In the face of a company contention that a dispute had no substantial effect on the war effort, the Board asserted its jurisdiction with seeming assurance in a case involving the relatively unimportant work of classified advertising solicitors for telephone directories. Both wages and union security were in controversy. In taking jurisdiction the Board spoke strongly of the importance of controlling all wages in the effort to combat inflation but in equally positive terms stated its views on jurisdiction of the nonwage issues:

It is the position of the War Labor Board that the war powers of the President are sufficiently broad to empower him to provide for the final determination of all wartime labor disputes by the National War Labor Board as he has done in Executive Order No. 9017. Therefore, it is the intention of the Board to take jurisdiction of all labor disputes not settled by other peaceful procedures and finally determine them on their merits.¹⁶

The War Labor Disputes Act, passed over the President's veto on June 15, 1943, gave the legislative imprimatur to the powers granted by Executive Order 9250, including the extension of Board functions to "all industries and all employees." It is therefore not surprising that the Board continued to interpret its authority without material inhibition from the act.¹⁷ That there were other inhibiting considerations affecting jurisdiction will be apparent.

1. *The NLRA*.—Conforming clauses in the documentary sources of NWLB authority clearly called for conformance with the National Labor Relations Act. That act and determinations by the National Labor Relations Board pursuant to it covered two types of issues—those involving representation questions and unfair labor practices. An important segment of any representation issue was the determination of the appropriate unit for bargaining.

a. *Bargaining unit*.—As a general rule the War Labor Board would not interfere in any way with an NLRB appropriate unit determination. It ordinarily refused to establish, split¹⁸ or augment¹⁹ the unit, and tended to follow NLRB policy on bargaining-unit matters even where no official designation of units had been made.²⁰ But the National Board, in a case denying a consolidation of bargaining units, did

¹⁵ See *Montgomery Ward & Co.*, case No. 192 (June 29, 1942).

¹⁶ *Rueben H. Donnelley Corp.*, case No. 4207-D (March 29, 1943).

¹⁷ See *Electrical Transcription Manufacturers*, case No. 111-2499-D (July 20, 1943); *Montgomery Ward & Co.*, case No. 3930-CS-D (August 20, 1943).

¹⁸ *Phelps-Dodge Corp.*, case No. 111-1529-D (September 4, 1943); *Curtiss-Wright Corp.*, case No. 111-3715-D (January 13, 1944); *Fall River Textile Mills*, case No. 111-5334-D (February 24, 1944).

¹⁹ *Florida Phosphate Mining Cos.*, case No. 111-1380-D (January 24, 1944).

²⁰ Supervisors were excluded from an agreed bargaining unit in *Cudahy Packing Co.*, case No. 111-209-C (June 30, 1944). See also *Brewster Aeronautical Corp.*, case No. 111-3372-D (September 24, 1943), providing that parties negotiate a separate collective-bargaining agreement for militarized guards.

authorize a subordinate agency to order uniform contracts for several bargaining units if the agency should determine that stabilization and labor relations in the industry justified uniformity.²¹

b. The determination of majority representation.—The boldest safe generality regarding the Board's reaction to disputes over majority representation is that it would "normally decline to act," on the ground that the matter was properly one for the NLRB.²² In a few cases the Board ordered grievance procedures for the members of minority unions, but indicated that this practice would be reserved for exceptional circumstances.²³ In another case,²⁴ wage changes were ordered, with the opinion indicating that during the war "any group of employees" which had exhausted all other procedures for achieving wage increases could come to the Board. This statement was very positively made, though probably unnecessary to a decision in the case in view of the Board's findings that the union represented a majority of the employees for whom it made its demand. Board practice also allowed the handling of supervisors' disputes except for representation and unfair-labor-practice issues.²⁵ There was, of course, some element of recognition of representative status derived even from the handling of nonrepresentation disputes for unrecognized employee groups.

NLRB determinations of representative status were presumed to continue until supplanted by another determination either by that Board or the courts.²⁶ The presumption applied also to voluntary recognitions.²⁷ But whether certified or voluntarily recognized, a clear showing of loss of majority, at least in cases involving contract

²¹ *Ohio Contract Carriers Assn. et al.*, case No. 4648-D (November 9, 1943).

²² *Virginia Electric and Power Co.* case No. 41 (March 11, 1942); *Easy Washing Machine Corp.* case No. 703 (January 9, 1943). See NWLB-NLRB agreement on cases involving Wagner Act questions, January 4, 1944, the Termination Report, vol. II, pp. 584-586. The statement accompanying the agreement indicated that the principles of the agreement applied both to employers engaged in interstate commerce and subject to the National Labor Relations Act, and to employers engaged intrastate but subject to a State labor relations act comparable to the NLRA.

²³ NWLB-NLRB agreement, loc. cit., sec. V.

²⁴ *Anacortes Veneer, Inc.* case No. 111-368-C (December 22, 1943).

²⁵ Resolution of May 18, 1944, War Labor Reports, vol. XV, p. xxxix.

²⁶ *Chicago Transformer Corp.* case No. 111-4581-D (March 1, 1944). A special problem in representation matters was raised by riders to the National Labor Relations Board appropriation acts. The riders prevented the use of NLRB funds to process complaints arising out of contracts between management and labor where the contracts had been in existence for 3 months or more without complaint being filed. Because the statutory language referred only to complaints, the NLRB felt itself uninhibited in representation matters. The NWLB was confronted with the consequence of this situation in *Baste Magnesium Inc.* case No. 111-2980-D (February 9, 1944). The NLRB had certified a CIO union after representation proceedings, but had refused to issue an order to bargain because of the interference of such an order with the company's older than 90 days contract with the predecessor AFL union. The NWLB refused jurisdiction of the dispute over refusal to bargain and later processed a voluntary application for a wage adjustment filed by the company and the AFL union, in spite of the usual NWLB rule that voluntary applications were to be only with the consent of the bargaining representative. See NWLB General Counsel's opinion on a comparable problem, War Labor Reports, vol XXI, p. xcii.

²⁷ *Hooks Motor Lines* case No. 111-4734-D (September 9, 1944); *Steffens Ice and Ice Cream Co.* case No. 111-1568-D (February 11, 1944).

renewals, would result in the Board eliminating issues, such as union security, bearing on the representation question.²⁸

Intrastate representation disputes did not involve conflicts with NLRB jurisdiction. On the contrary, disputes of this variety seemed to be a logical place for the NWLB to operate in the absence of a State labor relations board. The Board held a few representation elections involving intrastate employers. This practice was soon stopped, no doubt because of the burden the cases threatened to become. In general, the Board limited itself in intrastate disputes to the fixing of terms and conditions of employment without reference to representation or exclusive recognition.²⁹ However, the union had to demonstrate that it represented a substantial number of employees; and it was accepted as representative only for its own members,³⁰ unless voluntary exclusive recognition had been extended, in which case it was presumed the status continued.

c. Unfair labor practices.—Again because of conformance obligations, the Board veered away from matters involving unfair labor practices under the Wagner Act. Thus the Board refused to enforce collective bargaining between an employer and a certified union, and instead recommended bargaining³¹ or occasionally issued orders recognizing the status which the NLRB had certified.³² NWLB orders placed on top of orders issued by the NLRB posed a different question. These had apparent consistency with the conformity requirements, but raised an issue respecting the exclusive enforcement jurisdiction of the courts under the Wagner Act.³³ The NWLB might have refused enforcement efforts altogether, consistently with that section. A concession to the problem was the Board's unwillingness to go forward with compliance proceedings while an NLRB order was in litigation for review or enforcement.³⁴

Unfair-labor-practice issues, in general, were complicated by the fact that labor had voluntarily renounced the right to strike in wartime. Board action was the alternative and, when the use of the alter-

²⁸ *Missouri Farmers Assn. Refining Co.* case No. 111-4996-D (August 1, 1944); *Montgomery Ward & Co., Inc.*, case No. 111-5853-HO (January 18, 1944).

²⁹ Resolution of the National War Labor Board of July 12, 1944, War Labor Reports, vol. XVII, p. liii, II (a). Case development on this point preceded the resolution.

³⁰ *Weber Milk Co.* case No. 111-1012-D (June 23, 1944); *Brooklyn Central YMCA* case No. 111-1286-D (June 16, 1944). Some regional boards had gone much further on the recognition question prior to the Board's resolution of July 12, 1944.

³¹ Cf., e. g., *Utah Copper Co.* and *Kennecott Copper Corp.* cases Nos. 111-4944-D and 111-4945-D (February 5, 1944).

³² See *Chicago Transformer Corp.*, footnote 26, supra.

³³ Cf. *Sperry Gyroscope Co.* case No. 70 (April 28, 1942).

³⁴ Conditions attached to NWLB compliance orders provided for the eventuality of a court test. See *Winchester Repeating Arms Co.* case No. 443 (February 5, 1943); *Baltimore Transit Co.* case No. 522 (April 27, 1943).

native raised jurisdictional conflicts between agencies of the Government, some variety of interim action became a virtual necessity pending the final determination of jurisdiction.

Discriminatory discharges, for example, raised special problems handled in a variety of ways in the early experience of the Board. Ultimately the policy in such cases was precipitated in a policy statement worked out after consultation with the NLRB.³⁵ That policy in substance renounced all jurisdiction of discharge cases not involving numbers of men large enough to interfere with the war effort. Where the numbers were sufficient to justify NWLB action, it was proposed to act only after consultation with the NLRB and without prejudice to any proceedings by the latter.

Actually the policy represented an attempt to avoid the welter of discharge cases which would have come to the NWLB if the pivot of jurisdiction had become the absence of antiunion motivation in the dismissal. In practice, however, the Board continued to handle individual discharge cases so long as the union discrimination factor was not apparent.³⁶

2. *Intrastate disputes.*—Regarding certification of disputes by the Secretary of Labor as virtually conclusive evidence of the existence of a dispute that may lead to a substantial interference with the war effort, the Board regularly ordered dispute settlements for enterprises engaged in intrastate commerce. In a series of cases followed by a policy declaration on July 12, 1944, jurisdiction of such matters was put squarely on a war-powers basis.³⁷ Careful hedging protected against trivial cases, against the requirement of exclusive bargaining with a minority union, and against interference with exclusive bargaining rights where voluntarily extended.

In the implementation of this policy, the Board regularly handled a broad group of issues in addition to wages. As a general rule, however, exclusive representation, union security, and related issues were avoided. But voluntary recognition resolved objections to Board action on those issues.

3. *Parties and jurisdictional issues.*—*a. Employers.*—In a few instances the parties to a dispute affected the problem of jurisdiction. A good example was that of nonprofit and charitable enterprises, which were excluded from NLRB jurisdiction but not from that of the NWLB. This problem was related to the issue of jurisdiction in intrastate disputes. The NWLB determined at first that it had juris-

³⁵ May 4, 1943, War Labor Reports, vol. XI, p. 579.

³⁶ *Armour and Co.* case No. 111-644-D (August 1, 1944); *Pennsylvania Power & Light Co.* case No. 111-4840-D (January 25, 1944).

³⁷ See footnote 29, *supra*.

diction of such enterprises.³⁸ Later considerations motivated a policy denying jurisdiction of representation issues in intrastate disputes generally³⁹ and eventually the whole jurisdiction of nonprofit and charitable institutions was relinquished.⁴⁰ This represented a voluntary abandonment of jurisdiction, to which the Board made an exception in deciding a dispute between nonprofit hospitals and their union, which had been certified to the Board about 1 year before the policy on such disputes crystallized.⁴¹ The Board also voluntarily declined jurisdiction of disputes involving local governments. The decision not to take jurisdiction of disputes between municipalities and their employees may have turned ultimately on political rather than purely legal considerations, but in any event the tone and development of the opinion written by public member Morse⁴² left little doubt that an affirmation of jurisdiction could have been supported if the Board had thought it necessary to the war effort to do so.

b. Employees.—Jurisdiction over representation questions for agricultural workers was denied on policy grounds. The Board thought Congress deliberately excluded them from the NLRA and thus expressed an intent to keep the Federal Government out of representation questions affecting them.⁴³ With the passage of the War Labor Disputes Act, the Board lost jurisdiction over agricultural workers on all dispute questions.

Supervisory employees also posed a problem. It was contended that they were not employees within the meaning of the War Labor Disputes Act and that therefore controversies over their terms and conditions of employment were not labor disputes within the meaning of that act. The Board rejected these contentions and proceeded

³⁸ *Brooklyn Central Young Men's Christian Association* case No. 111-1286-D (August 11, 1943). The YMCA's anti-jurisdiction contentions were: (1) the YMCA was not within the jurisdiction of the NLRA since it engaged in intrastate commerce only, (2) the New York State Labor Relations Act specifically exempted charitable institutions from collective bargaining and (3) charitable institutions should not be required to bargain collectively. The Board rejected the arguments pointing out that it had previously taken jurisdiction of intrastate disputes, that the New York Constitution recognized the right of all employees to bargain collectively, thus overriding any provision of the New York Labor Relations Act to the contrary, and that charitable organizations are required to conform to wage stabilization policies. Issues other than wages were involved in the case. The Board later declined jurisdiction of the representation issues. See War Labor Reports, vol. XVII, p. 249.

³⁹ See *Simon J. Murphy Co.* case No. 111-1228-D (February 4, 1944).

⁴⁰ NLRB General Order No. 26, January 22, 1943, permitted charitable and nonprofit institutions to make wage adjustments without approval. This order, coupled with the *Simon J. Murphy* decision, severely limited jurisdiction in the institutional cases. At last the Board adopted a resolution providing for the return of disputes involving charitable or nonprofit organizations to the Conciliation Service. See the Termination Report, vol. I, p. 34.

⁴¹ *Beth Israel et al.*, case No. 111-2827-D (July 27, 1945).

⁴² *Municipal Government, City of Newark, et al.*, case Nos. 47 and 726 (December 24, 1942).

⁴³ *California Packing Corporation* case No. 111-549-D (February 4, 1944).

to process the cases, excepting only those issues within the jurisdiction of the NLRB and related matters such as union security.⁴⁴ At this time the NLRB decision in the *Maryland Drydock Co.* case, denying bargaining rights to supervisory employees, represented the majority view of that Board. When this decision was reversed in the *Packard Motor Car Co.* case, the NLRB began to consider union security issues along with other terms and conditions in supervisory employees' disputes.

4. *Nature of issues as affecting jurisdiction.*—As has been stated, issues within the jurisdiction of the NLRB represented a required exception to NLRB jurisdiction. Other types of issues were voluntarily renounced. For example, the Board refused to concern itself with the internal affairs of a union,⁴⁵ and declined to order contract clauses affecting postwar issues.⁴⁶ In both situations the decision was based on lack of jurisdiction. The Board also declined to act on hypothetical issues; whether from reasons of policy or as a matter of jurisdiction does not appear.⁴⁷

An early decision regarded a dispute over contract reopening for wage purposes as a jurisdictional question.⁴⁸ Later decisions in comparable situations supported the view that such matters were not jurisdictional in nature. Rather, said the Board, jurisdiction is clear, the relevant argument goes to the question of appropriate disposition of the issue.⁴⁹

5. *Conflicts with State law.*—In a number of States, statutes and constitutional provisions affected terms and conditions of employment. Where they did not conflict with Board policy, the State laws were given effect.⁵⁰ Conflicts arose when Board orders went counter to the State expression on the subject. The Board early affirmed the supremacy of its orders in these circumstances, basing its decision squarely on the supremacy of Federal war powers. In a leading case on the question,⁵¹ the Board stated in part:

The war powers of the President and Congress, under which the Board derives its authority to order the * * * company and its employees to abide by the maintenance-of-membership clause of the Board's directive order, are

⁴⁴ See *Murray Corp. of America et al.*, case No. 111-2382-D, also the Resolutions of May 18, 1944, and September 8, 1944, discussed in the Termination Report, vol. I, pp. 34-35.

⁴⁵ *Weber Show Case & Fixture Co.* case No. 2749-D (July 30 and November 9, 1943); see also *S. A. Woods Company* case No. 160 (August 1, 1942).

⁴⁶ *Glenn L. Martin Co.* case No. 111-7696-D (October 21, 1944). Cf. *Western Association of Wholesale Opticians* case No. 111-6648-D (September 7, 1944) for a different view of the problem of the post-war issue.

⁴⁷ *Ozan Lumber Co.* case No. 111-5830-D (February 26, 1945).

⁴⁸ *Major New York Film Exhibitors* case No. 111-60-C (May 17, 1943).

⁴⁹ *American Steel Foundries et al.*, cases Nos. 111-4190-HO, 111-5862-D, 111-6071-D (May 29, 1945).

⁵⁰ *Servel, Inc.* case No. 111-6878-D (May 10, 1945). (State law required employers to pay employees weekly if the employees requested it.)

⁵¹ *J. Greenebaum Tanning Co.* case No. 879 (August 28, 1943).

superior to and supplant any legislation of the State * * * which would place restrictions or conditions upon the maintenance-of-membership provision which the Board has seen fit to apply. The Board has arrived at this conclusion upon the premise that the absolute necessity for peaceful and prompt settlement of wartime labor disputes calls for full use of those broad and extensive powers of the President and Congress heretofore designated as the war powers.

When the issue arose again in interpreting the requirement of the War Labor Disputes Act that NWLB decisions conform to certain specified laws and all other applicable provisions of law, the Board concluded that the language of the statute had reference to Federal laws only. The point of supremacy became well established.⁵² At least one State supreme court was in accord.⁵³

Wartime disposition of labor problems demanded the extensive jurisdiction placed in the NWLB. The breadth of the jurisdiction inevitably brought the activities of the Board to points that impinged upon the jurisdiction of other agencies such as the National Labor Relations Board and the Treasury's Salary Stabilization Unit. The many jurisdictional exceptions and conforming clauses were designed to fit the parts together or to serve a special interest, sometimes purely political. Such efforts could not obviate all jurisdictional controversy and sometimes were sources of it. Day-by day operations brought up problems affecting jurisdictional authority that no general propositions could fully anticipate.

War enforces such enormous demands in the labor field that an argument for a complete integration of all jurisdiction in matters affecting labor has some apparent sense. But the actual implementing of such a decision would no doubt evoke problems not foreseeable. However, integration was not attempted on anything like a complete scale during World War II. In fact, it may be true that more integration should have taken place than did. For example, salary stabilization jurisdiction, reserved to the Treasury Department, might have been put in the NWLB. Such a move probably would have developed more uniformity in treatment for all salaried employees and certainly would have helped resolve some suspicion of discrimination which inevitably arose when the responsible agencies acted differently or seemed to diverge on matters of policy. Also strike control might have been simpler had the NWLB had more authority. Representation and unfair labor practice issues were outside the NWLB jurisdiction. Strikes over such controversies were not. Therefore, ability

⁵² See *United States Vanadium* case No. 111-1021-D (January 21, 1944); *Universal Products Co.* case No. 111-7502-D (June 21, 1944). The principle applied to conflicting State constitutional provisions as well as statutes. See *Radio Station WFTL* case No. 111-9032-D (July 5, 1945).

⁵³ *International Brotherhood of Paper Makers, A. F. of L. v. Wisconsin Employment Relations Board*, October 10, 1944, Wisconsin Supreme Court, War Labor Reports, vol. XIX, p. 249.

to condition progress on the merits of the dispute with the resumption of full production, the usual procedure, was not completely within the NWLB authority.

Regardless of speculative possible improvements in the jurisdictional powers of the NWLB, it is apparent that, tested by pragmatic standards, jurisdiction was sufficient to the demands put upon the Board. Few major disputes were outside its authority, and the powers of the Board were sufficient to meet all but relatively few of those within its jurisdiction. On the latter score, the ingenuity of the public members of the Board, backed by the partisan representation, is certainly more to be credited than any mere jurisdictional arrangement. However, the authority had to be sufficient to allow for the imaginative operation which Board personnel brought to wartime labor problems.

2. *Disputes jurisdiction from Executive Order 9599 to Executive Order 9672.*—After August 18, 1945, the main forces of the Board's energies were directed to the liquidation of the disputes program. Disputes which threatened the transition to a peacetime economy were to be handled,⁵⁴ but the main emphasis by far fell upon collective bargaining. Every effort was made, and with considerable success, to get the parties in pending cases to settle their differences by negotiation. The wage leeway in the new Executive Order (9599) was used to encourage fresh bargaining on deadlocked wage issues.

Failure to negotiate settlements would bring an importuning to submit to arbitration. Failing that, the parties were to be urged to submit the matter to the NWLB for final and binding settlement. Further momentum was given the winding-up process by provision for ending the issuance of directive orders in all cases except pending appeal cases and cases in which the Board was by agreement to issue a binding order. All other disputes were to be decided by recommendation only. This step obviated the necessity for permitting appeal and at the same time provided a process thought to be more in keeping with the functions of a liquidating agency.

Immediately upon the issuance of Executive Order 9651, clarifying and expanding the wage policy of Executive Order 9599, the Board seized the occasion to refer disputes back to the parties for negotiation if issues affected by the new order were involved. This policy applied to all cases, whether or not the parties had agreed in advance to be bound by the Board's decision.

⁵⁴ See President Truman's statement on August 16, 1945, reproduced in part in U. S. Department of Labor, *The National Wage Stabilization Board (1948)*, pp. 25-26 (hereinafter referred to as *The NWSE Report*). Executive Order 9599 expanded the definition of labor disputes that interrupt work contributing to the effective prosecution of the war to include disputes "which would * * * interfere with effective transition to a peacetime economy."

Following its policy of divesting itself of responsibility for direct participation in dispute settlement—in a sense a renunciation of jurisdiction—the Board moved rapidly toward its termination.

On the whole, the atmosphere created by the approach to disputes matters after VJ-day was not conducive to industrial peace. The emphasis was such that the parties could not count on Government decision in disputes which did not respond to collective bargaining. In spite of the fact that NWLB “orders” had not been mandatory in a legal sense, they carried more weight than post VJ-day decisions frankly designated “recommendations.” The NWLB attitude was characterized by a desire to get out of existence and had concrete demonstration in its relaxation of jurisdiction. While this approach certainly coincided with much of the postwar reaction to Government interference in labor relations, the policy was a mistake. Agreement to continue the activity of the Board for the purpose of voluntary arbitration was unobtainable, but it would have been desirable if labor and management could have been persuaded, on the basis of a modification of stabilization policies, to continue the disputes function of the Board during the postwar transition period on a recommendatory basis at least.⁵⁵

3. *Wage-stabilization jurisdiction from the Stabilization Act of 1942 to Executive Order 9599.*—The responsibilities of the NWLB for wage stabilization stemmed principally from the Stabilization Act of 1942, supplemented by Executive Order 9250 and regulations of the Economic Stabilization Director. All wage-rate and certain salary increases and decreases required the filing of notice with, and approval of, the Board.⁵⁶ Salaries and wages were broadly defined in Executive Order 9250.

a. *Exceptions and exemptions.*—Many jurisdictional enclaves marred the broad primary grant. Some of these were established by the Board itself under authority conferred by the Executive order and the regulations of the Economic Stabilization Director. Others were established directly in the regulations.

(1) *Exempted employees.*—Two groups of employees were placed outside the Board’s jurisdiction. Agricultural labor⁵⁷ was not sub-

⁵⁵ More will be said about the jurisdiction over wages and salaries in connection with the discussion of the stabilization sections which follow.

⁵⁶ Jurisdiction of the Board originally extended to the United States and its territories and possessions. Under authority of OES Regulations, sec. 4001.14 (War Labor Reports, vol. IV, p. XVII), the Board, in its General Order 8, issued October 31, 1942, contracted jurisdiction to include only the United States and Alaska. In June 1944 the Territorial War Labor Board for Hawaii was organized. See General Order 36. (Board wage determinations were not to be subject to court review in civil proceedings. OES Regulations, sec. 4001.2.)

⁵⁷ Defined in OES Regulations, sec. 4001.1 (2). “The term ‘agricultural labor’ shall mean persons working on farms and engaged in producing agricultural commodities whose salary or wage payments are not in excess of \$2,400.00 per annum. * * *” On July 17, 1945, a rider to the War Agencies Appropriation Act of 1946 prohibited any of

ject to wage and salary regulation unless and until the Secretary of Agriculture should determine that approval for future increases should be required. Also excepted from the Board's jurisdiction—and placed under the jurisdiction of the Commissioner of Internal Revenue—were salaried employees paid above \$5,000 per year and nonunionized executive, administrative, and professional employees paid not more than \$5,000 per year.

(2) *Divided jurisdiction.*—A divided or shared jurisdictional situation arose whenever the Board or the Price Administrator had reason to believe that a wage increase would require a price-ceiling change. In this circumstance simple Board approval was not enough. The proposed increase could become effective only if also approved by the Economic Stabilization Director.

Executive Order 9299 provided for another and different variety of jurisdiction sharing. That order stipulated that the general orders of the Board and regulations of the Commissioner of Internal Revenue allowing changes in wage and salary rates without specific approval should apply to all employees subject to the Railway Labor Act. Thus changes within the general orders could be made for such employees without approval. On the other hand, any proposed change for such employees which, in the opinion of the chairman of the Railway Labor Panel, did not conform to the standards of the stabilization program was subject to special procedures outside those provided by the Board.⁵⁸

Most of the discussion in connection with disputes jurisdiction in the war era is pertinent to wage stabilization jurisdiction during the same period. Considerations that argue for integration of disputes authority apply equally to wage and salary controls. For one thing, wage and salary issues were a most prolific source of disputes. It would have been incredibly bad policy to put jurisdiction of disputed wage changes in one agency and agreed changes in another simply on the ground that one adjustment was in controversy and the other not. That would have created a major division of jurisdiction, and coordination of wage and salary jurisdiction would have been even more difficult than it was. Enough problems were created by multiple exceptions, exemptions, and minor divisions of jurisdictional authority. Moreover, if the test is effectiveness, apparently the jurisdiction was

the appropriation for the fiscal year ending July 1, 1946, to be used in connection with "investigations, hearings, directives or orders concerning bargaining units composed in whole or in part of agricultural laborers as that term is defined in the Social Security Act." The effect of this rider was to remove NTLB jurisdiction over adjustments for some processors and packers not previously excluded. See The Termination Report, vol. I, p. 43.

⁵⁸ The Chairman of the Railway Labor Panel was empowered to appoint a three-man emergency board (selected from the panel) to investigate the proposed change and report to the President. Executive Order 9581 amended Executive Order 9299 to give the Hawaii War Labor Board jurisdiction of voluntary wage and salary adjustments for territorial workers subject to the Railway Labor Act.

at least adequate. Postwar experience makes this clear. Contrasts between wartime stabilization and that following VJ-day speak eloquently for the merit of the wartime effort.

4. *Wage-stabilization jurisdiction from Executive Order 9599 to the succession of the NWSB.*—At the end of hostilities Executive Order 9599, followed by 9651, set the stage for loosened controls and broadened policy where controls remained. The Government, in response to widespread clamor, moved swiftly toward decontrol and attempted to return to a peacetime basis almost in a single leap.

In this climate it is not surprising that the Board and its agencies resembled a ship after orders to abandon. The crew worked hard at pitching all movable cases over the side, and prepared to follow them in haste.

The weakening of controls accompanying the wind-up of affairs was largely reflected in contracted jurisdiction. Thus jurisdiction in wage stabilization matters affecting increases turned on one primary consideration after August 18, 1945. Executive Order 9599 authorized⁵⁹ the Board (and such other agencies as the Director of Economic Stabilization might designate, with the approval of the Director of War Mobilization) to permit the instituting of wage or salary increases without approval, provided such unapproved increases were not to be used in whole or in part to justify increases in price ceilings or to increase the cost of products or services furnished the United States. The Board immediately implemented its new "authority" by General Order 40, authorizing wage or salary increases without Board approval, subject to the conditions imposed by the order. Within 2 days employers and employees in the building industry and subject to the jurisdiction of the NWLB Wage Adjustment Board were excepted from the General Order 40, thus continuing controls in the industry.⁶⁰ The jurisdiction of the Steel Commission was also retained intact.⁶¹ Earlier general orders were modified or repealed to conform to new requirements.

There was no change in jurisdiction over wage and salary decreases. In this era of surging wages and prices this was of minor consequence.

Reconversion problems, especially lay-offs, reduction of take-home pay and labor strife,⁶² evoked Executive Order 9651. In this order jurisdictional modifications were secondary to policy changes. Nevertheless it had two significant jurisdictional effects. The new order

⁵⁹ "Authorized" in the context of the time was tantamount to "directed." See the President's statement of August 16, 1945, *The NWSB Report*, pp. 25-26.

