SUMMARY OF DECISIONS

of the

NATIONAL WAR LABOR BOARD

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SUMMARY OF DECISIONS OF THE NATIONAL WAR LABOR BOARD

INTRODUCTION

The purpose of this manual is to describe briefly some of the more important and representative decisions and determinations by the National War Labor Board.

JURISDICTION OF THE BOARD

The jurisdiction of the Board covers (1) the final disposition of labor disputes, and (2) the approval or disapproval of voluntary wage and salary adjustments.

LABOR DISPUTES

The National War Labor Board was created by the President through Executive Order No. 9017 dated January 12, 1942. By that order the Board was charged with the responsibility, after existing procedures had been exhausted, of finally disposing of labor disputes "which might interrupt work which contributes to the effective prosecution of the war."

In disclosing what it referred to as the "pattern of its rulings on jurisdiction" under Executive Order No. 9017, the Board, in the *Montgomery Ward & Company, Inc. case* (Case No. 192, June 29, 1942), reviewed its opinions in several prior cases (Nos. 21, 16, 48, 35, 91, and 7). Prefacing its review of these cases, the Board declared in an opinion written by Public Member Wayne L. Morse, in which the unanimous Board concurred:

> It is to be noted that the national understanding with the President agreed to by representatives of labor and industry covers all labor disputes. It is also to be noted that the question of determining what disputes may interrupt work which contributes to the effective prosecution of the war is left to the judgment and discretion of the War Labor Board. Such a procedure is highly to be desired because obviously the question of determining the extent to which a given labor dispute might interrupt work which contributes to the effective prosecution of the war is a question of fact. Such a question of fact can be determined best by that agency of the government which is entrusted with the carrying out of the agreement that labor disputes shall be settled by peaceful means for the duration of the war.
>
> The War Labor Board appreciates the fact that the line of demarcation between so-called labor disputes which do not affect the prosecution of the war and those which do, is not a clear and definite one existing between fixed knowns. Very good arguments can be made in support of the proposition that any labor dispute no matter how minor in nature is most certain, at least in some degree, to register a detrimental effect upon the war effort. There unquestionably is a general acceptance on the part of patriotic Americans, that *all* strikes and lockouts in all

> industries to *all* degrees should be considered out for the duration of the war, and the differences between the disputants should be settled by the peaceful procedures of mediation, conciliation and arbitration.
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> The instant case is not the first one in which the War Labor Board has passed upon the question of its jurisdiction over a given dispute. In fact, it has ruled on the issue so many times to date that the pattern of its rulings on jurisdiction has become very clear. It is the position of the Board that the question of its jurisdiction over a given labor dispute should rest entirely upon the facts of that case. Hence the Board has not failed in any case to make a very careful study of the nature of the business concerned, the source and destination of the goods produced or sold, the use made of the products insofar as the war effort is concerned, the influence of that dispute upon the economic area in which it arises, the effect of the dispute upon manpower problems of the nation if a strike should occur, and the importance to the war economy of the country of maintaining a continuous operation of the business uninterrupted by a strike or a lockout. Among the many factors considered by the Board in determining the question as to its jurisdiction in a given case, the Board invariably views the controversy from the standpoint of its effect on civilian morale. It gives weight to the needs of war workers who may be served by the industry or business as well as to the paramount consideration of the war needs of the country at large.

The Board then reviewed its opinions in the cases noted above and concluded:

> The aforementioned cases are only a few which illustrate the Board's position upon this problem of jurisdiction. It is a problem which cannot be resolved by resorting to strained legalistic or tortured interpretations of the language of the President's Executive Order of January 12, 1942. There is no room for doubt in the minds of reasonable men as to what the leaders of American industry and labor intended when they entered into the understanding with the President that labor disputes should be settled by peaceful means for the duration of the war. The problem of resolving the question of jurisdiction over any case which comes before the Board necessitates by its very nature a common-sense approach on the part of the War Labor Board to the end of satisfying itself by clear evidence as to whether or not the given dispute falls within the spirit and meaning of the language of the Executive Order of January 12, 1942.

Executive Order No. 9250 of October 3, 1942, extended the functions of the Board "to cover all industries and all employees". In considering the enlarging effect of this clause on its jurisdiction, the Board said, in the *Security Title & Guaranty Company, et al. case* (Case No. 646, November 14, 1942):

> The Board interprets that section to mean, at least in all labor disputes in which wage adjustments (or salary adjustments within the limitation of the Director's Order of October 27, 1942[1]) are involved, that the Board's jurisdiction of such disputes has been extended to cover all industries and all employees. Under that interpretation it is clear that the Board has jurisdiction of these disputes, whatever the relation of the companies' business to the prosecution of the war may be. We are aware that the administrative burden of the Board is increased by its assumption of jurisdiction over such cases as these, but we cannot for that reason avoid the clear mandate of Title III, Section 1.

The Board took jurisdiction in this case, and the issues involved were not only wages, but also union status and other matters.

The Board refused to take jurisdiction in the *Municipal Government, City of Newark, et al., case* (Case Nos. 47, and 726, December

[1] Regulations issued on October 27, 1942, by the Director of Economic Stabilization and approved by the President.

24, 1942), holding that it does not have jurisdiction of such disputes since the Board's powers are derived from the Executive Order creating the Board, and that the Order does not delegate any authority to the Board over such disputes. The Board declared, however,

> What position the Board will take if the parties to such a dispute should mutually request the Board to render an advisory opinion or make recommendations for the settlement of the dispute will be determined if and when the Board receives a joint request to assist in adjudicating a dispute between a local government and its employees.

WAGE AND SALARY STABILIZATION

Under Executive Order No. 9250 of October 3, 1942, no increase or decrease in wages (regardless of amount), and in salaries of certain employees up to $5,000 per year [2] may be made without the prior approval of the Board. This Executive order was issued to carry out the intent of the act of Congress of October 2, 1942, relating to the stabilization of wages and prices.

The Board's actions, both in wage and salary *dispute* cases and in *voluntary* wage and salary adjustment cases, are limited by this Executive order in the following particulars:

> *a.* Increases in wage and salary rates existing on September 15, 1942, are not to be approved unless such increases are necessary "to correct maladjustments or inequalities, to eliminate substandards of living, to correct gross inequities, or aid in the effective prosecution of the war.
>
> *b.* Decreases in wage and salary rates for any particular work below the highest wages paid therefore between January 1, 1942, and September 15, 1942, are not to be approved unless "to correct gross inequities and to aid in the effective prosecution of the war.

The Board has announced the policy to which it will adhere in carrying out this Presidential mandate by issuing on November 6, 1942, a Statement of Wage Stabilization Policy, which is hereinafter described.

In the pages that follow, there are set forth some of the more significant decisions and pronouncements of the Board on issues which will frequently face tripartite panels and the Regional War Labor Boards. As will be seen throughout the analysis of the cases, the Board has laid down no rule-of-thumb formula or hard and fast rules by which disputes can be mechanically disposed of. On the contrary, the Board has proceeded by the case method to settle each controversy on its merits and in the light of all the facts. At the same time, certain broad principles (subject always to exceptions in exceptional situations) have been evolved by the Board in the process of case determination, and an effort has been made in the pages which follow to indicate the nature and scope of these principles.

ISSUES OTHER THAN WAGES AND SALARIES

UNION SECURITY

This issue has come before the Board in many cases in the form of a request by the union for some provision making membership in the

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[2] Except salaries not in excess of $2,400 paid to agricultural labor. The Board has jurisdiction over increases or decreases in salaries up to $5,000 per year except those paid to employees employed in an executive, administrative or professional capacity who are not represented by a labor organization.

union a condition of employment. Some unions have asked for a closed shop, which requires an employer to hire only union members, or a union shop which requires all employees to become members of the union within a certain time after they begin working.

The Board has consistently refused to order either a closed shop or a union shop agreement.[3] It has, however, in appropriate cases, provided for a form of union security called "maintenance of membership."

REPRESENTATIVE CASES IN WHICH MAINTENANCE OF MEMBERSHIP HAS BEEN GRANTED

a. Early cases.—In the *Marshall Field and Company (Spray, N. C.) case* (Case No. 10, February 25, 1942), the Board directed the parties to include a provision in their contract providing that, as a condition of employment, present and future members of the Union should remain members of the Union in good standing for the duration of the agreement, "*Provided*, That this provision shall apply only to employees, who, after the consummation of this agreement, individually and voluntarily certify in writing that they authorize union dues deductions, and will, as a condition of employment, maintain their membership in the union in good standing during the life of the contract."

It may be noted that the provision did not contain the so-called "escape clause" (permitting any employee to resign from the union within 15 days after the Board's order, thus avoiding the effect of the provision), but contained instead the feature of voluntary, individual certification, and designated the effective date of the order to be "after the consummation of (the) agreement." The Board issued the directive order in this case without an opinion; one employer member (Mr. Roger D. Lapham) concurred and another (Mr. Albert W. Hawkes) dissented, both without opinion.

In the *Walker Turner Co. case* (Case No. 17, April 10, 1942), the Board found the company's attitude toward the union was "certainly not one of cooperation or helpfulness." Combined with a policy of paying low wages, and in view of the union's obligation under the national agreement to refrain from striking, the company's attitude was causing the union's disintegration, despite the reasonableness of the union's initiation fees and dues. In view of these findings the Board directed inclusion in the collective agreement of a maintenance of membership clause providing that all employees who in the future elect to join the union, and all production and maintenance employees who "are now or who on November 27, 1941, were or since have been members in good standing of Local No. 435, United Electrical, Radio and Machine Workers of America shall, for the duration of this contract, remain in good standing as a condition of continued employment with the company."

The date, November 27, 1941, designated by the Board marked the time when the negotiating committee of the union was instructed to negotiate for a union shop. The Board's Directive Order (dated April 10, 1942) also provided that if an employee was certified by the

[3] For departures in cases where the parties have had closed or union shop provisions in their previous contracts, see p. 29.

union not to be in good standing, the case could be treated by the company as a grievance and submitted to the grievance machinery. If such an employee was found not to be in good standing, the arbitrator (provided for in the grievance procedure) should direct the company either to discharge the employee, or to deduct each month a sum equivalent to his union dues and fines, and to deprive him of his seniority rights under the contract.

The Board's decision in this case was not unanimous. The labor members (Kennedy, Thomas, Meany, and Durkin) wrote a separate concurring opinion; the employer members (Lapham, McMillan, Deupree, and Mead) dissented in an opinion written by Mr. Lapham. The public members' opinion (by Chairman William H. Davis) stated in part:

> It has been urged that a clause of the type ordered by this Board involves compulsion by the Government with respect to a man's relationship with a company and a union. We have carefully considered this aspect of the case and cannot accept that view. This is not a closed shop contract in which a man is compelled to join the union. This clause applies only to employees who have voluntarily joined the union in the past. When a man joins a union, he knows that one of the normal and usual contract provisions which the union will try to get is some form of union shop clause. Thus, in joining, he accepts for himself the proposition that membership in the union may be a condition of his employment. The clause applies only to the members who were in good standing on November 27, 1941, when the negotiating committee of the union was instructed to negotiate for a union shop. The inclusion of such a clause limiting the freedom of action of men who have voluntarily joined the union is merely the culmination by majority vote of a situation which they must reasonably have contemplated when they joined the union whose proceedings with respect to such contracts are by majority action. It binds them to nothing more than the performance of their voluntarily assumed obligations to support the union, upon which the union and their fellow union members have every right to rely when they assume the burden of negotiating and administering the contract, and the obligations to abide by the contract and not to interrupt war production for any cause.

