

1950

Government and labor relations during World War II

<https://hdl.handle.net/2144/4727>

"Downloaded from OpenBU. Boston University's institutional repository."


BOSTON UNIVERSITY
College of Business Administration

THESIS

Government and Labor Relations During World War II.

by

William Francis Joy
(A.B. Boston College 1940
Ll.B. Boston College 1943)



submitted in partial fulfillment of
the requirements for the degree of

MASTER OF BUSINESS ADMINISTRATION

LIST OF TABLES

	<u>Page</u>
1. Union Membership 1937-1940. Source-"Brief History of American Labor Movement" October, 1947. Bureau of Labor Statistics, United States Depart- ment of Labor.	. . . 9
2. Employment of Labor Force 1938-1948. Source-"The Economic Almanac for 1949", Page 402 by National Industrial Confer- ence Board, Inc.	. . . 10
3. Total Labor Force Classified by Employ- ment Status, 1938-1948. Source-"The Economic Almanac for 1949", Page 414 by National Industrial Confer- ence Board, Inc. and "Statistical abstract of the United States, 1948". United States Department of Commerce, Charles Sawyer, Sec. Bureau of the Census, J.C. Capt. Director No. 926.	. . . 11
4. Industrial Production 1938-1947. Source-"The Economic Almanac for 1949", Page 38 by National Industrial Confer- ence Board, Inc.	. . . 12
5. Man Days Lost Because of Strikes 1938-1947. Source-"The Economic Almanac for 1949", Page 44, and "Statistical abstract of the United States" No. 243.	. . . 68

CHAPTER I

INTRODUCTION

The advent of World War II required the United States to wage war on two fronts, the military and the home. The task of producing and supplying the armed forces of the United States and its allies with the materials to wage war required the people of this country to unite in an all out effort on the home front. To achieve this goal, labor and management had to cooperate in a real sense. To aid both parties in this undertaking, the Government formulated a program designed to accomplish the task.

This program, especially as it applied to labor, is the subject of this thesis. Of necessity, only those features of the labor relations program during World War II, which in the opinion of the author, were the most important will be treated.

Specifically, the program included the outlawing of strikes and lockouts during the War, the settlement of disputes between management and labor by a third party, the National War Labor Board with a tri-partite composition, having representatives of labor, management and the public on the Board and the allocation of manpower to its most effective use through the War Manpower Commission.

The structure of this program, some of its main

problems and the results attained are treated herein.

Just as the experience of the country with these same problems during World War I served to provide some guidance for the program during World War II, so also should our experience during the latter War provide a guide for any future situation involving the same or similar circumstances.

Moreover, since labor relations itself is a dynamic concept, involving real persons, and since it has in a very real sense become an important part of our economy, the experiences during this highly critical period of our nation's history, should serve to throw some light on the problems to be encountered in the years following World War II, and the basic reasons underlying these problems. With this background it is possible to intelligently appraise and forecast possible solutions to some of the many difficult problems which occur in this highly volatile field. As stated by Secretary of Labor Schwollenbach. "Many of the problems with which the Board struggled are still with us and the experience of the Board may contribute greatly to their ultimate solution." (1).

Thus far, two comprehensive works have been published on this subject, "The Yearbook of American Labor, Vol. 1 War

(1). "The Termination Report, National War Labor Board
Vol. I. Page VII.

Labor Policies" by Colston E. Warne and others and "The Termination Report, National War Labor Board" in two volumes by United States Department of Labor. The author is indebted to these works for much of the material appearing hereinafter, both as an original source and for verification of material obtained from other sources.

Wherever possible, the author has relied upon primary sources of information such as laws, executive orders, regulations, case reports and statistics.

The author has also relied upon his personal experience having been engaged in this field for the most part during World War II.

CHAPTER II

THE UNION PICTURE AT THE BEGINNING OF WORLD WAR II

With the enactment of the National Labor Relations Act in 1935, by Congress, Unions received their first constitutionally sound assistance from the government in organizing workers. The purpose of the Act as stated in its preamble was -

"to diminish the causes of labor disputes burdening or obstructing interstate commerce"

and in the statement of Findings and Policies occurring in Section I, it is stated that the denial by some employers of the right of collective bargaining on the part of his employees through representatives of their own choosing and the inequality of bargaining power which exists between employers and employees has had the effect of causing strikes and unrest which tends to obstruct and burden interstate commerce.

It goes on to state that experience has proved that protection by law of the right of collective bargaining through representatives of the employees' own choosing eliminates these strikes and unrest by leading to the friendly adjustment of disputes and the restoring of the equality of bargaining power between the parties. Thus the government undertook to aid the growth of unions by proscribing certain

actions on the part of employers which were called unfair labor practices and by setting up an agency, the National Labor Relations Board, to enforce the proscription. The Act also set up machinery whereby the Board was called upon to decide what groupings of employees were appropriate for the purposes of collective bargaining and also to determine who was the duly selected bargaining agent of this group of employees.

It was not until 1937, that the constitutionality of the Act was upheld by the Supreme Court in the case of National Labor Relations Board vs. Jones and Laughlin Steel Co. 301 U.S. 1. The situation was now ripe for Unions to attempt to increase their numbers.

In November, 1935, the Committee for Industrial Organizations was formed by a group of dissident A.F.of L. leaders headed by John L. Lewis, President of the United Mine Workers of America. This organization had as its original purpose the organizing of employees on an industrial basis for affiliation with the A.F.of L. The Executive Council of the A.F.of L. characterized the activities of the C.I.O. as dual to the A.F.of L. and in January, 1936, requested the Committee to disband immediately. The C.I.O. rejected the request and the international unions participating in the work of the C.I.O. were suspended from the A.F.of L. by the

Executive Council and its action was upheld by the 1936 Convention. The C.I.O. held a convention and adopted a constitution and the name, the Congress of Industrial Organizations in November, 1938, and thus became a separate union distinct from the A.F. of L.

Following the enactment of the National Labor Relations Act and the upholding of its constitutionality, both the A.F. of L. and the C.I.O. made great strides in organizing workers. Great strides were made by the C.I.O. in industries such as meat packing, automobile, steel, shipbuilding, textiles and numerous others. The A.F. of L. continued its approach along craft lines and with its traditional conservatism. The C.I.O. was more aggressive and militant in its approach, and introduced the technique of the sit-down strike during this period.

The growth of unions during the period 1937 to 1940 is shown by the following figures: (1).

	<u>AFL</u>		<u>CIO</u>		<u>Ind.</u>		<u>Total</u>
1937	2,861,000	-	3,718,000	-	639,000	-	7,218,000
1938	3,623,000	-	4,038,000	-	604,000	-	8,265,000
1939	4,006,000	-	4,000,000	-	974,000	-	8,980,000
1940	4,247,000	-	3,625,000	-	1,072,000	-	8,944,000

Source: Brief History of the American Labor Movement, October, 1947, Bureau of Labor Statistics United States Department of Labor.

In the period 1930 to 1940 we were in the depression.

See the charts following.

(1). (Total union membership in 1935 was 3,728,000. Same source reference as above.)

Employment of Labor Force

		1938-1948	
<u>Annual Average</u>		<u>Grand Total</u>	<u>Military</u>
1938	---	40,022,000	--- 331,000
1939	---	41,372,000	--- 345,000
1940	---	43,148,000	--- 532,000
1941	---	48,169,000	--- 1,644,000
1942	---	54,062,000	--- 3,968,000
1943	---	61,249,000	--- 8,944,000
1944	---	62,889,000	--- 11,372,000
1945	---	61,521,000	--- 11,360,800
1946	---	55,255,000	--- 3,751,000
1947	---	55,797,000	--- 1,670,000

Source: "Economic Almanac" Page 402.

UNEMPLOYMENT

Total Labor Force
Classified by Employment Status

1938-1948

<u>Period</u>	<u>Total Labor Force</u>	<u>Armed Forces</u>	<u>Unemployed</u>
1938	54,950,000	340,000	10,390,000
1939	55,600,000	370,000	9,480,000
1940	56,180,000	540,000	8,120,000
1941	57,530,000	1,620,000	5,560,000
1942	60,380,000	3,970,000	2,660,000
1943	64,560,000	9,020,000	1,070,000
1944	66,040,000	11,410,000	670,000
1945	65,290,000	11,430,000	1,040,000
1946	60,970,000	3,450,000	2,270,000
1947	61,760,000	1,590,000	2,140,000

Source: "The Economic Almanac for 1949" Page 414.

INDUSTRIAL PRODUCTION

Index Numbers 1935-1939 = 100.