⁶⁰ Special circumstances, particularly short supply in housing, account for this.

⁶¹ General Order 42. The Steel Commission had been set up to administer changes in wage rate inequities within the limits of a directive order of the Board.

⁶² See address broadcast by President Truman from the White House, October 30, 1945, *The NWSB Report*, p. 335.

reaffirmed the principle in Executive Order 9599 that the institution of a wage or salary increase without prior Board approval was no bar to an application for approval thereafter to be used in seeking price relief, resisting reduction in ceilings or increasing cost to the United States. Furthermore, the failure to secure approval would not bar consideration of an unapproved wage or salary increase by the Price Administrator in determining whether an upward adjustment of price ceilings was required. The only limit was a provision requiring that the unapproved increase be given a reasonable test period before being taken into account in determining whether to increase price ceilings.⁶³ Thus the already relaxed approval "requirements" were transformed. Jurisdiction in the NWLB became merely a conditional "power to act" should the employer or the employer and the employee representative will it, with no necessary consequences trailing a denial of Board approval.

IV. THE JURISDICTION OF THE NWSB

Transition from the NWLB to the NWSB was greatly facilitated by the creation within the NWLB of an embryo stabilization board, known as the Stabilization Division. This tripartite division formed the framework for the successor agency. One of the division's most important jobs was to assist in developing regulations which were to govern the early operations of the new Board. The personnel of the division became the members of the NWSB by Presidential appointment. When Executive Order 9672 replaced the NWLB with the NWSB, the latter was immediately ready to operate.

Apart from a severely limited disputes jurisdiction,⁶⁴ the order continued in the Stabilization Board an authority equivalent to that of its predecessor.⁶⁵ A subsequent order, 9697, dated on Valentine's Day, 1946, wiped out all stabilization effort for a whole period by approving, in effect, all increases⁶⁶ made between August 18, 1945, and February 14, 1946.⁶⁷ The Stabilization Administrator, with the issuance of

⁶³ The order specified that 6 months would be a "reasonable period," saving exceptional cases.

⁶⁴ This jurisdiction covered only minor mopping-up responsibilities—to continue the Steel, Textile, and Meatpacking Commissions' operations under the old NWLB orders, appoint arbitrators, set terms and conditions of employment in the rare instances required by sec. 5 of the War Labor Disputes Act and accept strike notices.

⁶⁵ The NWSB Report, p. 8, marks some possible areas of jurisdiction never entered by the NWSB.

⁶⁶ Excepting only increases in industries, such as the building and construction industry, which remained under wartime restrictions.

⁶⁷ Executive Order 9697, sec. 3 (d). " * * * any wage or salary increase heretofore lawfully made, or made in accordance with a governmental recommendation in a wage controversy announced prior to the effective date of this order, shall be deemed to have been approved within the meaning of this order. * * *"

General Order 1, added to the sweeping approvals contained in the Executive order itself.

In direct approval matters, executive supervision raised serious questions, some of them bearing on jurisdiction. In the AFL maritime cases, for example, the NWSB's partial denial of the desired wage increases evoked strike action. After reaffirmation of the original decision on reconsideration by the Board, the Stabilization Director intervened and, in effect, took away the Board's jurisdiction retroactively by amending the supplementary wage and salary regulations to make Board approval unnecessary in certain circumstances involving increased costs to the Government.⁶⁸

The inadequacies of post VJ-day stabilization jurisdiction were apparent. Actually there was insufficient authority to stabilize. Wage and salary increases made without regard to price relief put pressure upon price-needy employers to grant comparable increases. And when it is considered that nothing would prevent future consideration of such increases for price relief purposes, the pressure was virtually irresistible. Moreover, the postwar era rapidly became a period of booming markets and full employment. This condition put still more pressure behind inflationary demand. The market was lively and it was no time to argue. Workers on the other hand, caught in the high price whirl, pressed for more to keep up, and inflation became inevitable.

All this might have been avoided had wage policy been modified somewhat and a jurisdictional authority equivalent to that prior to VJ-day continued. With some wage margin to work on, a continuation of NWLB processes might have bridged the crucial year or two after VJ-day by the familiar process of case-by-case adjustment. It is clear now, and was clear to some people even then, that the throwing off of controls was an error. Beyond all this, such weakened authority as remained assumed aspects of utter futility when on Valentine's Day, 1946, all postwar stabilization to that date was wiped out by Executive order. In retrospect, the stabilization effort seems an attempt to control without controls. What relaxed jurisdiction and ill-conceived policy did not unstabilize, executive intervention did.

V. PROCEDURAL REQUIREMENTS FOR JURISDICTION

Procedural requisites during the prewar mediation period were quite simple. Certification by the Secretary of Labor was the exclusive method for getting a matter before the NDMB, and the fact of certification was considered a conclusive jurisdictional determi-

⁶⁸ The NWSB Report, p. 50.

nation. The NDMB, unlike the NWLB, could not take a case on its own motion. Instead it might refer an uncertified dispute to the attention of the Department of Labor. Wage stabilization was not yet in the picture and therefore presented no problem.

The NWLB could acquire disputes jurisdiction either by certification or on its own motion, but might turn back cases acquired either way if convinced that the parties had not exhausted the possibilities of settlement without Board intervention or that, for some other reason, the matter was not properly within its bailiwick.

The New Case Committee of the NWLB had an important function in this area. This tripartite committee operated as a clearing house for new dispute cases, all of which were referred directly to the National Board. Its prime operation was to sift certifications and determine whether the cases were appropriate for the Board, taking such investigational steps as might be necessary for each determination. Assuming the clear propriety of a certification, the committee was authorized to refer it to that agent of the Board which in its judgment should process the case. Rejected cases were returned to the Secretary of Labor. Precertification discussions between the staff of the National Board and the Conciliation Service were used to forestall receipt of doubtful cases.

Jurisdictional problems in voluntary wage increase cases during the NWLB and the NWSB eras were substantially alike. Principally, this involved inquiry at local offices of the Wage and Hour and Public Contracts Division of the Department of Labor to determine whether the proposed increase required approval. Affirmative conclusions made necessary the completion of an application form signed by the employer or the employer and the union, where the employees were represented.⁶⁹ The local Wage and Hour Office normally transmitted the application to the NWLB or one of its agents according to established rules determining the allocation of applications. In the interest of protection of collective bargaining processes, collective bargaining agents were given an opportunity to state objections to applications to which they were not parties. Objections would convert the matter into a dispute case. Some adaptations of this process were instituted by the NWSB. Perhaps the most significant was a provision in October of 1946 to speed processing. Applications were processed immediately without notice to or signature of the collective bargaining representative of the employees involved, if based on a wage agreement and accompanied by a copy of the agreement.

⁶⁹ Private arbitration awards involving wage or salary increases were treated as applications for voluntary adjustments.

Both the NWLB and the NWSB had a special disputes responsibility under section 5 of the War Labor Disputes Act of 1943. That section was applicable only to facilities being operated by the Government after seizure under section 9 of the Selective Training and Service Act of 1940. Jurisdiction attached whenever the operating agency or a majority of the employees in the seized facility or their representatives applied for a change in "wages or other terms or conditions of employment." Thus the procedural necessities of jurisdiction required only application by an appropriate party.

VI. JURISDICTION OF STRIKES AND LOCKOUTS

The NDMB had an obvious interest in strikes and lockouts, but it was logical that the NWLB should particularly concern itself with these problems, since its procedures were the alternative to economic action by the parties to the industrial relationship. Ordinarily the Board did not take action in strikes until the Conciliation Service had exhausted its resources. However, the strike section in the disputes division of the NWLB often acted in advance of formal certification in strike situations. In urgent instances the certification was "telephonic," to be followed by formal papers.

In some instances strike settlements would be followed by a resolution of differences through the parties' agreement or through Board processes. In others the issues might be outside the Board's jurisdiction,⁷⁰ and therefore no further action would be taken.⁷¹ Progress on the merits of a certified matter was supposed to stop when strike action began, but procedural matters were handled including procedural prerequisites to Board jurisdiction and, it must be conceded, handled faster at times as a consequence of a strike.

VII. COMPLIANCE JURISDICTION

The NDMB affected settlements of disputes through mediation and, if necessary, through the publicity given to recommendations. Authority for the procedure rested on the clear mandate of Executive Order 8716. As indicated in chapter 1, ultimate failure to secure compliance might result in seizure.

Compliance matters raised a good many problems for the NWLB. They were generally worked out, a few exceptions apart, by varied

⁷⁰ For example, a representation issue.

⁷¹ See sec. III above.

techniques of persuasion. This was in fact the only weapon the Board itself had.⁷² Sufficient basis for the exercise of compliance jurisdiction could be argued from the theory of inherent power of a judicial or quasijudicial tribunal to "enforce" its orders. Compliance is a weaker concept than enforcement and it was appropriate that "orders," which were in legal contemplation only suggestions, should be accompanied by methods of securing observance which were short of compulsion. Restating the jurisdictional theory in compliance matters to fit the status of the Board's powers, one might say that a quasijudicial tribunal with power to suggest, coupled with the authority to "finally determine the dispute," has the inherent power to attempt to secure acceptance of its suggestions. From this viewpoint the compliance jurisdiction had a breadth equivalent to that of the general disputes jurisdiction.⁷³

SUMMARY AND CONCLUSION

The jurisdiction of the wartime labor agencies was conditioned by political necessities and administrative practicality as well as the program objectives. Except for the post VJ-day period the reconciliation of these varied considerations was sufficient to win the necessary support for the program. Such occasional issues as were raised over the constitutional authority of the agencies were met by reference to the war powers.

During the defense period, efforts at industrial peace met with relatively little jurisdictional complication even though, or perhaps because, the NDMB had broad authority to attempt mediation and persuasion. However, some attention was paid to political and administrative factors affecting jurisdiction, as evidenced by the exclusions and exceptions in the Executive order establishing the Board and by some of its jurisdictional decisions.

When the demands of the active war period caused the creation of the NWLB, the jurisdiction remained broad. However, the no-strike objectives of the Government were more critical and labor's pledge against stoppages during the crisis called for more positive techniques than mere persuasion in handling disputes. The Board as established was a decision-making tribunal which issued "orders" and assumed

⁷² Executive Order 9370, August 16, 1943, put drastic powers for the effecting of compliance with Board orders in the hands of the Director of Economic Stabilization. The possibility of seizure was always in the background also. However, the latter was a technique that depended more on psychological effect than is generally comprehended. A broad use of it would have drastically limited its usefulness. The doctrine of responsibility as a prerequisite to Board-ordered union security was used as a strike deterrent. But, regardless of the Board's use of the verbiage of force, its main strength was effective persuasion. "Orders" were, in legal contemplation, only suggestions or recommendations, and "show cause" hearings after orders only a variation of the process of persuasion.

⁷³ Jurisdiction over enforcement of wage-stabilization regulations is discussed in ch. 10.

inherent jurisdiction to secure compliance with them. Jurisdiction was extended further after the wage freeze and the vesting in the Board of wage-stabilization functions. The passage of the War Labor Disputes Act of 1943 added more authority, putting in the Board the power to determine disputes in seized plants and facilities. The Board tended toward a liberal interpretation of its jurisdiction, a policy justified by the importance of Board functions to the war effort. Nevertheless, considerations of expediency such as case load and relationships with other agencies of Government played some role in tempering the Board's decisions regarding the extent of its jurisdiction. In other instances statutory exceptions confined the authority of the NWLB. On the whole, however, its jurisdictional authority adequately combined duties that needed to be centralized either because of their subject matter or because of the practical necessity for coordinated handling. One undesirable effect of jurisdictional division was a difference in handling some issues such as wage and salary adjustments.

After the Japanese surrender, a loosening of procedures and controls contributed materially to the encouragement of agreed settlements of many disputes. On the other hand, the elimination of the NWLB procedures disposed of the one alternative to strike action during the postwar period, with serious consequences for industrial peace.

The NWSB was concerned principally with that part of the postwar anti-inflation campaign related to wages. Dispute functions were reduced to the handling of controversies arising in seized facilities under section 5 of the War Labor Disputes Act.

All stabilization jurisdiction in the NWSB, a few exceptions apart, was related to price relief. And even where wage increases were instituted without approval on the theory that prices would need no adjustments, they could be used nevertheless to justify price relief under certain easily attained conditions. Also, executive intervention wiped out the stabilization efforts in at least one instance for a period of several months before and after the NWSB began functioning. Under these conditions, stabilization jurisdiction after VJ-day was grossly insufficient for the program objectives.

Procedural requisites to jurisdiction were mainly significant in the defense and war periods and in connection with disputes problems. The Secretary of Labor had the power to certify disputes to both the NDMB and the NWLB. The latter could also take jurisdiction on its own motion.

Strikes and lockouts were the major concern of the defense period. Obviously their importance was accentuated by war. Initial jurisdiction of such matters by the NWLB was taken for the limited purpose of securing full production. Even though the Board had

jurisdiction of the merits of the dispute, hearing and decision on the merits would be withheld until full production was restored. However, the NWLB also acted in strikes or lockouts when the basic dispute was not within its jurisdiction. This sometimes complicated swift handling on the merits after the stoppages ended.

Compliance jurisdiction for the National Defense Mediation Board was simply a matter of using persuasion and publicity to secure acceptance of proposed settlements. With the advent of the NWLB, compliance became a matter of greater concern. Parties which voluntarily surrendered rights to use economic pressure in exchange for NWLB handling came to expect acceptance of its decision. However, in the total of decisions only a very few were met with adamant refusal to comply after compliance processing. Compliance jurisdiction in the NWSB was a relatively insignificant matter. However, in one important instance, a strike aimed at a decision of the Board under section 5 of the War Labor Disputes Act evoked executive intervention to modify the decision—a process not calculated to enhance the effectiveness of the Board.

The problems inherent in devising and administering a jurisdiction sufficient to the requirements of the war period, as contrasted with the defense era before Pearl Harbor when jurisdictional problems were negligible, were met by integrating extensive powers in the NWLB in a series of broad jurisdictional sweeps and adding some minor powers from time to time. Tailored exclusions and exceptions met practical or political considerations and in turn raised new problems. In general, the NWLB functioned in a fashion adequate for its responsibilities up to and including VJ-day.

After VJ-day, wage and salary controls were relaxed and disputes functions virtually abolished in spite of the Government's anti-inflation program, which included full production, and its preoccupation with a peaceful transition to peacetime production.

In the final analysis, the adequacy of jurisdiction in the respective periods is to be judged by whether the jurisdiction provided was sufficient for the objectives of the program. On this basis the following conclusions are drawn:

1. Political and administrative considerations were reconciled with program objectives during the defense and war periods without imposing serious limitations on the effectiveness of the program.
2. The defense period raised no critical jurisdictional problems.
3. During the war period the broad jurisdiction of the NWLB, coupled with its efforts to secure compliance with directives and to enforce wage stabilization, probably intensified efforts to secure exceptions or exemptions to jurisdiction. Furthermore, the catholicity of controls affecting labor and the variety of agencies sharing some

responsibility for them created a necessity for conforming clauses and exceptions. The principal effect of the resultant jurisdictional division was some lack of uniformity in handling comparable issues.

4. The degree to which integration of jurisdiction of wage issues, nonwage issues, strikes, and compliance took place in one agency, the NWLB, provided the instrument for the coordination essential to speedy and effective handling of disputes during the war period.

5. Jurisdiction in dispute cases was relaxed too fast and too much after VJ-day. The elimination of alternatives to economic force virtually insured work stoppages in the postwar period.

6. After the elimination of alternatives to strike action, the major jurisdictional mistake of the postwar period was the tying of jurisdiction of wage changes to the effect of such changes on the necessity for price relief.

7. Executive intervention in stabilization affairs to affect decisions already made by the NWSB impaired the usefulness of the whole stabilization process during the postwar era.

8. Procedural jurisdictional problems were adequately met throughout the defense, war, and postwar periods.

9. The screening of cases at a staff level on a jurisdictional basis was a useful device helping in expediting cases and eliminating unnecessary work.

10. Taking jurisdiction of strikes for the limited purpose of restoring production and conditioning consideration of the issues upon such restoration was a useful technique in shortening the period of stoppage. However, the technique could have been more useful had the breadth of jurisdiction of issues been as broad as the strike jurisdiction.

11. Compliance jurisdiction was an essential part of jurisdiction to settle disputes. An alternative to the use of economic force presupposed that that alternative could be made effective.

12. During the defense and war periods, the jurisdiction of the war-time labor agencies was generally sufficient to meet the problems of those periods. Neither dispute nor stabilization authority was sufficient in the postwar period.

The Distribution of Authority and Its Relation to Policy

By Clark Kerr

ANY NATIONAL policy-making and administrative agency of size and importance must diffuse some of the responsibility granted it. The NWLB, as one of the basic emergency arms of the Government, had an immensely delicate, complex, and detailed task to perform. It was confronted with the necessity of decentralizing its operations, and the organizational forms it chose to develop were closely intertwined with its policy-making and administering functions. Policy making and policy enforcing are interrelated, and both are affected by and in turn affect organizational structure and operations.

The Board dealt with powerful external pressure groups operating in a highly controversial field, and was itself tripartite in composition. At the same time, it was imperative that the Board serve public rather than partisan interests. The central theme of this chapter is that a chief aim of strategy had to be the neutralization, equalization, containment, and channeling of pressures, and that administrative organization was an important tactical weapon for these purposes.

I. THE LOCATION OF AUTHORITY

A. THE ESSENTIAL CHOICES

The NWLB was faced with three primary problems in managing the authority granted it in Executive Orders 9017 and 9250:

(a) Should all authority be retained in the hands of the National Board itself, viewed as an operating entity of twelve men and their alternates; or should some of this authority be parcelled out to subsidiary groups with a degree of independence?

(b) If the authority was to be dispersed, should it be delegated to the staff, to local panels, to regional boards, or to industry agencies?

(c) If authority was to be granted to others, should it be power to make policy or to administer policy?

The National Board arrived at decisions on all of these questions, although more as a result of operating pressures than deliberate and planned choice. These decisions had important effects on the operation of the Board. It should be understood, however, that the Board was not primarily an administrative agency. Its administrative aspects were far outweighed by the importance of its policy-making functions.

B. THE BASIC TESTS

The effectiveness of an administrative agency can be tested in a number of ways. Two important tests are smoothness of functioning and quality of results.

Smoothness of functioning in the case of the NWLB meant primarily the rapidity with which cases were processed and the minimization of friction between different levels of the organization and between groups at the same level. The first of these considerations did not mean, ideally, instantaneous disposal of either wage stabilization or dispute cases. As indicated in chapter 9, some delay, on occasion, was desirable, as well as inevitable. Delay, however, could give rise to irritation and aggravate the natural resistance to a regime of controls. It was important, therefore, that delay stop short of that degree which would produce exasperation in industry and labor.

The second consideration—minimization of friction—had several aspects. Standards governing the allocation of cases among the subsidiary agencies needed to be clear so that cases would not be shunted around unnecessarily and tempers not be frayed by internal jurisdictional disputes. The channels of communication needed to be sufficiently clear-cut so that the subsidiary agencies could perceive the directions they were to pursue. Status needed to be conferred commensurate with the assigned responsibilities and the reasonable expectations of the personnel.

The desired quality of results is not easily discerned nor completely noncontroversial. Three somewhat inconsistent results, at least, were desirable.

First, it was necessary to achieve a satisfactory degree of wage stabilization. This did not mean freezing wages. Nor did it mean doing in a cumbersome way what would have happened anyway. It meant slowing the advance of wage rates and holding down the ultimate levels. Administrative arrangements, as will be noted below, affected considerably the degree of stabilization.

Second, a sense of equality of treatment was needed, in lieu of complete equality itself. In many cases complete equality of handling was unwise, difficult, or impossible, however ethically desirable such uniformity would have been. Nevertheless, the concept of "equal treatment under the law" was sufficiently ingrained so that decisions, as far as possible, needed to appear substantially uniform. The variation in basic circumstances and the imperfect transmission of knowledge made it possible to establish some distinctions which did not actually distinguish and to rely on varying degrees of ignorance about what was being done in other regions or industries. An approximation to fairness of treatment had to be preserved.

Third, the decisions, for the most part, had to be voluntarily accepted. This requirement overshadowed all the others. Without a large measure of voluntary acceptance the Board could not have operated at all. While the other results of Board operations were desirable, this one was imperative. The willingness or ability to accept wage stabilization, for example, was not spread uniformly throughout American industrial society; nor was the capacity of the Board to secure acceptance equally distributed. Economic and political power varied greatly from industry to industry and union to union. Some recognition, on occasion, had to be given to this unequal distribution of power—whether morally justified or not—when the groups with power were unwilling to have this power go unrecognized and unrewarded even in a period of national emergency. Some lions demanded a lion's share.

An inherent conflict existed between the requirements of wage stabilization and uniformity of treatment, on the one hand, and of uncoerced acceptance on the other.

The decisions of the Board on the location of authority will be tested, primarily, by reference to the five criteria discussed above—the extent to which the decentralization program of the Board achieved smoothness of functioning, as shown by (a) a reasonably rapid processing of cases and (b) a minimization of internal friction; and the quality of results, as indicated by (a) the achievement of a satisfactory degree of wage stabilization, (b) the impression of nondiscriminatory determination and application of policy, and (c) the attainment of voluntary acceptance under conditions where merit and power did not always parallel each other.

The Board fashioned administrative arrangements which met each of these criteria to an adequate degree; but the definition of "adequacy" for a period of great change and immense confusion must of necessity be minimal. The task of the Board would have been simpler, were the tests more consistent internally. Despite the difficulties, in retrospect—which is certainly the easiest if not the only

process by which corrective measures can be fearlessly prescribed—certain improved arrangements appear to have been possible.

C. THE NEED TO DECENTRALIZE

The only function of the NWLB from January to October 1942, was to decide dispute cases. A sufficiently small number of these came along, so that the Board, with the aid of a small staff and a limited number of ad hoc panels, could decide all cases itself and keep reasonably current. Even then it fell progressively, but not disastrously, behind its agenda.

Executive Order 9250 changed this by giving the Board extensive wage stabilization responsibilities. An immense number of voluntary cases poured in. Nor was the effect only this direct one. Dispute cases were affected too. Their number increased appreciably because free collective bargaining and wage stabilization were not entirely compatible. A labor member of the National Board stated the implication of Executive Order 9250 was that there would be "little or no old-time collective bargaining"¹ and there was no point talking about resurrecting it. "Take wages out of collective bargaining and what the hell do you have left? * * * The best we can do is retain a tripartite system."² A public member observed that mediation was made more difficult, since the parties had to secure "authoritative approval" of wage increases, "so the whole collective bargaining business bogs down."³

Several substantial reasons caused this check upon collective bargaining and the consequent upsurge of dispute cases. In the first place, the parties had less latitude for bargaining. Wages are normally the most important issue in disputes. The unions could not accept less than Board policy allowed, or they would be subject to criticism; nor could they get more. Beyond that, fringe issues were controlled also. The ability of the parties to accommodate to each other's requirements was greatly lessened by the control of all those contractual provisions which had a monetary dimension.

Secondly, when the parties tried to bargain freely, their decisions were subject to reversal. A union might, for example, trade some non-wage provision for a higher wage increase, and upon disapproval of the increase by the Board have neither the provision nor the wage. In a dispute case, on the other hand, the Government might yield more than the employer. In any event, the maximum obtainable was what the Government would allow, so why take a chance on settling for less?

¹ National War Labor Board, Transcript, Executive Meeting, January 5, 1943, p. 27.

² *Ibid.*, p. 28.

³ *Ibid.*, p. 19.

Moreover, responsibility could be shifted to the Government. Representatives of both sides could avoid, and on some occasions wished to avoid, taking responsibility for decisions by referring cases to the Government. Any criticism was then directed at the governmental agency rather than the representatives of the parties. In a period of considerable stress, this had great advantage to some individuals. The sense of responsibility was weakened further by the knowledge that if the parties decided a wage or fringe issue once, the Government would have to decide it again for them anyway.⁴

On January 5, 1943, when the Board gave its most extended consideration to decentralization, the impossibility of continued centralization of function was clearly apparent. During all of 1942, the Board had closed 429 dispute cases. Over 350 new disputes had been received in the previous month. In the previous week the Board had disposed of 59 cases of all types. During that same week, 550 new voluntary cases had been received, and the backlog was 3,500.⁵

The National Board was literally engulfed by work. Decentralization grew out of this realization, rather than emerging from desire. Case-load statistics were not the only evidence of this engulfment. Board members reported on the rising irritations with delays. An industry member said: "The criticism against the Board, I think, is largely centered on the fact that they can't get quick decisions."⁶ A labor member reported: "The union tells me, 'Give us a decision; just give us a decision.'"⁷ A public member stated: "I am of the opinion that this Board cannot last beyond another 30 days and should not last beyond another 30 days if it does not meet this problem of disposing of problems out in the field in a much more efficient and expeditious manner than we have."⁸ Decentralization of some sort had become imperative.

D. RELUCTANCE TO DECENTRALIZE

The National Board did not decentralize its activities readily. Administrative inertia in part explains this. The Board had been going along in a moderately satisfactory fashion, without substantial decentralization, until Executive Order 9250 was issued. It had no inclination to change its method of operation unless compelled to do so. Administrative inertia was especially great because of the nature of

⁴ A further but minor factor, as the war continued, was the fact that both parties felt they could get higher wage increases by having a dispute over them to be settled by the Board, than by submitting a voluntary case to be passed upon by a staff member. These collusive disputes were not a basic cause of the increase in dispute cases, but they had a cumulative effect.

⁵ Transcript, Executive Meeting, January 5, 1943, pp. 38-48.

⁶ *Ibid.*, p. 30.

⁷ *Ibid.*, p. 43.

⁸ *Ibid.*, p. 46.

the organization. Twelve men, drawn from industry, labor, and the public, made policy. On organizational matters a high degree of unanimity was desirable. It took longer to arouse this Board to the necessity of making a decision than would have been the case with an organization having a single person at the head; and the process of establishing policy was more complex and time-consuming. Further, there may have been some natural resistance to the release of power, although this does not appear to have been an important factor.

Seven explicit arguments against decentralization—particularly the setting up of regional boards—were set forth in the discussions of the Board.

(a) It was feared that conflicts over policy would arise among the subsidiary agencies, and between these agencies and the Board. This would reduce the effectiveness of the Board and lower its prestige.

(b) It was anticipated that great confusion might result. For example, it would be difficult for the public to distinguish among the several subsidiary agencies. The Board might dissolve in "froth."

(c) The danger was foreseen of building up a vast bureaucracy. This bureaucracy would develop a vested interest in controlling industrial relations and strangle free collective bargaining.

(d) The establishment of too many administrative levels would cause great delay. Anyone who was turned down on a case would keep appealing it to higher and higher levels hoping to gain a favorable decision. There would be nothing to lose by appealing, and something might be gained. This would unnecessarily prolong the settlement of cases. It would be better to start at the top. The cases would reach the top anyway; and they might better get there sooner than later.

(e) The selection and training of competent personnel—particularly the public members—in the subsidiary agencies would be very difficult. It was better to rely on an already seasoned National Board than to undergo the costs and risks involved in setting up a number of "little war labor boards."

(f) It would be difficult, if not impossible, to control the operations of subsidiary agencies. Lack of uniformity of decisions could place the entire process in disrepute. The only way to secure uniformity of action was by having action taken by a single board in Washington, D. C. Blunders once made by a subsidiary agency would be hard to correct.

(g) Subsidiary agencies, being closer to the parties, would be subject to more pressures, and the actions of these agencies would reflect these pressures. The National Board had the stature and the insulation—by its geographical location—to avoid succumbing to these pressures. Decentralization would invite pressure tactics.

Despite hesitations, the Board did decide to decentralize. The most important decisions were made in December 1942 and January 1943.⁹

The most compelling reasons for these decisions were expressed as follows by one of the public members:

We had two main objectives for decentralizing. One was to set up machinery that would give the people out in the field a method whereby they could get quick disposition of their disputes, where we could get rid of the criticism that the Board is bogging down because of delay, give them machinery where, instead of waiting 2 months for a decision, they'd get it in 2 weeks; and, second, we were trying to bring the local communities into play, make them a part of the War Labor Board program.¹⁰

E. THE MAJOR ALTERNATIVES

Three major alternative proposals were considered by the Board: (a) Greater delegation of function to staff personnel, (b) increased use of ad hoc or permanent advisory panels, and (c) the creation of regional boards and industry agencies, which could make decisions subject to appeal.