The labor members' separate concurring opinion expressed the view that the Board did not grant sufficient security to the union in view of the facts in the case, but added:

> However, although we are dissatisfied with certain aspects of this decision, we concur in it because we believe, in view of all the circumstances in the case, that it makes a considerable approach to an adequate solution of the issue presented.

Mr. Lapham's dissenting opinion (in which all employer members concurred) stated in part:

> We dissent from this decision because it conditions the individual's right to work for an employer upon his continued membership in a labor organization. The decision requires all company employees who were, on or after November 27, 1941, members of a labor organization to maintain union membership in good standing under penalty of dismissal or loss of seniority rights.
>
> By this action the Board refuses to give any union employee an opportunity to say whether his obligation to maintain union membership meets his approval or not.
>
> The principles involved here are fundamental. We are not concerned with a voluntary agreement accepted by management, union, and employees in the process of collective bargaining. On the contrary, we are concerned with a directive order of this Board requiring a union-maintenance provision over the objection of management without first

ascertaining whether the workers affected approve or not. To arbitrarily impose these obligations without the consent of those affected, in our opinion, will tend to destroy the cooperation so essential to maximum production.

The opinion of the majority creates the impression that their decision is founded upon voluntary action of the workers in that they are, or were, members of the labor organization which requires protection from this Board. With this we disagree. When these employees joined the union, they did not agree to forfeit their jobs or their seniority rights if they exercised their right to withdraw from the union. In any organization governed by democratic principles, its members retain the right to be heard in opposition to policies and to resign at will. Why should the members of labor unions be denied these rights?

The effect of the directive order supports the view that organized labor, having agreed not to strike while the war lasts, should not be refused concessions which might have been obtained by economic force in peace time. If this should happen, then labor, in giving up the right to strike, would actually be surrendering nothing. Ultimately such a policy leads to union shop, closed shop, control of hiring and finally, the transfer to others of the rights and obligations of management.

A determination of these vital issues will affect the daily life of every citizen. Such matters, in our opinion, should not be decided by an administrative Board, but should be left to the elected representatives of the people.

In the *International Harvester Company case* (Case Nos. N. D. M. B. 4, 4A, 89, April 15, 1942), a majority of the Board directed that:

All employees who are now members of the Union in good standing or who may in the future become members will be required as a condition of employment with the company to maintain their membership in good standing during the life of this contract;

Provided, that this provision shall not apply until the National War Labor Board has certified to the company in writing that a majority of the members of the local Union who are employees of the Company have voted affirmatively on this specific issue by secret ballot in a referendum conducted under the auspices of the Board subsequent to the signing of this contract.

A secret ballot election was held by the Board shortly after the date of its order. Employees represented by three different unions, at all eight of the company's plants partitcipated. Out of a total of 10,751 ballots cast, 9703, or 91 percent voted in favor of the maintenance provision; 1,000 voted against; 48 votes were void.

In directing the maintenance provision, the Board overruled a panel, the majority of which recommended no union security provision. The Board's own decision was not unanimous, the employer members (Lapham, Mead. Horton, and Teagle) dissented in an opinion by Mr. Lapham. The Board's majority opinion (by Public Member Morse) on the union security provision stated in part:

It is submitted that the foregoing union-membership provision is eminently fair and reasonable in light of the facts and circumstances of this case as shown by the lengthy record. It would seem to be a foregone conclusion that industrial harmony with resulting maximum war production will be difficult to obtain in the International Harvester Company's plants unless the question of union maintenance is determined by the union membership itself. There can be no doubt of the fact, in the light of their past experience with the company, that the unions believe the company is basically unfriendly to unionism. Rightly or wrongly that is the attitude of the unions involved in this case, and so long as feelings of fear, suspicion, and distrust exist, it is to be expected that a great deal of the energy of the union will be devoted to maintaining its position of strength and to keeping its fences repaired, so to speak, within the industry.

So long as the union believes it necessary for it to be on guard against company policies and strategies or independent union drives against its membership there is bound to be diverting of effort from maximum production within the plants of the company. On the other hand, if a majority of the members vote upon themselves, as a condition of employment, membership in the union for the duration of the contract, the major result is bound to be a much greater stability in employer-union relationships than now prevails.

The plan will dissipate much of the cause for ill-feeling and distrust which now exists between management and the union. It will place very definite responsibilities and obligations upon the union to keep its house in order. It will protect management from many of the abuses of which it now complains. If the majority of the members vote for this plan of union-security, it will tend to eliminate rival union organization activities because it will "freeze" membership of that union now possessing the collective bargaining rights for the life of the contract, thus making ineffective any attempted raids upon its membership. It will give the union effective disciplinary powers over any member who violates the terms of the contract or who is guilty of those abuses of which employers so frequently complain.

The plan does not violate any of the principles of voluntarism but to the contrary stems from voluntary democratic action of the union. It rests upon the democratic principle of majority rule, and it gives to each member of the union the right by secret ballot to determine union policy as to the principle of union membership maintenance as a condition of employment. The plan furthers the sound policy that the Board should use such devices to effectuate the voluntary principle of union maintenance as are fair and equitable.

The employer members dissented in the following brief opinion by Mr. Lapham:

We concur with those parts of the order dealing with wages, pay for union representatives, and penalty time for swing shifts.

Again we question whether it is the function of this administrative board to impose upon an employer conditions which require him to discharge even a single worker because of failure to maintain union membership. We emphasize that in this order each union worker is denied the right to decide individually whether he wants to retain or not his union status for a stated period.

In our discussions in this case, we said we were willing to require a worker to remain a union member, provided either—

A. Each worker certified in writing his willingness to remain a member of the union during the life of the contract as a condition of employment, or

B. If the contract provided the worker must remain a union member as a condition of employment, then within ten days after the execution of the contract each union worker would be given the opportunity to resign from the union. Failing to resign within those ten days, he would be required to stay a union member for the contract period.

We recognize the need for unanimous thought and action, and regret for the reasons above stated, we must dissent from that part of the order dealing with union-management relationship.

The Board assumed jurisdiction directly in the *Federal Shipbuilding and Drydock Co. case* (Case No. N. D. M. B. 46, April 25, 1942), on March 26, 1942, and on the basis of the past history of this long-standing dispute, and on the basis also of a public hearing on March 30, 1942, the Board directed the following maintenance of membership provision:

In view of the joint responsibility of the company and the union to maintain maximum production during the present emergency and of their reciprocal guarantees that there shall be no strikes or lockouts for a period of two years from June 23, 1941, as set out in the Atlantic Coast Zone Standards agreement incorporated herein and made a part

hereof, there is an obligation upon each employee who is now a member of the union or who hereafter voluntarily becomes a member to maintain his membership in the union in good standing during the life of this agreement.

If any member is certified by the union not to be in good standing as defined in Section 3 of this Article, the case may be treated by the company as a grievance and submitted to the grievance machinery. If through this process such employee is declared not to be in good standing the arbiter shall discharge the employee unless as a condition of continued employment the employee agrees to request the company, in writing, to deduct from his pay his financial obligations to the union. In any case in which the company is so requested to make deductions the company will deduct from the first pay period of each month during the term of this contract and pay to the union a sum equivalent to the union dues, and also if any fine is imposed upon the employee a sum equivalent to the fine.

Again in this case the Board's decision was not unanimous. (Employer Members Lapham, McMillan, Derby and Horton dissented). The majority opinion by Dr. Frank Graham concurred in by the public and labor members stated in part:

In the interest of more stable membership in the union, of more responsible and cooperative relations for maximum war production, and on account of the special circumstances and equities in the long standing dispute between the company and the union, the National War Labor Board, by a vote of 8 to 4, decided in favor of a provision in the contract for the maintenance of membership in good standing in the union. This is essentially a reaffirmation of the recommendation made July 26, 1941, by the National Defense Mediation Board.

The freedom of choice of the individual workers is protected by a provision already in the contract against any coercion of a worker into membership in the union. In addition, the individual's right to work is safeguarded by a clause in the Board's order. Under this clause, a member of the union may withdraw from the union by not maintaining his membership in good standing. In such case, he must, as a condition of employment, continue to pay his financial obligations to the union for the duration of the contract, which has little more than a year to run. A member of a club has no more freedom and no lighter obligation. No member of the union need ever be discharged under this provision, except by his own choice.

The maintenance-of-membership clause does not require any worker, at any time, to join the union. It does not require the company to employ only members of the union and is, therefore, not a closed shop. It does not require the employees who have been hired by the company, to join the union, and is, therefore, not a union shop. It does not require the company to give preference in hiring to members of the union and is, therefore, not a preferential union shop. It does not require any old employee, any new employee, or any employee whatever to join the union at any time.

The maintenance-of-membership clause requires only that any employee who is a member of good standing, at the time the contract is signed, or who thereafter voluntarily joins the union, shall remain a member in good standing. This he is required to do as part of his obligation to keep the provisions of the contract made by the union with the company on his behalf. Every employee who, since the original recommendation of July 26, 1941, has chosen to remain a member in good standing, or who has since joined the union, has had full knowledge of this provision and has thus made the choice voluntarily to maintain his membership. Any others have already resigned.

The case for maintenance of membership is based not only on the equities in this case, but also on its value to the nation. The experience of the War Labor Board has shown how strong, responsible union leadership can keep production rolling. History affords no

parallel to the success of this voluntary agreement between labor, management, and the Government. In the first three months of 1942 less than 6/100 of one per cent of all the time worked in war production has been lost by strikes.

Mainly responsible for this amazing record are the labor leaders of America who courageously stand guard day and night over the keeping of this agreement. The few leaders who have failed their country in a few situations, serve to emphasize the overwhelming number of those who settle, stop, and prevent strikes at their first threat.

A great deal of the credit for this record goes to the patriotism of the rank and file of the workers themselves and to the discipline and stability of their local unions. There is a basic relation between maintenance of membership, maintenance of the contract, and maintenance of production.

An increasing number of companies recognize certain value in the maintenance-of-membership clause. These managers hold some such views as these:

> A stable responsible union is better for management than an unstable irresponsible union. An unstable membership contributes to an irresponsible leadership. Too often members of unions do not maintain their membership because they resent the discipline of a responsible leadership. A rival but less responsible leadership feels the pull of the temptation to obtain and maintain leadership by relaxing discipline, by refusing to cooperate with the company, and sometimes by unfair and demagogic agitation and attacks on the company. It is to the interest of management, these business leaders have found, to cooperate with the unions for the maintenance of a more stable, responsible leadership.

Union leaders sign a contract for all the members and are responsible to both the union and the company for the maintenance of this contract. For this reason they feel that the company and the union should cooperate in the maintenance of this responsible membership. Holding the membership, they argue, is essential to holding the membership to the contract. Cooperation between the company and the union for the maintenance of membership can make for the cooperative maintenance of production on higher levels.

In recognition of these values and the special merits and circumstances in this case, the War Labor Board made its directive order.