<u>Annual Average</u>		
1938	-----	89
1939	-----	109
1940	-----	125
1941	-----	162
1942	-----	199
1943	-----	239
1944	-----	235
1945	-----	203
1946	-----	170
1947	-----	187

Source: (1). Page 38 "The Economic Almanac for 1949". Copyright 1948 by National Industrial Conference Board, Inc.

(2). "Statistical Abstract of the United States 1948". United States Department of Commerce.

The declaration of war by Great Britain on Germany occurred in September, 1939. On December 7, 1941, the Japanese attacked the United States at Pearl Harbor and following this on December 8, the United States declared war on Japan and on December 11 against Germany and Italy. Following this the United States was at war as one of the Allies against the Axis powers.

The economy of the United States immediately became a War economy and it was obvious that labor would play an important and major role in this economy.

CHAPTER III

WARTIME LAWS GOVERNING LABOR RELATIONS

It was immediately obvious that the United States had a tremendous job ahead for supplying and maintaining a fighting force of its own in addition to that of the Allies who were almost completely dependent upon us. It was clear that only by gearing our production to full capacity could we hope to achieve total production so necessary in a total war.

Accordingly, President Roosevelt called a meeting of leaders of management and labor on December 17, 1941 at the White House, at which it was agreed that for the duration of the War there should be no strikes or lockouts and that all disputes should be settled by peaceful means.

As a result, the National War Labor Board was established for the peaceful adjustment of labor disputes which might interrupt work which contributes to the effective prosecution of the war.

The National Defense Mediation Board established by Executive Order 8716 on March 19, 1941, was abolished and its unfinished business assigned to the National War Labor Board in accordance with Executive Order 9017.

This Board functioned during the period of active preparation for national defense, not during an actual war

period, and was designed to handle disputes between management and labor then occurring. The philosophy of this Board in settling disputes was mediation, attempting to get the parties to agree to voluntary arbitration and fact finding made public. This was the extent of their authority as specified in Executive Order 8716 issued by the President under his constitutional and statutory powers.

Disputes were assigned to the Board by the Secretary of Labor after the United States Conciliation Service had been unable to settle them. Failing settlement, the Board would refer the cases to the President for appropriate action.

The record of this Board is set out in "Report on the Work of the National Defense Mediation Board". Bulletin No. 714, United States Department of Labor, Bureau of Labor Statistics.

The National War Labor Board was established by Executive Order 9017 of the President on January 12, 1942.

This Order created in the Office of Emergency Management, the National War Labor Board, which consisted of twelve members, four representing management, four the public, and four labor. A Chairman and Vice Chairman were appointed by the President from among the public members.

Six members including not less than two members

from each group represented constituted a quorum. Four alternate members representing management and four representing labor were also appointed.

Provision was later made for associate public members and alternate public members and subsequently the number of public members was increased to eight. (1).

Later the Board set up Regional Boards to handle cases on a regional basis and several industry commissions. On October 2, 1942, Congress enacted the "Stabilization Act of 1942" which amended the Emergency Price Control Act of 1942. 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 insofar as practicable on the basis which existed on September 15, 1942. Provision was made for the President to provide for adjustment necessary to aid in the effective prosecution of the war and to correct gross inequities.

On October 3, 1942, the President issued Executive Order 9250 creating the Office of Economic Stabilization with the function of developing a comprehensive national economic policy for prosecution of the war.

This Executive Order also cast upon the National War Labor Board the duty of administering the wage and salary

(1). (See Executive Orders Nos. 9038, 9395A and 9535.)

policy for employees not executives, administrators or professionals and executives, administrators and professionals represented by a recognized or certified labor organization. The Commissioner of Internal Revenue was given the duty of enforcing Salary Stabilization with respect to salaries in excess of \$5,000 and salaries of executive, administrative and professional employees not represented by a union.

By Executive Order 9328 issued April 8, 1943, the Board was deprived of the authority to approve or order wage increases on the basis of inequalities and increases were limited to those allowable under the "Little Steel Formula" and the substandards doctrine.

On May 12, 1943, the Director of Economic Stabilization issued a supplementary directive clarifying Executive Order 9328. In addition to the increases permitted under Executive Order 9328, the directive authorized the Board to determine "minimum and tested" going rates for key occupations and classifications in various industries and to permit increases up to these rates. For example, if the job of a machinist was found by the survey to be at \$1.25 per hour as the going rate in the area, comparable machinists jobs could be raised to this figure.

The War Labor Disputes Act also known as the

Smith-Connally Anti-Strike Act was passed on June 25, 1943. (1).

This Act authorized the President by amendment to Section 9 of the Selective Training and Service Act of 1940 to take over any plant, mine or facility where the President found that the interruption thereof would unduly impede or delay the war effort.

When a plant was taken over by the government, it would be operated under the terms and conditions in effect at the time of the taking over. Anyone who interfered with the operation of the plant, mine or facility while in the possession or operation of the government was subject to a fine of not more than \$5,000 or to imprisonment for not more than one year or both.

Under Section 7(a) the National War Labor Board was given the additional responsibility of deciding disputes over wages and hours and other conditions of employment which were certified to it by the United States Conciliation Service. Notice and a hearing was granted to all parties involved. In cases so serious as to interrupt the war effort, the Board was to take the case on its own motion.

Any decision made was to be in conformance with

(1). (Chapter 144, 57 Statute 163, Public Law 89, 78th Congress, 1st Session.)

the Fair Labor Standards Act, the National Labor Relations Act, the Emergency Price Control Act of 1942 as amended and the Act of October 2, 1942.

Matters within the purview of the Railway Labor Act were excluded.

Under Section 8(a) provision was made for a thirty day cooling off period for employees of a war contractor where a strike was imminent and then the taking of a strike vote by ballot conducted by the National Labor Relations Board. Under Section 9 by amendment to the Federal Corrupt Practices Act it became unlawful for a labor organization to make a contribution in any election for a federal office.

This Act supplemented Executive Order 9017 referred to above insofar as the authority and functions of the War Labor Board was concerned.

Thus, under these Executive Orders and laws, the National War Labor Board was given the burden of adjusting disputes between parties which had failed of adjustment through the process of collective bargaining and to administer the Wage Stabilization Program.

CHAPTER IV

WAGE STABILIZATION

The conversion of the American economy from a peacetime to a wartime economy brought with it the danger of inflation. With the great increase in production, there came a great increase in purchasing power by wage earners while the available supply of goods and services available for purchase decreased. This served to cause an increase in prices because of the money available to buy these things. Moreover, with available manpower being limited because of military needs, bidding for manpower would tend to abnormally raise wages. Thus, the vicious inflationary spiral could commence which could disrupt the whole economy and result in postwar calamities such as those which came after World War I.

Thus, it was necessary to have a complete program of control over the factors giving impetus to the inflationary spiral such as prices, wages and manpower.

On January 30, 1942, the Congress enacted the Emergency Price Control Act setting ceilings on prices.

On April 27, 1942, President Roosevelt in his message to Congress stressed the need for an overall program against inflation in which he recommended wage controls. Previously, the National War Labor Board had handled wages as an

issue only in connection with dispute cases.

By the Act of October 2, 1942, the President was given authority to issue an order stabilizing wages, salaries, and prices affecting the cost of living insofar as practicable on the level which existed on September 15, 1942. Wages might be adjusted also to correct gross inequities or to aid in the effective prosecution of the War.

On October 3, the President issued Executive Order 9250 which cast upon the War Labor Board the duty of ruling upon all wage changes.

Under these enabling laws and orders, and subsequently by the "Hold-the-Line" order, Executive Order 9328 and the directive of the Economic Stabilization Director on May 12, 1943, the Board administered the first program of wage stabilization in the United States.

Under this program, the Board set up certain criteria for granting wage increases to groups of employees. They were -

1. Maladjustments, that is, wages may be increased 15% above the level prevailing on January 1, 1941 which was the so-called "Little Steel Formula" developed in the Little Steel cases (1) to compensate for the increased cost of living.

(1). (Little Steel Cases National War Labor Board, Nos. 30, 31, 34, 35, Termination Report of the National War Labor Board, Page 185.)

2. Gross inequities and inequalities that arise from unusual and unreasonable differences in wage rates, although wage differentials which were normal and stabilized being traditional to American Industry were not disturbed.
3. Substandards of living under which the Board determined this on a case by case basis in most cases but granted permission without Board approval at successive times automatically to increases up to forty, fifty and fifty-five cents per hour.
4. Effective prosecution of the War under which the Board would approve increases in certain cases to solve a manpower problem in connection with the War Manpower Commission.

Also under Executive Order 9250, the Board construed its power to extend to cases involving individual adjustments such as promotions, merit, length of service and reclassifications and also such fringe items as vacations, holiday pay, shift differentials, incentive plans and the like.