1. *Staff personnel.*—Immediately after the issuance of Executive Order 9250, the Board relied primarily on the greater use of staff members to assist in handling cases.¹¹ At the national level, staff employees were used to a much greater extent for analyzing and screening cases on behalf of the Board. At the regional level, regional directors were appointed to process voluntary cases. These regional directors were permitted to make decisions on cases of minor importance, but even then the decisions were not final. Advisory committees, consisting of labor and management representatives, were appointed, with whom the regional directors could consult. Subsequently these committees, which were the forerunners of the regional boards, were permitted to hear appeals. This temporary solution kept centralized control in the hands of the National Board.

2. *Panels.*¹²—The National Board made extensive use of ad hoc panels in handling dispute cases prior to Executive Order 9250. It was suggested that more of these panels be established. As an alter-

⁹ The National Board did not, however, decentralize suddenly. Four commissions, primarily to handle dispute cases, were set up prior to Executive Order 9250; and three more shortly after the issuance of this order. The advent of the wage-stabilization program led to the establishment of the regional boards. Discussions of regionalization began in October 1942, subsequent to the announcement of Executive Order 9250.

¹⁰ Transcript, Executive Meeting, January 5, 1943, p. 16.

¹¹ The rising level of dispute cases, prior to Executive Order 9250, had already led to an augmentation of staff personnel.

¹² The term "panel" was used in three different senses. (a) There were ad hoc panels, appointed initially by the National Board and later by the regional boards, to hear individual dispute cases and make recommendations for settlement. (b) A proposal was made for the creation of standing panels located in major metropolitan centers. (c) Subsequently industry panels were authorized to hear cases arising from one industry or a segment of an industry, and to make recommendations to the National Board. These industry panels had relatively permanent status.

native, the creation of 30 to 100 standing panels was proposed. These panels would be more experienced than the ad hoc panels, and thus better able to base their recommendations on the policies of the National Board. The original proposal for widespread decentralization, made by one of the public members on December 18, 1942, called for setting up 30 such panels. It was suggested that each panel would handle cases arising in its area, regardless of industry.

The utilization of panels, again, would result in basic decisions being made by the National Board on the basis of the recommendations received.

3. *Regional boards and industry agencies.*—The third major proposal was for the creation of regional boards and the greater use of industry agencies. These agencies would have the power to make decisions rather than recommendations only. This would greatly relieve the overburdened National Board. Other arguments were also advanced. It would be easier to train 10 boards than 100 panels; and, if uniformity was not achieved, it was better to have “10 national policies than 100.”

The boards would have a continuing existence, as against the ad hoc panels, and thus would be able to make better decisions. The tripartite arrangements at the national level could be imitated at the local level. This was more in keeping with the spirit of the Board than reliance on administrators. Collective bargaining could better be preserved at the local level under tripartite auspices.

Finally, regional boards could work closely with the local representatives of the Conciliation Service. The Board, prior to Executive Order 9250, had relied heavily upon mediation. It was hoped that mediation could be continued. Regional boards could advise conciliators on the limits within which cases could be settled. This would aid voluntary settlement and reduce the case load for the Board. Further, the conciliators could pass on information to the regional boards, which would reduce the necessity for separate hearings and speed up the decision-making process.

F. THE DECISION

The key decision was to create regional boards out of the advisory committees, with power to make decisions. This does not mean that the regional boards and industry agencies were relied upon exclusively. The ultimate administrative arrangements drew heavily on all three of the alternatives. The National Board came to rely more heavily on its staff in Washington, and the regional directors became chairmen of the regional boards with a greater degree of independence. Panels continued to be used by the National Board and were widely employed by the regional boards. Most of these panels were established on an ad hoc basis, although some were permanent.

The grant of authority to the regional boards was essentially (a) to decide dispute cases confined to the individual regions based upon the policy of the National Board and subject to appeal to the National Board and (b) to pass upon voluntary cases arising within each region based upon the wage-stabilization policy of the National Board and subject to review by the National Board.

The Board's Executive Director set forth the functions of the National Board as follows:¹³

(a) To exercise ultimate reviewing authority, and a general superintendence over the regional machinery;

(b) To hear appeals from regional board orders in cases where petitions for review were granted by the National Board;

(c) To issue general policy directives;

(d) To take jurisdiction of cases of national importance whenever it seemed in the public interest to do so; and

(e) To support the regional boards in maintaining the national no-strike, no-lockout agreement and in obtaining compliance with their directive orders.

The basic factor in maintaining "a general superintendence over the regional machinery" was the selection and supervision of the chairmen of the regional boards, and to a much lesser extent of the wage-stabilization directors. The chairmen were selected as much because of the confidence the members of the National Board had in them as because of their familiarity with their regions. The chairmen were called into Washington on a number of occasions to confer with the National Board and were held responsible to that Board.

The National Board continued to be primarily a disputes board. It spent most of its time deciding dispute cases on the basis of the recommendations of its panels and handling appeals from the decisions of its agencies. Much of its wage-stabilization policy was made in dispute cases.¹⁴ The regional boards were at least as much, if not primarily, wage-stabilization boards. They were much more concerned with passing on voluntary cases or reviewing staff decisions in voluntary cases than was the National Board.¹⁵

The National Board always kept jurisdiction over dispute cases. All disputes were sent by the Conciliation Service first to the National Board. The latter then sent them out to its agencies, except when it

¹³ Transcript, Executive Meeting, January 5, 1943, pp. 59-60.

¹⁴ The National Board handled 16 percent of the dispute cases and disposed of appeals on about another 33 percent, but took action in any form on only 1 percent of the voluntary cases. (U. S. Department of Labor, *The Termination Report of the National War Labor Board (1948)*, vol. I, pp. 480 and 508—hereinafter referred to as *The Termination Report*.)

¹⁵ Regional boards and commissions and their staffs handled about 15,000 dispute cases as against 400,000 voluntary cases (*ibid.*, pp. 480 and 503).

wished to handle the case itself. This "putting-out" system contrasted completely with the handling of voluntary cases. Voluntary cases were sent by the original receivers—the local offices of the Wage and Hour Division—directly to the Board agencies, which processed and decided them. A very few went to the National Board on appeal, although others were sent to the staff of the National Board for delayed and rather perfunctory and ineffective review.

This solution was aimed at three results: (a) To make decisions more quickly, (b) to give local people an opportunity to participate in handling local problems, and (c) to develop a coordinated program through the power retained by the National Board to determine policy, review decisions, and control key personnel.

In making this decision, the National Board transferred basic reliance for assistance from its ad hoc panels to the regional boards, which in turn used panels of their own to hold hearings and make recommendations on dispute cases. The regional boards seldom attempted mediation, but left that function to their panels.¹⁶ Nor did the conciliators work closely with the regional boards as some had suggested they might. Really close relations nowhere developed. The boards devoted themselves to deciding dispute cases with the aid of their own ad hoc panels, and to ruling on the legitimacy of voluntary applications.

G. THE VALUES OF DECENTRALIZATION

The basic merit of decentralization was that the Board could not have survived without it. Seven general advantages flowed from the delegation of authority to the regional boards and industry agencies.

1. *Volume and speed.*—The National Board ruled on about 3,000 dispute cases and reviewed about 5,000 appeals from decisions by regional boards or industry agencies. This totaled a little less than half of all dispute cases. It received petitions to review rulings of its agencies in about 2,500 voluntary cases out of over 400,000 requests for rulings submitted to those agencies. It could not possibly have decided all these cases itself.

2. *Acceptance of the program by labor and industry.*—The Board both by choice and necessity, relied primarily upon the consent of industry and labor to secure compliance. Consent was easier to obtain if local boards or specialized commissions were employed. Decentralization appealed to the "grass roots" psychology of the American public. It permitted action by local people on a face-to-face basis as against decisions by "bureaucrats" in the national capital. As one labor member expressed it, it took the Board out into the "highways

¹⁶ The advent of wage stabilization had, however, considerably reduced the possibilities for mediation.

and byways of the country.”¹⁷ Decentralization also permitted issuance of “trial balloons.” Awards by regional boards or industry agencies tested the range of decisions acceptable to the parties. Decisions which fell outside the limits of the range could be handled differently by the National Board on appeal. It was often more difficult, however, to get the final decision back within these limits than it would have been for the National Board to discover the limits itself, by other means, and make the original decision.

3. *Appeal procedure.*—When original decisions were made by the regional boards or industry agencies, an appeal procedure was possible. This helped to create a sense of “due process of law.” The original decision, if upheld, helped to prepare the losing party psychologically for the ultimate result. The final decision, if it followed the original decision, buttressed the seeming justice of both awards. A greater “chance to be heard” was also created.

4. *Proximity.*—The boards and commissions were closer to the parties. This made it easier to obtain the essential facts about the cases. It also facilitated an understanding of the feelings of the parties about the cases. Dissemination of information about Board policies was greatly aided.

5. *Diffusion of responsibility.*—Decentralization spreads the fact-gathering and decision-making tasks over several organizational levels and over a substantial number of individuals. This reduced the pressures on any single governmental representative, and aided action in the public interest. Regional boards could share criticism with the National Board for policy making; the National Board could divide blame with the regional boards for their improper handling of cases or fact finding.

6. *Safety-valve.*—The large number of regional boards and industry agencies, with power to make decisions, provided more opportunities for oral hearings before one’s “peers.” This served as an exhaust valve, and aided compliance.

7. *Differentiation in treatment.*—The National Board, on occasion, felt it necessary to accord separate treatment to certain regions or to certain groups. It would have been difficult for the same men to act in such a diverse manner. The demand for “justice” would have been too compelling. By creating separate agencies, within each of which relative uniformity was achieved, it became possible to isolate somewhat the parties in one jurisdiction from those in another. They could then be treated variously with fewer protests. The jurisdictional lines between and among regions and commissions served as a partial insulation.

¹⁷ Transcript, Executive Meeting, January 5, 1943, p. 160.

As a longer-run byproduct, decentralization, by leading to participation by many industry, labor, and public representatives throughout the Nation, had important educational advantages.

Advantageous though the decentralization program was in its total results, it created definite problems. In retrospect, it appears that some of these difficulties could have been avoided or minimized without sacrificing the benefits.

II. GEOGRAPHIC VERSUS INDUSTRIAL ORGANIZATION

The Board never resolved a basic conflict in its administrative structure. It rejected basic policy-making by staff personnel on the ground that it was too authoritarian. It rejected primary reliance on panels because they were too ephemeral and hard to control. It accepted regional boards and industry agencies because they were permanent and tripartite, and were thus considered best able—next to the National Board—to arrive at proper decisions. But as between regional boards and industry agencies, the National Board never made a final decision. It used both, but was not fully satisfied with the arrangement.

A. THE REGIONAL BOARDS

Originally 10 regional boards were set up and subsequently 3 more were added to make 13. They were located as follows: Boston, New York, Philadelphia, Atlanta, Cleveland, Detroit, Chicago, Kansas City, Dallas, Denver, San Francisco, Seattle, and Honolulu.

The determination of the number and the definition of regions was, apparently, basically the work of the Budget Bureau.¹⁸ The original 10 boards were located in cities where the Office for Emergency Management had established headquarters. This facilitated the handling of payrolls and other administrative aspects of the program. The National Board had originally contemplated a somewhat larger number of such boards—15 or 16.¹⁹ Cities which were variously mentioned as possible locations for boards were: Hartford, Baltimore, Pittsburgh, Buffalo, Birmingham, New Orleans, Cincinnati, St. Louis, Minneapolis, and Los Angeles.

1. *The logic of greater decentralization.*—Some of the arguments for a larger number of boards were the same as those used to support the decentralization program. The more regional boards there were, the faster cases would be processed and the easier it would be to secure factual data and assay the attitudes of the parties. Greater consent would be forthcoming, since the closer board members were to local industry and labor leaders, the greater the acceptance would be. The

¹⁸ *Ibid.*, pp. 1-2.

¹⁹ *Ibid.*, p. 65.

more regions there were, the easier it would be to adopt different policies from region to region to fit local circumstances. The Hawaiian Territorial Board, for example, under unusual collective bargaining circumstances, developed its own version of union security, substituting the checkoff for maintenance of membership.

The case volume was quite unequally distributed among the regions; and, in general, the larger the case load, the more difficult it was to keep current. Chicago, New York, and Cleveland together had about 40 percent of the dispute cases handled by all the regions; Denver, Seattle, and Dallas together had less than 10 percent. The proportions were about the same for voluntary cases.

Three other factors also argued for a larger number of regional boards. In the first place, intercity rivalries are intense in some parts of the country. In California, as one of several examples, San Francisco and Los Angeles are traditional competitors. Location of the regional board in one city caused dissatisfaction in the other. Los Angeles was almost as unhappy about operating under administration from San Francisco as it would have been under administration from Washington, D. C.

Secondly, homogeneity of the region was a considerable asset to some boards; heterogeneity a cause of difficulty to others. In developing wage stabilization policy in the Cleveland region, as an illustration, it was found that living standards were much lower in Kentucky than in northern Ohio. The degree of unionization varied substantially. The outlook of the employers was not the same. The basic industries were quite different. Local practice on fringe benefits varied considerably. Similar variations within other regions made it difficult to develop suitable policy and reconcile different points of view within each board.

Thirdly, consistency of board membership was much greater in regions with one recognized metropolitan center. Where there were two or more rival centers, the industry and labor membership of the board fluctuated constantly. In the Chicago region, for example, Minneapolis labor and industry members preferred to sit on their own cases, rather than have the Chicago members do so. In California, there were virtually two boards—one in San Francisco and one in Los Angeles. One group of labor and industry members sat on northern California cases, another on southern California cases. High board morale, good personal feelings, and consistency of policy were all hard to achieve under such circumstances.

2. *The logic of restricted numbers.*—Several of the basic reasons for limiting the number of regional boards correspond to those advanced for having none at all. The selection and training of suitable board members, particularly public members, and staff personnel

would be increasingly difficult as more boards were added. The available number of skilled persons, in whom the National Board had confidence for regional chairmanships, was strictly limited. The preservation of uniformity in action would become harder and harder as agency after agency was added. A larger total staff would be required as the number of regional boards grew. This would create an even larger bureaucracy.

Additionally, other arguments favored restricting the number of regional boards. The cost was increased with each new board. New board members had to be compensated, and additional staff had to be hired. This was important particularly to the Bureau of the Budget. Coordination with the work of other agencies would be hampered. The Office for Emergency Management could best service boards in cities where it had regional offices. The cities originally selected by the Board were generally ones in which other war agencies had their regional headquarters. If more regional boards had been established, liaison between them and these other agencies would have been made more difficult, or these agencies might have found it necessary to establish additional offices also. Demarcation disputes potentially would have been increased by an addition to the number of boards. More and more cases would have fallen partly within two or more regions.

The decisions which were made on the appropriate number of regional boards needed to reflect consideration of these factors, among others. In actual practice, however, everything else remaining equal, the regional boards with relatively homogeneous areas had the least difficulties, and those with diverse areas and rival cities had the most. This suggests that creation of additional regions might have reduced some of the tensions.

B. INDUSTRY AGENCIES

The National Board established 17 commissions, panels, "sections," and "committees." Each of these was in varying degrees competitive with the regional boards. Commissions had an independent life like a regional board. They could make decisions and issue orders on their own account. Panels could hear cases and make recommendations, but could not issue their own orders. Several agencies which started as panels subsequently became commissions. A section—and there was only one: the Automotive Section—was in reality a panel with Nation-wide jurisdiction, attached to a regional board (Detroit). A committee—and there were only two, the entirely separate divisions of the West Coast Aircraft Committee—was a panel, confined to a single region, reporting to a regional board, but established by the National Board.

1. *Establishment of industry agencies.*—Four industry agencies (or their predecessors) were in operation before decentralization was widely discussed:

New York Metropolitan Milk Distributors Commission.
 Shipbuilding Commission.
 West Coast Lumber Commission.
 Wage Adjustment Board (building construction).

Three more were established during the period when the regional boards were being developed:

Nonferrous Metals Commission.
 Detroit Tool and Die Commission.
 Trucking Commission.²⁰

The remaining 10 commissions, panels, sections, and committees were set up after the regional boards were in operation:

Newspaper Printing and Publishing Commission.
 West Coast Aircraft Committee (in reality two committees—
 one in Los Angeles and one in Seattle).
 Automotive Section.
 War Shipping Panel.
 National Airframe Panel.
 Meatpacking Commission.
 Steel Commission.
 Northern Textile Commission.
 Southern Textile Commission.
 Telephone Commission.

Most, but not all, of these special agencies covered more than one region. Several of them had jurisdiction over enterprises in every region (except Hawaii). A few, such as the two West Coast Aircraft Committees, were confined to a single region. Some of the special agencies were limited to a single industry, like shipbuilding. Others were confined to a portion of an industry, like the Meatpacking Commission, which was concerned primarily with plants of the "Big Four" companies. Still others covered more than a single industry, like the Trucking Commission, which followed, in large part, the jurisdiction of the Teamsters' Union.

The subject matter encompassed varied greatly. Some of these agencies handled all types of disputes and voluntary cases arising within their jurisdictions; others considered only restricted types of cases, such as intraplant inequities, as in the case of the two textile

²⁰ Regional trucking panels were subsequently established. They were responsible to the regional boards administratively, but jointly to the regional boards and the Trucking Commission on matters of policy.

commissions. Thus the special agencies varied greatly in their geographic, industrial, and subject coverage. They were distinguished by diversity rather than similarity.

2. *Sources of the special agencies.*—These special agencies were developed for a variety of basic reasons. In each case, for some reason or reasons, the National Board did not wish to handle the problems itself and did not think it wise or possible to delegate them to the regional boards. Six essential factors variously led to the establishment of these agencies.

a. *Historical considerations.*—The Wage Adjustment Board was first created, with only labor and Government representation, in 1942 by the Secretary of Labor to administer a wage stabilization agreement for Government construction. It was reconstituted as a tripartite body by the National Board to process wage cases in the construction industry. The Shipbuilding Commission was set up, in part, because of the existence of the Shipbuilding Stabilization Committee, which was established in 1940 by the National Defense Advisory Commission. The War Shipping Panel took over review of wage increases from the War Shipping Administration.

b. *Manpower pressures.*—Several agencies developed out of severe manpower difficulties. Manpower stringencies put pressure on wage rates. In order to reduce turn-over and maintain or increase the labor supply of an industry, wages needed to be standardized, and in some cases raised to new levels. These manpower pressures were quite evident early in the war in the tool and die, nonferrous metals, and northwest lumber industries, among others.

c. *Government purchasing.*—In some industries, the Government was the sole or largest purchaser of the products. It was concerned with wages in these industries not only because of their relation to wage stabilization but also because they directly affected the cost of financing the war effort. This was true of the aircraft, shipbuilding, construction, and shipping industries, among others.

d. *Technical complexities.*—The National Board became involved in several major cases where it did not have the time to work out all the technical difficulties. These problems usually related to the development of intricate wage relationships among individual job rates, or the working out of complex clauses on bonuses, penalty rates, manning scales, etc., or the handling of a myriad of grievances. The Airframe Panel, West Coast Aircraft Committees, War Shipping Panel, Textile Commissions, New York Metropolitan Milk Distributors Commission, Meatpacking Commission, Steel Commission, and West Coast Lumber Commission were partly or wholly established to handle such complicated problems.

e. *Possession of power.*—Some industries and some unions had sufficient economic or political power to insist on separate treatment, if

they desired it. Sometimes this separate treatment could be secured best from the National Board itself. On other occasions, a special commission was preferred. Such a commission might give higher wages or lower wages or a different wage structure than the regional boards following standard policy, and adopt similar variations on other issues. In some industries, both parties wanted to be separated from the confines of general policy; in others, it was a strong union, alone or a strong employer alone seeking the differentiations.

f. Difficult industrial relations.—In some industries, because of rival unionism or employer-union controversies, collective bargaining was conducted unusually aggressively and unpleasantly. The National Board found it helpful, on occasion, to relegate such situations to the attention of a special commission. This was a primary factor in the creation of several of the special agencies.

The establishment of few of the special agencies can be explained solely on a single ground. Nearly all of these six factors were contributing considerations in the creation of two or three of the agencies.

C. THE IMPACT OF SPECIAL AGENCIES ON WAGE STABILIZATION

The special agencies generally, but not universally, administered the wage-stabilization policy more liberally than the regional boards. The explanations for this will be examined subsequently. In particular, industry agencies created because of manpower shortage, difficult industrial relations or the application of economic or political power were likely to order or allow wage increases beyond those normally permitted by the regional boards.

This liberality of treatment frequently had an upsetting effect on wage stabilization in the regions for several reasons. In the first place, the definitions of commission and regional jurisdictions were not always clear or mutually exclusive.²¹ Under such circumstances commission decisions sometimes applied to individuals whom the regional boards thought were within their own jurisdiction. In other instances, the commissions applied their higher wage decisions, if not to the same individuals, at least to people in the same or similar occupations. The regional boards were then put under pressure by labor, and sometimes industry, to extend commission wage rates to the other people in like circumstances. This was particularly true when union affiliation was the only basis for distinction between those covered by higher commission rates and lower regional rates. Whether or not the people involved were similar, industries or enterprises with commission rates attracted workers from those with regional rates. This led to requests for increases to competitive levels.

²¹ The industry agencies were usually the more persuasive in jurisdictional disputes. They usually had more powerful proponents than the regional boards.

Moreover, workers or employers who had, to various degrees, historically compared the rates they received or paid with those in industries covered by commissions demanded that the historical relationships be restored. Other workers, unions, or employers, who had not made such historical comparisons, learned of the more favorable handling by the commissions and demanded that they be accorded the same treatment.

If the regional boards granted increases on any of these grounds, then a new chain of reactions was set into effect. The wage structure of the Nation is a mass of interrelationships. Few wage rates are entirely unrelated to any other rates. Particularly in a period of full employment, the interrelationships are tightly knit.

These interrelationships are the result both of mental comparisons based upon concepts of what is just, proper, or possible, and of manpower pressures. Thus, commission decisions spread out and their repercussions were felt in many different places. At the same time that the regional boards were subjected to new pressures, their willingness to hold the line was decreased by their observance of the actions of the commissions.

The Chairman of the Tenth Regional War Labor Board illustrated this process as follows:

For instance, the Board felt as a matter of equity it had to order the same rates for the pulp and paper industry as those approved in cases under jurisdiction of the West Coast Lumber Commission, because of the historical relationship between the industry and lumber. Rates ordered in the Los Angeles area shipyards by the Shipbuilding Commission led to demands for similar wages by the steel fabricating and metal trades unions. Actions of the National Trucking Commission were used as bases for requests by unions in cases before the regional board.²²

The twelfth region was perhaps most drastically affected by the work of the commissions. The commissions, particularly the West Coast Lumber Commission, the Wage Adjustment Board, the Shipbuilding Commission, and the Trucking Commission, covered almost as many employees as the regional board—400,000 as against 500,000.²³

The Chairman of the Board reported:

These commissions generally made wage adjustments without consultation with the regional board and frequently with resulting dislocations in rates for comparable jobs under the jurisdiction of the War Labor Board. For example the Shipbuilding Commission allowed cooks \$1.30 and \$1.375 per hour, while the War Labor Board was endeavoring to stabilize such rates at \$1. Waitresses were awarded \$0.84½, when the War Labor Board bracket was \$0.80. The Wage Adjustment Board allowed common labor rates of \$1.13 per hour, when the comparable common labor rates under War Labor Board jurisdiction was \$0.85.²⁴

²² The Termination Report, vol. I, pp. 748-749.

²³ Termination Report of Twelfth Regional War Labor Board (mimeographed), p. 7.

²⁴ *Ibid.*, pp. 7-8.

D. THE REGIONAL BOARDS—ECONOMIC PRESSURES IN LOCAL LABOR MARKETS

The adherence of the regional boards to strict wage stabilization standards varied from region to region. It was the industry agencies, however, which upset regional stabilization, rather than the regions upsetting the industry agencies. A public member of the National Board commented:

When you give attention to the problems of a particular industry, the tendency is naturally to meet the problems of that industry. * * * We find, more than the regional boards, a tendency of the commissions to meet the problems of that industry irrespective of the wage stabilizing program. * * * A commission obviously must become industry-minded instead of wage-stabilization-minded. * * *

This greater attachment of the regional boards to the principles of economic stabilization was due to at least four causes. In the first place, the regional boards had more extensive knowledge of local wage structures. They were familiar with the existing patterns of interrelationships. They could anticipate, and were more concerned with, the effects of one wage increase on surrounding rates. This acquaintance with the over-all effects of a single wage increase dampened the enthusiasm for making increases. They could visualize the reactions of other employers and union leaders to an increase in one industry or plant which would upset the local pattern.

Secondly, the regional boards had a greater sense of responsibility for over-all stabilization. They covered many industries and segments of industries and knew they were accountable for what happened in the area.

Thirdly, board members were in the center of diverse pressures. A single industry—both the employer and the union—might desire a wage increase, but other employers might fight it because of its effects on them. Employer members of the regional boards were conscious of the general desire of the employer community that approval not be granted for wage increases that would embarrass employers in other industries. Even labor members did not always press effectively for certain wage increases. Unusual increases given to one union inconvenienced other unions whose contracts were not open or whose leaders knew they could not secure similar advances. The public members, subject to both upward and downward pressures from the community and from within their own board, were better able to follow the dictates of policy. They were quite conscious of the importance of precedents and subject to arguments based on the creation of precedents.

Fourthly, the National Board, apparently, kept a closer check on the regional boards than on the industry agencies, to see that they

* Transcript, Executive Meeting, June 24, 1943, p. 648.

did not violate wage stabilization policy in either voluntary or dispute cases. The Wage Stabilization Director of the National Board had more influence over the regional wage stabilization directors than over their counterparts on the special agencies. The regional wage stabilization directors in turn usually had greater influence within their organizations, than was the case on the industry agencies.

The tripartite system required special strategy to assure effective stabilization, since more than the public interest was represented in policy formulation and application. Thus it was essential to develop an opposition of interests which would approximate the same results as if only the public interest had been represented. The regional boards, in particular, supplied an administrative device where self-interests offset each other and supplied a system of checks and balances. As compared with the industry agencies, they afforded a political situation within which the public interest could better be served. The essential strategy was the equalizing of pressures.

E. THE INDUSTRY AGENCIES—POLITICAL PRESSURES IN COLLECTIVE BARGAINING

The commissions, generally, were in a situation less conducive to concentration on problems of wage stabilization. There were several reasons for this.

The industry agencies were more conscious of other considerations, in addition to wage stabilization. They were familiar with the manpower problems of the particular industry they covered and any procurement problems of Government agencies purchasing from it. Their over-all knowledge of the industry led to greater sympathy with its problems.

Many of the industry agencies were more concerned with standardization than with stabilization. Several were set up for the purpose of equalizing wage rates within the industry over a large area. Others were subject to severe union demands to standardize on an inter-regional basis. This usually meant raising rates to the highest levels which prevailed in any single locality regardless of local labor market wage levels.

The public members of the industry agencies were particularly conscious of the necessity of their getting along well with the representatives of the particular union and industry with which they dealt. This led to more of a mediation approach, as in the case of the earlier ad hoc panels, than to strict enforcement of a wage stabilization program. Some of the industry agencies were designed to help keep the peace in certain industries. Public members of these were particularly bound to discover what was mutually acceptable, as well as what was good stabilization practice. The price of peace was sometimes a cost to the stabilization program.

The political context within which some of the industry agencies operated was unfavorable to stabilization. Sometimes both the industry and labor members of an industry agency preferred substantial wage increases. Difficulties in recruiting adequate personnel, combined with the ability to pass on higher costs to the Government or to private consumers or to take them out of excess profits, served to obliterate the classic conflict of interest over wages. Under such circumstances, the pressures on the public members were in the upward direction only and no counter-vailing pressure exerted itself. When one or both of the parties were powerful enough to get an industry agency set up, they were powerful enough to assure that the agency served the purpose for which it was intended.

The industry agencies also had less information about the potential results of their decisions in local labor markets, had less responsibility for the over-all consequences, and were less subject to careful wage stabilization review.

The situation of the industry agencies was not entirely unlike that of the National Board in wage stabilization. The National Board also had less information about the local repercussions of its wage decisions than did the regional boards. The National Board, perforce, viewed problems from a national point of view, which tended to pass over subtle local distinctions. Moreover, in any single case involving wages, as in the *Boeing* case, the National Board was conscious of the needs of the parties immediately before it and not of the attitudes of other unions and employers in the same area. Thus, in its day-to-day operations, it was primarily concerned with the acceptable settlement of disputes rather than with local wage stabilization.