The dissenting opinion stated in part:

We are not taking a position as individuals or as employers for or against the closed shop, the union shop, the preferential shop, union maintenance or any other form of contract that any employer and union may see fit to make, provided that contract is not contrary to law. However, acting in our capacity as members of a Government agency, we cannot subscribe to any national labor policy which compels an unwilling employer to force an unwilling employee either to join or to remain a member of a labor union in order to play his part in winning this war. If this position is taken by a Government agency and a national labor policy is thus established, then Government must of necessity accept the responsibility of the supervision of that labor organization to which it forces an employee to pay dues, fines and assessments. If this position is taken by Government, then Government, in effect, exacts taxes from an individual citizen to be paid to a private organization for the privilege of working.

Acting as employer representatives of the National War Labor Board, we cannot subscribe to such a policy.

"The employer members presented two proposals, both of which the majority rejected, which can be summarized as follows:

> (1) That the company shall insert a provision in the contract with the union making continuance of membership a condition of employment for all union members who voluntarily certify in writing thereafter their willingness to remain members of the union during the life of the contract.

(2) That if the company is directed to insert a provision in the contract requiring union members who are employees to maintain their membership in the union in good standing as a condition of employment, then after such contract is entered into each employee who is a union member shall be given a definite opportunity, within a stated time, to resign. If he did not, he would then be required, as a condition of employment, to remain a member of the union in good standing for the contract period.

The majority of the Board, by rejecting both of these proposals, have made it clear that they do not concede the right of the individual worker to resign from the union. On the other hand, by failing to provide an "escape" clause, as suggested in (2) above, they are deciding that employees who are already members of the union must be conclusively presumed to have agreed, when they originally joined the union, that their jobs would, for the duration of the union contract, depend upon the continuance of union membership. We are not willing to ascribe any such state of mind to those employees who are already members of the union, and in our view the only fair and practical way to determine the intention of individuals who have already joined is to give them the opportunity to remain in or resign from the union. We submit that the right to resign from a labor organization is exactly the same as the right to join or not to join in the first place.

In the Walker Turner and the International Harvester cases and now in this case, the employer members have reiterated their belief that harmonious and cooperative relations between the management and employees, so essential to production, cannot be obtained by an administrative board compelling an employer and a union to enter into any agreement which deprives the worker of the opportunity to decide for himself whether or not he wishes to remain a member of a labor organization as a condition of continued employment.

Mr. McMillan wrote a separate dissenting opinion.

In the next three cases, *Robins Drydock and Repair Co.* (Case No. N. D. M. B. 97, June 2, 1942), *Browne & Sharpe Manufacturing Co.* (Case No. 101, June 2, 1942), and *Nevada Consolidated Copper Corporation* (Case No. 99, June 4, 1942), a majority of the Board adopted unanimous panel recommendations for maintenance of membership provisions. In each case the employer members of the Board dissented. In the *Robins* and *Browne & Sharpe cases* Lapham, Horton, McMillan and Derby dissented; in the *Nevada Consolidated case* Lapham and Horton dissented, the other two employer members were not present. In the *Robins Drydock and Repair Company case* the Board directed a maintenance of membership provision to be inserted in the parties' agreement which had been concluded on January 16, 1942. The provision was effective on the date of the directive order; however, the panel pointed out that a copy of the January 16 agreement had been distributed to each employee listing the points not yet agreed upon between the company and the union, and specifically noting the union's demand for a union shop as well as the company's position that union membership not be made a condition of employment. In the *Browne & Sharpe Manufacturing Co.* and *Nevada Consolidated Copper Corporation cases*, the maintenance of membership provisions directed by the Board were made effective on the dates on which the agreements being negotiated were made effective.

For the first time, in the *Ryan Aeronautical Co. case* (Case No. 46, June 18, 1942), a 15-day "escape clause," the principle of which had been suggested by the employer members in the dissenting opin-

ions noted above, was included in the Board's directive order for a maintenance of membership provision.[4] The provision stated:

> All employees who, 15 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 bylaws 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 the agreement.
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> The union shall promptly furnish to the National War Labor Board a notarized list of members in good standing 15 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.

Although the Board's opinion was not unanimous, two employer members (Lapham and Deupree) concurred, Mr. Lapham writing a concurring opinion. A dissenting opinion was written by Mr. McMillan who, with Mr. Horton, dissented. The majority opinion of the Board (by Dr. Frank P. Graham) treated the issue of union security at some length, reviewing its treatment before the National Defense Mediation Board as well as before the National War Labor Board. Excerpts from the majority opinion follow:

> (This case) * * * "is significant in that for the first time two employer members of the War Labor Board voted for maintenance of union membership as a condition of employment. These two employer members support this provision because it not only protects the freedom of the individual employee to join or not to join the 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. By this decision a worker does not have to join the union in order to be an employee of this company; and a member of the union may, within the fifteen day period, withdraw from the union and yet keep his job with the company. The vote of the Board was 10 to 2. Two of the four employer members dissented.
>
> In order to understand our first almost unanimous agreement on union security, we have to look beyond the usual arguments for and against 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 fredom, 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.

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[4] The *E-Z Mills case* (Case No. 55, June 12, 1942), and the *Ranger Aircraft Engines Div. case* (Case No. 24, June 12, 1942), were dated earlier and also contain the 15-day escape clause. However, the *Ryan case* was decided on June 11, but was withheld until June 18 in order that the opinions could be prepared. Mr. Roger Lapham in his concurring opinion in the *Ryan case* notes that his remarks refer to all three cases.

The majority opinion then detailed the experiences of the National Defense Mediation Board with the union security issue, revealing how that Board attempted to steer a middle course between the extreme viewpoints of industry and labor. On this chapter of the National Defense Mediation Board's experience the majority opinion concluded:

> In taking its stand for the protection of the C. I. O. union in the Kearny shipyard in the face of the defiance of the most powerful corporation in the world,[5] and in taking its stand for a sound public policy in the face of the defiance of the most powerful union in the world,[6] the National Defense Mediation Board was done to death. It was this case which caused the President of the United States to issue the statement that the Government of the United States would not compel a worker to join a labor union.

The majority opinion then continued:

> The search in wartime under a sanction of the Government for a reconciliation of individual liberty and union security had to be resumed by the new National War Labor Board, set up under the national agreement between labor, management, and the Government that there should be no strikes or lockouts for the duration of the war. Participation in this search with the public members by the labor and employer members did not and does not mean that, in their concern for more responsible and enthusiastic cooperation for war production, any of them has surrendered his views on the issue of union shop. Marshall Field, International Harvester, and Federal Shipbuilding settlements were the answers to this search adapted to the special facts and merits of these cases. In the Walker-Turner case peculiar circumstances, which are detailed in that decision, led the Board to adopt an unusual maintenance-of-membership provision. To many thoughtful minds the test of the liberty of the worker is not, as some spokesmen for business think, in the consent of the corporation to the abridgement of this liberty, or even in sanction by the Government of the compulsion upon the individual by the corporation, or by the union, or by both. This individual liberty inheres in the prior knowledge and the consequent consent of the worker himself, whether expressed in a certification, which he himself expresses freely and individually in writing before being bound, or in a majority vote in which he freely participates with knowledge of what his vote binds him to, or in the freedom of a member of the union for a brief period of two weeks or so to withdraw from the union or to stay in the union with express knowledge as to the nature of the particular provision for union security by which he is to be bound for the remainder of the contract.

The opinion then summarized the Board's treatment of the *Marshall Field*, *International*, *Federal Shipbuilding*, *Ranger Aircraft*, and *E–Z Mills cases*, leading up to *Ryan Aeronautical case*, and concluded:

> 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 industries 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

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[5] United States Steel Corporation's subsidiary, Federal Shipbuilding and Drydock Co.
[6] United Mine Workers of America, in *Captive Mine case*.

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.

The opinion of Mr. Lapham, concurring in the majority decision of the Board, stated in part:

The directive order of the Board in this case is noteworthy because for the first time it recognizes one of the main principles the employer members have contended for.

In simple language, it states that for the next 15 days (or until July 3, 1942) employees of the company who are now members of the union may withdraw from the union before the maintenance of membership clause in the agreement between the company and the union becomes effective. Thus, it can be and should be made plain to any employee who is a union member that if he is not prepared to remain a member in good standing until January 22, 1943 (i. e., during the life of the agreement), he should now resign from the union and, if his resignation is disputed, be prepared to prove the validity of his resignation before the arbiter appointed by this Board.

Members of the union on July 3, 1942, or those who become members of the union any time after that during the life of the agreement, are subject to discharge if they fail to maintain whatever are the good standing requirements of the union as defined by the union's constitution and by-laws.

In previous union maintenance decisions the employer members of this Board, in their dissenting decisions, emphasized that the directive orders of the Board did not allow the individual affected to exercise in some form the right of withdrawal or resignation within a reasonable time. (See dissenting opinions in *International Harvester Company case*. N. D. M. B. 4, and *Federal Shipbuilding & Drydock Company case*.) In the latter case, the majority opinions, but not the directive order, did explicitly state the individual's right to withdraw from the union before the agreement between the company and the union was executed.

While in the present case, as well as in many others, the necessity of a union maintenance clause is not apparent, I have voted with the public and labor members because they have met a main objection to any union maintenance of membership clause.

However, I believe, as pointed out in Mr. McMillan's dissenting opinion, that if this Board prescribes any form of union maintenance, it should avoid compelling an employer to discharge a competent employee merely because he chooses not to continue his union membership. In these days of national emergency it would not seem in the public interest to compel discharge for this reason alone. In the Federal Shipyard case the directive order provided: "If through this process such employee is declared not to be in good standing the arbiter shall discharge the employee unless as a condition of continued employment the employee agrees to request the company, in writing, to deduct from his pay his financial obligations to the union." It seems inconsistent not to include

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some such provision in any union maintenance clause prescribed by this Board.

Despite the claims made on many occasions that this Board decides each case on its own merits, no one cany deny that each successive decision of this nature writes the Board's policy with respect to union security, or perhaps more correctly expressed, union status.

As a member of a federal board, created by Executive Order, I am reluctant to impose upon any employer any form of union-employer relationship. I maintain that while the law permits an employer voluntarily to enter into a labor agreement providing for a closed shop, union shop or other form of shop, it is quite another thing for an administrative Governmental agency to prescribe just what form of union status should be applied in any given case.

If we are to have a national policy as to employer-employee relationship, then that policy should be stated in exact form by the Congress.

The dissenting opinion of Mr. McMillan stated in part:

I cannot concur in the provision of this directive order compelling maintenance of union membership, such provision commonly termed "union security."

The order fairly provides the opportunity for a union member to withdraw from the union during a 15-day period prior to the signing of the contract by the company and the union should he not wish to be bound by the contract.

The order further provides, however, that during the life of the contract, a man, once a member of the union, must continue a member of the union, in good standing, otherwise the company must discharge him.

I maintain that no agency of Government should compel either party, against its wishes, to execute a contract containing a provision which compels the discharge of an employee who for some valid reason, known to him, may wish during the life of the contract to withdraw from the union. This, in my opinion, is not "good Government." No man in the present emergency should be denied by Government order the right to work and thus contribute to the success of our defense program because he does not wish to continue membership in a union.