Under the Hold-the-Line Order, the Board established the "bracket system" for correcting inequalities in rates. This system provided for the establishing of sound and tested

going rates for key jobs in a labor market area. By comparison with these jobs and the tested rates, it could be objectively determined whether an inequality existed. The Board was permitted to grant increases up to the minimum of the rates.

With regard to individual increases employers could grant these under General Orders 5, 9 and 31 of the Board for merit and length of service or promotion without specific Board approval if made in accordance with an established collective bargaining agreement or an established wage and salary schedule.

Under General Order 31, Board approval was necessary for increases in excess of ten cents per hour or $2/3$ of a rate range during any one year whichever was higher.

In carrying out this program, the Board exercised authority over fringe items, mentioned above, and ordered them when not conflicting with the stabilization program.

Generally speaking, with regard to vacations, holidays, sick leave, rest periods and shift differentials, the Board would look to the practice in the industry in the area and grant or refuse to grant the requested item on that basis. Ordinarily, a company operating nationwide would be considered from that viewpoint so as not to create an inequity within the company.

Incentive plans became prominent in the program of the War Production Board and the War Labor Board adopted the policy that it would not order one in a dispute case but where the union and management agreed, it would approve it, if not inconsistent with the stabilization program.

The period of wage stabilization actually came to a close on August 18, 1945 when President Truman issued Executive Order 9599 permitting voluntary increases in all cases except those necessitating price increases or decreases or increases in cost to the United States.

The effectiveness of this program is shown by the fact that basic wage rates increased only eight percent from October 1942 to April 1945. (1).

(1). (See Termination Report of the National War Labor Board Page 540.)

CHAPTER V

THE PROBLEM OF UNION SECURITY

During the War years, the number of workers employed in industry rose to very high proportions especially when the United States became an active participant in the War. It was very natural, therefore, that Unions should see in this phenomena, an opportunity not only to increase its membership, but also to consolidate and retain its members in the fold.

It followed then that Labor would attempt to obtain in its collectively bargained agreements some provision granting some measure of security to the Union. It was logical for Unions to seek a closed shop agreement.

Under the National Defense Mediation Board, the question became critical and upon the refusal of that Board to recommend a union-shop clause in the case of the Bituminous Coal Operators and the United Mine Workers (CIO) (1), the Union called a strike and the labor members representing the CIO resigned. This in effect terminated the activity of the National Defense Mediation Board.

Previously the National Defense Mediation Board had ordered a maintenance of membership clause in the Federal Shipbuilding and Drydock Case. The employer refused to accept the award and the Government took the plant over and operated

(1). (See 1 War Labor Reports XIII.)

it for a period of time. (1).

The development of the problem was excellently set forth by the opinion of the War Labor Board in the Ryan Aeronautical Company Case. (2). This was the first case before the War Labor Board where two of the employer members voted for the inclusion in the contract of a maintenance of membership clause.

As stated in the opinion, the two employer members supported this form of union security because it not only protects the freedom of the individual employee to join or not to join a union with foreknowledge of this clause, but it also gives the individual member of the union two weeks within which to choose whether or not he will stay in the union and be bound by the maintenance of membership provision. In other words, a worker does not have to join a union in order to be an employee and a member of the union may, within the fifteen day escape period, withdraw from the union and still retain his job. The vote of the Board was 10 to 2 with two of the four employer members dissenting.

The Board stated -

"In order to understand our first almost unanimous agreement on union security, we have to look beyond the usual arguments for and against

- (1). (See 1 War Labor Reports XIII.)
(2). (See 1 War Labor Reports 305 at 312.)

union security to the history of both the National Defense Mediation Board and the National War Labor Board. From the logic of considering each case on its merits, there evolved through the case system itself a pattern of decisions on union security. The work of both Boards, fortunately under the same Chairman, has been characterized by a relentless search for a reconciliation of stability and freedom, a fusing of union security and individual liberty in the midst of a world war. Back of the fusion thus achieved is an untold human story of the evolution of the intense forthright struggles of honest and patriotic leaders of American labor and American business to meet this hottest and most stubborn issue squarely and resolve it in balancing the facts and equities of conflicting views in justice to private as well as public interests and in paramounting maximum production for winning the war." (1).

In illustrating the emergence of a pattern, the Board sets out three cases before the National Defense Mediation Board and three cases before the National War Labor Board. Those before the National Defense Mediation Board were Snoqualmie Falls Case, (2), Cheney Silk Case, (3) and the Federal Drydock and Shipbuilding Company Case (4), involving the Kearney, New Jersey Shipyard.

In the Snoqualmie Falls Case, the issue involved was the union shop, and the strike involved was six months old when certified to the National Defense Mediation Board.

- (1). (See 1 War Labor Reports 312.)
- (2). (See Report of the Work of the National Defense Mediation Board, Case No. 5, Page 98.)
- (3). (Ibid. Case No. 47, Page 192.)
- (4). (Ibid. Case No. 46, Page 185.). Actually the Board discusses the Bituminous Coal Operators Case as the third one.

Although this strike involved only a small sawmill in the Northwest woods and a local union, the issue involved caused the case to have its effect felt across the country. Through sympathetic tieups there were stoppages in the construction of a large airport, an army cantonment, the sailing of ships from Pacific ports, and the availability of special timber for the decks of battleships then under construction.

Actually there was involved over this basic issue the head-on collision of a giant corporation and a giant federation of labor, the clashing of corporate policy with an industrial trend. From the viewpoint of the Company, it was for the principle of the freedom of the open shop and it felt a loyalty to older employees who belonged to no union or who belonged to another union. The Company was opposed to forcing all these old employees and all new employees into a union shop. The Company also had a deep fear of the alleged encroachments of the union shop upon the rights of management.

The union on the other hand deeply felt that the power of a union shop would be their guarantee for higher wages and a better standard of living. The members of the union feared the expanding impersonal power of a great corporation and the expanding power of a powerful rival labor organization.

The maintenance of membership form of union security was finally accepted by both parties through mediation. This form of union security in a large measure allayed the fears of both and substantially met the conflicting concerns for liberty and security.

This case then illustrated a formula, maintenance of membership, which was agreed upon by the parties through mediation.

In the Cheney Silk Case, the Union realized that the Company's opposition to compulsory unionism was a matter of strong and sincere conviction. The chief executives of this Company, which was engaged in making of parachutes for the Air Force, were in favor of a strong responsible union but would not contractually agree to compelling their employees to join a union.

Through the labor member on the panel, the voluntary check-off by certification by the individual employee was agreed upon. This formula provided for individual freedom, for active cooperation on the part of the Company and the Union and brought much strength and stability to the Union. Here the sincere conviction of the Company for individual choice was taken into account.

In the case of the United Mine Workers of America CIO and the Captive Coal Mines (these are coal mines owned and operated by Steel Companies), the union demanded a

union shop. The Union had a good case for the union shop. Ninety-five percent of the employees were members of the Union. However, the public members of the Board felt that this case presented special facts and circumstances. Coal was an essential basic commodity and we were at war. The Board ruled that the concern for union security even in wartime does not justify government sanction of any virtual monopoly control over any basic resource such as coal or oil without public responsibility. Granting the union shop would be giving a virtually uncontrolled monopoly to the Union, therefore, the request was denied. In taking its stand for the protection of the CIO Union in the Kearney Shipyard Case in the face of the defiance of the most powerful corporation in the world, and in taking its stand for a sound public policy in the face of the defiance of one of the most powerful unions in the world, the National Defense Mediation Board succumbed. It was this case which caused the President of the United States to issue a statement that the Government of the United States would not compel a worker to join a labor union. (1).

The National War Labor Board continued to wrestle with the problem when it came into existence as the successor of the National Defense Mediation Board. Three cases serve

(1). (See "Report of the Work of the National Defense Mediation Board". Page 268.)

to illustrate the development of the problem before this Board, namely, the Marshall Field Case, (1), the International Harvester Company Case, (2), and the Federal Drydock and Shipbuilding Case (3).

In the Marshall Field Case, the formula adopted was principally the voluntary check-off. Here maintenance of membership in good standing was required but good standing was meant individual voluntary authorization in writing of the check-off of union dues. Without the authorization, the employee was not bound by the maintenance of membership provision. Because of the fact that this was a test case for the new Board and received wide publicity, it became one of the War Labor Board's most famous cases. One of the employer members of the Board voted with the majority in this case. The decision was met by considerable outcry from the steel companies and by some other business interests any by some labor spokesmen. The Company accepted the decision under compulsion of a Board Directive Order. The formula worked out well in providing a basis for sound cooperative relations for maximum production.

In the International Harvester Company Case, the Board was faced with another unusual factual situation.