Consequently, the regional boards were in the best position to stabilize effectively. They had the most complete information and were subjected to the most nearly equalized pressures. The industry agencies were most likely to feel only one-sided pressures; and the National Board to act in a rarified atmosphere where the local situation was only dimly seen.

The industry agencies, as the war neared an end, began to act more like the regional boards. Labor-market pressures were reduced; and the employers, as they began to look ahead to the postwar period, became again more concerned with competitive costs in the product market.

F. THE IMPACT OF DECENTRALIZATION ON ADMINISTRATION

The coexistence of 13 regional boards and 17 special agencies created certain administrative difficulties.

It was impossible to draw clear-cut jurisdictional lines for most of the industry agencies. The boundaries of the Trucking Commission, in particular, never were satisfactorily defined. Even in what would

appear to be the relatively simple case of the Meatpacking Commission, clear lines of demarcation were hard to distinguish. It was necessary in that instance to define the jurisdiction in six dimensions. Some unions, some companies, some plants, some types of operations, some employees, and some issues were covered by the commission; and the others by the regional boards.

The shadowy nature of many of the dividing lines confused staff members in the industry agencies and regional boards alike, caused unnecessary shunting of some cases back and forth, and irritated staff personnel and industry and labor representatives.

The juxtaposition of regional boards and industry agencies caused some internal conflicts within the administrative machinery. A certain amount of mutual resentment was aroused. The Chairman of the Twelfth Regional Board stated:

The Twelfth Regional War Labor Board, from time to time, raised its voice in vigorous protest against the extension of the jurisdiction of the commissions, and even argued in favor of reducing them, or at least requiring more effective cooperation between the commissions and the regional board and for better coordination of policy. All of these protests fell on deaf ears and the commissions continued to flourish and expand.²⁶

The chairman of the First Regional Board advised:

Avoid special areas of "wage stabilization" such as the Trucking Commission, Shipbuilding Commission, etc.²⁷

The chairman of the Second Regional Board protested against—
defining as an industry the businesses which happen to have been organized by a particular union.²⁸

The chairman of the Third Regional Board said the commissions and regions should be better coordinated.²⁹ The chairman of the Fourth Regional Board stated that national commissions were not readily accepted in the South and mentioned in particular the unstabilizing effects of three commissions.³⁰ The chairman of the Seventh Regional Board pointed out that: "The unsettling implications of such an arrangement are obvious."³¹ The chairman of the Eighth Regional Board said commissions "should be discouraged."³²

These statements reflect the fairly widespread distrust of industry agencies in the regions. This resentment was based partly on the feeling that it was not equitable for some groups, usually in the more advantageous positions already, to obtain unusually favorable treat-

²⁶ Termination Report of the Twelfth Regional War Labor Board, *op. cit.*, p. 9.

²⁷ The Termination Report, vol. I, p. 612.

²⁸ *Ibid.*, p. 625.

²⁹ *Ibid.*, p. 645.

³⁰ *Ibid.*, p. 658.

³¹ *Ibid.*, p. 701.

³² *Ibid.*, p. 715.

ment. It was also caused by the effect commission decisions had in making the difficult stabilization task of the regional boards additionally onerous.

G. THE RECONCILIATION OF REGIONAL AND INDUSTRY APPROACHES

Administration by regions and by industry are two philosophically opposed principles. The former presupposes equality of economic citizenship; the latter differentiation in status. The former emphasizes adaptation of policy to suit the needs of a varied clientele; the latter a tailoring of policy to satisfy the requirements of a restricted element or elements. The difference is, in part, the difference between essentially public and essentially private courts. Administratively, also, the two principles, if simultaneously followed, of necessity lead to some overlapping.

But the regional form and the industry form of organization each had merits from the point of view of the National Board. The regional boards were generally better at wage stabilization and thus most useful in those areas of economic life where stabilization was most desired or at least most easily achieved. They were better at administration of enforcement and as liaison with the Wage and Hour offices and other Federal field offices. Jurisdictional problems seldom arose among the regional boards. Regional lines were precisely drawn and, for the most part, the National Board handled the interregional cases.

The industry agencies had specialized functional areas, also, in which they excelled. If, for some reason, strict stabilization was undesirable, as in cases of essential industries experiencing severe manpower shortages, or impracticable, as in the case of powerful groups unwilling to submit to it, the industry agencies were better at unstabilizing than the regional boards. By their nature they were more likely to raise wages, and the separatism of jurisdiction served to obscure the variations in policy. Similar action by the National Board or the regional boards would have appeared more crude. The effective prosecution of the war could not always wait on moral considerations. The redistribution of manpower and the maintenance of full production were often of an equal or greater order of importance than distributive justice.

The industry agencies were adept at highly technical problems such as developing more consistent internal wage structures or standardizing wage or "fringe" policies on an industry-wide basis. They were closer to the parties; more concerned with acceptance of decisions; and better able to achieve compliance in industries with troublesome relations. By disposing of some of the more difficult problems, they reduced the pressures which the regional boards had to meet and thus facilitated their functioning. As the end of the war approached, they

were able to assist in the adaptation of industrial relations to the requirements of the transition period. They usually acted more expeditiously in processing cases than the regional boards, and were more effective in handling dispute cases because of their greater knowledge of each industry and their more constant contact with the parties.

Regional boards and industry agencies were simultaneously useful and inconsistent modes of administrative organization. The two forms were most nearly compatible when one or more of six circumstances were present:

(a) The industry agency had as its sole task the detailed application of general orders of the National Board. It operated at a technical level within restricted limits. The opportunities for it to upset local relationships were strictly confined.

(b) The collective bargaining system over which the industry agency had jurisdiction, by the nature of the industry or the history of its relationships, was clearly defined and relatively isolated from the main flow of manpower and of industrial relations developments. Overlapping of jurisdiction and the transmission of separatist policies were both minimized. This was, in part, the situation of the War Shipping Panel, the Newspaper Commission, the Tool and Die Commission, and the Nonferrous Metals Commission,³³ for example.

(c) The industry agency followed the policy of checking with the regional boards when its acceptance of cases or the content of its decisions might affect regional operations, as did the Tool and Die Commission; or it was geared into the regional boards, as were the two West Coast Aircraft Committees.

(d) The special agency was a panel, rather than a commission. Panel recommendations were subject to review by the National Board with its greater capacity for taking an over-all view.

(e) The industry agency followed the same wage stabilization policy as the regional boards, and did not establish separate policies such as the "in lieu of" principle which was used by the Trucking Commission, following the precedent established in the railroad industry.

(f) The special agency followed conservative wage policies. Occasionally the industry agencies were more conservative than the regional boards. It was not difficult for the boards to resist downward pressures in wartime; the problem of maintaining their standards arose when they were subjected to upward pressures as a result of agency actions. Industry agencies with elements of conservatism were the Telephone Commission and the Airframe Panel.

Conversely, the greatest difficulties arose in the case of industry agencies that acted on general wage increases and fringe benefits; that

³³ It was particularly true for the mining operations covered; much less true for the refining segment of the industry.

dealt with groups that were intertwined with other groups; that did not check with the regional boards; that had the power to make original decisions; that developed their own distinct policies; or that administered wage-stabilization rules liberally because of manpower needs, the demands of influential parties, or the urging of procurement agencies.

Some of the difficulties between the regional boards and the Trucking Commission, Automotive Section, Shipbuilding Commission, West Coast Lumber Commission, and Wage Adjustment Board stemmed from one or more of these factors.

III. THE DETERMINATION AND ADMINISTRATION OF POLICY

Once having decentralized, the National Board needed to determine how much policy it should make and how much should be made by its agencies; and which cases it should handle and which should be referred to its subsidiaries.

The essential policy was stated by a public member as follows: "The Board always reserved for itself the final judgment upon all major questions."³⁴ It made all major policy, established the procedural rules, set up uniform administrative regulations, handled appeals, and made all major appointments. It reserved the right, on its own motion, to take jurisdiction at any time over any case. It kept dispute cases which had interregional aspects and could not be referred appropriately to one of its industry agencies. It also kept cases which involved the making of basic policy. The National Board delegated case handling, but not policy formulation; it followed the practice of centralizing policy and decentralizing administration.

The Board agencies had less and less to do with policy determination on major issues. They could exercise free judgment only on issues regarding which the National Board had not prescribed policy. During the early life of the Board, this gave the agencies considerable latitude. In fact, many policies were developed by National Board approval, on appeal, of policies originated by an agency. As time passed, the National Board formulated policies on more and more issues, so that the agencies needed to follow increasingly specific National Board principles.

A. CONTROL V. INITIATIVE

Generally the system worked satisfactorily. Central domination over policy-making kept a large degree of uniformity in the decisions

³⁴ The Termination Report, vol. I, p. xxiii.

of a complex agency. The regional boards and industry agencies were less subject to being pushed and pulled around since they could not make, but only interpret, basic policy. The work of the public members, in particular, was eased. Both the Board agencies and the National Board were reasonably satisfied with the arrangement.

To the extent that there was any discontent it arose from a feeling in the regions that too much authority was concentrated in the National Board. The chairman of the First Regional Board stated: "The regional boards should be made to realize that their actions are subject to check only in extreme cases and that regional discretion will be respected within these extreme limits."³⁵ The chairman of the Third Regional Board felt: "The regions should be given the greatest possible degree of independence from Washington control."³⁶ The chairman of the Twelfth Regional Board expressed the opinion that: "Every attempt should be made to leave with the regions a fair degree of initiative and also a considerable degree of finality in their awards."³⁷ It was generally argued that greater delegation of authority would reduce the congestion in the National Board and lead to greater initiative and responsibility in the regions.

Four complaints, in particular, were advanced by regional personnel. In the first place, some of the regional boards would have welcomed more consultation by the National Board prior to the issuance of policy directives and the deciding of important inter-regional cases. This consultation would have given a greater sense of participation and made possible the expression of regional viewpoints in advance. Receipt of more immediate and precise information about such determinations would also have been appreciated.

Secondly, the regional boards felt on occasion that the National Board delayed unduly in announcing policy, or set it forth in an unclear manner. As indicated in chapter 2, most of the policy of the National Board was, of necessity, decided on a case-by-case basis. This had the great advantage of allowing formulation of policy in the context of a live situation. It meant, however, that the National Board had to wait for an appropriate case in connection with which it could make such policy; and then the statement of policy was partly in terms fitted to the case being decided, although the National Board did, particularly in the opinions of the public members, consider the wider implications.

Thirdly, sometimes the policy established by the National Board for Nation-wide application did not apply equally in all regions. The locally accepted level of substandards of living was different in the

³⁵ *Ibid.*, p. 606.

³⁶ *Ibid.*, p. 645.

³⁷ *Ibid.*, p. 769.

South than in Detroit. Local patterns of fringe benefits varied greatly with the type of industry, the history and strength of union organization, and the policies of employers and unions. Some of the regional boards would have preferred greater flexibility in adopting general policy to local patterns.

Fourthly, the National Board modified the decisions of regional boards with considerable freedom. Some of the regional boards would have preferred that their decisions be upheld unless there were clear error in procedure or interpretation of policy. It was sometimes considered that the National Board, on appeals, gave different, but not clearly better, decisions.

B. POLICING THE SYSTEM

The National Board, considering the gravity of the responsibilities with which it was charged, had to have some assurance that its agencies would carry out national policy faithfully and effectively. It could not assume a uniformly satisfactory level of good will, capacity, and performance.

Four primary methods of enforcement were utilized. One method was the control over selection of personnel. The National Board placed great reliance on securing competent personnel. One of the public members expressed the generally accepted viewpoint when he said that the quality of the individuals operating the program was more important than the adequacy of the administrative machinery.³⁸ Great stress was laid on the qualifications of the chairmen, and to a much lesser extent the vice chairmen, of the agencies. Many of them were trained by the National Board, and all of them were selected and appointed by it. The National Board retained, and several times exercised, the right to remove or transfer these officials.

A second method was consultation. When an agency was, in the judgment of the National Board, acting improperly, National Board members were sometimes sent out to investigate the situation and devise means for its improvement. On other occasions the Chairman and even the leaders of the industry and labor members were called into Washington where National Board members sought to correct the difficulties.

Another method was the reversal of actions. If an agency made a decision contrary to national policy, it could be reversed either on appeal or on the initiative of the National Board. This was not always an easy process, since vested interests in original decisions developed rapidly; but it was possible and was done.

A final method was the requirement of reporting. The regional boards sent many of their decisions in dispute and voluntary cases to

³⁸ Transcript, Executive Meeting, January 5, 1943, p. 12.

the National Board. Here they were examined, however inadequately. When individual decisions appeared out of line, they were called to the attention of the regional boards, and sometimes additional explanations were requested.

One weakness in the ability of the National Board to require agency conformance with its policies was its lack of direct control over the industry and labor members of the agencies. This was particularly serious in those instances where the difficulties basically arose from the partisan rather than the public members. This problem was partly met by permitting the agency public members to refer to the National Board for prereview of any decisions on which they had been outvoted.

Generally, the National Board was better off when it had relatively conservative and cautious leadership on the regional boards and commissions, for it was easier to go beyond the original decisions than to cut them back.

The policing powers of the National Board proved largely adequate. Some annoying deviations from general policy did occur, but none was disastrous.

IV. CONCLUDING OBSERVATIONS

Historical judgments are usually based on an oversimplification of the problems facing the persons who made the original decisions. From the favored position of the ex-post analyst, several revisions of National Board practice seem desirable, although they may well not have been possible at the time and under the circumstances. The suggestions, set forth below, are interrelated and several of them cannot stand by themselves. Each of them is connected in some way to these five basic tests of administrative effectiveness that were discussed at the beginning of this chapter:

- (a) Reasonably rapid processing of cases,
- (b) Minimization of internal friction,
- (c) Achievement of a satisfactory degree of wage stabilization,
- (d) Impression of nondiscriminatory determination and application of policy, and
- (e) Attainment of voluntary acceptance under conditions where merit and power did not always parallel each other.

These suggestions will be outlined as they relate primarily to the National Board, the regional boards, and the special agencies.

A. THE NATIONAL BOARD

1. Had the National Board undertaken full-fledged regionalization at a somewhat earlier date, the backlog of cases, which plagued the

Board so much in 1943, would not have been built up to the same extent. The fears about the regional boards proved to be largely unfounded. The decentralization program yielded good results. Had the regional boards been established 3 months earlier, some of the industry agencies might not have been necessary.

2. The National Board, from the start, might have had a larger number of public members. With more public members, several of them could have devoted more time to becoming acquainted with the activities and problems of individual Board agencies. This would have permitted closer liaison between the National Board and its agencies, and been effective in securing greater uniformity of action. The public members could have visited these subsidiary groups more frequently. Appeals might have been reduced or at least processed more expeditiously.

3. Generally more personal communication between the national and regional levels would have been helpful. Events moved too rapidly for written orders to be entirely effective. The flow of information back and forth was most effective in face-to-face contacts. The regional chairmen might well have gone to Washington more frequently. This difficulty of inadequate contact was experienced primarily in the outlying regions.

4. Additional consultation officially between the National Board and regional boards would have been desirable. The regional boards might have been helpful in commenting on contemplated policy actions or case decisions which affected their regions; or at least they would have been better informed about the considerations involved and the implications.

5. A greater rejection of appeals by the National Board, except where there was clear error, would have reduced the volume of appeals and, at the same time, have strengthened the agencies and given them a greater sense of stature and responsibility. Greater restriction of the acceptable bases for appeal would have reduced the almost unlimited right of appeal.

6. For stabilization purposes, more careful review of a sample of agency decisions would have aided the achievement of uniformity.

B. REGIONAL BOARDS

1. An increase in the number of regional boards—to make a total of perhaps 20 or 25—would have had several advantages. The case load would have been more evenly distributed, and the disposition of voluntary cases facilitated by the greater knowledge of and contact with local practices. A greater consistency in regional board membership would have been achieved. Some of the strains arising from intercity rivalries and differences in degree of unionization and in employer attitudes would have been lessened. More dispute cases

could have been heard originally by the regional boards, instead of local ad hoc panels, thus speeding up the processing. Greater local homogeneity in wage and fringe patterns would have made it easier to apply National Board stabilization policy and adapt it to local needs.

2. The granting of additional autonomy to the regional boards, within the framework of a more flexible national Board policy, would have given the regional boards greater standing in their communities and permitted the closer matching of policy with local conditions. The regional boards might well have been given greater freedom to establish policy, subject to appeal or review by the National Board.

3. The composition of the industry and labor sections of the regional boards might have been under greater scrutiny by the National Board. Had the regional boards been set up earlier and in less haste, Board members might have been selected more carefully.

C. INDUSTRY AGENCIES

1. Representatives of procurement agencies should not have served as public members of industry agencies, as was the case in the original form of the Wage Stabilization Board and Shipbuilding Commission.

2. The establishment of commissions should have been limited largely to situations where either a technical assignment was involved, or the collective bargaining system was a relatively isolated one, as in the maritime industry. This would have minimized the problems of integration.

3. For some other situations, standing panels reporting to the National Board might have been preferable. The National Board was better able to see the over-all results, more skilled in reconciling pressures, and more able to resist special influences than some of the independent commissions. The National Board might have set up a larger number of such standing panels, for example in the rubber and coal industries. This would have relieved the Board so it could have directed more attention to general policy formulation, the handling of appeals, and the coordination of operations.

4. Separate treatment, where necessary, might sometimes have been better achieved by differentiating policy rather than by setting up special jurisdictions. This policy would have been available to all who met its requirements, regardless of jurisdiction. This is essentially what was done with the local transit industry.

5. Commissions and panels might have been required to consult the regional boards more frequently to obtain data about local patterns and a better appreciation of the regional point of view. Each regional board might have had one or more specialists to work with the industry agencies. More group meetings of chairmen of regional boards

and industry agencies would have given the representatives of the latter a better understanding of regional problems.

6. A greater consciousness of the importance of jurisdictional lines between the regions and the industrial agencies, and increased attention to their clear demarcation would have aided the achievement of smoother operating conditions.

Viewed over-all, considerable wisdom was shown by the National Board in making its decisions about decentralization. The size and form of evolving problems could not be precisely seen; numerous conflicts in points of views existed; the burden of work was terrific; and the time for investigation and contemplation was strictly limited. Nevertheless, an organization was built up rapidly which worked with reasonable precision and remarkable voluntary acceptance of its actions.

Problems of Case Processing

By Emmett B. McNatt

I. INTRODUCTION

ANY ATTEMPT to evaluate our World War II experience with governmental controls over wages and industrial disputes necessarily involves an examination and appraisal of the methods, machinery, and problems of case processing. The most soundly conceived program, based upon economic, political, and other considerations, is bound to fail if it proves to be administratively unworkable. In other words, any control program over wages and labor disputes must provide adequate machinery for its administration. The basic problem was to devise rules and procedures that would best balance the need for speed with the need for reasonably equitable and realistic treatment. In most situations, it was desirable that the parties receive a final answer from the Board as soon as possible after a case was submitted. Although the degree of urgency varied greatly from one situation to another, relations between management and labor were likely to become a problem if their case remained undecided for a considerable period of time. On the other hand, a speedy conclusion that was patently unfair could have done far more damage.

Specifically, this analysis will run in terms of seeking answer to such questions as the following: What kind of a case load were various wartime wage stabilization and labor dispute agencies required to carry in administering their programs? What administrative problems were encountered in the processing and disposition of these cases, and how were these problems resolved? What was the actual time required, and what was a reasonable time, for processing a wage

or a dispute case? Were there alternative procedures that could have been used which would have reduced the processing time? Were the delays incident to case processing sufficiently serious to impair significantly the satisfactory operation of wage and labor dispute controls?

A. THE CASE PROCESSING RECORD OF THE NATIONAL DEFENSE MEDIATION BOARD, MARCH 19, 1941—JANUARY 12, 1942

A brief examination of the experience of the NDMB with case processing is important as a background for the better understanding and evaluation of the later problems of the NWLB and NWSB. It was the first World War II agency in the field of industrial relations using individual case processing in discharging its responsibilities.

The jurisdiction of the NDMB was confined exclusively to handling dispute cases certified to it by the Secretary of Labor. It had only mediatory and recommendatory powers in settling disputes. The case load was handled by panels of the Board consisting of one public, one labor, and one management representative. A staff member also was usually assigned to the panel as an assistant. These panels exercised all the powers of the full Board in settling disputes. Only three cases were brought before the full Board during its entire life. The Board panel held hearings and attempted to obtain an agreement between the disputing parties by mediation. If mediation failed, the panel prepared a report on the case with recommendation to the Board for a final settlement.

During the 10 months of its existence, the Board docketed 118 cases, involving 114 disputes. Of these cases, 96 were disposed of by the NDMB, and 22 were referred to its successor, the National War Labor Board.¹ The average length of time required for processing these 96 cases from the day the case was certified to the Board until it was closed was 36.5 days.² The longest time required for any one case was 210 days, and the shortest was 1 day. Only eight cases required 100 days or longer to process. Thus it is apparent that the case load of the Board was small, the processing machinery relatively simple, the disposition of cases rather speedy, and the staff, other than Board members, required for processing, almost negligible.

B. THE CASE PROCESSING RECORD OF THE NATIONAL WAR LABOR BOARD, JANUARY 12, 1942—DECEMBER 31, 1945

From its inception on January 12, 1942, to October 3, 1942, the NWLB handled only dispute cases. From October 3, 1942, to January

¹ U. S. Department of Labor, Bureau of Labor Statistics, Report on the work of the National Defense Mediation Board, Bulletin No. 714 (1942), p. 2.

² *Ibid.* Compiled from case history data in this bulletin.

1, 1946, the NWLB handled both dispute and voluntary wage stabilization cases. The responsibility of the National Board for the processing and disposing of dispute cases began with the certification of the case to the Board from the Secretary of Labor. Before the establishment of the regional boards in March 1943, all dispute cases were processed exclusively by the National Board in Washington. Upon receipt of the case it was docketed and assigned by the Board to a tripartite panel or to a staff hearing officer. A hearing was then scheduled and held, a report was prepared by the panel or hearing officer, comments on the report by the disputants were filed, and the case was presented to the full Board. The Board considered this report, and the record on which it was based, in executive session and made its decision in the form of a "Directive Order."

Subsequent to the assumption of responsibility for the administration of wage stabilization in October 1942, and the establishment of regional boards in March 1943, the machinery for handling dispute cases became more involved and the length of time for processing these cases necessarily increased. A wage stabilization memorandum had to be prepared for each dispute case after October 1942 in which an analysis had to be made as to the permissibility of any wage increases involved. This obviously required considerable extra time and staff for processing. After the regional boards were established, the National Board had to screen all dispute cases and decide which cases to keep for final processing in Washington and which cases to send to the regional boards and commissions. The processing of a case by these agencies followed the same pattern as that of the National Board. After a decision had been issued by the National Board or one of its agencies, either party had the right to request reconsideration. In addition, the final action of a Board agency could be appealed to the National Board.

Obviously, with a machinery as elaborate as this, cases would take a considerable time to process. In addition, the Board was overloaded with 20,692 dispute cases during its life.³ Unfortunately, the records are inadequate for a complete statistical summary of the time consumed in handling dispute cases. We do know that of the cases decided in July 1945, 25 percent were decided within 3 months of their certification, 40 percent within 3 to 6 months, 20 percent within 6 to 9 months, and 15 percent required even longer.⁴ In addition,

³ For a detailed statistical analysis, see U. S. Department of Labor, *The Termination Report of the National War Labor Board* (1948), vol. I, pp. 479-502 (hereinafter referred to as *The Termination Report*).

⁴ Based on a sample of cases decided in July 1945. *Ibid.*, pp. 485-486. A few of these cases remained unsettled for as long as 20 to 24 months before final disposition. However, these cases were exceptional and were mainly due to factors over which the Board had no control, such as representation disputes.

many of these cases were not finally disposed of until petitions for reconsideration or review were completed.

There are indications that the elapsed time varied significantly from these figures during different periods of the Board's history. During the first 10 months, with only an indefinite stabilization responsibility and a small number of cases, processing time apparently was not so long. However, the impact of a specific stabilization responsibility greatly extended the elapsed time. This occurred immediately after the issuance of Executive Order 9250 in October 1942 and again after the issuance of the "hold-the-line" order (9328) in April 1943. Indeed, after the second of these orders, processing practically stopped until after its clarification 5 weeks later. Following a period of readjustment, the processing time began to decline until it reached the 1945 level stated above. Despite this improvement, the Board still had a backlog of 3,042 dispute cases on VJ-day. Most of these cases were subsequently returned to the parties for settlement through collective bargaining.

The machinery for handling voluntary wage stabilization cases was also rather involved and time consuming although not as elaborate as that designed for disputes. The processing of these voluntary cases began with the filing of a Form 10 application for a wage increase by either an employer alone if the plant was unorganized, or by an employer and the representatives of the one or more recognized unions if the plant was organized. These applications were filed with the nearest office of the Wage and Hour Division of the United States Department of Labor. At this level the applications were given a preliminary review to see that they were properly prepared, and then were forwarded to the Regional Wage and Hour Office for another screening before finally being sent to a regional board. Processing by a regional board began by docketing the cases to be retained by it for final action and forwarding the remainder to the National Board, or appropriate commission. The case was then assigned to a wage analyst in the wage stabilization division of the agency for review and analysis, a memorandum was prepared by the analyst and a decision rendered by either the Wage Stabilization Director or the Board. If the case fell within the delegated authority of the Wage Stabilization Director, and was decided by him, it could be appealed to the regional board, and then appealed again to the National Board. If the regional board decided the case in the first instance, it could also be appealed to the National Board.

As with dispute cases, the procedure established for voluntary cases required considerable time even under the best of circumstances. In addition, the Board's problems were complicated by the enormous

number of voluntary wage applications received during its life.⁵ The available statistics, although not completely adequate, show the length of time required for processing voluntary cases at different periods of the Board's history. Of the cases decided during July 1945, when the Board was operating more expeditiously than before, 68 percent of those processed by regional boards were decided within a month of their receipt and only 12 percent required more than 2 months.⁶ For a number of cases, additional time was consumed in appeals to the National Board. In the early days of the program, for the reasons indicated below, the processing time was considerably longer.⁷ On the other hand, with the issuance of Executive Order 9599 immediately after VJ-day, the Board did drop all but about 2 percent of its backlog because the rest did not directly involve price relief.⁸

C. THE CASE PROCESSING RECORD OF THE NWSB, JANUARY 1946-FEBRUARY 1947

The functions of the National Wage Stabilization Board were quite different from those of the NWLB. The dispute settlement function was eliminated, except for a few minor duties.⁹

The chief function of the NWSB was to exercise indirect controls over wage or salary increase, that is, to rule upon applications for approval of voluntary increases which might be used as a basis for increasing prices or rent ceilings, or which might result in higher costs to the Government. The Board determined whether such wage increases could be used in whole or in part for these purposes. In addition, the Board exercised direct controls over certain adjustments. Board approval was required before a wage decrease could be put into effect and for the establishment of rates for new occupations, departments, or establishments. Direct controls were also specifically maintained by Executive Order No. 9672 over all wage or salary adjustments in the building and construction industry and certain adjustments in the basic steel industry.¹⁰

The mechanics for processing these voluntary cases were practically

⁵ From October 3, 1942, to August 17, 1945, the Board received a total of 453,373 Form 10 voluntary applications for wage or salary adjustments. Of that total, 97 percent were disposed of during the same period. *Ibid.*, p. 504.

⁶ Summarized from a table covering July 1945. *Ibid.*, p. 509. This same section of The Termination Report contains a considerable amount of statistical data on the processing of voluntary cases.

⁷ The backlog of voluntary cases rose steadily during the early months of wage stabilization, increasing from around 5,000 in January of 1943, to its peak in June 1943 of some 26,000 cases. The backlog declined rather steadily the last 6 months of 1943, ending the year with 17,040 pending cases. The backlog held fairly steady during the first part of 1944, increased to nearly 22,000 cases in July, before declining rather sharply the last 6 months of 1944 to 12,505 cases on December 31. In terms of the rate at which cases were being closed, this represented a work load of about 3½ weeks. In other words, the average age of pending cases as of January 1, 1945, should have been around 3½ weeks.

⁸ The Termination Report, vol. I, p. 459.

⁹ The Steel, Textile and Meatpacking Commissions were continued to carry out directive orders already issued in dispute cases in these industries. The NWSB was also authorized to appoint arbitrators in dispute cases where such appointments were called for under previous NWLB directive orders or under collective bargaining agreements, and to receive strike notices under section 8 of the War Labor Disputes Act.