If, for some valid reason, a man wishes to withdraw from a union, he should be permitted to honorably do so without losing his job; at the same time he should not object to fulfilling his financial obligation to the union during the life of the contract.

The *Phelps Dodge Corporation case* (Case No. 114, June 24, 1942), marked the first unanimous decision by the Board in granting a maintenance of membership provision. No opinions were written in this case; the Board adopted the unanimous recommendation of the panel that such a provision be granted but which left the precise formulation of the provision for the Board to determine. The Board drafted the following provision:

All employees who on the 13th day of July, 1942, are members of one of the unions, parties to this agreement, in good standing in accordance with the constitution and by-laws of that union, and those employees who thereafter become members, shall as a condition of employment remain members of the union in good standing during the life of the agreement.

The unions shall promptly furnish to the National War Labor Board a notarized list of their members in good standing on July 13, 1942. If any employee named on that list asserts that he withdrew from membership in the union prior to July 13, 1942, or if after July 13, 1942, the union certified to the company that a member then in good standing is no longer in good standing, and any dispute arises, that dispute shall be referred to the grievance machinery provided in the agreement, and, if necessary, to arbitration under the grievance machinery for final determination.

The panel emphasized the following facts in this case: (1) Organization rivalry between A. F. L. and C. I. O. organizations was a serious threat to production in the mines; (2) certain collective bargaining units had been established, which, if stabilized, would contribute to continuous production; (3) there was a real fear among the unions that there would be a recurrence of the company's past practices of discouraging organizational activities; and (4) that having procured the benefits of collective bargaining the union members were in all fairness under the implied obligation to support the union at least for the duration of the contract.

A divided Board in the *Caterpillar Tractor Company case* (Case No. 63, July 4, 1942), directed a maintenance of membership provision similar to that directed in the *Ryan case*. The employer members of the Board (Lapham, Horton, Mead, and McMillan) dissented, in an opinion by Mr. Lapham which said in part:

> The union security clause set forth in the directive order in this case differs only slightly in its wording from those ordered in four of the last five cases decided on this issue by the Board, Directive Orders in the cases of *Ryan Aeronautical* (Case No. 46), *Ranger Aircraft* (Case No. 24), *E-Z Mills* (Case No. 55), and *Phelps-Dodge* (Case No. 115), all provided that within a definite time the workers affected might withdraw or resign from the Union before they were required to remain union members as a condition of employment.
>
> In the present case, the order makes it plain that at any time within the next 15 days, or until July 19, 1942, any employee of the Caterpillar Tractor Company who is now a member of Local 105, Farm Equipment Workers Organizing Committee (C. I. O.), may withdraw or resign from that local. If he fails to withdraw or resign before July 19, he is required to remain a member in good standing of Local 105 until the expiration date of the agreement. If the withdrawal or resignation of any employee from this union is disputed, then such employee must prove the validity of his withdrawal or resignation before the arbiter appointed by the Board.
>
> To date, this Board has ordered some type of clause requiring maintenance of union membership in eleven cases. In no case have new employees been required to join the bargaining agent union. However, any employee, either new or old, who joins the Union after the date on which the 15 day escape period ends (in this case, July 19, 1942), is subject to discharge unless he remains a member of the Union in good standing until the expiration date of the contract.
>
> This background is reviewed because some people are still uncertain as to just what maintenance of union membership means. Many confuse it with the closed shop or the union shop. It should be noted and emphasized that this Board has never ordered any employer to enter into a closed shop or union shop agreement. A closed shop is one where an employer contracts to employ only members of the union. Under a union shop, the employer is free to hire whom he pleases, but agrees that every employee hired must join the union within a certain period of time after hiring.
>
> The maintenance of union membership shop is neither a closed nor union shop. It is a form of union security first recommended by the National Defense Mediation Board and subsequently has been adopted by this Board. It does not require any man who is not a member of a union to join a union in order to hold his job.

The opinion then asserted that the merits of the present case warranted only a "recognition" clause because of the history of good faith between the parties, because both the International Union and the Local Union in the case were relatively young with no proven back-

ground of responsibility and because the Company's record showed a background of good faith and a cooperative attitude towards the Union. Mr. Lapham's opinion continued:

> In recent cases in which I have participated, I have voted for a maintenance of union membership clause similar to this one. In Ryan Aeronautical (Case No. 46), I wrote a concurring opinion giving my reasons for an affirmative vote. I concluded my opinion with some general observations as to the attitude of labor unions toward any simple restriction which might be imposed by legislative action and said, "It follows that when parties are given power, they must be willing to accept the corresponding responsibility and regulation that goes with it."

The opinion discussed the desirability of certain regulatory features for unions which ought to accompany the granting of maintenance of membership provisions, concluding:

> Inasmuch as this Board has now established what appears to be a fixed policy under which it shall be giving some form of maintenance of union membership in any dispute where union security is asked, it seems only fair and reasonable to require that the unions receiving this advantage measure up to certain standards. If a government agency is to give advantages not granted by legislative action, it should also impose upon the beneficiary certain conditions which Congress has not yet seen fit to require.
>
> The trend should be toward the middle ground. The pendulum must not be permitted to swing to either extreme, but should be held somewhere near the center. Certainly in these days of national emergency, we need internal unity based on a proper balance in our social and economic structure.
>
> When it was apparent in the Caterpillar case that some form of maintenance of union membership was to be granted over their objections, the employer members of the Board offered a motion to include in the order a clause reading as follows:
>
> > The Union, on or before _____ shall file with the Secretary of the National War Labor Board, on prescribed forms, statements as to the following:
> >
> > 1. Copy of constitution and by-laws
> > 2. Names of officers
> > 3. Amount of dues and initiation
> > 4. Statement of receipts and expenditures
> >
> > These statements shall be filed not more frequently than twice a year and copies of the statements shall be made available to the membership of the Union.
>
> By an 8–4 vote, the clause was rejected, the public and labor members of the Board voting "No" and the employer members voting "Yes."

A special opinion in support of the Board's decision by Dean Wayne L. Morse, written primarily in reply to the dissent stated in part:

> The public members of the Board gave very careful consideration to the employers' repeated suggestion that a form of an escape clause union maintenance proposal be applied in such cases in which the facts would seem to indicate that it would be as fair and equitable as some other formula. The labor members of the Board were emphatic in their opposition to such an escape clause plan, chiefly on the grounds that, in their opinion, it would provide anti-union employers with an opportunity to take advantage of the escape period by encouraging union members during that period to resign from the union. They discussed in detail the various devices which anti-union employers had been known to adopt in their endeavors to discourage their employees from joining the union, or from remaining in a union once they had joined. Although the public members recognized that there was merit in much of what the labor members of the Board had to say about the danger of an escape clause form-

ula, nevertheless, they reached the conclusion that a fair balancing of all the interests involved supported the conclusion that an escape clause formula should at least be adopted in some cases.

In all frankness it should be said that the public members gave weight to the fact that it would be highly desirable if the Board could reach a unanimous point of view on this union security issue which was proving to be so disturbing and disruptive of harmonious industrial relations throughout the country. The employer members of the Board had urged upon the public members to do whatever they could to lead all divisions of the Board to a fair, equitable, and reasonable "middle ground" on the issue in the interests of unanimity. The records of the Board will show that on many occasions employer spokesmen deplored the fact that the Board was so split on this issue, and likewise, public and labor members expressed regrets that the divisions of the Board had been unable to unite on the matter.

Hence, when the employer members indicated in their dissenting opinions that they would join in an escape clause formula, the public members proposed such a formula for adoption in the Ryan, Ranger, and E–Z Mills cases, a series of cases, all of which were considered by the Board in a single day insofar as the union maintenance clause was concerned. At first the labor members were adamant in their opposition to the proposal. They felt that the public members were unreasonable in asking them to retreat so far from their original position of demanding a closed shop or a union shop. They expressed fear that the escape clause would result in a disintegration of their unions. However, the public members pointed out that the final outcome of the Federal Shipbuilding case had amounted, to all practical intents and purposes, to the equivalent of an escape clause in that the contract had not been signed until some thirty days after the decision in the case, thereby giving the employees in the plants a long time to resign from the union if they cared to. They pointed out that instead of the union disintegrating under such circumstances in that instance it had enlarged its membership by several thousand.

Furthermore, the public members made clear that they believed, in light of the facts and circumstances existing in the Ryan, Ranger, and E–Z Mills cases, an escape clause union maintenance plan would be fair and equitable and that they would vote for it in any event if enough members of the Board would join with them in order to constitute a majority. Thereupon the labor members and two of the employer members joined with the public representatives in voting for an escape clause formula to be applied in each one of the three cases as heretofore mentioned.

The Ranger and E–Z Mills decisions were announced on June 12, and the Ryan decision, on June 18. It was on June 24 that the unanimous decision in the Phelps-Dodge Corporation case, applying the same escape clause formula, was adopted.

What happened between June 24, 1942, and July 1, 1942, to cause the employer members of the Board to adopt such a great change in their position on the union maintenance issue? When the instant case involving the Caterpillar Tractor Company was presented for consideration of the Board on July 1, it was a great surprise to the public members to discover that the employer members would not approve the same escape clause formula which they had voted for unanimously in the Phelps-Dodge case of June 24, 1942.

In reply to the suggestion contained in the dissenting opinion that certain regulatory restrictions be placed on the union to accompany the granting of a maintenance of membership provision, Dean Morse's opinion stated:

> It is the opinion of this writer that the position they have taken is highly improper and constitutes a proposal which exceeds the functions and purposes of the War Labor Board. However, in spite of the fact that the proposal of the employers, as expressed in the dissenting opinion involves a proposal for legislation which is a proper subject for Congressional discussion rather than War Labor Board action, let us assume for

the sake of argument that the War Labor Board should give serious consideration to it.

Just what would it accomplish if it adopted the proposal? Investigation shows that copies of the constitution and by-laws of all unions appearing before the War Labor Board are now requested by the Administrative Office of the Board and are on file. Likewise, the names of the officers of all the unions appearing before the Board are on file with the Board. The amount of dues and initiation fees charged by every union which has appeared before the Board in a dispute has been provided the Board whenever it has asked for the same.

Now, what about a statement of receipts and expenditures? Of what use would such a statement of receipts and expenditures be to the War Labor Board if it should require it? Is it the implied suggestion of the employer members that if the War Labor Board should reach the conclusion that the dues and initiation fees are too high that it should deny union maintenance unless the dues and initiation fees are lowered? Is it the view of the employer members that the War Labor Board should assume the duty of policing the financial policies and practices of American unions? It is understandable why some American employers would like to have the War Labor Board, or some other Government agency, assume such jurisdiction, but they should not overlook the fact that fairness would require that the adoption of such a policy should be made to work both ways. That is, it should be applied to employers as well as to unions.

In the opinion of this writer it would be equally absurd to suggest that the War Labor Board should go into the financial practices and policies of employers and employer associations and police the same, as it would that they should follow such a course in connection with union finances. That is not what the War Labor Board has been set up to do.

If, on the other hand, the suggestion of the employers is but a mere attempt to set up some official Government file as a depository for union financial records open to employer and public inspection, then obviously such a proposal involves a matter of public policy which falls beyond the jurisdiction and purposes of the War Labor Board and rightly belongs in the halls of Congress where to date attempts to attain the ends sought by the employers in their dissenting opinion have failed.