- (1). (See 1 War Labor Reports 47.)
- (2). (Ibid. Page 112.)
- (3). (Ibid. Page 140.)

This dispute involved three unions, the United Auto Workers CIO, the Federal Labor Union AFL, and the Farm Equipment Workers Organizing Committee, CIO, having a combined membership of approximately 18,000. There were eight plants of the Company involved in three different states. The majority position of each union in its respective plant over the minority union was small.

In order to stabilize this complicated situation and give the members of the Union the freedom to choose whether they wished to be bound by a maintenance of membership clause, the War Labor Board ordered and held an election at the eight plants on the issue. Of the 10,700 who voted, 9700 voted to be bound by the maintenance of membership provision or a majority of 91 percent of the voters and a majority of 57 percent of those eligible to vote. This formula resulted in improved relations in the plants involved and the Company and the union proposed the same plan for some of its other plants.

We have already seen the experience of the National Mediation Board with the Federal Drydock and Shipbuilding Company Case. With the no-strike pledge and the creation of the War Labor Board, the Navy returned the yards to the Company with the provision that any unsettled labor dispute was to be referred to the War Labor Board. The union security issue

was soon before the Board which met it head on. It ordered a maintenance of membership clause and provided for a voluntary check-off which satisfied the good standing requirements. No old or new employee was required to join the Union to keep his job. All members of the Union who had withdrawn in the nine months since the original decision of the National Defense Mediation Board had the freedom to stay out and yet keep their jobs. Any member of the Union who chose to withdraw before the signing of the new contract had the liberty to stay out and yet remain in the employ of the Company. Furthermore, at any time after the contract was signed, if a member of the Union withdrew and asked in writing that his obligations to the Union be deducted monthly by the Company for the remainder of the contract, he could keep his job.

The four employer members of the Board dissented but finally the Company agreed to abide by the decision. The back of adamant opposition was finally broken and in the Ryan Aeronautical Case, two employer members as we have already seen, voted for maintenance of membership with a fifteen day escape clause.

The importance of this formula is best illustrated by the Board's own words:

"The maintenance of membership, the maintenance of the contract, and the maintenance of production are parts of the interconnection of freedom and security, justice and democracy,

production and victory. This maintenance of membership clause provides during this war for a free and fair basis for responsible union-management cooperation for all out production. Management in the war industry has the guarantee for the duration of the war of continuous business without the usual risks to investments. The unions, with the unusual risks of the war pressure against strikes and general wage increases, except in the nature of equitable adjustments, need some security against disintegration under the impact of war. It is in the interest of equity that the Union, which might win by a strike the more complete security of the union shop or even the closed shop, be assured the maintenance of the membership which it already has or may voluntarily acquire. It is in the interest of war production that the peaceful mediation and arbitration of this crucial issue by a public board be substituted for strikes and private wars in the midst of the war against Hitler and the Axis powers.

"Finally, this maintenance of membership provides three basic guarantees: First, it guarantees democracy in America against the tragedy both of the disintegration of responsible unions during the war and against the defenselessness of industrial workers after the war; second, it guarantees through responsible union leadership and stable union membership in the crucial transition from war to peace against a violent revolution and the rise in America of a fascist, communist or imperialistic dictatorship; and third, it affords one of our chief hopes that the all out production for destruction in winning the war for freedom shall be converted into all out production for winning the peace and for organizing plenty for America and for the stricken and hungry peoples still hopeful for freedom, justice and

peace all over the world." (1).

The Clause ordered by the Board in the Ryan Aeronautical Case is as follows:

"All employees who, fifteen days after the date of the Directive Order of the National War Labor Board in this case are members of the Union in good standing in accordance with the constitution and by-laws of the Union, and those employees who may thereafter become members shall, as a condition of employment, remain members of the Union in good standing during the life of this agreement.

"The Union shall promptly furnish to the National War Labor Board a notarized list of members in good standing fifteen days after the date of the Directive Order. If any employee named on that list asserts that he withdrew from membership in the Union prior to that date, the assertion or dispute shall be adjudicated by an arbiter appointed by the National War Labor Board whose decision shall be final and binding upon the Union and the employee." (2).

This clause became a standard one with the Board. Contemporaneously with the decision in the Ryan Aeronautical Case, the Board decided the Ranger Aircraft Case where the vote was 10 to 2 also and the E-Z Mills Case where the vote was 8 to 1 marking the first time that a majority of employer members voted on maintenance of membership.

In considering the question of maintenance of mem-

- (1). (See 1 War Labor Reports 318.)
- (2). (See 1 War Labor Reports 307.)

bership, the Board established as a policy;

1. that the granting of union maintenance was not an automatic reaction to a demand for some sort of union security but would be granted only after a thorough examination of the merits of the case and careful deliberation;
2. that the Board before granting the clause, must have been of the opinion that it would result in industrial harmony and increased cooperation between management and union; and
3. that the Board must have ascertained that the Union was a responsible organization capable of fulfilling all of its obligations to its members, management and to the Board. (1).

As a corollary of the Board's policy on maintenance of membership, it also established the general rule that it would maintain union-management relations developed through past collective bargaining. (2). This meant;

1. that no Company would be permitted to take advantage of the Board's standard provision of maintenance of membership to reduce a greater

(1). (See CCH Labor Law Service Volume IA, Page 10,085-6; Norma-Hoffman Bearings Company, National War Labor Board Release B165.)

(2). (See Harvill Aircraft Die Casting Corporation, National War Labor Board Release B436.)

form of union security enjoyed by the union as a result of past collective bargaining; and

2. that no Company would be allowed to take advantage of the no-strike agreement to abandon a union security provision in a contract between the parties.

It was, however, necessary for the continued existence of such union security that it be based upon a written contract, not an oral agreement. (1).

The Board adopted the same policy with respect to preferential hiring, that is, where a preferential hiring clause was contained in a prior contract, it ordinarily would be contained in the new under the policy of not disturbing the degree of union security which formerly existed between the parties. (2).

Union responsibility was a thing insisted upon by the Board in considering union security. It was not granted to a union which violated its no-strike pledge, which refused to have reasonably frequent elections or which refused to make financial reports to its members. (3).

As a matter of practice, the Board required the

- (1). (See Horst Manufacturing Company, National War Labor Board Release B668.)
- (2). (See CCH Labor Law Service, Volume IA, Page 10,085-16.)
- (3). (See Humble Oil & Refining Company, National War Labor Board Release B1485.)

Union to submit its constitution and by-laws when a case was certified. (1).

A "check-off" provision for the deduction of union dues by the employer upon authorization by the individual employee was usually granted to implement the maintenance of membership clause. It was usually granted or denied on the same basis as maintenance of membership. (2).

Three kinds of check-off were usually granted:

- (a) Irrevocable for the duration of the contract;
- (b) Revocable after a stipulated notice period; and
- (c) Revocable at any time upon notice in writing. (3).

- (1). (See S. A. Woods Machine Company, National War Labor Board Release B138.)
- (2). (See Bethlehem Steel Corporation et al, National War Labor Board Release B168.)
- (3). (See CCH Labor Law Service, Volume IA, Page 10,085-27.)

CHAPTER VI

THE FOREMEN'S QUESTION

During the year 1943, many cases involving Foremen were submitted to the War Labor Board. Serious questions arose in the minds of the members of the War Labor Board as to their jurisdiction to decide disputes involving supervisory employees. Accordingly, a public hearing was held by the Board on January 6, 1944. On the issue of its jurisdiction in these cases, the Board requested the opinion of its General Counsel on this matter. Accordingly, the General Counsel of the War Labor Board gave an opinion, dated March 30, 1944, and issued on May 30, 1944. (1).

In his opinion, the General Counsel stated that between June 19 and December 11, 1943, the Secretary of Labor certified to the Board nine cases, all involving the Foremen's Association of America. These cases involved the Ford Motor Company, Murray Corporation of America, Briggs Manufacturing Company, Chrysler Corporation, Republic Steel Corporation, Maryland Drydock Company, Packard Motor Car Company, Bohn Aluminum & Brass Corporation and Baldwin Locomotive Works. The certifications stated that each case represented a labor dispute which could not be settled by collective bargaining or conciliation and that each threatened substantial

(1). (See 15 War Labor Reports XXVIII.)

interference with the war effort. The Union involved in these cases was the Foremen's Association of America (Independent). This organization was formed in 1941 and admitted to its membership only supervisory personnel.