¹⁰ U. S. Department of Labor, The National Wage Stabilization Board (1948), p. 7.

the same as under the NWLB. However, during the early months of NWSB operation there was no delegation of authority to Wage Stabilization Directors and hence more original decisions by the National and regional boards. During the latter months of 1946 extensive delegation of authority to Wage Stabilization Directors resulted in original decisions by the Directors in the great majority of cases handled.

The NWSB did not have to handle nearly the volume of cases that had pressed in on its predecessor during the war, nor in other ways was its task so complicated.¹¹ In consequence, its elapsed time record was better. Of the cases on which statistics are available, 73 percent were processed within a month and 21 percent more by the end of a second month. As in the case of the NWLB, however, it should be remembered that this length of case processing time does not include additional elapsed time for those cases appealed, or reconsidered by the Board or its agents. Nevertheless, on the basis of this record, it would appear that the NWSB did not have a serious problem of delay in processing its voluntary applications.

II. LIMITING FACTORS IN THE SPEED AND EFFICIENCY OF CASE PROCESSING

The foregoing brief review of the record of the Boards suggests that case processing time was not a serious problem for either the NDMB or the NWSB. On the other hand, the considerable time required by the NWLB to process many of its cases requires further examination in the light of the combined criteria of speed and equity.

A. GENERAL ADMINISTRATIVE PROBLEMS

Among the more serious early administrative difficulties encountered by the NWLB in handling its load of voluntary and dispute cases were the problems of recruitment and training of personnel. During the first 9 months of the Board's existence, when it was handling dispute cases exclusively, this problem was not too serious and did not retard appreciably the speed of case processing; the case load was fairly light; the staff required was rather small; and competent personnel were available, particularly from such agencies as the former NDMB. But with the addition of wage stabilization administration to the Board's duties in October 1942 the necessity for rapid recruitment and training of a large staff to handle both the increased dispute case load and the new flood of voluntary applications presented

¹¹ From January 1, 1946, to November 9, 1946, when case processing closed, the NWSB received a total of 22,292 voluntary cases. (Ibid., p. 264.) Extensive statistics of case handling are provided in ch. 22 of the report of that Board, cited above.

a serious problem.¹² To cope with this problem, the Board made extensive use of the National Roster of Scientific and Specialized Personnel which had been hastily assembled. In addition, vigorous recruiting in other governmental agencies was resorted to, particularly the various divisions of the United States Department of Labor, the United States Employment Service, the National Labor Relations Board, the Social Security Board, and various State agencies. College and University staffs were combed for key personnel such as public Board members, statisticians, economists, panel chairmen, etc.

Since all full-time staff appointments carried temporary civil-service status, clearance with the United States Civil Service Commission was essential before a recruit could be placed on the Federal payroll. Technically all recruitment was from the civil-service rolls, but in actual practice the candidate was often recruited first and qualified later by the Civil Service. During the period of most intensive recruitment (from about November 1942 to July 1943) the problem of civil-service clearance did not present many difficulties; prewar civil-service standards were relaxed for the new wartime appointments, Board judgment as to the candidate's qualifications for a particular classification was generally accepted, and the wartime emergency with its emphasis on speed was recognized. But as the problem of recruitment gradually shifted to one of training, upgrading and reclassification in the latter part of 1943, civil-service clearance became more difficult and frequently resulted in serious impairment of staff morale and efficiency. The Civil Service Commission insisted that many job descriptions were so vague that it was impossible for them to apply any normal standards and thus to judge accurately either the original recruitment classification or Board recommendations for reclassifications and promotions. The result was that too much of the Board's time and energy in the latter part of 1943 had to be devoted to overcoming the resistance of the Civil Service Commission to proposed reclassifications and appointments.

Many of these personnel difficulties were unavoidable and were due to the unusual nature of the Board's operations. Not only were there a very limited number of people experienced in the intricate and complex field of dispute settlement, but there were no people at all with experience in the processes of wage stabilization administration inasmuch as this experiment had never before been attempted. The uncertainty surrounding the nature of the job to be performed, therefore, made the task of judging experience and qualifications exceedingly complicated.

Neither the national nor the regional board ever developed a formal training program for dispute or wage stabilization personnel. Some

¹² Although the NWLB total staff consisted of only 2,613 full-time employees at its peak, over 85 percent of this total had to be recruited after October 1942. In addition, several hundred part-time employees had to be recruited during these early months.

regional offices made an attempt to provide limited instruction along this line, but in general the emphasis on speed was so great that new personnel were immediately assigned tasks involving specific cases and received their training in the actual processing and disposition of these cases. Of course some supervision was provided in this on-the-job training, but the main emphasis was on the individual's own initiative and competence.

Particularly in the first year of the Board, administrative confusion combined with the shortage of experienced staff to cause serious delays. However, even these difficulties had some compensations. As a former Board Chairman concluded:

But the early administrative confusion, such as it was, had its own virtues. The confusion consisted simply in the fact that jobs of various sorts were assigned to full-time staff members, ad hoc mediators, arbitrators, panel chairmen, and other special assistants, not according to any fixed plan or chart of operations, but on the spur of the moment, under the pressure of events which could not brook delay, and in accordance with what seemed at the time to be the capabilities of the persons who either were at hand or could be drafted. The result was that while some mistakes of both commission and omission were made, hidden talents were quickly discovered, initiative was encouraged, and indeed compelled, and enough men were trained with enough speed to enable the Board to carry the greatly magnified burden of work which was soon to fall upon it under the Stabilization Act. Finally, the high degree of responsibility delegated to the staff evoked in them a loyalty to the Board's undertaking which never flagged throughout its existence. This delegation of responsibility to relative amateurs was due not so much to conscious policy as to sheer necessity. There simply were not enough experienced men to be had, and until the last year of the Board's existence the work had always increased faster than the budgetary estimates.²³

Another early administrative problem bearing directly on the speed and efficiency of case processing involved the internal organization of the NWLB. Besides the office of the Board itself, the operating staff was organized under four main heads. This organizational pattern was the same in both the national and regional boards. The Chairman of the Board was the chief administrative officer and each division of the Board had a director who was responsible to the Board for the efficient operation of his division. The primary responsibility of the wage stabilization, disputes, and legal divisions was the processing of cases. (In the latter part of the Board's existence the enforcement of wage stabilization provided most of the case load for the legal division.) The administrative division's principal job was handling personnel and fiscal problems, arranging for necessary space and physical equipment, etc.

The problem of developing a smooth work-flow of cases through these divisions, and through the Board itself, was complicated by

²³ The Termination Report, vol. I, p. xxiii.

the early reluctance of the Board to delegate authority and responsibility. Even though this reluctance was understandable in view of the inexperienced character of most of the staff, it became an impossible task for the full Board to hear and decide all cases after the institution of wage stabilization in October 1942. The first step in the direction of delegated authority was the organization of regional wage stabilization staffs under a regional director in November 1942. These directors, however, had authority only to make recommendations to the National Board on the basis of a preliminary case analysis. When the regional boards were established in February 1943, they were given authority to make final decisions in both voluntary wage stabilization and dispute cases, subject only to appeal to the National Board.

In addition, both the national and regional boards were forced by the sheer magnitude of the case loads involved to organize committees, such as the new case committee, the appeals committee, and the post-directive committee, to aid in the processing of cases. Most of the committees were composed of Board members; others consisted of staff members. Instead of the Board's full complement of public, labor and industry members sitting on all cases, a quorum of three or six was typically used in routine cases with two or more divisions of the Board frequently sitting simultaneously. The establishment of commissions and panels such as the Trucking Commission, the Lumber Commission, the Shipbuilding Commission, etc., was also resorted to in the effort to expedite its work.¹⁴

Although these administrative delegations of authority helped, the National Board and its agencies were constantly plagued with the intermittency and turn-over of the personnel especially of its partisan membership. The industry members were recruited from their full-time jobs, many of which were important to the war effort. Hence, they found it increasingly difficult, as the work of the Board increased, to assume either full-time or even regular part-time Board assignments. To a considerable extent this was true also of the labor members, both regulars and alternates. To a lesser degree, it was also true of the alternate public members.

This problem arose because the Board sought the participation of responsible partisan leaders. But it had the effect of impairing the rapidity of Board activities because there was lack of continuity on committees and on the Boards themselves.¹⁵

B. SPECIAL PROCESSING PROBLEMS IN DISPUTE CASES ¹⁶

1. *The NWLB and the Conciliation Service.*—When an impasse developed between an employer and his organized employees over the

¹⁴ The work of the NWLB Commissions is analyzed in ch. 8.

¹⁵ See also ch. 6, pp. 259-260.

¹⁶ For a routine procedure for handling dispute cases, see *The Termination Report*, vol. I, pp. 47-52.

terms of a new contract, or the interpretation of an existing contract, the procedure required that the mediating efforts of the United States Conciliation Service be invoked. Since the object, and only excuse, for any governmental intervention in labor-management relations was to secure an early agreement on disputed terms of employment and thus insure uninterrupted production and since an old, established agency with a trained staff was available and normally discharged this function, there seemed to be every reason for utilizing this agency as the first resort in settling wartime labor disputes.

But the effectiveness of the mediating efforts of the Conciliation Service depended, in the last analysis, on the extent to which both sides preferred the results of their own collective bargaining to an arbitral conclusion of their disputes.¹⁷ The vast majority of negotiations were concluded without reference to the Board, but all too frequently calling in a conciliation commissioner was considered by one or both of the disputants as only a necessary routine that had to be followed as a prerequisite to getting the case certified to the NWLB by the United States Department of Labor. Although it was inevitable that many of the disputes would go on to the Board, it would appear that hundreds of cases and thousands of minor issues were tossed into the lap of the Board for final determinations that might have been bargained out between the parties, with or without the aid of the Conciliation Service. And, for many of the cases which the parties could not or would not settle by bargaining, however, the net effect of calling in the Conciliation Service was only to delay the final certification of the case to the Board by several days to a week or more. The question may appropriately be raised at this point as to whether or not the Conciliation Service should have been placed administratively directly under the NWLB. Good arguments can be advanced for and against this proposition. The principal argument for this proposal was that the NWLB would then be in charge of the dispute from the time of the first governmental intervention in the case until it was closed. But there were practical and political reasons why this course of action might have been undesirable. At the very least, however, a closer liaison between the Conciliation Service and the NWLB would have facilitated greatly the work of both agencies.

In its early planning the NWLB expected the closest of cooperation with the Conciliation Service. The Board philosophically favored the settlement of cases without resort to authoritarian decisions. It hoped and expected, as its early deliberations show, that the Conciliation Service, as the mediation arm of the Federal Government, would dispose of the vast majority of dispute cases. The Board would establish national policy and the parties would follow it in good faith with

¹⁷ For a discussion of the effect of the NWLB on the process of collective bargaining see ch. 1, pp. 44-46.

the aid of Government conciliators. Only policymaking cases and particularly difficult disputes would require settlement by the Board. And, in relation to these types of cases, the Conciliation Service would be most helpful. It would supply essential factual data and make available information on the viewpoints of the parties.

The Board acted upon this theory of the proper relationship between the two agencies. Funds were provided through the Board to the Conciliation Service so that the Service could appoint liaison officers located in each regional board office and, additionally, hire more conciliators.

The system, with a few notable exceptions, did not always function in close approximation to the original theory. One result was an overestimation of the workload of the Conciliation Service and a consequent overstaffing; and a gross underestimation of the dispute case load of the Board and, initially at least, understaffing.

Some notable exceptions existed to the general failure of the cooperative system. In a few regions, largely because of the personalities and philosophies of the regional chairmen or disputes directors and of the liaison officers of the Service, collaboration did develop, although never to the extent originally envisaged. Frequently there was distinct coolness and occasionally open hostility between the representatives of the two agencies. Instead of close cooperation, the relation became one of formal referral by the Service of cases to the Board which equally formally accepted them.

This failure of the original dream to take physical shape is, in retrospect, understandable. It was founded in the attitudes of many people, who, in playing out their roles, viewed the relationship quite differently from that anticipated by the National Board at the outset. It was based, also, on certain administrative arrangements and developments:

1. Cooperation of the sort desired depended on face-to-face dealings. Passing on both the facts and the feel of a case required some intimacy between the people in the Board and the Service who handled it. So also did the acquainting of the conciliators with all those niceties of current interpretations which would assure faithful presentation to the parties of Board policy as the basis for their own voluntary settlement. At the operating level some verbal exchange of data and ideas was essential. Quite the opposite occurred. Cases were passed from hand to hand, and the conciliator at one end and the panel chairman or hearings officer at the other end were frequently quite far removed. The conciliator passed the case to his national office, through channels; his national office referred it to the National Board; after going through channels there, it ended up in the hands of the regional board; and from there, after some handling, it went to the panel chair-

men or the hearings officer. Not only were the ground-floor people at both ends many steps removed from each other, but they faced the case at quite different times. The handling process took time; and by the time the case became hot for the panel it was cold for the conciliator.

2. The parties were not always anxious for the Conciliation Service to expend full effort on their case. One or both sides frequently desired to pass on the effort of effectuating an agreement to the Board, and the risk and blame as well. Negotiations were often viewed as something of a farce, since rules of the Board greatly restricted the area for give-and-take. The Conciliation Service frequently was considered to be a way station to the Board, and since there would be many exasperating delays later, it was often made clear that the case should be sent on its way as expeditiously as possible by the Service. Good service meant fast service.

3. There were many reasons why the conciliators did not wish to do more than the parties wanted them to do. Should a conciliator settle a case, if it involved wages or fringes, it still needed to go to the Board for approval. If the Board did not approve (and a few actual cases of this quickly taught the lesson), the conciliator lost face with the parties. Every settlement involved a risk. Better to refer the case quickly and take no chances. The record of the conciliator looked just as good.

Nor was there usually any great anxiety to help the War Labor Board. Partly, this stemmed from the top. The relationship between the Director of the Conciliation Service and the National War Labor Board was not a close working one. Partly, this attitude developed at the bottom. The green hands of the War Labor Board took all the glory, and, to boot, were paid higher salaries. Resentment of the professional toward the usurping amateur, of the back-seater toward the front-seater, of the low-paid toward the higher paid were compounded together.

Loftier motives were at work, too. The War Labor Board was not always popular with the parties, but then it was a temporary agency and expendable. The Conciliation Service, however, antedated the war and would post-date it, too. Too close a connection with the Board would taint the reputation of the Service and impair its usefulness in the future years. It was better, with an eye on the long run, to stand at a discrete distance. Furthermore, a really confidential relationship with the Board would have been somewhat unethical. To be fully useful to the Board, the conciliator would have needed to turn over all his knowledge about each case. Since the conciliator often is given information in private, this would have meant some betrayal of confidences.

4. Board personnel were equally responsible for failure of the original policy. There was a tendency to disregard and even be disdainful of the Conciliation Service. Board officials were very busy. They were often more concerned with applying policy than with achieving the settlement most satisfactory to the parties involved. The Conciliation Service was a way station.

Taken together, the administrative arrangements and the attitudes of the parties, the conciliators and the Board officials explain the general, but not universal, failure of the policy of cooperation, embraced at the start by the National Board.

2. *Tripartite panels versus hearing officers.*—The use of tripartite panels instead of staff hearing officers lengthened the time required to process a dispute case because the panels were exceedingly cumbersome. These panels were established from approved lists of labor, industry, and public representatives. But industry or labor members of the Board sometimes requested preruleview of the particular panel candidates before their final selection to serve on a specific case. Then considerable time was spent in notifying the panel members of their selection, determining their availability, arranging a suitable time and place for the hearing, conducting the hearing itself, and reassembling the panel members to write the panel report. As a result, irritating delays in this procedure were common.

The reason for the parties' preference for panels over a hearing officer, however, was understandable.¹⁸ They felt that their side of the case would be received more sympathetically and decided more fairly if they had a partisan representative hearing the case and participating in the report and recommendation to the Board. The use of a staff hearing officer, however, could usually shorten the time of getting the case to the Board by several days, if not weeks. A special but largely unsuccessful drive was instituted by the Board during 1945 to get the parties to agree to accept hearing officers rather than panels in order to speed up this phase of dispute case processing.

3. *Other processing problems.*—After a panel or hearing officer's report was completed, it was sent to the disputants for comment. This also took time as the parties were often very slow in returning their comments to the Board. Then if a wage issue was involved, (and typically there was a wage issue in dispute cases) the case had to be analyzed by the wage stabilization division and a memorandum prepared on the permissibility of the wage increase recommended by the panel or hearing officer's report. Delays in clearing the case through the wage stabilization division were occasioned by about the same factors as were involved in voluntary cases. These factors are discussed in some detail below.

¹⁸ For a discussion of the role of partisan panel members, see ch. 6, pp. 236-240.

But, even after a case was ready for the Board's docket, it might require additional time before the case was actually considered and ample, could be requested and granted before the case was finally decided by the Board. A Board public hearing on the case, for example, and a directive order issued.

At least three additional factors complicated the processing of dispute cases and lengthened the time involved therein. First, the strike policy of the Board called for the immediate cessation of all processing of a given case during a work stoppage. Enforcement of the no-strike, no-lockout pledge required this action, but it did result in longer processing time for the cases involved.

Second, the special pressure by labor and industry Board members to call up cases out of turn resulted in shoving older cases farther down on the agenda and lengthened their repose in the Board's backlog. A pressing emergency in a vital area of war production may have occasionally warranted such action, but too often these pressures were used without such warrant.

Third, and more important by far than the other two in lengthening case processing time, was the multiplicity and complexity of the issues involved in the typical dispute case. One case alone might easily have 25, 50, or even more, separate issues that had to be independently heard, analyzed, and finally decided.¹⁹ Many of these issues were exceedingly complex (such as intraplant inequity problems) and required the most careful consideration before a fair and equitable judgment could be reached. This demanded time—in the hearing, by the panel, by the wage stabilization division, and by the Board itself.

What were the alternatives to a considerable amount of elapsed time in dispute case processing? One alternative, of course, would have been the freezing of the status quo in industrial relations and employment conditions for the duration of the war.²⁰ But the acceptance of the principle of flexibility in the settlement of industrial disputes in World War II eliminated this possibility.

Another alternative that might have been resorted to was a requirement that the disputants submit only written briefs to the Board for final action, thus dispensing with all oral testimony, public hearings, panels, hearing officers, and reports. But the traditional American concepts of fair play, of disputants having their day in court, of abiding by some kind of due process in administrative law making, all

¹⁹ The large number of issues typically presented to the Board in dispute cases was the result of the prevailing tendency of some of the parties to make little serious effort to settle these matters on their own, but instead to turn them over in toto to the Board for final adjudication. Despite strenuous efforts of the Board to get the disputants to bargain out nonwage issues, even referring many issues back to the parties with instructions to settle these issues themselves, the typical dispute case always had a number of unresolved issues which had to be decided by directive orders.

²⁰ The closed-shop issue was thus frozen in World War I. For an extensive discussion of the establishment of general standards, case-by-case handling and flexibility, see ch. 2.

seemed to mitigate against this alternative. Final decisions under this simplified arrangement furthermore would not likely have been as sound, fair, or acceptable, as under the longer procedure in which thoroughgoing analysis, debate, and consideration were given to each disputed issue. Although it was well recognized that Board public hearings rarely added anything new to the evidence already at hand, the psychological value was usually tremendous. The losing party tended to accept his loss with better grace because he felt that he had had a fair hearing before impartial judges. In accepting the principles of flexibility and of due process in dispute case settlement, therefore, it appeared inevitable that a considerable amount of elapsed time would be required in case processing; fairness to the parties involved, soundness of the judgment rendered, and acceptance of the final award all demanded it.²¹

Some improvements in the procedures could undoubtedly have been made in the interest of shortening case processing time, but if serious mistakes were to be avoided and major dissatisfaction with disputes decisions minimized, these possibilities were far more limited in dispute cases than in voluntary wage stabilization cases.

C. SPECIAL PROCESSING PROBLEMS IN VOLUNTARY WAGE CASES ²²

By far the most serious obstacle to the more rapid processing and disposition of wage stabilization cases in the early months of the NWLB was the uncertainty and indefiniteness of existing stabilization principles or criteria. The four major standards against which voluntary wage increase applications were judged prior to April 8, 1943 (the maladjustment formula, inequalities, substandards, and effective prosecution of the war), all posed many questions when applied to specific cases. Even the simplest of these, the Little Steel maladjustment formula, involved serious questions as to its correct application to a specific case. It could not be applied, for example, to a single employee, but only to an appropriate group of employees; it had to exclude changes in hourly earnings due to merit increases, promotions, reclassifications, etc.²³

The inequalities criterion was the most difficult of all to apply because of the extreme amount of uncertainty and indefiniteness surrounding its use in specific cases. The majority of cases involved the use of this standard down to April 8, 1943. What constituted a wage inequality? No one could answer this question with finality; a large amount of discretionary judgment had to be used in every case. But

²¹ See, particularly Taylor's comments on this point in Termination Report, vol. I, p. xxv.
²² For routine procedure for handling voluntary wage cases, see The Termination Report, vol. I, pp. 45-47.

²³ At one time during this period some fifty-odd separate questions on the correct application of the maladjustment formula were sent by the regions to the National Board for interpretation and clarification.

regional staffs were reluctant to use the large amount of discretionary judgment the use of this standard required in view of the limited authority delegated to them during this period. The result was delay, and an ever-increasing case backlog.

The substandard principle was in such an unsettled state before April 8 that it was seldom applied by any regional board. There was no agreement in either the regional boards or in the National Board as to what was a substandard wage. And the effective prosecution of the war standard obviously was not a standard to be used by a wage-stabilization director in the day-to-day processing of cases.

The difficulty of holding some kind of a wage line with these standards, particularly the inequalities criterion, led to the issuance of the hold-the-line order of April 8, 1943. With the policy Directive of May 12, the wage bracket program was introduced to deal with inter-plant inequities. Case processing, however, was practically stopped between April 8 and late May 1943, and the backlog, of course, climbed steeply. But the application of the brackets to specific cases also posed terrific problems, and, at the same time, the vast majority of cases had to be decided under this standard. It was not until the fall of 1943 that this standard was developed sufficiently to serve as a practical device for voluntary or dispute case wage processing.

The substandard principle was clarified somewhat in the summer of 1943 with the adoption of 50 cents per hour as a tentative base, and this helped considerably in moving some cases. But it was not too simple to apply at best, in view of the complications its use created for the rate structure above 50 cents per hour. The tapering principle was later developed to meet this problem.

The effective prosecution of the war, or rare and unusual, principle remained an indefinite standard to the end of the war. It was designed only for exceptional cases, and, therefore, was never of any utility in routine case processing, or in reducing the case backlogs.

The slow hammering-out of most wage stabilization principles by the case-by-case method, with the insistence that no general policy was established in any specific decision, had important advantages from a long range point of view. This procedure, however, was cumbersome, time-consuming, and accounted in no small measure for the rapid accumulation of a sizable backlog of cases in the first year of the Board's existence. Case processing simply could not proceed in any orderly fashion in the absence of definite, workable principles as a guide. During the last year and a half of the Board's existence many of these difficulties had been overcome; fairly definite principles had been established; and case processing picked up real speed.

Only slightly less serious as an impediment to more rapid case processing after April 8, 1943, was the dearth of necessary wage data

in disposing of gross inequity, or bracket cases. In view of the fact that approximately 80 percent of voluntary cases eventually had to be decided by the application of stabilized wage brackets, and the use of these brackets involved the collection, organization, and interpretation of wage rate data by job classification and local labor market area, the task was truly a staggering one. Starting out in the summer of 1943 with only the most scanty data of this sort, the Board called on the Bureau of Labor Statistics to gather the raw material from which stabilized rates were to be set. This primary source of wage data was supplemented by other available sources, such as past case records. The BLS did an heroic job of collecting a vast amount of wage rate data in a short period of time, but the organization of this data by regional board staffs, and the establishment of stabilized rates by tripartite panels of the regional boards for literally thousands of separate job classifications in hundreds of local labor market areas, proved to be a task of such formidable proportions that it was never entirely completed.

In a large number of cases, tentative rates had to be set by staff analysts on the basis of estimates and judgment, using such information as was available. This frequently involved assumptions regarding job descriptions which were usually missing and had to be guessed at or secured by additional correspondence with the applicants. These steps added up to days and weeks during which a case lay dormant in the backlog. Anything approximating adequate wage rate information necessary to process the typical inequity case was not available until well into 1944, and for many areas specific wage data for specific job classifications were never assembled.

In addition, the Board was hampered in its early days by a lack of trained wage analysts. It had to hire many with very little training and experience. Before employment with the NWLB, the typical raw recruit had never even seen the wage rate structure of a going business concern, let alone known the meaning and use of job descriptions. And in regard to incentive systems, job evaluation plans, and complicated intraplant inequity problems, the average analyst was meeting a strange and new world, totally foreign to anything in his past experience. When confronted with the task of applying indefinite principles of wage stabilization to specific cases under these conditions it is remarkable that the task was accomplished as well, or as rapidly, as it was. As was indicated above, however, on-the-job training proceeded rapidly and individual talents were quickly discovered and utilized. By the beginning of 1944 a group of fairly well-trained analysts had been assembled and case processing

after this date was not seriously delayed by the lack of trained personnel.

Still another factor impeding more rapid voluntary case processing in the early days of wage stabilization was the limited delegation of authority, first from the National Board to its Stabilization Director and to the regions, and second by the regional boards to their stabilization directors. It became obvious very shortly after the wage stabilization program was inaugurated that the full boards themselves could not hear and decide all the voluntary cases submitted to them. There, however, was an understandable reluctance to delegate wide authority for final case decision in a period of such great uncertainty as to the proper interpretation and application of wage stabilization policies. Nevertheless, it resulted in delays of considerable magnitude. It was not until the middle of 1944, for example, that the National Board delegated to its Wage Stabilization Director any authority to make original decisions in voluntary cases, subject only to appeal to the full Board.

The administrative impossibility of handling the case load in the regions by the boards themselves forced early delegation of some responsibility to the regional wage stabilization directors for making original decisions. But it was still too little and too late in most regions for rapid disposition of large numbers of cases. Wide regional differences in the amount of delegated authority to wage stabilization directors in disposing of cases by original decisions existed to the very end of the Board's life. Processing was expedited in most regions, however, by the use of tripartite divisions or committees of the Board who heard and made original decisions in those cases not falling within the delegated authority of Wage Stabilization Directors.

The use of the field offices of the Wage and Hour Division of the United States Department of Labor as original receiving stations for Form 1 and Form 10 applications did lengthen the immediate processing time, but in the long run the total elapsed case processing time very probably was shortened by this procedure. The functions of the Wage and Hour field offices were—

to answer specific questions by employers and employees in their localities as to the application of the wage regulations (Form NWLB-1) and to aid employers and unions to fill out applications (Form NWLB-10) for wage and salary increases which had to be approved by the Board.²⁴

These applications were then forwarded to the nearest regional War Labor Board office for final disposition.

The fact that in over 60 percent of the Form 1 cases ruled upon by the Wage and Hour offices the applicant was informed that a Form 10 need not be filed with the War Labor Board indicates the extent to

²⁴ The Termination Report, vol. I, p. 508.

which the potential Form 10 load of the Board was reduced.²⁵ But even more, the original processing of Form 10 cases themselves by these field offices saved many hours and days in the NWLB when these cases came up for analysis. The Wage and Hour staffs checked incoming Form 10's for completeness of information and signatures, returned them to the applicants when they were incomplete, and frequently aided the applicants directly in filling out the Form 10's correctly. All this speeded up the actual processing time after the case reached the Board itself. Despite the resentment often voiced by applicants at having to file their petitions first with the local Wage and Hour offices instead of directly with the NWLB, and despite some additional elapsed time in Wage and Hour processing and forwarding to regional board offices, it was therefore generally believed that the total elapsed processing time in the long run was shortened by the use of this agency. This was especially true in the latter days of wage stabilization as trained Wage and Hour personnel became increasingly efficient in handling these Form 10's. The convenience of having staff representatives in these local field offices for consultation and advice on NWLB policies and procedures also weighed heavily in favor of filing Form 10's with these offices rather than directly with the NWLB.

As in dispute case processing, special pressures by labor and industry Board members to take up cases out of turn lengthened the time it took other cases to pass through the Board. But this problem in voluntary case processing was not as serious and did not occur as frequently as in dispute cases. Fairly early in the Board's career the general principle of taking up cases in the order in which they were received was accepted—equity and fairness to the applicants demanded it, and this policy in voluntary cases was rather closely adhered to.