During recent years, in particular, American unions have been the recipients of increased rights, privileges, powers and opportunities from the hands of a democratic Government, and that Government in turn has the right to demand of unions that they exercise those rights free of abuses. Any failure on the part of organized labor groups to do so places upon a democratic Government, the obligation of regulating them or any group so favored, be it union, employer or any other, in a manner which will protect the public. However, such regulation should flow from the halls of Congress and not from a war emergency agency such as the National War Labor Board, which was set up for the specific purpose of settling labor disputes and not for the purposes of determining legislative policy.

Referring to the comment in the dissenting opinion suggesting that the Board "has now established what appears to be a fixed policy under which it shall be giving some form of maintenance of union membership in any dispute where union security is asked," Dean Morse stated:

> This statement is apparently based upon a false assumption that the four public members of the Board, who hold the balance of power on this issue of union maintenance, have decided to grant some form of union maintenance in every dispute in which union security is requested. The record of the Executive Sessions of the Board and all the decisions written by the public members are replete with statements to the effect first, that the public members have not adopted a fixed policy of granting a union maintenance in all cases which it is asked; second, the record is clear that the public members have not decided upon any one particular union maintenance formula in preference to all others.

> In the Ryan case, Dr. Graham in his opinion pointed out the various types of union maintenance formulae which the Board has adopted to date. Those formulae, plus any new ones which may yet be advised, will be applied by the public members of the Board when in their judgment the facts of an individual case warrant it. But, no union maintenance at all will be granted when the facts of the case fail to justify it.

While a majority of the Board has definitely rejected the employer members' suggestions to impose certain regulatory controls over unions to whom the Board awarded maintenance of membership provisions, the impact of their suggestions is revealed in decisions subsequent to the *Caterpillar Tractor case*. In future cases, as will be seen, a maintenance provision was granted only after the Board had satisfied itself concerning the responsibility and soundness of the union and its leadership. This consideration, plus the use of the 15-day escape clause, as in the unanimous Phelps Dodge decision, marks the transition from the early to the more recent decisions. In the following, the trend is demonstrated by the Board's inquiry into the responsibility of each union requesting a maintenance provision and by the Board's use of the 15-day escape clause. It is particularly marked in those decisions where a maintenance provision was denied to unions found guilty of irresponsible conduct.

In the *Little Steel cases* (Cases Nos. 30, 31, 34, and 35, July 16, 1942), a majority of the Board, in granting a maintenance of membership provision where the union demanded a closed shop, examined the responsibility of the union to determine whether it merited such a provision. Dr. Graham's opinion on behalf of the majority then stated in part:

> The Union asking for security in this case is worthy of the freedom and responsibility of the voluntary and binding maintenance of union membership and check-off. The United Steel Workers of America, on the record, is one of the most democratic, responsible, and efficient unions in America. Elections are held periodically and by secret ballot. A strike to be authorized must have a secret two-thirds majority of the local, and must have the sanction of the International Office. The membership fee is one dollar a month. The initiation fee is three dollars. No assessment has yet been made against the members of this union. Accounts are audited every three months by a certified public accountant and reported to the membership. It is the expressed policy of the Union to cooperate with management in the keeping of agreements, in maintaining discipline, and in improving production.

The Board's decision was not unanimous. In the dissenting opinion, the employer members (Lapham, Mead, McMillan, and Horton) reiterated their reasoning of the *Caterpillar Tractor case* and urged that regulatory features accompany maintenance of membership awards. The dissenting opinion concluded:

> The public members did not accept this suggestion and in no case thus far have they shown any indication of asking a union to comply with some regulatory requirements, although ready to grant to unions many things not provided by statute.
>
> It is the opinion of the employer members of the Board that in time of war no individuals or groups should be permitted to gain advantages at the expense of others or of the country at large. Yet this is happening, not only by permission but by assistance from an agency of the government. We believe the concession given to the union in this case is not in the best interests of the nation. We are in a struggle for existence and to win this war selfish interests must be subordinated to the national good.

In the *United States Rubber Company case* (No. 180, July 23, 1942), the *B. F. Goodrich Company case* (No. 190, September 17, 1942), and the *Firestone Tire and Rubber Company case* (No. 184, September 17, 1942), the companies had manifested attitudes of good will toward and cooperation with unions. The U. S. Rubber Co. had established union shops by unwritten understanding with the unions in two of eight plants; and in four others an informal system approaching maintenance of membership has been established by informal local understandings. In Firestone and Goodrich, while affirmative aid had not been given the unions, relations between the companies and the union had been excellent. In all three companies, the unions had grown to represent over 90 percent of the employees in the plant. However, there were a number of unsettling factors resulting from conversion of the plants to war work, and in two of the companies there had been considerable expansion in working force. The impact of the general war economy, the need for wage stabilization, which imposed problems of self-discipline upon unions, and the unions' records of responsibility were considered by the majority members of the panels in recommending a maintenance of membership provision in each case. A majority of the Board (Lapham, Mead, and Black dissenting in U. S. Rubber, and Derby and Robertson dissenting in Firestone and Goodrich) adopted the recommendations. The clause ordered in each case was similar to that in the *Ryan Aeronautical case.*

Shortly thereafter a unanimous Board directed a maintenance of membership provision in the *S. A. Woods Machine Company case* (Case No. 160) and the *Warner Automotive Parts Division, Borg-Warner Corporation case* (Case No. 135) both decided August 1, 1942. The provision directed in both cases was similar to that directed in the *Norma-Hoffman* case, mentioned below.

The Board's opinion in the *S. A. Woods case*, covering both that case and the *Warner Automotive Parts case*, read in part:

> In the discussions before the Board of the maintenance of membership clause, certain general considerations were brought to the Board's attention which seem worthy of note. Briefly, these considerations were as follows:
>
> 1. The employer members expressed their view that the maintenance of membership clause should not be granted to a union in a particular case unless the Board was satisfied that the union was responsible and was operated according to certain well-established democratic principles under its constitution and by-laws. The public members of the Board agree with the employer members in this respect completely.
>
> The Board in granting the maintenance of membership clause in this particular case satisfied itself that the Union was responsible and was operated under a constitution and by-laws which protected for the membership their normal democratic rights. As matter of practice, the Board requires a submission of the constitution and by-laws of the union when a dispute is certified to the Board.
>
> 2. The employer members urged that in addition to examining the particular union involved to see that it was a worthy one, the Board should likewise require as a condition to the granting of a maintenance of membership clause, an obligation on the part of the union to file from time to time with the Board financial statements, changes of officers and so forth. Likewise, it was suggested that the Board should make certain positive requirements relating to trade unionism in general such as forbidding unions to contribute to political campaigns and related actions.

Quite apart from any opinion as to the desirability, from the standpoint of the country as a whole, of regulations of the type suggested by the employer members, it seems quite clear that any such attempt on the part of the War Labor Board to extend a continuing control by the Board over a labor union would be to indulge in the worst vice of administrative tribunals—an attempt to extend jurisdiction beyond the frame of reference under which the tribunal acts. The decisions of the Board made under its Executive Order to finally determine labor disputes should certainly be confined to provisions which establish contractual obligations between the parties to the dispute.

In a special concurring opinion the employer members stated:

We owe it to the public and ourselves to explain our affirmative vote in this case.

The directive order states what now appears to be the Board's standard maintenance of membership clause. The Order makes plain that at any time within the next 15 days, or until August 16, 1942, any employee of the S. A. Woods Machine Company who is now a member of Local 272, United Electrical, Radio and Machine Workers of America, C. I. O., may withdraw or resign from that local. If he fails to withdraw or resign before August 16, 1942, he is required to remain a member in good standing of Local 272 until the expiration date of the agreement. If such withdrawal or resignation of any employee from this union is disputed then such employee must prove the validity of his withdrawal or resignation before the arbiter appointed by this Board.

We emphasize that the directive order does not require:

a. Anyone not now a member of Local 272 to join that local in order to hold his job;

b. Any new employee to join Local 272 in order to obtain or hold his job.

The order does require, however, that:

a. Anyone who is a member of Local 272 on August 16, must remain a member in good standing or be subject to discharge.

b. Anyone who joins Local 272 after August 16, 1942, must remain a member in good standing or be subject to discharge.

The directive order also provides that no coercion shall be exercised by the union in securing members.

All these provisions or conditions lapse at the expiration of this agreement.

Recently the Board discussed a maintenance of membership clause in the U. S. Rubber Company case (No. 180). The Board voted 6-3, the three employer members dissenting, to impose upon the U. S. Rubber Company a maintenance of membership clause similar to the one adopted in this case.

In discussing the U. S. Rubber Company case the public members of this Board made plain their belief:

a. That unionism should be strengthened and made more responsible.

b. That the Board's policy should be to stabilize unions and that maintenance of membership was one way to do it;

c. That maintenance of membership was a means of securing unions against deterioration and that in this period of stress labor organizations should be supported;

d. That insofar as employers were concerned maintenance of membership should be required, regardless of whether employers are good, bad or indifferent, or are pro-labor, anti-labor or what-not.

In the U. S. Rubber Company case it was unanimously conceded that the relations between employer and union were excellent and that there was nothing in the record of the company per se that justified or required a maintenance of membership clause. The employer members opposed disturbing the existing amicable relations between company and union, fearing an adverse effect on production. The public mem-

bers, however, justified the imposition of a standard maintenance of membership clause on the four broad grounds above stated.

Presumably the granting of a maintenance of membership clause in the U. S. Rubber Company case fixes a pattern applicable to all employers. But it is yet to be determined if such a pattern will be applied in favor of all unions, whether they be responsible or irresponsible.

When it came to a vote on this (S. A. Woods Machine Company) case, in which the three members of the mediation panel had unanimously recommended a maintenance of membership clause, the employer Board members were faced with a choice of two alternatives. One was to continue to vote against granting maintenance of membership except in such cases where circumstances very clearly justified it as a means of securing uninterrupted war production. The other was to assent on the grounds that nothing constructive could be gained by continually voting no as a matter of principle.

The latter course was chosen in the belief that constant emphasis on disagreement could serve no useful purpose in this critical period.

However, the employer members wish to make plain that they reserve their rights to reverse or revise their position on the question of maintenance of membership at any time and in any case coming before the Board, particularly when they think because of some special facts the public interest would not be served by granting maintenance of membership.

If, in furtherance of its policy of developing more reliable unions, the Board continues to impose maintenance of membership (disregarding the factor of whether an employer is good, bad or indifferent) will it not be compelled to give more and more consideration to the suggestions made by the employer members in their dissenting opinions in the Caterpillar Tractor case (No. 63) and the Little Steel cases (No. 30, 31, 34 and 35)? We are more convinced than ever that the interests of the public, unions and union members demand that the Board insist that such unions who seek maintenance of membership from this Board meet certain requirements. In the Little Steel cases it was suggested to the public members of the Board that there be included in the directive orders granting maintenance of membership, the following provisions:

> The Union, on or before the effective date of the collective agreements, shall file with the National War Labor Board a copy of its constitution and by-laws, and a list of its present officers, and shall agree that during the lives of the collective agreements:
>
> *a.* It will file with the Board from time to time, and as promptly as circumstances will permit, notice of any changes in its constitution and by-laws, changes in official personnel of the union, or changes in its dues or initiation fees;
>
> *b.* It will file with the Board semi-annually, a financial statement in such detail as the Board may require.
>
> The reports supplied under paragraphs (*a*) and (*b*) shall become public records. They shall be subject to inspection by any member of the union, by the employer who is a party to a labor dispute with said union certified to the Board, and, under rules to be prescribed by the Board, by any other person, including officers or agents of the Federal Government.
>
> There shall also be incorporated in the collective agreements, an undertaking by the union that it will not, during the life of the agreement, make, assume, guarantee, repay or participate in any contribution, subscription, pledge or other financial obligation to any political party or candidate for public office.