In 1944 its membership approximated twenty thousand, the bulk of it being concentrated in and around the City of Detroit. On this question of the Board's jurisdiction, the General Counsel held that the cases represented labor disputes incapable of settlement through collective bargaining or conciliation, which threatened substantial interference with the war effort and thus came within the meaning of Section 7(a)(1) of the War Labor Disputes Act. The record of the Board hearing on January 6, 1944 indicated that there were such issues in dispute as recognition, seniority, premium pay, sick leave, vacations, job classifications, discharges, wage and salary rates, etc. He also concluded that any labor troubles with the Foremen in and around Detroit would have critical consequences for war production. He also pointed to a communication dated January 19, 1944, addressed to the Chairman of the Board by Robert P. Patterson, Under-Secretary of War, and also on the same date, a similar communication from Ralph A. Bard, Assistant Secretary of the Navy, pointing out the critical nature of a strike at two of the Chrysler plants by some of the foremen involved in the present

cases. The argument that the matter was one for the National Labor Relations Board, and that foremen were not employees and, therefore, excluded from the coverage of the National Labor Relations Act was cast aside by the General Counsel. To buttress his position, he traced the history of Foremen's cases before the National Labor Relations Board.

In 1936, (1) and again in 1941, (2), the National Labor Relations Board found that supervisory personnel constituted an appropriate unit for the purpose of collective bargaining. Not until the decision of the Union Collieries Case (3), did any member of the Board question the certification as an appropriate unit of a group consisting entirely of supervisory employees. Mr. Reilly dissented on the ground that such a unit would -

"tend to industrial strife, impede the processes of collective bargaining, and militate against effectuation of the policies of the Act".

The result was the same in the Godchaux Sugars Case (4), where it was held that a unit of working foremen and non-working foremen in a Sugar Refinery was appropriate for the purpose of collective bargaining. On May 11, 1943,

- (1). (See International Mercantile Marine Company, 1 National Labor Relations Board 384.)
- (2). (See A. H. Bull Steamship Company, 36 National Labor Relations Board 99.)
- (3). (See 41 National Labor Relations Board 961 and 44 National Labor Relations Board 165.)
- (4). (See 44 National Labor Relations Board 874.)

the Board decided the Maryland Drydock Case (1). In this case a Union Local 31 of the Industrial Union of Marine & Shipbuilding Workers of America sought to represent the supervisory employees of the Company, either in one all embracing unit consisting of supervisory and non-supervisory workers or one which separated the supervisors from the workers. The Union itself was currently representing the production workers. The Board dismissed the petition. Its basis was that supervisory employees would not constitute an appropriate unit for the purposes of collective bargaining, although it agreed that they were employees, within the meaning of the Act. Its reasoning was that the position of supervisor was of such a nature that to include him in a union would tend to compromise his loyalties to management and the union and would result in the disruption of industrial peace. The General Counsel concluded that they were employees within the meaning of the National Labor Relations Act, and under the conformity clause of the War Labor Disputes Act, the War Labor Board was required to respect limitations imposed by the National Labor Relations Board. The General Counsel also stated that the War Labor Board withheld its opinion on the question of jurisdiction pending the decision before the National Labor Relations Board of two cases, that is, the Soss Manufacturing

(1). (See 49 National Labor Relations Board 45.)

Company Case and the Republic Steel Corporation Case, both involving the Foremen's Association of America.

On May 8, the National Labor Relations Board decided these cases and ruled that supervisors are employees and that supervisory status does not, by its own force, remove an employee from the protection of Sections 8(1) and 8(3) of the Labor Relations Act. The General Counsel took these two decisions to be in conformity with the other decisions upon which he relied.

As a result of the General Counsel's opinion on May 18, 1944, the War Labor Board issued a resolution asserting jurisdiction over the pending Foremen's cases and created a panel to investigate the facts. (1).

The panel made its report in conjunction with the War Labor Board's decision of the various Foremen's cases. (2). The panel consisted of S. H. Slichter, R. D. Collins and W. N. Spohn.

The panel summarized the long term trends in Foremen's responsibilities as follows:

- (1). a decline in the Foreman's authority.
- (2). a decline in the Foreman's responsibility for making policies.

- (1). (See 15 War Labor Reports, Page 39 War Labor Board Press Release B1531.)
- (2). (See 26 War Labor Reports 645.)

- (3). a rise in the Foreman's responsibility for executing policies. (1).

The panel found there was no serious complaint regarding the general level of pay, but there were complaints regarding such matters as overtime, differentials relative to production workers, night work premiums, special bonus payments, and relative compensation of different foremen within the plant. Though all of these complaints had some foundation, none were serious in nature.

The panel recommended the development of more effective systems of two-way communication between supervision and higher levels of management to improve management relations and that management should provide Foremen with a clear statement of its policy in the form of manuals or otherwise. It also recommended machinery for hearing grievances, but opposed arbitration of these grievances, pointing out the nature of a foreman's position with respect to management wherein the management must rely on a foreman in whom it can impose implicit trust in carrying out its policies. This requires management to retain the right to handle questions concerning selection, advancement, retention, transfer, or discipline of foremen rather than pass these off to an

- (1). (See "The Foreman in Industrial Relations" by Robert David Leiter, Ph.D. New York, Columbia University Press 1948, Page 37.)

outside neutral with no conception of the policies or problems of the firm. Independent unions of foremen rather than affiliation with unions admitting to their membership production workers was favored.

It also stated that -

"although the supervisors in these cases have made plain their desire for bargaining rights, their interest in bargaining rights does not appear in the main to spring from complaints concerning their compensation or working conditions. On the contrary, it appears to spring from two principal causes: 1. the desire of foremen to retain their jobs, which they know to be unusually good ones, and to escape demotions when cutbacks come; and 2. the desire of foremen for free interchange of viewpoints with higher management, particularly better opportunities to present such grievances as arise". (1).

The Report and Recommendations of this distinguished panel is a monumental work. It is a source of factual data to which those concerned with the problem may turn for a complete picture when the question was truly alive.

On July 23, 1945, the War Labor Board issued its decision in the Foremen's cases and made them public on July 30, 1945. (2). It accepted some of the recommendations of the panel, but not all, but indicated a general acceptance. It did not require the Companies to recognize or

(1). (See 26 War Labor Reports, Page 749.)

(2). (See 26 War Labor Reports, 644 et seq.)

bargain collectively with the supervisors, nor did it grant the Unions demand for a sick leave plan or straight seniority.

It did order a seniority plan to govern layoffs and demotions to provide that whenever skill and ability are fairly equal, length of service shall be the determining factor, and a grievance procedure was ordered not culminating in final arbitration.

With regard to the wage question, the Board claimed it had insufficient data and appointed a special representative to investigate this point and to make a report to be sent to the Shipbuilding Commission for comment and upon the receipt of the comment, the Board would make a ruling.

As we have already seen, the National Labor Relations Board, at least since the Maryland Drydock Company Case, had refused recognition to supervisor's union. However, a change in the Board's attitude was in the offing and eventually, it went the full way toward recognizing foremen's unions.

In the Packard Motor Company Case, (1), the National Labor Relations Board held that -

(1). (See 61 National Labor Relations Board 26; 16 Labor Relations Reference Manual 43.)

"all general foremen, foremen, assistant foremen and special assignment men employed by the Company at its plants in Detroit, Michigan, constitute a unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act"

and the Foremen's Association of America was certified as the bargaining representative.

The Company took the position that foremen were not employees within the meaning of the Act and refused to bargain with the Union. An unfair labor practice was found against the Company by the Board, resisted by the Company, and the Board was upheld by the United States Circuit Court of Appeals for the Sixth Circuit and the United States Supreme Court on March 10, 1947. (1).

Following its decision in the Packard Motor Company Case, the National Labor Relations Board made the complete turn and ruled in the case of Jones & Laughlin Steel Corporation, (2), (March, 1946) that supervisors may be represented by a union which also represented the production workers, the union in this case being the United Clerical, Technical and Supervisory Employees Union, a division of the United Mine Workers of America.

The Labor-Management Relations Act of 1947 (Taft-

- (1). (See 19 Labor Relations Reference Manual 2397.)
(2). (See 66 National Labor Relations Board 386.)

Hartley Act) withdrew the protection of the right of supervisors to organize and bargain collectively.

CHAPTER VII

GRIEVANCE PROCEDURE AND ARBITRATION

The term grievance procedure refers to the method of handling disputes that arise during the effective term of a contract and usually set out specifically in the contract. It was provided in Executive Order 9017 that before a dispute was certified to the War Labor Board, it should first be subjected to direct negotiation between the parties or to the procedures provided in collective bargaining agreements.

The War Labor Board consistently advocated the establishment of such procedures. On July 1, 1943, William H. Davis, Chairman of the Board issued a statement urging parties to contracts to establish procedures for the settling of the day to day grievances which arise out of the interpretation of an agreement. This procedure **should include** a step for final and binding arbitration. He stated that -

"The National War Labor Board as the custodian of the no-strike, no-lockout agreement and as a part of the all-out effort to win the war, calls upon the parties to all labor agreements to accept this urgent responsibility and render this patriotic service.