There were no alternatives to some elapsed time in processing voluntary cases if any kind of a wage stabilization line was to be held.²⁶ Rubber stamping cases in the interest of speed of disposition without adequate and careful analysis of the facts involved would not only have been grossly unfair to the applicants concerned (unless, of course, all cases were automatically approved) but would have quickly undermined all public confidence in the wage stabilization program.

²⁵ *Ibid.*, p. 503-504 "In the period November 1, 1942-August 24, 1945, Wage and Hour Offices received from inquirers for the first time a total of 214,335 requests for rulings (see table 20). 86 percent of the requests were disposed of by ruling; 12 percent were returned to applicants because of incompleteness and were not resubmitted by the applicants or were sent to the War Labor Board for ruling; and 2 percent were 'otherwise disposed of' * * * In 111,092, or 60.4 percent of the total number of rulings, it was indicated that application on Form 10 was not required. In 66,949, or 36.4 percent of the rulings, it was stated that application on Form 10 was required."

²⁶ It was recognized that delay itself was a stabilizing factor to the extent that the status quo was maintained until a Board decision was rendered, although this was certainly not a basic reason for the procedures. (See ch. 4.)

But granting that some elapsed time was necessary in order to render an equitable decision on the merits of individual cases, there were desirable modifications to the rather involved, time-consuming procedures followed during the early days of wage stabilization. The adoption of short standardized forms for wage memoranda, letters, and decisions, was too long delayed. Improvements in the routing and assignment of cases to individual analysts could have been achieved earlier. Organization of the wage analysis staff by industry groupings was slow in developing and never uniformly adopted. Better controls and record keeping would have shortened necessary case processing time. In addition, of course, various impediments to more rapid case processing discussed above might have been eliminated. Comparatively little time would have been saved by the earlier use of these modifications, however, if the job of wage stabilization was still to have been done with anything approximating fairness, equity, and thoroughness.

D. PROBLEM OF APPEALS

The factors limiting the speed and efficiency of case processing up to this point have been discussed almost entirely in terms of reaching original decisions by the NWLB or its agents in voluntary and dispute cases. But many cases were not finally closed with issuance of a directive order in dispute cases or an original decision in voluntary cases. Any administrative organization involving necessary and wide delegation of authority for its operation must provide for some kind of appeals procedure. The whole American system of jurisprudence is based upon this principle and the denial of its use in a quasi judicial agency such as the NWLB would have violated the traditional American concept of equity and fair play. Petitions for reconsideration and/or review lengthened total case processing time by days and even weeks.

As has been indicated above, the National Board delegated complete authority to its regional boards and commissions to make original decisions in dispute and voluntary cases except in a limited number of cases in which original jurisdiction was reserved because of the size or national importance of the case. But the right to appeal from these original decisions was never denied. The usual procedure was to appeal first to the regional board or commission for reconsideration, and, if still dissatisfied, to appeal to the National Board for a final answer. Complete statistical data on the number of petitions for reconsideration and review are not available. However, in the period September 1, 1944, to August 18, 1945, regional boards received a total of 3,010 requests for reconsideration of one or more items in the directive orders issued by them in dispute cases.²⁷ And in the period

²⁷ The Termination Report, vol. I, pp. 480-482.

from June 25, 1943, to August 18, 1945, the National Board received a total of 5,031 petitions to review one or more items in the directive orders issued by the regional boards or commissions.²⁸ In view of the fact that the regional boards and commissions closed less than 15,000 dispute cases by original directive order during the entire period from January 12, 1942 to August 18, 1945, it would appear that over 50 percent of all original decisions by the regional boards and commissions were appealed either to the regional boards and commissions for reconsideration or to the National Board for review.

Appeals from original decisions of regional boards in voluntary cases were much less frequent. In the period December 3, 1943, to August 17, 1945, the regional boards received 5,885 petitions for reconsideration of their decisions.²⁹ And in the period from June 25, 1943, to August 17, 1945, the National Board received only 2,689 petitions for review of regional board and commission decisions in voluntary cases.³⁰ When it is considered that the regional boards or their agents rendered original decisions in over 400,000 voluntary cases down to VJ-day, the percentage of petitions for reconsideration, and review of regional board decisions was very small. It is important to emphasize, therefore, that whereas appeals to the regional boards for reconsideration and to the National Board for review were an exceedingly important feature of dispute case processing, they were relatively insignificant in voluntary cases.

The real appeals problem in voluntary cases, however, occurred in the form of appeals to the regional boards from the original decisions of the wage stabilization directors. Some 96 percent of all regional decisions in voluntary cases from July 1, 1944, to August 17, 1945, were made by regional wage stabilization directors under authority delegated to them by their regional boards. While administrative necessity required this wide delegation of authority to regional wage stabilization directors, it was clearly understood that any party to such a case had an unqualified right to appeal the decision to the regional board. Indeed, many labor organizations and some employers followed the practice of automatically appealing the decision of a wage stabilization director whenever anything less than full approval was granted. Between July 1, 1943, and August 17, 1945, a total of 52,410 cases decided originally by regional wage stabilization directors were appealed to their respective regional boards.³¹ Although this represented only about 15 percent of the 350,000 decisions rendered by regional wage stabilization directors, the total appeals case load thus created was terrific.

²⁸ *Ibid.*

²⁹ *Ibid.*, p. 507.

³⁰ *Ibid.*

³¹ *Ibid.*

Appeals from regional board decisions in both dispute and voluntary cases were handled by a tripartite division of the National Board known as the Appeals Committee. Appeals from each wage stabilization director's decisions were handled by a tripartite division of that regional board, also called an appeals committee. Appeals case backlogs at both the national and regional levels, had become an alarming problem by the end of 1943 and reached a peak about the middle of 1944. Rapid processing and disposition of appeals cases by the national and regional appeals committees were hampered by the lack of clear-cut delegation of final authority and jurisdiction by the respective boards; by the time-consuming appeals procedure, particularly in disputes cases where filing of petitions, briefs, and replies to briefs often consumed weeks or even months; by the shifting personnel on the appeals committees; by the difficulty of securing a committee quorum and hence following a regular, steady time schedule of work; by the reluctance of labor and employer members of these committees to make a final disposition of the appeal without a hearing by a full Board; by the difficulty of securing a place on the agenda of the full boards for hearing reports and recommendations of the appeals committees; and by the limited staff available for the analyzing of appeals cases for the appeals committees.

No adequate data are available on the average length of processing time in these appeals cases.³² But the appeals case backlogs at both the national and regional levels had become so large by the end of 1943 and early 1944 that drastic steps were adopted to reduce them. Appeals procedures were tightened in a variety of ways, including the imposition of rigid time limits on filing petitions and replies to briefs. Appeals committees spent more regular time hearing and disposing of pending cases. More analysts were taken off original case processing and assigned to appeals case processing. Wider and more specific delegation of authority was made to the appeals committees by the boards. More time was given by the full boards to the disposition of appeals cases. In addition, in order to discourage a large volume of appeals which had little or no merit, a tougher policy was adopted by both the regional and national boards in the form of upholding the original decisions. The record shows that on appeals for review during the period June 25, 1943, to August 17, 1945, the original decisions were upheld in 80 percent of the voluntary cases. The original decisions of wage stabilization directors, however, were upheld in only 34 percent of the appealed cases.

³² Only one sample of some 800 disputes and voluntary cases appealed to the National Board from regional boards between October 1, 1944, and December 31, 1944, is available in this connection. The average length of time of processing appeals from regional board directive orders to the issuance of a National Board directive order in disputes cases was 3 to 5 months. In voluntary cases, 2 to 4 months was required to process the appeal from the regions to the National Board.

There is no question that the appellate procedures of the NWLB lengthened the time of final case disposition and thus created a rather serious problem, particularly in dispute cases. But were there any alternatives to this extended time period in the processing of appeals? It is extremely doubtful that the Board could have functioned without some appeals machinery. Appellate procedures are an indispensable corollary of any administrative organization using extensive delegation of authority. And a wide delegation by the National Board was inevitable and desirable.

With the addition of wage stabilization to the NWLB's functions in the fall of 1942, it had to establish regional boards and delegate wide authority to them in handling both dispute and voluntary cases. In turn the regional boards had to delegate wide authority to their wage stabilization directors in disposing of voluntary cases. Acceptance of the principle of delegated authority, particularly by a tripartite organization in such a delicate area as industrial relations, depended upon a careful reservation of the right of appeal by interested parties.

But this does not mean that procedures used by the Board could not have been improved and the elapsed time or processing appeals cases shortened. Consideration of the appeals problem was too long delayed by the Board, the early appeals procedures were too loose and too indefinite, and the appeals procedure was too frequently used by interested parties as a means of delaying final compliance with Board orders or decisions.

In contrast with the wartime experience, the processing of appeals raised no serious questions after VJ-day. The National Wage Stabilization Board encountered no serious problems either in terms of the size of the appeals case backlog or in terms of the length of time of case processing. This was due in large measure to the larger number of trained staff personnel available for case processing, to the use of the standardized procedures and principles eventually developed by the NWLB, and above all to the drastic reduction in the total case load the NWSB was required to handle after VJ-day.

E. PROBLEM OF RETROACTIVITY

Related directly to the problems of case processing, particularly as a causal factor in lengthening the time of final case disposition by appeals, was the issue of retroactivity. Recognition of the principle of retroactivity in both dispute and voluntary cases was generally accepted as necessary even though it tended to extend the elapsed time in case processing by the Board. It would have been difficult indeed to have retained the adherence of labor to the no-strike, no-lockout pledge, or to have gained the acquiescence of labor to some elapsed time in case processing, if retroactive adjustments had not

been available. Retroactivity was thus the "quid" for the "quo" of waiting for orderly case processing and a final Board decision. Furthermore it would have been grossly inequitable to have asked employees to stay on their jobs and maintain uninterrupted war production while their cases were pending before a governmental agency if every day of such pendency meant a loss of income, and such a loss would have been realized in most instances without the use of the retroactivity principle.

The Board's general policy on retroactivity was rather well established early in 1943, and was formalized for dispute cases in a written policy statement on August 16, 1943.³³ This policy provided that Board decisions would be retroactive to the date of agreement by the parties or, in the absence of such agreement, to the expiration date of their last contract. If there was no agreement on the effective date, and if there was no previous contract, the Board would use the date of certification of the dispute to the Board by the United States Conciliation Service. Only under special circumstances would the Board depart from this policy. Although a similar statement was never formally issued regarding the approval of a retroactive date in voluntary cases, the Board's policy was to approve the date agreed upon by the parties, or the expiration date of the last contract, if these dates appeared on the face of the application to be reasonable. Where there was no union, and hence no previous contract, the date of filing the application was frequently used for retroactive purposes.

Next to maintenance of membership, retroactivity was the most common non-wage-rate issue which confronted the Board in dispute cases. Despite the vigorous dissent of industry members, the Board majority turned a deaf ear to the contention that this retroactivity policy frequently imposed an intolerable financial burden upon individual employers in disputes cases. Thus, the processing time of many cases was extended because appeals of regional board retroactivity decisions to the National Board by employers was one of the most common and troublesome problems in closing dispute cases.

In voluntary cases the retroactivity problem often took a different turn. In these cases the Board had to be on guard against approving employer requests for too early a retroactive date. In the tight labor market prevailing during most of the war period, competition for labor caused most employers to seek wage increases as a means of holding present employees or attracting new ones. Under the pressure of these conditions employers often made wage adjustments for their employees and then sought NLRB approval for these adjustments later. Inasmuch as this type of action was a clear violation of the wage stabilization law, retroactive approval of the wage adjust-

³³ The Termination Report, vol. I, p. 167.

ment was the only thing that would clear the employer. These attempts to avoid liability for violations of wage stabilization laws by the use of the retroactivity principle were handled rather sternly by the Board. Strict adherence to the above-mentioned policy on retroactivity in deciding voluntary cases meant frequent denial of requested retroactive dates, and, as a result of such denials, frequent appeals from these decisions.

III. CONSEQUENCES OF EXTENDED PROCESSING TIME

Perhaps the most serious consequences of the extended time in the processing of both dispute and voluntary cases were the strikes by employees expressing their dissatisfaction with delays in case processing and attempting to secure earlier action by the NWLB on their pending cases. Despite the rigid adherence of the Board to the policy of stopping all case processing until the employees returned to their jobs, these work stoppages were fairly common throughout the Board's existence. No exact data on the number of man-days lost as a result of this type of strike is available, but "strikes against the Board" as a result of the irritation and impatience of workers with the length of processing time presented a problem of no small importance.

Inability of employers to secure an immediate answer to their requests for wage increases also led to a considerable number of violations of the wage stabilization law.²⁴ As was mentioned above, employer requests for retroactive approval of their wage petitions were often the result of having made wage increases without waiting for advance Board approval. Undoubtedly the length of case processing time in voluntary cases encouraged some violation of the wage stabilization law and added to the seriousness of the problem of enforcement.

The length of case processing time, furthermore, had a tendency to impair good industrial relations in many instances. Employer applications for voluntary wage increases which required weeks, and sometimes months, to clear the Board, created employee dissatisfaction and unrest and resulted in loss of morale and production. Not infrequently such delays resulted in employee loss of confidence in the employer's "good faith" in filing the voluntary petition. Employees often directed inquiries to the Board either by mail or in person to see if their employers had actually filed a petition, and, if so, whether or not they were cooperating with the Board in the speedier processing of the case. Delays in case processing also impaired good industrial

²⁴ For a discussion of the extent and seriousness of violations see ch. 10 of this study on the problems of enforcement.

relations in dispute cases, particularly when employer appeals from original decisions delayed the issuance of final directive orders by days and weeks.

Both employers and employees were affected by the length of case processing time in connection with union organizational efforts. For example, in a number of cases a union organizational campaign was begun after the employer had filed a petition with the NWLB for a wage increase. In such a case, an immediate decision from the Board approving the increase might very well have affected the outcome of the campaign. Consequently the union would want the case delayed until after a representation election while the employer would want immediate action. The Board's policy in such instances was to take the case up in its regular order, unless an NLRB election date was set before case processing was completed. If such a date was set by the NLRB during this period, and it often was, case processing stopped until after the election. Employer dissatisfaction with delay in these cases was extreme, and bitter criticism of Board procedures was the normal result.

IV. CONCLUSIONS

Implicit in the premise that there was a problem of delay in the processing of at least NWLB cases is the question of what is a "reasonable" processing time. What standard or yardstick should be used as a measure of the reasonableness of case processing time? Opinions on this question are bound to differ widely. The applicants themselves are likely to consider any delay in case processing irritating, and delays of a month or more unreasonable. The general public and elected officials are likely to be somewhat more tolerant but periods of longer than 6 weeks to 2 months are likely to be judged as excessive. The administrators directly involved in this problem are likely to place the most liberal construction of all on the concept of reasonable processing time. Few people, however, would disagree with the proposition that there is such a thing as an unreasonably long time in case processing and that an elapsed time of 2 to 3 months in voluntary cases and 4 to 6 months in dispute cases would easily qualify as unduly long. Within these limits there is obviously room for a wide area of judgment as to just what the precise standard should be.

The reasonableness of any standard for case processing can be judged only with reference to a number of variables. First of all, the type of case involved is of major importance. Anyone even slightly familiar with the work of the NWLB would readily agree that a reasonable processing time for a dispute case would be considerably

longer than a reasonable time for a voluntary application. In both dispute and voluntary cases the difficulty or simplicity of the case must also be taken into account in judging the reasonableness of processing time. For example, a dispute case involving several thousand workers with 40 to 50 complex issues to be settled would obviously require a different standard of reasonableness than a small case affecting a dozen or more workers with perhaps only one or two issues in dispute. Similarly, in voluntary cases the standard must be varied to take account of the number of workers and job classifications involved, the nature of the wage issue, the availability of necessary wage-rate data, etc.

The reasonableness of case processing time must also be related to specific time periods in the Board's history. A reasonable processing time for dispute cases before wage stabilization, for example, would certainly be far less than after this program was adopted in the fall of 1942. And a reasonable time for voluntary case processing during the first year of wage stabilization, when stabilization principles were being slowly hammered out, wage-rate information and staffs assembled, and techniques perfected, would certainly be different than that during the last year of Board operations, when many of these problems had been pretty well solved.

The quality, size, efficiency, and turnover of staff personnel must also be taken into account in establishing any standard of reasonableness for case processing. The Board had difficulty in recruiting and training sufficient staff to handle its case load expeditiously. A reasonable time for case processing with a staff narrowly limited as to size and quality, with a rather heavy turnover, is one thing; a large staff of highly trained competent people during the entire life of the Board would have involved quite a different standard.

And finally the cooperation of the parties involved in these cases must be considered in setting up any standard of reasonable processing time. In both dispute and voluntary cases, if one or more parties involved felt that their case was rather weak, they did not press for early decisions; they would even delay the case by responding slowly or not at all to Board requests for necessary information. Interested Board members might also delay rapid processing of these cases where adverse decisions were expected.³⁵

³⁵ Still another suggested standard, and one quite different from any of the above, is based on the psychological reaction of the parties affected. How much delay in case processing will the parties and the public accept without rebelling against the program? Judged by this standard, case processing time in general during World War II was not prolonged beyond the limits of public toleration. But the use of this standard of reasonableness for case processing time is highly questionable in either war or peace. People will tolerate a lot under the stress of national emergency. To set up some kind of a psychological breaking point as the standard against which to judge the reasonableness of such a thing as case processing time would only be to establish outside limits for the program,

It is highly doubtful that all these variables can be combined into one or more precise standards of reasonableness in case processing time. Perhaps the best answer to the question of an appropriate general standard during the latter period of the NWLB's existence may be found in the suggestion of Chairman Davis that a reasonable elapsed time in case processing should not exceed 3 weeks for voluntary cases and 6 weeks for disputes. Although this standard was never formally adopted by the NWLB, it was used as a goal toward which speedier case processing was aimed in the latter months of NWLB experience. Should this standard be used for the earlier period, it would be concluded that there was a rather serious problem of delay in processing both dispute and voluntary cases during 1943 and the first part of 1944. But in the light of the limiting factors during this period discussed above, it is questionable as to how unreasonable this longer case processing time was. Indeed, the alternatives to considerable elapsed time in case processing were either severely limited or nonexistent. It may also be noted that if judicial review of Board decisions had been utilized the additional elapsed time in closing Board cases would have been tremendous and very likely would have created an intolerable problem of delay.³⁶

Did the limitations on rapid case processing during the war period seriously impair the efficient operation of the wage stabilization or dispute settlement functions of the NWLB? The best judgment of those who were directly involved in the administration of the programs, as well as many close observers outside the Board, is that they did not.³⁷ Delays in case processing did lead to considerable irritation and dissatisfaction on the part of petitioners; they did cause some strikes and work stoppages; they did lead to some violations of the wage stabilization law, and to the impairment in some instances of good industrial relations. But appraised in terms of over-all results, the time required in case processing did not endanger the success of the programs.

In the case of the NDMB and the NWSB the record seems to indicate even more clearly the conclusion that delays in case processing never reached serious proportions, and therefore never impeded significantly the efficient operation of these agencies.

³⁶ Chairman Davis, in a letter to the Senate Judiciary Committee opposing legislation which would make NWLB decisions subject to judicial review, cited the NLRB experience with the length of time involved in court review. The average length of time between the filing of a petition with the court and the court's decision in one NLRB sample of some 100 cases was 232 days. Mr. Davis said: "We believe that similar delays would gravely prejudice the effectiveness of the War Labor Board, which up to now had been able to dispose of the disputes certified to it with reasonable dispatch, and to keep the peace in the meantime." The Termination Report, vol. I, p. 58. For a further discussion of this part, see ch. 1 of this study.

³⁷ See, for example, The Termination Report, particularly the comments in vol. 1 of the chairmen of the various regional boards. These comments were all written after VJ-day.

Enforcement

By Benjamin Aaron

SINCE THE term "enforcement" relates solely to securing observance of wage regulations, the NDMB had no enforcement responsibilities. The enforcement problems of the NWLB and NWSB will be separately discussed in this chapter.

I. ENFORCEMENT BY THE NWLB

A. NATURE OF THE ENFORCEMENT PROBLEM

Of the many great tasks facing the National War Labor Board, that of enforcing wage-stabilization regulations was not the least important; but it was, by all odds, the one undertaken with the gravest misgivings and with the least enthusiasm. While the need for some sort of an enforcement program became apparent at a considerably earlier date, little preliminary work on such a program was begun until the latter part of 1943, and complete instructions on how to deal with the problem were not sent to the regional boards until the fall of 1944, 2 years after the first statutory regulation of wages had been imposed. In the end the Board was goaded into taking action on enforcement at the urgent insistence of the regional boards and industry commissions, which had been trying, with varying degrees of success, to cope with wage stabilization violations in the absence of an integrated enforcement program.¹

¹ Some agencies of the Board could not afford to wait. The Detroit Area Tool and Die Commission, faced with an extremely serious violations problem at the time of its inception in December 1942, formulated and administered its own enforcement program during the year of 1943. Further reference is made to the problems confronting this commission on pp. 367-370 of this chapter.

It is not surprising that the Board handled the problem of enforcement so gingerly. The administration of the wage-stabilization program itself was undertaken with considerable reluctance, but with the view that wage problems could not be divorced from nonwage problems in the handling of labor-management disputes. In the case of enforcement, however, some public and industry members of the Board, and the labor group as a whole, were never persuaded that it was so intimately connected with the other functions of the Board that it could not be assigned to some other Government agency.

Moreover, there was a very natural desire on the part of the Board members to hold down, to the greatest possible extent, the number of administrative "do's" and "don't's" to be imposed upon employers, unions, and individual employees, who were generally reported as being already strangled by red tape. Wage stabilization was an unpopular innovation, concerning which most unions and employers never ceased to complain. The complexities of the numerous regulations issued by the Board in the form of "General Orders" were the cause of constant anxiety and exasperation to those who were covered by their provisions. This feeling was not entirely confined to the Board's "customers"; some of the Board's staff members and, one must admit, even some of the Board members, never were fully initiated into the mysteries of the more complicated and technical aspects of wage-stabilization policy.

In the early months of the wage-stabilization program it was natural that the number of innocent violations should exceed the number of deliberate evasions of the law, and the Board tended to react to unintentional transgressions more in sorrow than in anger.² As time went on, however, the number of cases in which perfectly clear regulations were deliberately flouted increased, and it became obvious that the national wage-stabilization policy could not be enforced by moral suasion alone. While the Board officially took note of this fact as early as March 1943,³ it continued to demonstrate an unwillingness to pursue a vigorous and intensive enforcement program. One of the questions which this chapter attempts to answer is whether the Board's reluctance was warranted under the circumstances.

² The Board adopted, on November 6, 1942, General Order No. 11, which provided for retroactive approval of certain innocent violations made prior to November 7, 1942.

³ On March 22, 1943, the Board issued a public statement taking note of the alleged violations which had come to its attention and stating, in part: "Obviously, willful violations of the law must be stopped if the anti-inflation program is not to be impaired and the critical manpower situation rendered more acute. Where the Board's investigation of the facts warrants, violators will be prosecuted immediately and vigorously. Ignorance can no longer be pleaded as an excuse" [Wartime Wage Control and Dispute Settlement (Washington: Bureau of National Affairs, 1945), p. 380]. For the reasons set forth in the preceding footnote, however, investigation of the facts seldom was deemed to warrant prosecution in this early period.

B. SOURCES OF THE BOARD'S AUTHORITY

The sources of the Board's enforcement authority were the Stabilization Act of 1942, Executive Order 9250, and the Regulations of the Director of Economic Stabilization. The Stabilization Act provided that no employer should pay, and no employee should receive, wages or salaries in contravention of the regulations promulgated by the President under the act, and it directed the President to prescribe the extent to which wages paid in contravention should be disregarded by Government agencies in determining the costs or expenses of any employer for the purposes of any other law or regulation. Under this authority, the President determined, and so stated in Executive Order 9250, that "any wage or salary payment" made in contravention of the rules should be disregarded by the executive departments and other Government agencies in determining the costs or expenses of any employer for calculating deductions under the revenue laws of the United States, or for determining costs or expenses under any contract made by or on behalf of the Government.

The Stabilization Act also provided that any deliberate violation thereof was a criminal offense for which the violator was subject to a fine of not more than \$1,000, or to imprisonment for not more than 1 year, or to both.⁴

The Regulations of the Economic Stabilization Director were issued on October 27, 1942. They provided, in part, that in cases in which a wage or salary adjustment was given in contravention of the law (that is, without the approval of the Board or the Commissioner of Internal Revenue⁵), the entire amount of the wage or salary payment was to be disregarded by other Government agencies in calculating costs or expenses for income tax or other purposes. The regulations were explicit in this regard, stating—

the amount to be disregarded is the amount of the wage or salary paid or accrued and not merely an amount representing an increase in such wage or salary.

The Regulations also imposed upon the Board and upon the Commissioner, within their respective jurisdictions, the duty to determine finally whether wage or salary payments had been made in contravention of law; and it was further provided that their determinations

⁴ The Department of Justice was the agency responsible for handling cases warranting criminal prosecution. However, "no criminal prosecutions had to be undertaken for violation of the Wage Stabilization Act nor did the Board refer any cases to the Justice Department as appearing to warrant criminal prosecution" [U. S. Department of Labor, *The Termination Report of the National War Labor Board (1943)*, vol. I, p. 428 (hereinafter referred to as *The Termination Report*)]. Actually, there probably were some violations which warranted criminal sanctions, but in view of the Board's general attitude, imposition of such sanctions would have been unthinkable.

⁵ As mentioned in ch. 7, the Commissioner of Internal Revenue had jurisdiction over salary adjustments for employees receiving \$5,000 or more per year and for those receiving less who were nonunionized administrative, executive, or professional employees.

“shall not be subject to review by the Tax Court of the United States or by any court in any civil proceedings.”

The combined effect of these various statutory, executive, and administrative regulations could, of course, have been staggering. If the Board determined that an employer had overpaid 100 employees by 5 cents per hour for 16 weeks, and so certified to other Government agencies, the hapless employer was subjected to income-tax deduction or Government reimbursement disallowances, not for just the amount of the overpayment of 5 cents per hour per employee, but for the entire sum of wages paid to such employees during that period. As previously noted, once the Board made its determination and so advised the other Government agencies, the latter were required by the regulations of the Economic Stabilization Director to make the appropriate disallowances. For many employers the consequences of such action would have been completely ruinous. It is not surprising, therefore, that the Board showed extreme reluctance to impose these severe penalties.

After the first few months of investigating violations, the Board concluded that the requirement that the full wage payment must be disallowed in all cases did not sufficiently take into account various situations which, in many cases, appeared to warrant mitigation of the prescribed penalties. Accordingly, the matter was discussed with Judge Vinson, the Economic Stabilization Director, with the result that on July 13, 1943, he advised the Board, in part, as follows:

It is my opinion that the regulations of the Economic Stabilization Director are properly construed to empower the * * * Board in making findings of improper wage or salary payments, in accordance with its procedure in such cases, to examine into the existence of extenuating circumstances and, in appropriate cases, to recommend that the sanctions or a portion thereof should be withheld * * *.

The adoption of such recommendations of the Board will, of course, be a matter within the sound discretion of the other agencies. However, in cases where the Board does not make any such recommendations the regulations appear to require that the sanctions be imposed.⁶

After experience with this procedure, there appeared to be no good reason why the agency best informed of the circumstances of the violation should make only a recommendation subject to review by another agency. Therefore, on December 13, 1944, the regulations of the Economic Stabilization Director were amended so as to give the Board power, not just to recommend, but to determine finally and to certify the amount to be disallowed to the agency or agencies which would effectuate the disallowance. With rare exceptions, disallowance was limited to deductions for income tax purposes.

⁶ The complete text of Vinson's letter is set forth in *The Termination Report*, vol. II, p. 749.

It is appropriate at this point to consider whether the Board's enforcement authority might better have been rooted more firmly in the Stabilization Act itself. The very broad and practically undefined authority granted by the Stabilization Act to the President, not only to set up the stabilization rules but also to prescribe the penalties for violation, represented a departure from normal legislative practice. The further delegation of wide enforcement powers to the Board, as provided in the regulations of the Economic Stabilization Director, raised a specter of unconstitutionality which haunted some members of the Board's legal staff throughout the period in which the Stabilization Act was in force.⁷

Apart from the consideration of possible constitutional objections, it is probably true that an administrative agency generally can function more smoothly and with greater public cooperation if its authority is clearly spelled out in a statute. Considering the fact that during the war a number of Government agencies were issuing a great many rules and regulations which must frequently have confused and irritated the average citizen, it is rather surprising that the Board's enforcement regulations were generally treated with such respect.