Briefly, we believe that the interest of Mr. John Doe, union worker and the interests of the public can best be served if unions, both local and international, are required to comply with certain rules, just as industry generally has been compelled to accept regulatory measures designed to prevent or correct abuses.

One of the most frequently used clauses is the maintenance of membership provision directed by the Board in the *Norma-Hoffman Bear-*

ings Corporation case (Case No. 120, August 24, 1942). Since its issuance, it has frequently been referred to as the Board's standard type of maintenance of membership clause. Its text follows:

> In order to secure the increased production which will result from greater harmony between workers and employers and in the interest of increased cooperation between union and management, which cannot exist without a stable and responsible union, the parties hereto agree as follows:
>
> All employees who, fifteen (15) days after the date of the National War Labor Board's directive order in this matter, are members of the Union in good standing in accordance with the constitution any by-laws of the union, and all employees who thereafter become members, shall, as a condition of employment remain members of the Union in good standing for the duration of this contract.
>
> The Union shall promptly furnish the National War Labor Board a notarized list of its members in good standing as of the fifteenth (15th) day after the date of the National War Labor Board's directive order in this matter. If any employee named on that list asserts that he withdrew from membership in the Union prior to that day, and any dispute arises, or if any dispute arises as to whether an employee is or is not a member of the Union in good standing, the question as to withdrawal or good standing, as the case may be, shall be adjudicated by an arbiter appointed by the National War Labor Board, whose decision shall be final and binding on the Union, the employee, and the Company.
>
> The Union agrees that neither it nor any of its officers or members will intimidate or coerce employees into membership in the Union. If any dispute arises (as to whether there has been any violation of this pledge or whether any employee affected by this clause has been deprived of good standing in any way contrary to the constitution and by-laws of the Union), the dipute shall be regarded as a grievance and submitted to the grievance machinery, and, if necessary, to the final determination of an arbitrator appointed by the National War Labor Board in the event that the collective-bargaining agreement does not provide for arbitration.

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

The labor reprsentatives dissented in this case, on the grounds that a voluntary check-off should have been directed. The employer members concurred in the maintenance of membership provision.

For other representative cases since Norma-Hoffman in which a maintenance clause was granted, see the following list of cases.[7] With the decision in the Norma-Hoffman case, the Board had succeeded in evolving the type of maintenance clause that would be granted in future cases in which a form of union security was found to be appropriate. For that reason the full text of the clauses is not set forth in the list. But it may be helpful to consult the list of representative

[7] This is not an exhaustive list, although it includes most of the cases between August 24, 1942, and January 14, 1943, in which maintenance clauses were granted.

decisions bringing up to date the pattern of the Board's voting on this issue:

Pioneer Gen—E—Motor, No. 220 August 31, 1942. Majority decision, six members participating. Union requested union shop. Employee members dissented from granting a union maintenance clause. Employee members dissenting: Thomas Kennedy, Robert J. Watt.

Bethlehem Steel Company, No. 38, September 1, 1942. Unanimous decision, six members participating.

American Can Co. NDMB 102, September 2, 1942. Majority decision, six members participating. Employer member dissenting: H. B. Horton.

Mack Mfg. Corp., No. 76, September 4, 1942. Majority decision six members participating. Employer member dissenting: H. B. Horton.

J. H. Williams. No. 225, September 18, 1942. Majority decision, nine members participating. Employer members dissenting: H. L. Derby, Robert F. Black, Almon E. Roth.

Monolith Portland Cement Co., No. 244, September 19, 1942. Majority decision, nine members participating. Employer members dissenting: Almon E. Roth, H. L. Derby, Robert F. Black.

North American Refractories Co., No. 266–B, September 23, 1942. Majority decision, nine members participating. Employer member dissenting: Almon E. Roth.

Kentucky Fire Brick Co., No. 266–C, September 23, 1942. Majority decision, nine members participating. Employer member dissenting: Almon E. Roth.

Harbison-Walker Refractories Co., No. 266–A, September 23, 1942. Majority decision, nine members participating. Employer member dissenting: Almon E. Roth.

Shell Oil Company, No. 92, September 23, 1942. Majority decision, nine members participating. Employer members dissenting: H. L. Derby, Reuben B. Robertson, Almon E. Roth.

Brown & Sharpe Manufacturing Co., No. 101, September 25, 1942. Majority decision, 12 members participating. Employer members dissenting: Almon E. Roth, Cyrus Ching, Geo. H. Mead, Thomas R. Jones.

General Motors Corp., No. 125, and No. 128, September 26, 1942. Majority decision, 12 members participating. Employer members dissenting: Robert Black, Almon E. Roth, H. L. Derby, Roger Lapham.

Wagner Electric Corp., No. 367, October 2, 1942. Majority decision, nine members participating. Employer members dissenting: H. B. Horton, H. L. Derby, Reuben B. Robertson.

Milton Mfg. Co., No. AR–57, October 2, 1942. Unanimous decision, nine members participating.

The Standard Tool Co., No. 202, October 2, 1942. Unanimous decision, nine members participating.

Underwood Elliott Fisher Company, No. 178, October 2, 1942. Majority decision, nine members participating. Employer members dissenting: H. B. Horton, H. L. Derby.

Combustion Engineering Co., No. 336, October 2, 1942. Majority decision, nine members participating. Employer members dissenting: H. L. Derby, Horace B. Horton, Reuben B. Robertson.

American Steel Foundries Co., No. 306, October 8, 1942. Majority decision, 12 members participating. Employer members dissenting: Roger D. Lapham, Cyrus S. Ching, Robert Black, H. L. Derby.

Feltex Corporation, No. 480, October 9, 1942. Unanimous decision, 12 members participating.

Fulton County Tanners' Negotiating Committee, No. 83, October 16, 1942. Majority decision, six members participating. Employer members dissenting: Cyrus S. Ching, Robert F. Black.

Tennessee Coal, Iron & Railroad Co., No. 465, October 16, 1942. Majority decision. six members participating. Employer members dissenting: Cyrus S. Ching, Robert Black.

Los Angeles Steel Casting Co., No. 335, October 24, 1942. Majority decision, six members participating. Employer members dissenting: Roger D. Lapham, Cyrus Ching.

Colorado Fuel Iron Corp., No. 51, October 31, 1942. Majority decision, nine members participating. Employer members dissenting: H. B. Horton, H. L. Derby, Reuben B. Robertson.

Montgomery Ward & Co., No. 192, November 5, 1942. Unanimous decision, nine members participating.

Smith & Wesson, Inc., No. 368, November 16, 1942. Majority decision, nine members participating. Employer member dissenting: Almon E. Roth.

Libby, McNeill & Libby, No. 386, November 16, 1942. Majority decision, nine members participating. Employer members dissenting: Cyrus S. Ching, Robert Black, Frederick S. Fales.

Cincinnati Industries, Inc., No. 519, November 18, 1942. Majority decision, six members participating. Employer member dissenting: Almon E. Roth.

5 St. Louis Mo. Refractories, No. 348, November 19, 1942. Majority decision, six members participating. Employer members dissenting: Almon E. Roth, H. L. Derby.

Ralston-Purina Company, No. 503, November 24, 1942. Majority decision, six members participating. Employer members dissenting: Almon E. Roth, H. L. Derby.

United States Coal & Coke Co., No. 464, November 27, 1942. Majority decision, six members participating. Employer members dissenting: Reuben B. Robertson, Frederick S. Fales.

Jones & Laughlin Steel Corp., No. 485, November 30, 1942. Majority decision, six members participating. Employer members dissenting: H. L. Derby, Almon E. Roth.

Wm. White & Company, No. AR–45, December 1, 1942. Unanimous decision, six members participating.

Yellow Truck and Coach Co., No. 383, December 14, 1942, Majority decision, 12 members participating. Employer members dissenting: Reuben B. Robertson, Frederick S. Fales, Thomas R. Jones, Almon E. Roth.

Shell Oil Co., No. 208, December 18, 1942, Majority decision, six members participating. Employer members dissenting: Roger D. Lapham, Cyrus S. Ching.

Atlas Powder Company, No. 521, December 28, 1942, Majority decision, six members participating. Employer members dissenting: Cyrus S. Ching, Harry L. Derby.

Niles-Bement Pond Co., No. 340, January 2, 1943. Unanimous decision, six members participating.

Shell Oil Co., No. 511, December 29, 1942. Majority decision, six members participating. Employer members dissenting: Frederick S. Fales, Cyrus S. Ching.

Burlington Dyeing and Finishing Co., Inc., No. 300, December 30, 1942, Majority decision, six members participating. Employer members dissenting: Harry L. Derby, Reuben B. Robertson.

Hercules Powder Company, No. 445, January 2, 1943. Majority decision, six members participating. Employer members dissenting; Frederick S. Fales, Roger D. Lapham.

American Locomotive Company, No. 493, January 7, 1943. Majority decision, six members participating. Employer members dissenting: Cyrus S. Ching, Roger D. Lapham.

Tubular Alloy Steel Corp., No. WA–382, January 7, 1943. Majority decision, six members participating. Employer members dissenting: Roger D. Lapham, Frederick S. Fales.

Bendix Aviation Corp., No. AR–95, January 9, 1943. Majority decision, six members participating. Employer members dissenting: Harry L. Derby, Almon E. Roth.

Ohio Steel Foundry Co., No. 403, January 11, 1943. Unanimous decision, six members participating.

Scully Steel Products Co., No. AR–152, January 13, 1943. Majority decision, six members participating. Employer members dissenting: Frederick S. Fales, Roger D. Lapham.

Boyle Manufacturing Co., No. AR–150, January 13, 1943. Majority decision, six members participating. Employer members dissenting: Frederick S. Fales, Roger D. Lapham.

Universal Atlas Cement Co., No. AR–154, January 13, 1943. Majority decision, six members participating. Employer members dissenting: Frederick S. Fales, Roger D. Lapham.

Oil Well Supply Co., No. AR–151, January 13, 1943. Majority decision, six members participating. Employer members dissenting: Frederick S. Fales, Roger D. Lapham.

Virginia Bridge Co., No. AR–153, January 13, 1943. Majority decision, six members participating. Employer members dissenting: Frederick S. Fales, Roger D. Lapham.

American Bridge Co., No. AR–121, January 13, 1943. Majority decision, six members participating. Employer members dissenting: Frederick S. Fales, Roger D. Lapham.

General Steel Castings Corporation, No. 466, January 13, 1943. Majority decision, six members participating. Employer members dissenting: Frederick S. Fales, George K. Batt.