"1. To install adequate procedures for the prompt, just and final settlement of the day to day grievances involving the interpretation and application of the contract.

"2. To make the full functioning of the

grievance procedure a major responsibility under the no-strike, no-lockout agreement for maximum production to win the war". (1).

The Board refused to handle cases where the parties had not availed themselves of proper grievance machinery in the contract. (2).

While the Board favored strongly the inclusion of grievance machinery in contracts, the question of whether it would order such inclusion was dependent on the facts of each case.

As a general policy the Board would order the parties to negotiate the terms of a grievance procedure and if the parties could not resolve the matter between themselves then the matter was to be referred back to the Board for handling. (3).

The Board would not order grievance machinery for a minority union ordinarily. But in the Hughes Tool Company Case, it would not order the Company to cease recognizing a minority union for the purpose of settling grievances of its members on the ground that this was a matter for the

- (1). (See National War Labor Board Release B769, July 1, 1943.)
- (2). (See Arizona Power Corporation, National War Labor Board Release B794-; New Orleans Laundrymen's Club, National War Labor Board Release B69.)
- (3). (See Remington Rand Company, Inc., National War Labor Board Release B645; Borg Warner Corporation, National War Labor Board Release B1238.)

National Labor Relations Board, since another union was certified. (1).

The matters covered in grievance machinery generally extended to the interpretation of the contract, working conditions and matters of discipline. They usually excluded matters which had to do with the management of the business. (2).

Matters held to be subject to the grievance machinery included, discipline, coercion of employees into joining unions, under maintenance of membership clauses, qualifications to perform work, promotions, shop rules, job rates and classifications, incentive wages, technological change and work assignments, and whether certain matters were arbitrable. (3).

The procedure usually provided certain steps to be followed commencing with the aggrieved employee and his steward and the foreman of the department involved. The succeeding steps brought in supervisors of higher responsibility and the union grievance committee. The final step was usually arbitration by a neutral third party either appointed by the Board or agreed to by the parties. In one

- (1). (See Hughes Tool Company National War Labor Board Release B1306.)
- (2). (See Montgomery Ward & Company, National War Labor Board Release B287.)
- (3). (See C.C.H. Labor Law Service, Volume 1A, 1943, PP 10,087-6, 10,087-7.)

of the steps, it was usually required that the grievance be set out in writing.

In the Lucas Machine Tool Company Case (1), the Board refused to include a clause in the machinery specifying the right of an individual under Section 9(a) of the National Labor Relations Act to present his grievances separate from the Union on the ground that there was nothing in the contract which contravened this right. On the other hand, the Board held that the union was entitled to be notified of any grievance by the Company and be present at all stages of the grievance procedure when they were considered. (2)

Ordinarily, the Board would not require the Company to pay union representatives for time spent handling grievances, but would approve agreements to do this. Where it could be shown that it was essential to the proper functioning of the grievance procedure, the Board would order the Company to pay employees for time spent on grievances. (3)

There were many disputes which arose during the war concerning the interpretation of contracts and working conditions in which no provision was made for a final solution should the parties be unable to agree. Many of these

- (1). (National War Labor Board Release September 3, 1943.)
- (2). (See Cochecho Woolen Manufacturing Company, National War Labor Board Release B2057.)
- (3). (See C. C. H. Labor Law Service, Volume 1A, 1943, Page 10,087-10.)

developed into disputes which threatened to interfere with the war effort and in most cases the Board would order the parties to present the disputes to an arbitrator appointed by the Board.

Under the Rules and Procedure of the Board, arbitrators were appointed in the following situations:

1. where the parties requested it;
2. when the parties having agreed to arbitration, cannot agree on an arbitrator; and
3. whenever it was deemed necessary by the Board to do so.

The Board exercised the power to order disputes to be arbitrated under the War Powers of the President. (1).

An arbitrator appointed by the Board was required to file the facts and his award with the Board when completed and if the award was in accord with Board Policy, it was approved.

Arbitration of this type was certainly in keeping with the no-strike, no-lockout pledge and served to develop the scope of voluntary arbitration during the postwar period.

(1). (See Montgomery Ward & Company, Inc., National War Labor Board Releases B114, B910 and Executive Order 9017.)

CHAPTER VIII

THE PROBLEM OF GOVERNMENT SEIZURE

The problem of getting the parties to dispute cases to accept the decisions of the War Labor Board was not of major importance when the statistics are considered. Between January 12, 1942 and August 18, 1945, the Board handled 17,650 dispute cases involving approximately 122 million workers. In 95 percent of these cases, the decision of the Board was accepted by the parties. (1).

In forty-six cases, the Board had to refer them to the President for action. These cases all involved the important question as to efficacy of the Board's decisions and consequently its very existence.

The Board itself had no authority to compel compliance with its decisions. As a last resort, it could refer them to the President, who, under his War powers as President and Commander-in-Chief, could order the Government to seize and operate any plant where cessation of operations would interfere with the war effort.

This power of seizure in labor disputes had been previously exercised by President Wilson in World War I.

On June 25, 1943, Congress passed the War Labor

(1). (See the Termination Report of the National War Labor Board, Volume I, United States Department of Labor P 415.)

Disputes Act over Presidential Veto. This Act gave Congressional support to decisions of the Board and specifically gave the President the power to seize any "plant, mine or facility" necessary to the war effort, where operation of the plant, mine or facility would be stopped by a strike or other labor disturbance. He was authorized to designate the department or agency of the government which would run the seized plant.

On August 16, 1943, the President issued Executive Order 9370 wherein he authorized the Director of Economic Stabilization to effectuate compliance with directive orders of the National War Labor Board in cases which the Board reports that its orders have not been carried out. This authority included ordering Government agencies to withhold benefits such as priorities or government contracts from non-complying employers; the ordering of any government agency operating a seized plant to petition the War Labor Board to withdraw from a non-complying union the privileges under the conditions of employment existing when the plant was taken over until compliance is assured; and to order the War Manpower Commission in the case of non-complying individuals to modify or cancel draft deferments or employment privileges or both.

These sanctions were relatively ineffective and

used only in four cases, the first of which brought compliance, the other three were still unsettled by the end of the war, the sanctions having been imposed just prior to the end of the war. There was also some doubt as to the legality of the sanctions insofar as priorities under the War Production Board were concerned. (1).

There were forty-six cases acted on directly by the President, six were settled by telegraphic request and forty by plant seizures.

When the Government seized a plant, the Presidential Staff determined which agency should operate it. This was usually based upon the nature of the Company's business and the type of Government contracts held e.g., oil companies by the Petroleum Administrator for War, transportation firms by the Office of Defense Transportation, coal mines by the Department of Interior and Shipyards by the Navy. Because of its interest in many types of supplies, the Army operated many different types of seized companies.

Where seizure was the result of Company non-compliance, the Government officials played an important role in running the business. In most cases, the companies signed contracts and agreed to run the plant on behalf of

(1). (See Termination Report of the National War Labor Board, P. 423, 424.)

the Government so replacement of management officials was not necessary.

Where seizure was occasioned by union non-compliance, a Government official was placed in charge technically and business was carried on the normal fashion.

Under the War Labor Disputes Act, changes in wages or working conditions in a seized plant could not be made without approval of the War Labor Board and the President and this was often an effective means of gaining compliance by unions. Moreover, the Act also provided penalties for anyone interfering with the operations of a seized plant.

Because of the notoriety involved, mention should be made of the Montgomery Ward & Company, Inc. Case. In several cases decided by the Board, Montgomery Ward & Company, Inc. refused to obey the Board's orders. Upon the refusal of Ward's to obey the directive orders of the Board involving its facilities at Jamaica, New York, Detroit, Dearbon and Royal Oak, Michigan; Chicago, St. Paul, Denver, San Rafael, California; and Portland, Oregon, the President, by Executive Order 9508, dated December 27, 1944, directed the Secretary of War to take possession and operate the plants and facilities of the Company, at the above mentioned cities. Ward's resisted to the extent that it was necessary for the

Army personnel to actually carry Mr. Avery, Chairman of the Board out of his office. Ward's maintained that the action of the President was unconstitutional.

On December 28, 1944, when the War Department took possession, the Government filed suit for a declaratory judgment in the Federal District Court in Chicago asking the Court for a judgment and decree declaring the rights and status of the Government and also declaring that under the Executive Order of the President, the Government is in lawful possession of the plants and facilities of Ward's and also a decree enjoining Ward's from interfering with the Government's possession.

Judge Sullivan decided against the Government. (1). The Government had contended that the President acted within the scope of his authority -

- (a) under the War Labor Disputes Act, and
- (b) as Commander-in-Chief of the Army and Navy.