There is also the question whether the authority of the enforcement agency should have been more limited in scope and less flexible in application. A number of possible alternatives suggest themselves. The controlling law or regulation might, for example, have deprived the enforcement agency of any discretion in determining the amount of the penalty for a wage violation, and could have specified either that in every case the total wages paid should be disallowed as an income-tax deduction or as a reimbursement item, or that only the amount of the overpayment should be forfeited. Again, it might have fixed a specified fine, without regard to the actual amount of illegal payment involved in the individual case. It is to be noted that the Stabilization Act did provide for a specific fine for criminal violations.

The mere statement of these alternatives, however, is sufficient to reveal their essential impracticability. Some flexibility in the assessment of penalties for wage violations was absolutely necessary in order to avoid grave injustices. Obviously, some distinction had to be drawn between the innocent and the willful violator, between the employer who openly confessed his error and the employer who

⁷ The constitutionality of the Board's enforcement powers could conceivably have been challenged on several grounds. It might have been contended either that the statutory delegation of authority to the President was too broad, or that the rules and regulations implementing the statute were improper and illegal. A possible object of attack on the latter ground was the provision in the regulations of the Economic Stabilization Director that determinations by the Board or by the Commissioner of Internal Revenue that wages or salaries had been paid in contravention of law should not be subject to review by the Tax Court of the United States or by any court in any civil proceedings.

Actually, the Board's enforcement powers were never challenged on constitutional grounds. A suggested explanation for this remarkable record is offered on p. 361 of this chapter.

deliberately sought to conceal it. The establishment of fixed penalties in the statute would have deprived the enforcement agency of this necessary flexibility in administering the wage stabilization program. Moreover, if the statute had limited the penalty to the amount of the overpayment, there was the possibility that many employers would cheerfully pay the fine and continue their illegal wage practices. Finally, as demonstrated by the Board's experience, the uncertainty of the penalty which might be levied against the violator under a system permitting administrative flexibility in enforcing the law proved to be a great deterrent upon employers, who were generally afraid to risk incurring the maximum disallowances.⁸

The discretionary authority of the Board to specify less than maximum disallowances not only encouraged voluntary disclosure of violations, but also permitted the Board to correct as well as to punish. In all cases in which an unlawful increase had been put into effect, no findings of good faith were made unless (a) in the case of increases which were approvable, a Form 10 was filed seeking approval, or (b) in the case of increases which were not approvable, they were reduced to approvable amounts or eliminated entirely.

This policy, initiated in the regions at a relatively early date, was particularly effective. In February 1944 the general counsel informed the Board:

Our experience to date demonstrates that this has been a most effective means of getting employers to roll back unlawful wage increases and of getting labor organizations to agree to accept the roll-back.

We have not to our knowledge as yet run into a case where, a finding of violation having been made, an employer has refused to roll-back an unapprovable wage increase. If such a case were to come to our attention we believe that it would be possible to make a finding that so long as the unlawful increase was continued in effect, it should be deemed to be a continued violation of the law.⁹

It remains to consider whether more moderate limitations regarding penalties might have been imposed upon the Board without impairing the necessary flexibility of administration. The Board's discretion might have been circumscribed by specifying minimum and maximum penalties. It seems clear that enforcement, even in this case, would have been less effective and less equitable than it was under the methods actually followed. It has already been indicated that the program would have been less effective if the maximum penalty had been set at an appreciably lower level; and equity would have been sacrificed by specifying a minimum, since no penalty seemed warranted in cases of innocent violations that were promptly corrected.

⁸ Actually, it is not clear that the disallowances in the majority of violation cases exceeded the amount of the overpayment, but employers could never be sure of the amount of penalty that would be assessed.

⁹ National War Labor Board, Transcript, Executive Meeting, February 22, 1944, p. 577.

C. RESPONSIBILITY FOR ENFORCEMENT

Reference has already been made to the fact that some of the Board members succeeded in persuading themselves that the task of enforcing the wage stabilization law should have been assigned to some other agency. The Justice and Treasury Departments were most frequently mentioned as the logical choices. How this notion could ever have been seriously entertained by anyone who was familiar with Board policies and procedures remains a mystery. One shudders to think of the possible consequences of such division of authority. It is an indisputable fact that the reasoning underlying many of the Board's wage stabilization policies, to say nothing of the complexities of the regulations under which they were administered, were never fully understood or appreciated by other Government agencies.¹⁰

Assignment of the enforcement function to some other agency would in all probability have led to the adoption of a rigid enforcement policy, which inevitably would have provoked resentment and resistance. Moreover, the Board's enforcement program placed greater emphasis upon education and persuasion than upon punitive measures; and it would have been impossible for another agency to combine these various techniques so effectively. In addition, the not inconsiderable advantages inherent in the tripartite administration of the enforcement program, discussed in greater detail below, would have been lost if the job had been assigned to another agency. Finally, it must be remembered that many innocent and unwitting violations were discovered for the first time when the violator filed a Form 10 application with a regional board. Frequently, the regional board's enforcement attorneys were able to clear up these cases by informal procedures without delaying unduly the processing of the wage applications. It is doubtful whether the same procedures could have been utilized if the wage stabilization and enforcement functions were divided between separate agencies.

Whatever improvements might have resulted from the adoption of some of the alternative courses of action suggested above, the fact remains that the Board was assigned the sole discretionary role in the enforcement of the wage stabilization regulations. Strange as it may seem in retrospect, considerable time had to be spent in persuading the National Board that it had an affirmative duty to develop

¹⁰ One illustration of this point should suffice. Almost to the end of the war, certain Government procurement agencies persisted in the practice of distinguishing between disputes and Form 10 cases for the purposes of reimbursement. All wage adjustments paid by an employer pursuant to a directive order of the Board were automatically approved as reimbursable items, while voluntary adjustments approved by the Board were frequently disallowed for reimbursement. The obvious fact that such a policy inhibited peaceful settlements and encouraged disputes was stressed repeatedly by the Board, but without effect.

an enforcement program. Much of the reported discussion of this matter in the National Board's executive sessions reflects an attitude on the part of many of its members that it lay within their discretion either to undertake an enforcement program or to do little or nothing about the problem. This attitude is most vividly illustrated by the following account of an episode involving the enforcement program.

On March 18, 1943, the National Board's legal staff presented for approval the text of a proposed public statement on enforcement policy. With a few minor changes the statement was unanimously approved, and it was released to the press on March 23, 1943.¹¹ Also discussed at the meeting of March 18 was a proposed procedure for the processing of enforcement cases in the regions; and while no formal vote was taken, this procedure, with a few suggested changes, met with no overt expression of disapproval.

These actions by the National Board on March 18 were greeted with enthusiasm by some of the regional boards, which had been agitating for action on enforcement for some time. Moreover, the National Board's staff, having been apprised of the action taken at the March 18 meeting, naturally assumed that the NWLB had finally accepted responsibility for enforcing the wage stabilization program. Accordingly, the legal division promptly set its somewhat rudimentary enforcement procedures in motion. Several hearings were scheduled, and all the regional boards were notified, in effect, that the National Board had given the green light to the proposed enforcement program.

On April 8 the President issued Executive Order 9328, which tightened up wage stabilization policy considerably. The following day the National Board unanimously approved a resolution requesting the Wage and Hour and Public Contracts Division of the Department of Labor—

to make as fully available as possible the services of the inspectors of the Division in conducting investigations on behalf of the National War Labor Board and the Regional * * * Boards of alleged violations of the act of October 2, 1942, and of the orders and regulations issued thereunder.

In presenting this resolution to the Board the general counsel made the following comment:

This resolution that you have before you is a very simple one. It is an official request to the Wage and Hour Division to make their inspectors available to us and conduct an investigation of violations of [Executive Order] 9250.

The practical situation is this, that a number of the Wage and Hour offices in the field are not willing to let their investigators, their inspectors, assemble evidence for us in the violation cases without specific authority from home base. Home base is hesitant to give specific authority without official request from the Board.

¹¹ See footnote 3.

I think that it is now more than ever essential that we use the wage and hour inspectors up to the hilt, because I think we are going to have a gigantic problem of enforcement under this latest [Executive] order.¹²

Following this action by the National Board, the staff proceeded to hold conferences with officials of the Wage and Hour Division and the Budget Bureau; and the budget for the forthcoming year was planned on the assumption that wage and hour inspectors would be used for investigations.

On April 17 and 18, 1943, a meeting was held in Washington to which all regional chairmen and key staff members were invited. This assembly was advised by the Board's general counsel, in part, as follows:

We are asking the Budget [Bureau] for the coming year for 250 additional wage and hour inspectors to be added to the staff to do nothing but enforcement work for us, and we are asking for an increase in the legal staff of the regions from an average of 5 per region to an average of 12 per region, so we really mean to take a vigorous stand, and with your cooperation I think we can do so.¹³

On April 20, 1943, the Legal Division presented to the Board a proposed clarifying amendment to the resolution of April 9, which simply specified the circumstances in which wage and hour inspectors would be called upon to investigate alleged wage stabilization violations. For the first time, apparently, the Board realized what was involved; and the general reaction was immediate and unequivocal. "We went on for many years with wage and hour inspectors * * * in industry determining whether we were paying enough wages," said one industry member with disgust, "and now we are going to have the same group on our necks to see if we are paying too much."¹⁴

The feelings of the labor members were similarly offended. "Under our whole theory and system of jurisdiction [jurisprudence]," asked one rhetorically, "does the court set up a lot of inspectors to go around the country into people's homes and in the factories to see if there are law violations?"¹⁵ Clearly, the Board thought not.

To these somewhat emotional objections was added the solemn warning from one public member that "the power contemplated by this resolution, and by the legal department of this Board, does not fall under the war powers of the President. * * * We need an act of Congress."¹⁶

The result of this discussion was the casting of a unanimous vote not only to reject the proposed clarifying amendment to the resolution

¹² National War Labor Board, Transcript, Executive Meeting, April 22, 1943, p. 363

¹³ *Ibid.*, p. 365.

¹⁴ *Ibid.*, April 20, 1943, p. 228.

¹⁵ *Ibid.*, p. 229.

¹⁶ *Ibid.*, p. 236. It should be noted that congressional approval was provided through fiscal appropriations to the Board for that purpose.

of April 9, but also to rescind the resolution itself. Thereupon, as subsequently reported by the general counsel, "the Wage and Hour inspectors were directed to cease any further investigations; hearings which were scheduled by the regional boards were postponed; and the enforcement program came to a dead stop."¹⁷

On April 22, 1943, the Board once again reconsidered its previous action, and voted by a majority of seven (three public and four industry members) to five (one public and four labor members) to readopt the resolution of April 9 and to permit the regional boards to carry on with their enforcement activities. It is significant not only that the vote was so close, but also that one of the public members felt it necessary to remark during the course of the debate which preceded the vote that "I think we have got to take all of the responsibilities under this thing or get off the Board, and one of the responsibilities is seeing to it that there is reasonable enforcement."¹⁸

D. AMOUNT OF ENFORCEMENT

Up to this point the question was whether the NWLB should undertake any enforcement program at all; thereafter the question was how vigorous and extensive the enforcement program should be. Actually, the National Board never came squarely to grips with this latter problem and never reached a definite decision with respect to the amount of enforcement which was desirable or feasible. Instead, it more or less drifted into a program of limited enforcement. There were important, though not always articulated, reasons or rationalizations for this development. For one thing, the NWLB lacked the staff to administer an all-out enforcement program. During the third quarter of 1945, when it reached its peak, the Board's staff of attorneys averaged less than nine per region. The peak force of wage-and-hour inspectors assigned to the regional boards for investigation work only slightly exceeded 300. Obviously, such a relatively small force could give adequate consideration to only a fraction of all violation cases. Yet, it must be admitted that this lack of staff was probably more the result of the Board's indecisive attitude toward enforcement than the cause of it. Additional manpower could have been secured, had the Board earnestly desired it.

A second, equally important limiting factor was the Board's sincere belief that most violations were committed through ignorance and not with deliberate intent to flout the law. Education, rather than punishment, was invariably stressed as the keynote of the enforcement program. It was not unnatural for the NWLB to cherish this belief, since the general assumption during the early days of the stabilization

¹⁷ *Ibid.*, April 22, 1943, p. 366.

¹⁸ *Ibid.*, p. 384.

program was that employers would be only too happy to keep their wage costs down; and, at least for a time, no one fully realized the extent to which some employers would go in order to secure or retain desperately needed manpower.

A third factor influencing the development of the enforcement program was the conviction of most National Board members that enforcement was the least important of the Board's various functions. The labor members, particularly, were apt to be somewhat disinterested in, or openly antagonistic toward, the development of any enforcement program at a time when their constituents had so many unsettled complaints against the administration of the wage stabilization policy. This attitude is clearly revealed in the following statement by one labor member:

My conclusion is this, that if we display, if we direct our resources and energies to disposing of cases that have piled up on us that are awaiting disposition in the form of demands for aid and correction of a wage situation, working conditions, and so on, if we move in that field and get our house in order in that regard first, then it will be time enough to look around for new fields in which to work; that our problem is not this abuse that has been referred to of excess payments, but a failure to process the thousands of cases that have been piled up back here in this and all regional boards.¹⁹

Finally, the development of the enforcement program was influenced by the fact that the Board did not regard even willful violations of the wage stabilization regulations in the same way that the Office of Price Administration, for example, regarded price violations. Rightly or wrongly, the Board was inclined to consider illegal wage payments as less reprehensible than illegal price increases. Whatever logical weakness such a notion had, it did have a certain plausibility and probably reflected popular sentiment. No one had sympathy for the price gouger, who alone benefited from his illegal conduct, at the expense of others. The employer who granted illegal wage increases was regarded with greater tolerance; he at least was giving something to others, and the inflationary consequences of his actions were far less apparent than in the case of the price gouger. As for the employee who accepted the illegal wage increase, although he was equally guilty under the law, no one seemed to regard his conduct as particularly improper. While his wage rate was sometimes cut back to the legal amount, he suffered no other penalty.

The inflationary aspect of wage violations never appears to have given the National Board much concern. What did seem to bother the Board was the essential unfairness of allowing a few selfish or thoughtless employers to take advantage of the great majority of employers and unions who conformed to the stabilization regulations. Thus, we find one public member explaining to the labor members

¹⁹ *Ibid.*, p. 373.

why some enforcement program was necessary in the following language:

Gentlemen on the labor side, what is happening in the field is this, that good, loyal, responsible union organizations who have accepted the decisions of this Board denying them wage increases are seeing employers of nonunion groups increasing the very wages in violation of our orders and nothing being done about it.²⁰

A frequent criticism of the Board's enforcement program is that it was too little and too late. The latter characterization is unquestionably true, but the former appears to be unjustified. Enforcement on a scale larger than that attempted by the NTLB would, under the circumstances then prevailing, have been highly ill-advised. The sheer magnitude of the task rendered all-out enforcement practically impossible. A huge army of investigators and lawyers would have been required, and their activities would, inevitably, have evoked public resentment and resistance. Indeed, it is extremely doubtful whether Congress would have appropriated sufficient funds to permit the Board to engage in such an undertaking. The size of the case load would have prevented the great flexibility in treatment which characterized the handling of the enforcement cases that actually came before the regional boards. Moreover, the possibility of defiance and court tests of NTLB rulings would have been greatly enhanced; and, as previously indicated, the successful outcome of such tests (from the Board's point of view) was by no means assured.

Actually, the prosecution campaign launched by the NTLB would probably have been sufficient to bring about a satisfactory amount of observance of wage stabilization regulations if the Board had accepted its enforcement responsibility at the outset. It was the tardy recognition of this duty by the National Board, rather than the scale of the enforcement effort itself, which must be blamed for any shortcomings of the program.

E. OPERATING POLICIES AND PROCEDURES

We come now to the actual methods of operation pursued by the NTLB in the administration of its enforcement program. Foremost of these were the two which characterized all of the other Board activities—decentralization and tripartite participation. The logic of delegating principal responsibility to the regional boards is explained in Chapter 8, and there is no need to dwell upon the point here. It is interesting to note, however, that while the regional boards were given full powers, subject to appeal, to dispose of dispute cases and wage applications as soon as they were established, they did not receive official sanction from the National Board to process enforcement cases until much later. As we have seen, however, this was not because the

²⁰ *Ibid.*, p. 410.

National Board felt that the handling of enforcement cases should have been centralized in Washington, but because it took so long to decide that it would adopt any enforcement program at all.

One disadvantage which resulted from the decentralization of the enforcement procedure was, of course, the wide diversity of treatment which similar types of cases received in different regions. While the same thing was true to a lesser degree in the handling of dispute and wage-approval cases, it was far more pronounced in violation cases. The reason was obvious: in dispute or wage-approval cases, some objective standards or precedents had been formulated by the National Board; but in enforcement cases the result depended upon the weight the regional boards gave to extenuating circumstances in any given situation. No objective standards or recognized precedents were established in this field, and the decisions of the regional boards were more apt to be determined by partisan pressures.

The advantages and disadvantages of tripartitism have been discussed in Chapter 6, and only a few additional comments are pertinent here. Most of those who participated in or observed the operations of the national or regional boards, particularly when they were formulating major policies, have developed a certain reverence for the tripartite process. Observing the interplay of ideas, the impact of opposing views meeting in head-on collision and, ultimately, the synthesis of opinions into a policy supported by all tended to confirm one's faith in the strength of democracy. It is clear, however, that tripartitism did not lend itself to administrative efficiency, and that it frequently operated to least advantage in enforcement cases. NWLB attorneys, accustomed by training to follow judicial procedures, were particularly incensed by the inconsistency and open partisanship displayed by industry and labor members serving on enforcement cases. The following comment of one who was intimately connected with the enforcement program probably expresses the views of many others. "I personally am convinced," he writes, "that enforcement of wage stabilization by a tripartite board is one of the most grotesque conceptions that I have ever encountered."²¹

This comment takes on added meaning when read in the light of an experience of one regional attorney which may well have been duplicated on occasion in the other regions.

I had just come to the regional board from another agency [he stated], and I had never had any experience with a tripartite set-up. I prepared my first violation case with considerable care, and decided, on the basis of the record, to recommend a fairly lenient settlement to the tripartite enforcement division.

Well, I thought my first case would be my last! The labor members raised an awful row, accused me of collusion with the employer, and threatened to get me fired.

²¹ Letter to the writer.

My second case was a simple instance of willful violation with no extenuating circumstances. Still smarting from the beating I had taken from the labor members, I brought this case into the same enforcement division with a recommendation that the entire amount involved be disallowed.

Imagine my consternation when the labor members again jumped all over me, this time because I was too tough! They raised so much hell that the violator got off with a 10 percent disallowance.

It wasn't until later that I realized what had happened. The first employer was unorganized, while the second had always played ball with the union; it was as simple as that.²²

However, the advantages of tripartitism were more than sufficient to offset the disadvantages. The plain fact was, of course, that without tripartite support no enforcement program was possible. A refusal by the labor and industry members to underwrite the enforcement activities of the Board would have been the signal for defiance by employers and unions of the Board's enforcement orders. At the same time, the number of deliberate violations would have increased, since the lack of labor and industry sponsorship of the Board's enforcement program would have produced a drop in voluntary compliance with existing regulations. Indeed, it is not too much to say that the entire stabilization program would have been gravely endangered.

The importance of tripartite support in obtaining enforcement is well stated by a former member of the enforcement staff:

I know that there were times when we were * * * ready to throw up our hands in complete despair at the prospect of getting any effective enforcement through tripartitism. On the other hand, there was the factor which we often tended to overlook, that tripartitism was a means of getting community support for wage enforcement. After all, for the first time in American life there was an attempt by the Government to control the amount of wages which a man could pay or a man could receive. This touched most closely the life of the individual and was, of course, most likely to arouse passions and antagonism to Government. Tripartitism was certainly one means of making possible effective enforcement.²³

Some indication of the value of the tripartite process is revealed in the history of the enforcement program. As previously described, all the labor members, some of the industry members, and one of the four original public members of the National Board vigorously opposed the initiation of an enforcement program by the Board. Nevertheless, when the decision was finally reached, by a closely divided vote, to proceed with enforcement plans, all members of the national and regional boards shared the responsibility for the successes and failures of the program.

It has been suggested elsewhere in the present study²⁴ that, while

²² Oral statement to the writer.

²³ Letter to the writer.

²⁴ Ch. 6, pp. 243-245.

tripartite sponsorship and support of the enforcement program was essential, the actual participation by labor and industry representatives in the administration of the program had a number of undesirable consequences. In this connection, the National Board is criticized for reversing the unanimous action of the Twelfth Regional Board in delegating all enforcement work to the public members. Assuming that the partisan members of the regional board would actually have given their wholehearted support to a program in the execution of which they did not participate, the criticism seems justified. In defense of the National Board's action, however, it may be argued that it feared that, despite their good intentions, the partisan members would not always withstand the pressures exerted by labor and employer groups involved in enforcement proceedings. Actual participation by the partisan members in the operation of the enforcement program was a kind of insurance against their outright or tacit encouragement to those attacking that program.

While there were doubtless some cases in which labor and industry members took unfair advantage of their position and discriminated in favor of or against an employer charged with a wage violation, in the great majority of cases they appear to have approached their task in the proper spirit, and with full realization of their public responsibilities. In addition, they sometimes exercised a restraining influence upon the more detached and relatively more severe attitude of the enforcement attorneys. One attorney, who reacted strongly against any kind of tripartite administration, nevertheless was willing to admit that—

under all the circumstances there were some advantages, such as the fact that from a public relations standpoint we could always point out to violators that they would receive consideration from people who were not legalistic and who understood the problems the employer was facing. In this sense, the tripartite enforcement board had some of the advantages of a jury. I also think it was quite remarkable that the tripartite boards on the whole functioned as well as they did in enforcement cases.²⁵

The foregoing analysis is borne out by the comments on enforcement contained in a majority of the terminal reports submitted by the Board's regional chairmen.²⁶ With several exceptions,²⁷ the regional chairmen testified to the effectiveness of tripartite enforcement procedures. Two excerpts from these reports will suffice to illustrate the

²⁵ Letter to the writer.

²⁶ The background of these reports, a composite summary of them all, and the full text of each are set forth in *The Termination Report*, vol. I, pp. 571-781.

²⁷ The chairman of the First Regional Board, for example, expressed the opinion that, "The enforcement program beyond any other should have been administered by public judges only." (*Ibid.*, p. 601.) The chairman of the Seventh Regional Board expressed a similar opinion, and added: "In our region the relationship of partisan members to the parties has too often assimilated that of client and counselor." (*Ibid.*, p. 695.)

attitude expressed. The chairman of the Third Regional Board reported :

In the enforcement program in the Third Region, it is clear that the labor and industry members made a real contribution. Most of the members of our Enforcement Division served without interruption from the time the Division was established until the end of the Board's program. In every decision reached the Enforcement Division has been unanimous. Every member of the Division was keenly aware of the responsibilities which the program entailed and exercised every possible care to assure that the decisions on individual cases were reasonable and were in line with other decisions by the Division in other cases. In particular, the industry members have had a large share in selling the enforcement program to the public since ordinarily only the employer is interested in an enforcement matter.²⁸

The chairman of the Fifth Regional Board reported :

Without the participation of the industry members in the enforcement program, it is doubtful what success, if any, the enforcement program would have encountered. While labor went along with enforcement, it was not with too much interest or enthusiasm. However, with very few exceptions, the findings of the Board's Enforcement Division were unanimous. * * * In addition, industry and labor participation probably made the penalties more reasonable and practical, that is, rendered them more preventive or educational rather than purely punitive.²⁹

The strongest advocate of tripartitism will admit that it shows off to least advantage as a purely administrative device. The usefulness of the tripartite method in carrying out the NWLB enforcement program derived solely from the fact that the stabilization program itself was formulated and administered by a tripartite agency. It must be readily conceded, therefore, that under any other circumstances tripartite administration of the enforcement program would indeed have been a grotesque anomaly.

Whatever faults may have existed in the Board's enforcement policies and procedures, the latter, at least, were distinguished by a scrupulous and untiring concern for the rights of individuals accused of violating the law. Indeed, it may be observed that the procedures not only conformed to, but went beyond, normal requirements for protecting individual rights in situations of this type.

When information relating to an alleged violation was received by a regional board,³⁰ a preliminary inquiry was customarily instituted by the regional attorney to determine by informal consultation whether the facts justified a formal proceeding. In some instances it developed that wage payments, which on their face had appeared

²⁸ *Ibid.*, p. 640.

²⁹ *Ibid.*, p. 671.

³⁰ Most of the industry commissions did not process enforcement cases, but referred each instance of apparent violation to the appropriate regional board, sometimes with an accompanying statement of any relevant facts that were known to it. For other sources of information on apparent violations, see *The Termination Report*, vol. I, pp. 432-433.

to have been improperly made, were in fact permissible under one of the Board's general orders. If so, the matter was closed. If this was not the case, a report was submitted to a tripartite division of the regional board. If the division was satisfied that there was reasonable cause for believing that a violation had occurred, it customarily requested the alleged violator to appear at a hearing.

At least 10 days' advance written notice of the hearing was given to the alleged violator; this notice specified in detail the nature of the alleged unlawful adjustments. The alleged violator was given the absolute right to be represented by counsel, to present written and oral testimony, and to examine and cross-examine witnesses. Opportunity was also afforded for oral argument and the presentation of written briefs and statements.

At the conclusion of the hearing, proposed findings of fact were submitted by the regional attorney to the tripartite division and to the alleged violator. Opportunity was given the latter to submit written comments on the proposed findings to the division. The division then determined, on the basis of the entire record, whether or not unlawful wage adjustments had been granted.

If the division found that unlawful wage adjustments had been granted, it further determined the amount of the penalty to be assessed and the extent of the rollback necessary to reduce the illegal wage rates to the proper level. The violator then had the right to petition the National Board for review. The National Board, if it so desired, could call for further written or oral testimony.³¹

A fundamental policy of the NWLB and of the regional boards was to secure voluntary conformance with the stabilization program by educating those affected by the regulations. Thus, in the detailed enforcement instructions prepared by the Board's General Counsel and sent to the various regional boards on September 6, 1944, appeared the following:

Efforts to broaden the "educational" aspects of the enforcement program should also be made. Some of the Regions have effectively utilized a system of conducting stabilization "clinics" in particular areas where contravention of the [Stabilization] Act is known or believed to be widespread. These "clinics" conducted by one or more members of an Enforcement Division or of the enforcement section, if planned and publicized, especially in connection with enforcement cases in the same area, may educate a large number of employers in a given area or industry. Often the cooperation and active help of private agencies in a community can be enlisted in such a program. Methods of publicizing such meetings or of notifying employers in a particular area can be worked out with the Information Division.³²

³¹ In actual practice the regional boards often went to even further lengths to insure that the alleged violator received a full and fair hearing. See, for example, the lengthy excerpt from the National Board's opinion in *Howard Menu Service, Inc.*, case No. 2-E-1 (January 28, 1944), in *The Termination Report*, vol. I, pp. 434-5.

³² *The Termination Report*, vol. II, p. 756.

Programs such as those referred to in the foregoing quotation were frequently employed with excellent results. One measure of their effectiveness is the number of consent settlements of violation cases. These settlements, which comprised at least 90 percent of violation cases, involved admission by the violator of a breach of stabilization rules, as well as his voluntary acceptance of the assessed penalty. In many of such cases, the employer voluntarily disclosed his violation in the first instance.

F. SPECIAL INDUSTRY PROBLEMS

In several industries the problems raised by violations of wage-stabilization regulations were particularly acute. In the interests of brevity, only two such industries will be discussed here—the tool and die industry in the Detroit area and the building and construction industry.

1. *The Detroit area tool and die industry.*—The problem of wage stabilization violations in the Detroit area tool and die industry was perhaps the most serious ever faced by the Board. Owing to an unusual combination of circumstances, however, the enforcement program developed for that industry was the most successful one ever undertaken by the Board.

In order to convert to war production, the automobile industry in the Detroit area required thousands of new tools, dies, jigs, and fixtures. The task of meeting this urgent demand fell mainly to the independent jobbing shops which operated, in most cases, as subcontractors for the large production plants. Primarily because of the lack of a sufficient number of skilled workers, the jobbing shops were unable to cope with the tremendous number of orders. Consequently, indiscriminate wage-rate increases and labor pirating were widely resorted to as a means of securing additional trained employees. The high wages and other allurements offered by the jobbing shops began to attract workers from the so-called captive tool rooms maintained by the large production plants for the building and repairing of tools used in their own manufacturing processes.