Fairchild Engine and Airplane Corp., No. 605, January 14, 1943. Majority decision, six members participating. Employer members dissenting: Harry L. Derby, Almon E. Roth.

Benco Manufacturing Co., No. 615, January 14, 1943. Majority decision, six members participating. Employer members dissenting: Almon E. Roth, George K. Batt.

CASES IN WHICH THE BOARD HAS DENIED MAINTENANCE OF MEMBERSHIP PROVISIONS

In terms of the merits of particular cases, the Board has denied maintenance of membership provisions requested by unions, for varying reasons.

In two early decisions, *Bower Roller Bearing Co.* (Case No. 12, March 12, 1942), and *Remington Rand Co.* (Case No. 44, April 23, 1942), the Board denied a union security provision on the ground that the parties were negotiating their initial agreements. It should be noted that a limited form of union security was granted in these cases in the form of a check-off.

In several more recent cases, the Board denied a union security provision when the unions failed to manifest the necessary qualifications of responsibility.

In the *Monsanto Chemical Company case* (Case No. 292, August 27, 1942), the union, as the Board found, had called a strike on the recommendation of its leaders which had been endorsed by the union membership. The Board's unanimous opinion, written by Public Member Morse, stated in part:

> It is with regret that the National War Labor Board denies union maintenance in this case because the Board is convinced that a maintenance-of-membership provision in most cases acts as a stimulus to production and provides a union with needed and deserved protection in consideration of its pledge not to strike. The Board is satisfied that whole-hearted cooperation between union and management can best be obtained in the ordinary case when the union is strong, responsible and protected from any employer technique aimed at destroying the union.
>
> The Board has found that the granting of union security in the cases which have come before it has, for the most part, been a great benefit to labor-management relationships in the plants concerned because it has stabilized union membership, strengthened union discipline, put at rest fears of anti-union activities on the part of the employer and strengthened the confidence of the workers in peaceful procedures for the settlement of their disputes during the war period.
>
> Management, in turn, has come to recognize many values in union security provisions. The increased responsibility placed upon the union has made it possible for management to obtain more effective handling of grievance and disciplinary problems on the part of union officials. A much better feeling has developed in management relations with unions which have been protected by a union security provision, with the result of marked improvements in production and general morale. Furthermore, management generally has come to appreciate the fact that the War Labor Board stands back of its decisions, including those on union security, and any abuse of those decisions by either labor or management will receive further action by the Board. Hence, the peaceful procedures for handling disputes which have been evolved by the War Labor Board

have been generally accepted by both labor and management as needed and effective stabilizers of industrial disputes for the war period.

However, the War Labor Board would not be justified in granting a maintenance-of-membership protection to this or any other union which resorts to the use of economic force in an attempt to obtain its demands. Such action is in direct violation of labor's pledge to the President and to the nation that it will not strike for the duration of the war and that it will agree to abide by decisions reached through the use of the peaceful procedures of conciliation, mediation, arbitration, and if necessary, final determination by the War Labor Board * * *

However, in spite of the union's assurance that it would not strike as a means of securing a settlement of its dispute with the management of the company in this case, the fact is it *did* strike, and its strike action did not constitute a good-faith performance of its obligations under the no-strike agreement.

The panel found that the evidence clearly shows that the decision to call a strike in this important war industry was specifically recommended by the union's leaders and places the responsibility for calling the strike upon those leaders, and the action was endorsed overwhelmingly by the membership of the union.

The Board stated in Case No. 120 that before union maintenance will be granted, "The Board must also have ascertained to its satisfaction that the union is a responsible organization capable of fulfilling all of its obligations to its members, the management, and the Board."

The peaceful procedures for settling labor disputes referred to by the President in the Executive Order creating the National War Labor Board rest upon good faith. There is no substitute for good faith. The War Labor Board cannot afford in this case to set a precedent whereby a union is granted union maintenance protection by the Board in the very face of a record which shows that the union violated its no-strike pledge. Hence, the granting of union security to this union must at least be postponed until such time as this union demonstrates that it has adopted a change of attitude in regard to the use of the strike weapon during the period of this war.

As pointed out by the labor member of the panel, it is to be noted that the contract which is about to be executed has less than a year to run. Certainly by that time, the union should be able to make a much better case for itself in support of the request for union maintenance than it was able to make in this case. The Board intends to keep in touch with the situation involved in this case, and the members of the union can be sure that the Board will not countenance the company's taking advantage of the refusal of the Board to grant union maintenance in this case.

The important point for all concerned to remember is that when labor agreed to forfeit its right to strike for the duration of the war the government provided it with an orderly and impartial tribunal to settle its disputes with industry. So long as the National War Labor Board functions, there is neither need nor justification for strikes. Certainly it must be clear to everyone that the War Labor Board as an agency of the federal government and acting under Executive Order should not and will not be swayed by economic pressure brought to bear by either management or labor.

In the *Pettibone Millikan Corporation case* (Case No. 326, October 20, 1942), while denying any union security because the local union had gone out on strike, the Board stated that the issue might be reopened and reviewed by the Board, on the union's petition, 6 months after the date of the directive order. Reference was made to the panel's statement that the strikes had been declared unauthorized by the union's international and that the international vice president had gone to Chicago and succeeded in persuading the strikers to return to work.

The *General Chemical Company case* (Case No. 267, September 18, 1942), was certified to the Board on June 9, 1942. On June 10 the union advised the company that unless the union's demands were

granted by June 15, all work would be stopped. On June 15 all work was stopped and pickets were thrown around the plant. The Board pointed out that although the stoppage lasted only a few hours, it was in direct violation of labor's pledge to the President. The Board said:

> The Board has made clear in past decisions that it does not propose to grant any form of union security to any union that has failed to show by a record of action and conduct that it is a responsible union. Judicial notice can be taken of the fact that a union which resorts to economic force in violation of the no-strike agreement for the duration of the war establishes at least a prima facie case against itself as to its responsibility.

An exception to the view that a violation of the no-strike policy forfeits a union's claim to union security was enunciated by the Board in the *Worcester Pressed Steel Company case* (Case No. 142, September 30, 1942). A Norma-Hoffman maintenance clause was ordered by a unanimous Board, despite the fact that the employees had conducted a 2-day strike in April 1942. The Board's opinion declared, in part, that:

> The record of the union leaders since the strike convinces the Board that granting union maintenance is the proper way to finally determine the dispute on the issue for it believes that union has already demonstrated the necessary qualities of leadership, stability and responsibility which are necessary before the protection of union maintenance may be granted. * * *
>
> It is important to note that there was not any evidence in this case which indicated that the work stoppage was instigated or condoned by the local or international union leadership. On the contrary the Board is of the opinion that the strike was a spontaneous and unplanned demonstration of the rank and file itself. * * *
>
> If this union is to become a responsible organization acting through its leaders, it is necessary that it have some power over its members in order that small minorities may not again precipitate some such rash action as the strike of last April. The inclusion of a maintenance of membership provision in the contract between the parties will have that result because an employee who elects to be bound by the maintenance clause must remain a member in good standing of his union in order to keep his job. Thus the responsible leaders and the reliable element of the union have an effective disciplinary power which will enable the union to get behind the company's production efforts. * * *
>
> * * * (There) seems much reason to believe that the company in this case has not negotiated with the union in a spirit of cooperation. The Board must make it clear that a corollary of the rule laid down in the Monsanto and General Chemical cases is the principle that no employer can be allowed to antagonize and provoke the union to such an extent as to bring about a strike and then expect to have the Board refuse any form of security to the union because of that strike. Such an action by the Board would not be fair; it would not place the blame where the blame is due.

The existence of an agreement establishing the union's status in the *Diamond State Telephone Company case* (Case No. 366, December 11, 1942) compelled the Board to deny a maintenance of membership provision, on the ground that it would be in violation of the existing agreement. In this case, the agreement between the parties contained only a clause recognizing the union as the bargaining agent for the employees. The agreement had expired on March 1, 1942, and been renewed automatically for a year by the union's failure to give the requisite notice of termination. The union maintained that since the agreement made no mention of union security the issue was not

covered by the agreement and hence was not foreclosed by the automatic renewal of the agreement. The Board rejected the union's demand on the ground that the recognition clause in the agreement defined the status of the union's relation with the company and that to require any change in that relationship would violate the agreement.

CASES IN WHICH THE BOARD CONTINUED EXISTING UNION SHOP PROVISIONS

In referring to the decisions discussed below, it has sometimes been claimed that the Board has "granted" union shop provisions. This is not the case. In its decisions rendered in such cases, the Board refused to disturb a relationship which the parties had voluntarily established at a previous time.

In the *Fifteen Paint Manufacturers case* (Case No. 227, October 16, 1942), the Board unanimously adopted the report of its arbitrator, who recommended that the union membership requirements of the previous contract between the two parties be continued in the new contract. Under the old provision, reported the arbitrator, no difficulty had arisen during the past two years. The old provision was a qualified union shop and also granted union members preference in hiring.

In an interim directive order in the *Fifteen Clay Sewer Pipe Manufacturers case* (Case No. 349, November 20, 1942), the Board denied the company's request to reduce the union-shop provision of the old agreement between the parties, to a maintenance of membership provision. A majority of the Board (employer members Derby and Roth dissenting) adopted the majority recommendations of its panel which reported:

> * * * Such a retrogression might well initiate a restlessness which would interfere with production. There is evidence to show that the percentage of membership is substantial, and in the panel's opinion such an alteration of a status established for the Union in peacetime would be detrimental to the war effort.

The *Harvill Aircraft Die Casting Corporation case* (Case No. 163, February 12, 1943), is noteworthy in that the Board's decision made it "emphatically clear that as a general rule a company, except by mutual consent of the parties, cannot abandon a union shop already established by agreement between the parties."

In this case, the company had in a previous contract agreed to a union shop provision, but refused to renew the provision and insisted upon establishing an open shop. The case presented an additional complication which was reviewed by the Board in its summary of the facts in the case:

> This case, in coming, after many delays, to the full Board for final determination, does not present the clear situation of the union on an open shop basis struggling for the union shop. The Board's standard answer in such a case would be the provision for a maintenance of membership. Nor does the case present the unmixed situation of a company attempting to get rid of an established union shop. The Board's present answer makes it unmistakably clear that as a general rule a company cannot for the duration of the war, except by mutual consent, eliminate the union shop. An unprecedented situation has developed from the following

facts: (1) the contract expired without the renewal of the provision for the union shop, and (2) the submission to the procedures of the National War Labor Board has entailed delays too long and developments too mixed for the one clear and single answer now preferred and henceforth to be given by the majority of the Board. The new workers who, since the lapse of the union shop, have become employed without the knowledge or acceptance of the conditions of the union shop, are the responsibility of the Company, in its refusal to continue the union shop; of the Union in its ineffectiveness in winning the new employees; and of the War Labor Board, in its failure to make an early settlement of this case. The Board, consequently, finds in conflict two of its basic policies in this case; first, that a worker shall not be compelled by the government to join a union to get a job; and second, the herewith declared policy that a company cannot take advantage of the no-strike agreement to give up a union shop previously established by the agreement of the Company and the Union. It is the responsibility of the Board to resolve this conflict in basic policies and yet make clear that, as a general rule, a regularly established union shop or closed shop, shall remain regularly established for the duration of the war.