The Court held that the operations of Ward's were in the field of "distribution" and, therefore, not within the purview of the War Labor Disputes Act and also that the power of the President as Commander-in-Chief to seize facilities during time of war must be confined to the immediate theatre of war and to an immediate urgency which did not exist in this

(1). (United States vs. Montgomery Ward & Company, Inc. 15 Labor Relations Reference Manual 885.)

case. The Government attempted to appeal the case directly to the United States Supreme Court. This was denied.

Thereupon the case was appealed to the United States Circuit Court of Appeals for the Seventh Circuit which decided that the President did have the power to seize Ward's under the War Labor Disputes Act on the ground that the "term" production included the operations performed by Ward. (1).

The Company then petitioned the United States Supreme Court for a writ of certiorari which was granted November 5, 1945, wherein the Circuit Court of Appeals was directed to vacate its judgment, and remand the cause to the District Court where it was to be dismissed as moot.

The general acceptance by management and labor of the decisions of the War Labor Board was one of the chief contributing factors to the tremendously successful accomplishments of our wartime economy.

(1). (United States vs. Montgomery Ward & Company, Inc.
16 Labor Relations Reference Manual 771.)

CHAPTER IX

THE WAR MANPOWER COMMISSION

Closely integrated with labor regulation during World War II, was the control of manpower itself by the War Manpower Commission. This Commission was created by Executive Order 9193, April 18, 1942, to assure the most effective utilization of national manpower. The Commission was established in the Office of Emergency Management of the Executive Office of the President and consisted of the Federal Security Administrator as Chairman and a representative of each of the following departments and agencies: the Department of War; the Department of the Navy; the Department of Agriculture; the Department of Labor; the War Production Board; the Labor Production Division of the War Production Board; the Selective Service System and the United States Civil Service Commission.

Its functions required the Chairman after consultation with the members of the Commission to -

- A. Formulate plans and programs and establish basic national policies to assure the most effective utilization of the nation's manpower in the prosecution of the war; and issue such policy directives as may be necessary thereto.
- B. Estimate the manpower requirements for industry; review all other estimates of needs for military, agricultural and civilian manpower; and direct the several departments and agencies of the Government as to the proper allocation of available manpower.

C. Determine the basic policies for, and take such other steps as are necessary to coordinate the collection and compilation of labor market data by Federal departments and agencies.

D. Establish policies and prescribe regulations governing all Federal programs relating to the recruitment, vocational training, and placement of workers to meet the needs of industry and agriculture.

E. Prescribe basic policies governing the filling of the Federal Government's requirements for manpower, excluding those of the military and naval forces, and issue such operating directives as may be necessary thereto.

F. Formulate legislative programs designed to facilitate the most effective mobilization and utilization of the manpower of the country, and, with the approval of the President, recommend such legislation as may be necessary for this purpose.

The following agencies were subject to the policies, directives, regulations and standards as prescribed by the Chairman of the Commission:

A. The Selective Service System with respect to the use and classification of manpower needed for critical, industrial, agricultural and governmental employment.

B. The Federal Security Agency with respect to employment service and defense training functions.

C. The Work Projects Administration with respect to placement and training functions.

D. The United States Civil Service Commission with respect to functions relating to the filling of positions in the Government Service.

E. The Railroad Retirement Board with respect to employment service activities.

F. The Bureau of Labor Statistics of the Depart-

ment of Labor.

G. The Labor Production Division of the War Production Board.

H. The Civilian Conservation Corps.

I. The Department of Agriculture with respect to farm labor statistics, farm labor camp programs, and other labor market activities.

J. The Office of Defense Transportation with respect to labor supply and requirement activities.

And also all other Federal Departments and agencies which perform functions relating to the recruitment or utilization of manpower.

The following agencies and functions were transferred to the War Manpower Commission:

A. The labor supply functions of the Labor Division of the War Production Board.

B. The National Roster of Scientific and Specialized Personnel of the United States Civil Service Commission and its functions.

C. The Office of Procurement and Assignment in the Office of Defense Health and Welfare Services in the Office of Emergency Management and its functions.

The following agencies and functions were transferred to the Office of the Administrator of the Federal Security Agency:

A. The apprenticeship section of the Division of Labor Standards of the Department of Labor and its functions.

B. The training functions of the Labor Division of the War Production Board.

The National Roster of Scientific and Specialized

Personnel and the apprenticeship section of the Division of Labor Standards of the Department of Labor were preserved as organizational entities following transfer. (1).

On June 22, 1942, the Commission issued eight directives designed to allocate to various government agencies specific tasks in the manpower program. Five related to industrial employment and three to agricultural labor and the facilities for transportation and living requirements.

The five relating to industrial employment were as follows:

1. To the United States Employment Service to maintain lists of essential activities and essential occupations.
2. To the War Production Board to furnish information as to relative importance of critical war products.
3. To the United States Employment Service to accord placement priority for essential jobs.
4. To the United States Employment Service to encourage transfers to essential activities.
5. To the Director of Selective Service concerning occupational deferments for individuals needed for essential occupations in essential activities.

The authority of the Commission was subsequently extended by Executive Order Nos. 9247, 9279, 9301 and 9250, which;

(1). (10 Labor Relations Reference Manual 1165 et seq.)

1. transferred to it the United States Employment Service, all government agencies concerned with apprenticeship training and the Selective Service System;
2. gave it authority to compel adoption of a 48 hour minimum wartime work week in critical areas; and
3. authorized it to forbid transfers between jobs at higher pay except in accordance with an approved employment stabilization plan. (1).

The Chairman of the Commission was Paul V. McNutt.

Under the "Hold-the-Line" order, Executive Order 9328 added penal sanctions to the Commission's authority. It also provided authority for the Commission to forbid transfers between jobs for higher pay except where such transfers would aid the War effort.

In its operation the Commission first looked upon the labor supply problem as a series of local problems to be solved by action of the local level after consultation with labor and management. The main problem was to shepherd workers to necessary jobs. The Commission set up an "Employment Stabilization Plan" to serve as a model for all local plans which were subject to approval. The plan was to apply to areas designated as critical and prevented employees from transferring from job to job without first obtaining a certificate of availability. There were several plans adopted which

(1). (See 10 Labor Relations Reference Manual 1165.)

differed in some small measure to fit the local situation such as the Louisville Plan and the Detroit Plan.

One of the difficulties in the administration of the program was the lack of coordinating authority among agencies seeking manpower such as the Selective Service System, the War Production Board and the lack of authority over the United States Employment Service.

These difficulties were subsequently ironed out with the placing of the United States Employment Service under the Commission and also the Selective Service System which, however, was subsequently set up as an independent agency.

Effective July 1, 1944, the Commission centralized the hiring of all male workers in the country in the United States Employment Service under a priority referral system and the setting of employment ceilings for establishments.

This system required job applicants to first go to the United States Employment Service where according to his capabilities, he was channelled to an essential job. An appeals procedure was set up to handle cases where workers were denied certificates of availability providing for appeal to the area manpower appeals committee, then to a regional appeals committee and finally to the Chairman of the War Manpower Commission.

CHAPTER X

TRANSITION FROM WAR TO PEACE

The European phase of World War II ended on V-E day May 8, 1945 and the Pacific phase ended on V-J day September 2, 1945.

There was, of course, an immediate demand for a return to a peacetime economy and a demobilization of the armed forces.

The latter was done as quickly as possible, thus returning to the labor market a great number of workers, most of whom had reemployment rights protected by law.

As we have previously seen, the War Labor Board soon ceased to exist and controls on prices (1) soon were discarded along with manpower controls. (2).

The immediate effect of all of this was that labor and management were now released of their no-strike, no-lock-out pledge and collective bargaining was again the means of settling their disputes.

The transition was not without its difficulties. Having had their differences resolved over a period of three years by a third party, this required a period of readjustment for the parties to the collective bargaining process

(1). (Executive Order 9801, November 9, 1946.)

(2). (August 14, 1945, The World Almanac 1948, Page 717.)

itself.

Labor had made large gains during the war period and intended to preserve these gains. The principle item of importance was that of preserving take-home-pay. The cancellation of military supply orders had resulted in a return for the most part to a forty hour week. Previously, the hours worked varied from 48 to 52. The return to forty hours would certainly affect a worker's take-home-pay. Consequently, in collective bargaining unions demanded an increase in hourly rates to compensate for the decrease in hours worked. The common demand was 52 hours pay for 40 hours work. Add to this the fact of the increase in the cost of living caused by an increased demand and the removal of ceiling prices on everything except housing, and you had the basis for an inflationary spiral.