To stabilize this chaotic situation, the National Board issued directive orders in October and December 1942, which set maximum wage rates for the various classifications in the tool and die industry and prescribed rules designed to prevent labor pirating. This stabilization program was administered by the Detroit Area Tool and Die Commission, a tripartite agency of the Board, which was established in December 1942. Within a year's time the Commission was able to report that labor pirating in the industry was virtually extinct and that practically complete wage stabilization had been achieved.³⁵

³⁵ The first annual report of the Commission is published in *The Termination Report*, vol. I, pp. 1134-1163. For details of its enforcement program, see pp. 1156-1159.

It would be a mistake to assume, however, that the methods used by the Tool and Die Commission could have been applied with equal success by other agencies of the Board. The Commission's achievement was due largely to a number of factors peculiar to the tool and die industry. First, the basic stabilization regulation was more stringent than any other ever promulgated by the Board. It fixed a specific maximum rate for each major classification in the industry and, with one exception,⁸⁴ forbade payment above that maximum for any reason. Since almost all workers in the jobbing shops received the maximum rate, the Board's order virtually froze existing rates. This regulation, while drastic, was short, specific, and easily understood. It was widely circulated within the limited geographical area of the Commission's jurisdiction and was soon thoroughly familiar to all employers and workers in the industry.

Another important factor was the full cooperation given the Commission by the various unions involved. Of these, the United Automobile Workers-CIO represented the majority of tool and die workers in both the captive and the jobbing shops. The UAW had taken the lead in petitioning for the Board's tool and die directive, which it needed to stabilize wage-rate relationships between the captive and the jobbing shops. Once the order had been issued, the union supported it vigorously and insisted that its members adhere to the industry's stabilization program.

The Board's directive was also scrupulously observed by almost all of the well-established jobbing shops and the major production plants which operated captive shops. These employers aided the stabilization program not only by complying with it themselves, but also by helping the Commission locate violators.

While the Commission had jurisdiction over more than 10,000 workers, the geographical area within which it operated was relatively small. Two wage and hour inspectors detailed to the Commission were able, within a year's time, to check almost every establishment in the industry and to make numerous return visits to shops where violations had been discovered.

Finally, the labor and industry members of the Commission, as well as the public members, were firmly convinced from the outset that a strong enforcement program had to be formulated. This program was initiated 2 weeks after the Commission started operating, and well in advance of any enforcement activity by the National or regional boards. The Commission's prompt action and the full sup-

⁸⁴ Under the National Board's directive a tool and die worker who had been receiving, prior to the effective date of the order, a rate in excess of the maximum fixed for his classification, could continue to receive it, provided he did not change jobs. If he changed jobs, his new rate could not exceed the legal maximum except in special cases approved in advance by the Commission.

port of the enforcement program given by the industry and labor members assisted immeasurably in stamping out violations.

2. *The building and construction industry.*—The enforcement problems in the construction industry were entirely different and much more difficult than those in the tool and die industry. In the first place, instead of one master directive, there were a number of complex regulations governing building trades wage rates. Many of these were never publicized until after the demise of the NWLB, when its successor agency, the NWSB, attempted to codify the various rules and procedures relating to wage rates in the construction industry. According to one attorney who participated in this effort:

This was done because it showed up so clearly in enforcement that the supposed rules and rates which we were trying to enforce were unbelievably confused.

The very nature of the construction industry presented unique problems of enforcement. The casual nature of the employment and the number of different jobs undertaken by individual contractors made payroll checks and wage roll-backs extremely difficult, if not impossible, in many cases.

Moreover, instead of dealing chiefly with one dominant union which firmly supported a strong enforcement policy, the Wage Adjustment Board (the National Board agency having jurisdiction over the building and construction industry) had to contend with a large number of powerful, autonomous building trades unions which were not particularly sympathetic to either wage stabilization or enforcement. Since these unions controlled most of the hiring in the industry, their lack of support of a strong enforcement program was a serious handicap. Had they supported such a program, they could easily have insisted that their men work for contractors paying only the legal rates and stop "shopping" for jobs at illegal rates.

Unlike the Tool and Die Commission, the WAB had the entire country within its geographical jurisdiction. Different local and regional practices provided additional problems. The sheer magnitude of its task presented an insurmountable obstacle to effective enforcement.

Finally, the WAB had complete, and very largely independent, jurisdiction over the stabilization program in the building and construction industry. Theoretically, the NWLB had the ultimate responsibility for enforcement, but there was little supervision of WAB operations by the NWLB and no integration whatever of its program with that of the various regional boards.³⁵

³⁵ By way of illustration, the report from the Ninth Regional Board states, in part: "We were given an impossible task in respect to the enforcement of construction industry rates. It was not until the dying days of our program that we could even build up liaison with the understaffed Wage Adjustment Board or learn of its policies" (The Termination Report, vol. I, p. 738).

These facts are frankly admitted in the final report of the WAB.³⁶ On the subject of enforcement the report states:

The prime weakness in the functioning of the Wage Adjustment Board was the lack of enforcement. The [Wage Adjustment] Board itself had no enforcement powers and integration with the Regional Boards for this purpose was lacking. Also the Wage Adjustment Board was not possessed of an adequate staff or fund to broaden its activities in this regard, had it the power. In the absence of a widespread program imposing penalties for violations, an unusual degree of compliance was obtained through the cooperation of the international unions and contractors associations on what may be termed a moral basis.³⁷

Very little enforcement in the construction industry was attempted by the national or regional boards during the life of the NWLB.³⁸ The first real attempt to establish an enforcement program for the building and construction industry was begun by the NWSB. This is not surprising when one considers the complexity and vagueness of the numerous regulations affecting the construction industry, as well as the general disinclination of regional enforcement personnel to tackle cases about which they knew so little.

The comparison of the experience with enforcement in these two industries indicates the great number of variables influencing the problem. In the judgment of most observers, enforcement of stabilization regulations in the building and construction industry could have been greatly improved; but it is absolutely certain that it could never have been nearly so effective as the enforcement program in the tool and die industry. Similarly, the methods used by the Tool and Die Commission would have been inappropriate in dealing with the broader and quite different problems confronting the various regional boards. In evaluating the effectiveness of the Board's total enforcement effort, therefore, it is necessary to keep in mind that special circumstances in a few industries contributed more to the success or failure of the Board's enforcement program than did the details of the program itself.

G. EVALUATION OF THE NWLB ENFORCEMENT PROGRAM

The enforcement program of the NWLB can be evaluated with reference to three criteria: (a) procedural uniformity between regions, (b) consistency in the disposition of cases of the same general

³⁶ *Ibid.*, pp. 1197-1205.

³⁷ *Ibid.*, p. 1203. The last sentence of this quotation would be hotly disputed by most regional board and staff members. Their general reaction may accurately be summarized by rephrasing the latter part of the sentence to make it read "* * * an unusually low degree of compliance was obtained by virtue of the collusion between the international unions and contractors' associations on what may be termed an almost immoral basis."

³⁸ In 1943 the WAB investigated and reported to the NWLB the existence of widespread violations in the Norfolk-Newport News area. This resulted in an intensive enforcement program for that area. [See "Report of Norfolk-Newport News Panel for Building Trades," War Labor Reports, vol. XXVII, p. XII.] Again, in 1944, the WAB uncovered violations in Detroit which led to enforcement action by the NWLB [*General Builders Association of Detroit*, case No. WAB 3034 (July 13, 1944)].

character, and (c) the extent of enforcement. Although the Board made some effort to achieve procedural uniformity, consistency, and the widest possible conformity with the wage-stabilization program, its reach in general exceeded its grasp. In many instances, it met with only partial success.

1. *Procedural uniformity between regions.*—Procedural uniformity between regions was easily achieved because the various procedures used in different cases were all drafted in Washington. Not only did the adoption of uniform procedures guarantee due process to all alleged violators, but it sometimes brought about uniform substantive results in similar cases as well. For example, Form 10 applications frequently disclosed that the rates for which approval was requested had already been placed in effect. If the rates were actually approvable, in some regions the application was approved retroactively, and the violation was thus automatically forgiven. In other regions, however, retroactive approval was denied and the case was referred to the enforcement division. The ultimate adoption of a uniform clause, approving the wage application prospectively, but specifically not excusing the past violation, led to uniform treatment of similar cases in all the regions.

2. *Consistency in the disposition of similar cases.*—With the exception noted above, practically no consistency in the disposition of cases of the same general character was achieved between the regions or even within the same region. The reason for the failure to achieve such consistency has already been explained. Not only did the tripartite administration of enforcement occasionally result in the exercise of partisan pressures having no relation to the merits of the cases involved, but the changing personnel on the enforcement divisions also had a marked effect upon the decisions rendered. This was apt to be a particularly influential factor with respect to the public members; for while the votes of the industry and labor members tended to be influenced by the interests of their principals in any given case, the public members had no guiding policy whatever to steer by. Consequently, some were known as being particularly severe, while others were considered relatively lenient.

however, the problem was insoluble. In the light of the earlier discussion of possible alternative methods of enforcement, it is apparent that true consistency of treatment would have been completely illusory under any kind of enforcement system which might have been adopted. The application of uniform penalties, prescribed by statute, would have precluded the consideration of extenuating circumstances and such a policy would have been far more unjust than the one actually adopted. On the other hand, a consideration of extenuating circum-

stances necessarily brought into play the fallible judgment of a great many human beings. While the variations in such judgments could have been drastically reduced by the rejection of tripartitism and the concentration of enforcement administration in Washington, they could not have been eliminated entirely.

3. *Extent of enforcement.*—As previously mentioned, the Board's enforcement program was a limited one, under which only a sampling of violation cases could be handled. The final reports of the regional board chairmen previously referred to are virtually unanimous in their conclusion that numerous violations went unpunished, but that most of them involved such small establishments that their combined effect upon stabilization was slight. What the National Board consistently failed to appreciate, however, was that numerous violations of this type, regardless of their small impact upon stabilization, tended to create an attitude of disrespect for the law and encouraged violations of a more serious nature. This fact was, of course, immediately apparent to the regional boards, and it does much to explain why they constantly urged the National Board to take prompt and decisive action on enforcement matters.

Granted the limited character of the enforcement program, it was essential that only the most important cases be selected for special attention. There is considerable question, however, whether the program ever really touched the "most important" cases. The answer probably depends upon the standard of measurement used.

There were in general two main types of violations. The great bulk of the violations involved relatively small establishments. They were usually clear-cut instances, arising from ignorance of the regulations, inability to master the vagueness and ambiguity of some of the Board's general orders, a yielding to union pressures, or a complete disregarding of the established rules. Some of the violations, on the other hand, were committed by large-scale employers, who were well informed and capable of avoiding obvious breaches of stabilization policy. Instead, they evaded the law through the use of more subtle stratagems, such as misclassification and excessive upgrading. Quite possibly, some of the wage-adjustment devices of the large employers, though contrary to the spirit and intent of the stabilization regulations, were technically within the law.

In practice the Board's attention was directed chiefly, but not exclusively, at the former type of violation. This fact has been explained as follows:

With rare exceptions, the large establishments of the country adhered closely to wage stabilization regulations. When serious violations occurred in such establishments they were nearly always detected and rectified. For the most part violations occurred in the low-paying small-size establishments, particularly

in the retail and service industries, such as restaurants, bars, laundries, auto repair shops, shoe repair shops, and jewelry stores."³⁹

Considerations other than the relative frequency of the two types of violations also help to explain the Board's choice. In the first place, the problem of proof was much greater in the improper upgrading and reclassification cases. In large establishments, the mere job of collecting the necessary information was enormous.⁴⁰ Of equal importance was the fact that prosecution of these cases often would have involved interminable conflicts over very complicated questions of fact concerning the content of numerous job classifications, the applicability of loosely drawn rules and regulations to new or changed job classifications, and similar problems. In this connection it is significant that the Board had no subpoena power until the passage of the War Labor Disputes Act of June 1943; yet prior to that time it experienced practically no difficulty in obtaining the consent of employers to examine their records in violation cases. However, most of these cases involved small employers and extenuating circumstances.⁴¹ It is doubtful whether such consent would have been granted by major employers in cases involving deliberate evasions of the law.

The Board's choice was presumably based in part also on a judgment as to the relative effects of the two types of cases on the stabilization program. Insofar as the immediate effects on the program were concerned, it may be true that the use of subtle tactics by some of the larger firms had a more unstabilizing influence than the obvious violations of many small establishments. Yet, in the total effect, the great danger to the stabilization program lay not so much in the clever evasions or avoidances of a few major companies, despite the unstabilizing results of their conduct, but in the more numerous and cruder violations of the smaller employers which, while less unstabilizing in themselves, would have led to a general disregarding of the law if they had gone unchallenged. As between the persuasive task of encouraging compliance, and the punitive task of enforcing the law against violators, the former was more important; and it is almost certainly true that compliance with the law was encouraged more by the correction of numerous cases of indisputable violations than by the

³⁹ The Termination Report, vol. I, p. 436.

⁴⁰ A case in point is one involving the Hudson Naval Arsenal near Detroit. As stated in The Termination Report, vol. I, p. 432, "it was necessary to assign all of the inspectors available to the Detroit region plus additional investigators drawn from other regions for this job for several months. The case involved alleged misclassification of employees and required a thorough inspection of the jobs of many hundreds of individual employees to compare actual job content with payroll descriptions. Investigation of the entire naval arsenal proved impossible and the enforcement staff selected sample parts of the operation for investigation."

⁴¹ Another explanation of the willingness of employers to permit examination of their books is that the inspections were conducted by wage-hour inspectors, often for the dual purpose of checking on alleged violations of both the Stabilization Act and the FLSA.

imposition of penalties in fewer cases where the violations were much less apparent.

The regional enforcement divisions, in regarding as the "most important" cases those evidencing the most egregious violations, probably made a wise choice, since these were likely to be the most commonly known. Also on the basis of the practical considerations, previously mentioned, the Board was probably correct in its choice. While the Board could not completely ignore the dangers of getting into a large-scale legal conflict with one or more major employers, there is probably only slight validity to any contention that the Board's policy was dictated by expediency or represented a capitulation to large employers.

It is not intended to suggest that the Board's enforcement staff deliberately followed a path of least resistance, either out of fear of the reaction of the big employers to the alternative policy, or out of conviction that the enforcement program could be more effectively administered in that manner. On the contrary, it is clear that the regional attorneys generally tackled all cases, regardless of size, which they felt equipped to handle and that they frequently complained of the administrative limitations which prevented them from undertaking enforcement activities on a larger scale. Viewed from the vantage point of time, however, the limitations under which they chafed appear to have been less unfortunate than was at first supposed.

It is almost certain, however, that the widest possible conformance with the stabilization program, even under the limiting circumstances described above, was not achieved. Possibly, some of the purely unintentional and innocent violations could have been eliminated by a more intensive program of public education, undertaken at the outset of the stabilization program; and, undoubtedly, the regional boards would have had fewer deliberate violations to contend with if the National Board had become reconciled to its enforcement responsibilities at an earlier date. Finally, greater compliance with the wage stabilization program would have resulted if the National Board had formulated its various regulations with an eye to their enforceability. Its failure to do so made a certain number of innocent violations inevitable and a great many deliberate violations extremely difficult, if not absolutely impossible, to uncover and prosecute.⁴²

⁴² It has been suggested by some observers that the NLRB adopted a far too tolerant attitude toward the pressures exerted upon employers by some labor groups to compel the granting of illegal wage increases. In such cases, the punishment, if any, was suffered only by the employer; the union went scot free, and the employees affected suffered, at most, a reduction of wages to approvable rates. The actual number of such situations was never accurately estimated, and it would have been extremely difficult to prescribe an appropriate penalty in verified instances. Practically speaking, an attempt by the NLRB to punish unions or employees under these circumstances would have weakened labor's support of the enforcement program considerably.

Given the circumstances in which they were forced to operate, however, the regional boards established an impressive record of achievement in the field of public compliance with the stabilization program. Penalties were assessed in 6,903 cases, and the amounts disallowed for tax deduction purposes totaled more than \$15,000,000 in consent cases and nearly \$4,000,000 in contested cases.⁴³ The total number of violations that escaped discovery cannot even be estimated with accuracy; but viewed in retrospect, it appears that the number was kept within moderately satisfactory limits. The real significance of the wartime experience with stabilization is that it was largely successful, and that it did not break down because of lack of public support.

II. ENFORCEMENT BY THE NWSB

A. NATURE OF THE ENFORCEMENT PROBLEM

With the end of the war, the removal of most of the direct controls on wage increases,⁴⁴ and the termination of the NWLB,⁴⁵ the nature of the enforcement task underwent a radical change. The enforcement functions of the NWSB were confined to four types of activity: (a) closing out pending violation cases which were carried over from the NWLB; (b) enforcing the direct controls still applicable to the building and construction industry; (c) enforcing the direct controls still applicable to wage decreases; and (d) liquidating NWSB violation cases on hand when the President terminated wage stabilization on November 9, 1946.

The difficulty in carrying out these functions was greatly increased as a result of changing social conditions and public attitudes. The war was over and the Nation was in the process of reconverting to a peacetime economy. Quite naturally, there was a growing public impatience with the continuance of any controls. Partisan groups were no longer as ready to make sacrifices for the common good as they had been during the war. Employers and unions alike grew increasingly restive under even the few stabilization controls which remained. Under these circumstances the NWSB had an extremely thankless task. Nevertheless, it seems to have completed its assigned

⁴³ The Termination Report, vol. I, pp. 439-440.

⁴⁴ See ch. 3, p. 147.

⁴⁵ Executive Order 9672, issued December 31, 1945, terminated the NWLB and created the NWSB. Among other things the Executive order provided that "The Wage Adjustment Board for the building and construction industry shall continue to perform its present functions with respect to the stabilization of wages and salaries in the building and construction industry."

duties in the enforcement field as successfully as could have been expected.⁴⁶

1. *Closing out NWSB violations cases.*—On January 1, 1946, when the NWSB began its operations, there were 8,189 cases on file with the enforcement divisions of the 12 regional boards. By June 30, 1946, determinations in all but 108 of these cases had been made. The remaining ones, with few exceptions, were disposed of in the succeeding 2 months. In processing these cases the NWSB followed the policies and procedures developed by the NWLB. The principal job was done in the regions; tripartite enforcement divisions were used; and the National Board served as an appellate body.

Considering the magnitude of the job accomplished in this period and the circumstances under which the NWSB performed its work, it would not have been too surprising to discover that many of the regional boards had liquidated their backlogs by the simple expedient of forgiving large numbers of violations. However, this appears not to have been the case. An NWSB attorney who helped supervise this clean-up job commented upon the work as follows:

A real effort was made to deal with these cases on the same basis they would have been dealt with prior to the release of controls. Nevertheless, it was obviously very difficult to maintain the same feeling of urgency about the situation that existed when controls were active. This is a problem which was undoubtedly common to any of the war-time controls, once they were abandoned. * * * I think it is undoubtedly true that, as time passed, the cases were dealt with more and more leniently, especially when the final drive was on to clean up the cases. Even so, I dare say the cases received more attention and came closer to being cleaned out on a fair basis than * * * backlog cases remaining in other war agencies after controls were removed.⁴⁷

2. *Enforcement in the building and construction industry.*—As previously indicated, the major breakdown in the enforcement of the wartime wage stabilization program was in the building and construction industry. The critical situation in that industry became even more serious in the latter part of 1945, when the Government began its low-cost housing program. Existing confusion in the industry was worse confounded by the mix-up over General Orders 40 and 41 of the NWLB. The trouble began on August 18, 1945, when the WAB announced that it would terminate its activities in 90 days. On August 20, General Order 40 was issued. It removed all direct wage controls except those over wage decreases and wage rates for new plants. On August 22, however, the NWLB issued General Order 41, which stated that General Order 40 did not apply to employers and employees in the building and construction industry subject to the jurisdiction of the WAB. Subsequently in processing violations

⁴⁶ For a detailed report of the Board's enforcement activities see U. S. Department of Labor, *The National Wage Stabilization Board (1948)*, pp. 223-235 (hereinafter referred to as *The NWSB Report*).

⁴⁷ Letter to the writer.

cases involving this industry, the NWSB frequently encountered the defense that the violators had read the statement of the WAB and General Order 40, but had never seen General Order 41.

Enforcement in the building and construction industry was hampered chiefly by the organizational patterns of the WAB and the NWSB. The problem is succinctly stated in the following excerpt from The NWSB Report:

The Wage Adjustment Board was set up in the Department of Labor but its procedures and decisions were subject to review by the National Wage Stabilization Board. This difficulty was compounded by the fact that although industrial wage stabilization was administered through the regional boards, subject only to review by the National Board, the wage stabilization program in the building and construction industry was administered by the Wage Adjustment Board in Washington, and the enforcement of that program by the regional wage stabilization boards in the field.

The confusion engendered by the organizational set-up will be appreciated when it is observed that building and construction rates were approved by the Wage Adjustment Board on an area basis, but approvable rates for industrial concerns were established by regional boards on a case by case basis. Where the Wage Adjustment Board failed to establish an area rate, the regional officers experienced great difficulty in obtaining any degree of compliance where the manpower situation, as was frequently the case, was critical.⁴⁸

The foregoing comment treats with commendable restraint a situation which must have been maddening to the regional enforcement staffs. They seldom had reliable information regarding authorized wage rates and frequently had to supply contractors with obsolete data. To these difficulties were added those occasioned by the fact that the WAB was unable to process expeditiously the wage applications filed with it. Thus employers were required to wait for considerable periods of time before being told whether their current wage rates were approvable. To make matters worse, the WAB, contrary to well-established policies of both the NWLB and the NWSB, continued for some time to grant retroactive approval to employers in violation.

Faced with these and many other handicaps, the NWSB did the best it could, and the wonder is that its enforcement efforts succeeded even in a small degree. One lawyer summed up the situation as follows:

In any event, WSB did the best it could to continue enforcement of the alleged stabilized rates in the building industry, thanking God as each day passed that those employers whom we charged with violations did not have sufficient critical faculties to blow our procedures to pieces by insisting on proof of the existence of the rules and rates. There were, of course, many cases where the rates could be nailed down sufficiently for violation case purposes and where the employers accepted the settlements or decisions, because they knew they had paid more than the industry understood was the right rate.⁴⁹

⁴⁸ Op. cit., p. 227 (footnote).

⁴⁹ Letter to writer.

The crowning achievement of the NWSB with respect to enforcement in the building and construction industry was the publication in the *Federal Register* in the fall of 1946 of the substantive and procedural rules of WAB, as well as the area rates for 11 States. If stabilization had continued, all the area rates would eventually have been published; but these praiseworthy efforts to establish a sound basis for enforcement were cut short by the issuance on November 9, 1946, of Executive Order 9801, which removed all controls on wages and salaries.

3. *Enforcing controls on wage decreases.*—At the outset of the re-conversion period there were some indications that the problem of illegal wage decreases might become a serious one. Most economists predicted a substantial decline in both employment and wage levels, and few anticipated the boom in business activity which subsequently developed.

It was fortunate indeed that the problem of wage decreases never became serious from the standpoint of enforcement.⁵⁰ The difficulties involved in formulating a policy with respect to such reductions were numerous. These difficulties have been discussed in great detail elsewhere.⁵¹ It is sufficient here to point out that they involved such questions as the definition of wage decreases, the requirement of prior approval, and the standards of approval. To illustrate, the question arose whether the enforceable stabilized rate was the original rate being paid at the time wage stabilization went into effect or was the rate achieved as a result of approved wage increases. Executive Order 9250 provided that—

The National War Labor Board shall not approve a decrease in the wages for any particular work below the highest wages paid therefor between January 1, 1942, and September 15, 1942, unless to correct gross inequities and to aid in the effective prosecution of the war.

This was hardly conclusive, however, since it did not specifically prohibit the Board from disapproving reductions below a previously approved rate. The manner in which this question was handled by the NWSB was described by one thoroughly disenchanted observer as follows:

In accordance with the highest tripartite traditions, these problems were never actually resolved, and for policy and pressure reasons the rates enforced against decreases were the rates existing at the time direct wage controls were removed.⁵²

4. *Liquidating NWSB violation cases.*—When the President terminated wage stabilization on November 9, 1946, there were 6,676 enforcement cases pending in the several regions. January 15, 1947,

⁵⁰ The chapter on enforcement in *The NWSB Report* makes no reference to decrease cases, although the statistics indicate that such cases comprised 6.5 percent of all violation cases received and disposed of between January 1, 1946, and January 30, 1947.

⁵¹ *The NWSB Report*, pp. 166-191.

⁵² Letter to the writer.

was set by the NWSB as the deadline for liquidation of this backlog. By February 21, 1947, all but 60 cases had been closed, and these were transmitted to the Treasury Department for further processing.

As in the case of violations inherited from the NWLB, the NWSB made every reasonable attempt to give each separate matter proper consideration. This required a tremendous amount of work, and most enforcement divisions met much more frequently than had been the custom, to hear and dispose of cases.

Some idea of the extent of the NWSB enforcement program can be gained from the fact that, in little more than 1 year of operation, it processed 30,071 enforcement cases and made determinations of income-tax disallowances for 5,504 employers.

B. EFFECTIVENESS OF THE NWSB ENFORCEMENT PROGRAM

The principal function of the NWSB was to carry out a holding action against postwar inflationary forces. Political, as well as economic, factors made this task impossible, and the Board was mercifully allowed to expire after a hectic year of existence.

Under these circumstances, the achievements of the NWSB in the realm of enforcement were notable, to say the least. In 1 year it processed almost half as many violation cases as the NWLB had handled in 3 years. Moreover, it performed this administrative task not by a series of sweeping rulings in the nature of general amnesty decrees, but by hard work involving the conscientious consideration of individual cases.

It has been suggested by some that the failure of the NWLB to prosecute all known violators of the stabilization program might leave a legacy of popular disrespect for the law. The record of the NWSB in cleaning up past violation cases long after most people believed there was any need for stabilization and after popular interest in enforcement was practically nonexistent should do much to dissipate such fears.

III. SUMMARY OF CONCLUSIONS

1. The provisions of the Stabilization Act of 1942, Executive Order 9250, and the Regulations of the Economic Stabilization Director, as well as the organization of the NWLB itself, made the tripartite, decentralized administration of the enforcement program a logical necessity.

2. A much wider and more intensive enforcement effort was neither feasible nor desirable; the limited enforcement program actually undertaken was sufficient to assure an exceptionally high degree of public compliance with wage stabilization regulations. While there were

doubtless a great many violations of the stabilization law which were never discovered or punished, their combined effect was not serious enough to endanger the over-all stabilization program. A vigorous prosecution of such cases, many of which were cleverly managed and difficult to prove, would have involved the Board in continual litigation, and would have reduced the amount of voluntary compliance with existing regulations. On the other hand, the Board's concentration upon the relatively smaller cases involving unquestionable violations gave notice to the general public that violators of the law were not escaping with impunity, but did not antagonize powerful groups whose opposition might have wrecked both the Board and the stabilization program.

3. The Board made some mistakes which could have been avoided. It should have accepted its responsibility of enforcing wage stabilization much earlier than it actually did. Moreover, in formulating its wage regulations, it should have given greater consideration to the problem of their enforceability. These errors were attributable, for the most part, to the tripartite organization of the Board. Under the circumstances which prevailed, however, public support of the enforcement program could not have been maintained without the tripartite administration. Therefore, the advantages of tripartitism probably outweighed the disadvantages.

4. The formal procedures adopted by the Board in the administration of its enforcement program were eminently fair. They provided the best and, indeed, the only protection against the possibility of too drastic action in individual cases.

5. Widely varying experiences of the Board in enforcing stabilization regulations in particular industries emphasized the fact that no one policy or procedure could have proved successful in all cases. The conditions prevailing in some industries made effective enforcement well-nigh impossible, whereas entirely different conditions existing in other industries led to unusually successful results in curbing violations and achieving a high degree of stabilization.

6. In the last analysis the Board's enforcement program must be termed a success. The national wage stabilization program was never seriously weakened by public disobedience or defiance, and the Board's authority to enforce the law was never successfully challenged.

7. The NWSB operated in an unfavorable climate of public opinion. The end of the war was accompanied by a popular reaction against governmental controls and a great rush to return to "normalcy." The Board's job was to preserve the last vestiges of wage stabilization controls during a brief period of transition. At least insofar as enforcement was concerned, it did the best job that could reasonably have been expected.