Prolonged strikes resulted in various industries such as automobile, steel, meat packing, and coal in 1946 and 1947. See the table following.

MAN DAYS LOST BECAUSE OF STRIKES

<u>PERIOD</u>	-----	<u>MAN DAYS IDLE</u>
1938	-----	9,148,273
1939	-----	17,812,219
1940	-----	6,700,872
1941	-----	23,047,556
1942	-----	4,182,557
1943	-----	13,500,529
1944	-----	8,721,079
1945	-----	38,025,000
1946	-----	116,060,000
1947	-----	34,559,000

Source: (1). "The Economic Almanac
for 1949". Page 44.

(2). "Statistical Abstract
of the United States".
No. 243.

In some cases the President appointed fact-finding Boards whose recommendations were accepted and failing of acceptance, he would seize the plants, mines or facilities involved under his powers set out in the War Labor Disputes Act which expired on June, 1947. With this expiration and the threat of future strikes of a national emergency nature, the public clamored for some new legislation.

In the Congressional elections of 1946, the Republican party captured control of Congress and saw in this phenomena a mandate from the electorate to revise the National Labor Relations Act and to enact some additional legislation to handle other specific points involved in labor-management relations.

Some of the points to which attention was directed were, the foremen's question, union security, political contributions by unions, the equalizing of rights and obligations of both parties under the National Labor Relations Act, the separation of functions under the National Labor Relations Board which had been prosecutor, judge and jury on cases coming before it, provisions for national emergency strikes, suability of unions for breach of contract and numerous others.

The 80th Congress held hearings on these matters with a view to enacting new legislation. Management appeared

through its representatives and pressed their points. Unions on the other hand maintained that no change or additional legislation was necessary and stood on that position.

The end result was the Taft-Hartley Act, so-called because of the names of its sponsors, Senator Taft of Ohio and Representative Hartley of New Jersey, also called the Labor Management Relations Act of 1947.

The influence of labor relations during World War II could be seen in this new law. Supervisors were removed from the protection of the Act, unions were made responsible for certain unfair practices, the prosecuting functions were separated from the judicial functions of the War Labor Relations Board, the closed shop was outlawed, leaving the union shop as the maximum allowable union security, unions were made suable in federal courts for breach of contract, the check-off of dues was regulated, political contributions in federal elections were forbidden to unions, a procedure for handling strikes which are of a national emergency nature was set up, the filing of non-communist affidavits by union officers was required and many others.

Labor reacted violently against this law and pledged itself to compel its repeal.

The enactment of this law may be considered as the completion of a cycle in the field of labor-management

relations commencing with the enactment of the Wagner Act in 1935. The pre-war period has been briefly touched upon in the first part of this thesis. The period of wartime labor relations has been considered as the main body of this work. The period of transition from a war to a peacetime economy has been considered briefly in this chapter.

From our experience with labor relations during World War II, we can state the following:

1. Labor and management can and will cooperate where the greater good of the country is involved.
2. Where they do cooperate in an all out effort there is no practical limit on what they can accomplish in the production of goods and services.
3. The problems considered by the War Labor Board focused the attention of scholars, businessmen and labor leaders as well as the general public on some of the most important problems in labor-management relations and under the compelling necessity of the war produced solutions which gave thorough consideration to the position of both parties.
4. The consideration given to these problems dur-

ing the War serves as a basis for understanding and appraising the problems as they exist in the post-war period. Among these are the problems of supervisors, arbitration, union security, wages and the role of the Government in protecting the general public's interest when disputes arise.

5. Many of these problems have been considered by Congress in the light of our wartime experience and the result has been the covering of these specific points in the Labor Management Relations Act of 1947.
6. Labor and management must consider each other on a more equal basis than before the war because of the increase in strength and importance of labor and because of the maturing of the collective bargaining relationship.

One factor above all others which places importance upon understanding these problems in the light of our experience, is the changing form of our society. Professor Sumner Slichter of Harvard states -

"For some time the United States has been changing from a capitalistic to a laboristic society. By this, I mean that employees and their representatives are coming to replace businessmen as the most important

single influence in the community." (1).

He also states -

"The Union representatives have raised challenging issues; they have forced the community to re-examine many matters. All of this is stimulating and wholesome. Indeed, one of the great benefits which the community may expect from the rise of the laboristic society is that accepted habits of thought and value judgments will be questioned and that men will be required to consider afresh many important conclusions which they have been taking for granted." (2).

Clinton S. Golden, prominent labor leader, states -

"Unions have developed a definite organizational or institutional personality within the present economic system which must be understood as a basis for successful labor relations." (3).

Donald R. Richberg, Esquire, prominent attorney in the field of labor relations and formerly head of the National Industrial Recovery Administration states -

"It should be plain that within the next few years, organized labor in America is going to become either the most destructive or the most constructive force in America, and indeed in the world. American labor is the largest body of self-reliant individualists in the world who are organized for concerted action". (4).

Whatever value lies in this thesis, it is in the

- (1). (See Harvard Business Review, Volume XXVII, Page 346.)
- (2). (Ibid. Page 361.)
- (3). (See Harvard Business Review, Volume XXVII, No. 4. July 1949, Page 412.)
- (4). (Ibid. Page 405.)

analytical and detailed consideration of some of the major problems during World War II in the field of labor relations to the end that such consideration of these problems may serve to throw some light on these problems as they now exist. The understanding and solving of these and new problems in this field has become a challenge which must be met in this post-war period if the United States of America is to fulfill its destiny in a confused world.

BIBLIOGRAPHY

Commerce Clearing House, Inc., "Labor Law Service," Volume IA, Third Edition, 1943, Chicago, Illinois.

The Bureau of National Affairs, Inc., "War Labor Reports", 1942, 1943, 1944, 1945, Washington, D.C.

The Bureau of National Affairs, Inc., "Labor Relations Reference Manual", 1943, Washington, D.C.

Gregory, C.O., "Labor and the Law", W.W. Norton & Company, Inc., 1946, New York, N.Y.

United States Department of Commerce, Charles Sawyer, Secretary, Bureau of the Census, J.C. Capt, Directory No. 926 "Statistical Abstract of the United States, 1948". Washington, D.C. 1948.

National Industrial Conference Board, Inc., "The Economic Almanac for 1949", New York, N.Y., 1949.

Brumm, J.M., "Brief History of the American Labor Movement", Bureau of Labor Statistics, United States Department of Labor, Washington, D.C., October, 1947.

United States Department of Labor, "The Termination Report of the National War Labor Board", Volume I, January 12, 1942, December 31, 1945, Washington, D.C.

Leiter, R.D., "The Foreman in Industrial Relations", Columbia University Press, New York, 1948.

Warne, C.E., and others, "Yearbook of American Labor", Volume I, War Labor Policies, F.H. Hubner & Company, Inc., New York.

United States Department of Labor, Bureau of Labor Statistics "Report on the Work of the National Defense Mediation Board, March 19, 1941, January 12, 1942", Bulletin No. 714, United States Government Printing Office, Washington, 1942.

Podolsky, S.D., "Guide to War Labor Board Policy" Second Edition, The Bureau of National Affairs, Inc., Washington, 1945.

Daugherty, C.R., "Labor Problems in American Industry" 1948-1949 impression, The Riverside Press, Cambridge, 1948.

Douty, H.M., "The National War Labor Board Notes on Labor Regulations in Wartime", Monthly Labor Review, Volume 68, No. 1, January 1949, United States Department of Labor, Bureau of Labor Statistics, Washington, D.C.

Cox A. "Some Aspects of the Labor-Management Relations Act of 1947". Harvard Law Review, Volume 61, Page 1 et. seq. and Page 247 et. seq. 1947, Cambridge

Slichter, S.H., "The Challenge of Industrial Relations", Cornell University Press.

Miller, G.W., "American Labor and the Government", Prentice-Hall, Inc., New York, 1948.

Patterson, S.H., "Social Aspects of Industry", McGraw-Hill, New York, 1943.

Slichter, S.H., "Profits in a Laboristic Society". Harvard Business Review, Volume XXVII, No. 3, May 1949, Harvard Graduate School of Business Administration, Cambridge, Mass.

Levy, B.H., "Collective Bargaining Under the Taft-Hartley Act". Harvard Business Review, Volume XXVI, No. 4, July 1948, Graduate School of Business Administration, Harvard University, Cambridge, Mass.

Golden, C.S., "Understanding Union Attitudes", Harvard Business Review, Volume XXVII, No. 4, July 1949, Graduate School of Business Administration, Harvard University, Cambridge, Mass.

Richberg, D.R., "Understanding Union Attitudes", Harvard Business Review, Volume XXVII, No. 4, July 1949, Graduate School of Business Administration, Harvard University, Cambridge, Mass.