The employer members (Ching, Roth, and Derby) dissented without opinion. Following is the major part of the Board's opinion, written by Dr. Frank P. Graham, in which the Board ordered a maintenance of membership provision to apply to employees hired since the lapse of the union shop provision and the restoration of the union shop provision in the parties' contract:

In order to understand these two basic policies, we must understand the policies of the War Labor Board of the First World War and the policies of the National Defense Mediation Board which immediately preceded the War Labor Board of the Second World War.

THE WAR LABOR BOARD OF THE FIRST WORLD WAR

The War Labor Board of 1917–1918, as we analyze their policies, recognized two planes of union status: one, the status of the union shop or closed shop, somewhat static and stabilized in its security, the other the status of the open shop, unstabilized in its insecurity and dynamic in the struggle toward the union shop. In order to stabilize the status and struggle of the unions in the First World War, the Taft-Walsh War Labor Board Held that the unions which had union shops or closed shops should continue to have union shops or closed shops undisturbed and that unions on an open shop basis should continue to be open shop for the duration of the war. In view of the fact that the struggle of the union in open shop industries to become union shop or stronger is a normal aspiration of unions and especially in a period of expanding industrialism, it might seem, without further analysis, that the policy of the old War Labor Board was heavily loaded against the normal struggles and aspirations of the unions. However, in 1917–1918 even the principle and practice of collective bargaining were far from being universally acknowledged and accepted as the right and practice of American workers. The War Labor Board of the First World War, in the interest of justice and stabilization, established the right of organized workers to bargain collectively with their employers. On the dynamic plane of struggle for union security, the former War Labor Board took an advanced position and established the line of stabilization by its own stand for the recognition of majority unions and their right of collective bargaining through representatives of their own choosing for the duration of the war.

THE NATIONAL DEFENSE MEDIATION BOARD

The new National Defense Mediation Board, at the outset, was widely urged by many and clamorous voices with much force but without full understanding of changed conditions, to adopt with regard to the open and closed shop, the principles of the War Labor Board of 1917–1918. However, the operations of the Wagner Act, the expanding industrialism of defense production and the dynamics of the labor movement by 1941, had carried

the issues of union security, immediately faced by the new National Defense Mediation Board, much beyond the then well established and legally enforced right of collective bargaining. The new Board was set up to grapple with a log jam of strikes which were holding up most vital defense production. Many of these strikes involved crucial struggles for the union shop.

The contention that the status of the Union, and especially the struggle over the Union shop, was not a proper subject for the consideration of the Board was unrealistic in the face of the fact that the cause of many stoppages of defense production was this very struggle of the unions in open shop industries for union shop status. In a period of industrial expansion and the consequent drive for the organization of industrial workers, the struggle of the unions for more security was inevitable. The line along which was stabilized the struggle in the First World War, was recognition and collective bargaining, now long since established by law.

The center of the continuing struggle was early in the Second World War found to be in advance of the old line. To draw a new and balanced line for the stabilization of the struggle was an immediate and continuous problem of the National Defense Mediation Board to which it gave constantly its thought and finally its life. The National Defense Mediation Board and the War Labor Board both have recognized, as we have sought to interpret both Boards in the opinion on union security in the "Little Steel" case, that it would be "unfair to attempt to hold labor unions fixed in the midst of a tremendous industrial expansion, unwise to try to hold them static in a dynamic area of industrial society, and undemocratic to call a complete halt to the free development of organizations of workers in the midst of a total war for freedom." In drawing the new line for a fair and balanced stabilization, both the Defense Mediation Board and the present War Labor Board have relentlessly searched for a reconciliation of stability and freedom and a balance of union security and individual liberty in the midst of a world war for both liberty and security.

In the midst of strikes before Pearl Harbor, in the cooperation of labor, management, and the government in the comparatively wide fulfillment of the no-strike agreement since Pearl Harbor, and in the logic of considering each case on its merits, there emerged out of the case system itself a pattern of settlements and decisions on union security.

THE PRESENT WAR LABOR BOARD

By its decisions, the National War Labor Board, in the hottest area of open and dynamic struggle drew the new line for both liberty and security. The Board determined that the provision for the free acceptance by the workers of the maintenance of membership in the union was a new and advanced but a fair and balanced base for the stabilization of the cooperation of unions and companies for responsible relations and maximum production for winning the war. In spite of some company advertisements and occasional misrepresentations, we repeat that this provision is not a closed shop, is not a union shop, and is not a preferential shop. No old employee and no new employee is required to join the union to keep his job. If in the union, a member has the freedom for fifteen days to get out and keep his job. If not in the union, the worker has the freedom to stay out and keep his job. This freedom to join or not to join, to stay in or get out, with foreknowledge of being bound by this clause as a condition of employment during the term of the contract, provides for both individual liberty and union security.

The National War Labor Board, by the provision for the maintenance of membership, seeks to stabilize the unions in an area of struggle. By provision for the continuance of the established union shop, the Board seeks to keep stabilized the union in an area already stabilized. In the unstabilized area, to withhold provision for maintenance of membership from unions struggling for more security would cause a sense of insecurity, instability and frustration on the part of millions of workers in the midst of the need for our all-out effort in the war for freedom and security. For unions in open shop industries to fight out to the bitter end the battle for the union shop would be most unstabilizing and devastating for war production. Likewise, to push

union shops back into open shops would unstabilize, for war production, the unions of the millions of American workers who have pledged themselves not to strike but to leave to peaceful arbitrament the security of the unions which they have won after long and arduous struggles.

In the present Harvill Aircraft case, the National War Labor Board, in accordance with these two basic policies, makes provision for the maintenance of membership for the workers employed between the date of the expiration of the previous contract and the date of this directive order, and restores the former provisions of the union shop and check off for all present workers who were employees at the time of the expiration of the union shop contract, and all future employees of the Company. The National War Labor Board, in its basic policies, holds that the Government will not compel a worker to join a union in order to get a job, and that the Government will not use its sanctions during this war to establish or disestablish the union shop. By this decision, notice is now given to both workers and management, beyond future misunderstanding or appeal, that no company can take advantage of the Board's standard provision for union security to reduce the provision for the union shop to the provision for maintenance of membership, hereafter also for the so-called interim employees; and that no company can take advantage of the no-strike agreement to throw out a union shop previously established by agreement between the parties. This policy is not intended to interfere with lawfully established bargaining rights.

By this stabilization of responsible relations on both planes and by concentration on cooperation for maximum production, American labor unions and business corporations can help decisively to win the war for the freedom and security of unions and corporations, the United States and the United Nations.

In the *Wilson-Jones Company case* (Case No. 161, September 25, 1942), the panel found that the company had signed a union shop contract with the union in 1940, but the contract had terminated in the summer of 1941 when the union went on strike. Since that time, the company had been following an open shop policy. The majority of the panel recommended that the union shop status be restored, but a majority of the Board (employee member Hewitt dissenting) overruled the recommendation and directed, instead, the Norma-Hoffman maintenance of membership provision.

CASES IN WHICH THE BOARD DIRECTED PREFERENTIAL HIRING PROVISIONS

In the *Hotel Employers Association case* (Case No. 21, June 4, 1942), a majority of the Board (industry members Lapham, Ching, and Horton dissenting) directed that a clause providing for preference in hiring to union members be included in the agreement. The previous agreement contained a preferential hiring clause, but the one ordered by the Board was a revision to meet certain objections of the union. The Board also granted a maintenance of membership provision effective on the date of the agreement, but without the 15-day escape clause.

In the *United States Lines Company case* (Case No. 82, May 26, 1942) there had been no previous contract between the parties. The Board unanimously directed the inclusion of a preferential hiring clause. The union requested a union shop. The company was willing to give preference to union men, but objected to making membership in the union a condition of employment for nonmembers hired when members are unavailable. The Board directed that a clause providing that if the company first made inquiries of the union for

employees, and if none were available, nonmembers hired were not required to join the union; but if the company failed to make such inquiries, nonmembers hired were required to become members upon their employment. See also *Coos Bay Logging Co. et al.* (Case No. 155, 156, 157, June 11, 1942); *Realty Advisory Board* (Case No. 141, July 17, 1942); *Underwood Elliott Fisher Co.* (Case No. 178, August 12, 1942).

CHECK-OFF

The Board in some cases has granted a check-off provision along with a maintenance of membership provision, where the circumstances revealed that the check-off would implement the maintenance of membership provision.

In the Big Steel cases (Carnegie Illinois Steel Corp., Columbia Steel Co., American Steel & Wire Corp., National Tube Co., Tennessee Coal, Iron, and R. R. Co., Case No. 346, August 25, 1942) and Little Steel cases (Bethlehem Steel Corp., Republic Steel Corp., Youngstown Sheet & Tube Co., Inland Steel Co., Cases Nos. 20, 31, 34, and 35, July 16, 1942), the Board ordered what it termed a "voluntary binding" check-off. The Board's majority opinion in the Little Steel case stated:

> The voluntary binding check-off on the basis of the special facts in this case and not as a precedent for other cases, protects the free choice of the workers * * * The voluntary accepted binding check-off will contribute to the security and stability of the union, and affords a basis for cooperation between the Company and the Union, * * * At present, the Company forbids the collection of dues on company property and provides no facilities anywhere for this purpose. The problem is further accentuated by the difficulties and complications of many different nationalities and races among the workers, the widely separated and far flung locations of mills and homes, and the limitations on transportation. Since some of the companies make deductions for several other authorized items due to the agencies and causes in which the companies believe or have an interest, steel workers often have the impression that the companies are opposed to the union because they do not check-off dues to the union.

The clause ordered was:

> The company, for said employees, shall deduct from the first pay of each month the union dues for the preceding month of one dollar ($1.00) and promptly remit the same to the International Secretary-Treasurer of the Union. The initiation fee of the Union of three dollars ($3.00) shall be deducted by the Company and remitted to the International Secretary-Treasurer of the Union in the same manner as dues collections.

The employer members dissented in both groups of cases, writing an opinion on the check-off provision in the *Little Steel cases*. The dissent stated:

> Under the check-off clause employees who have not withdrawn from the union before July 31 must have their dues and initiation fees deducted from their wages without their express consent and despite any objections that they might make to this procedure.
>
> The majority opinion justifies the imposition of a check-off "on the basis of the special facts in this case" and then points out that this unusual order is not to be a precedent in future cases. In our opinion, no analysis of the facts in this case can possibly justify the Board's action. Why is the assurance of union financial security through dues deduction so essential to the war effort? What is the benefit to the individual worker? If the workers were convinced of the benefits to be

> derived from financial support of the unions no compulsion would be necessary. Nor would it be necessary for the union officials to form dues collection picket lines which are now impeding war production.
>
> Although a guarantee of financial support of the union is now assured, direct financial aid to the country's war effort through the purchase of war bonds is not a matter of compulsion. The reason? Wage earners and other good citizens are ready and willing to give financial support freely and voluntarily without an order from Congress or any Government agency.

The voluntary character of the check-off in these cases inhered in the fact that an employee could voluntarily determine, during the 15-day period provided in the "escape clause" whether he wished to become a member of the union and be subject to the check-off provision. The "binding" character, of the check-off provision, on the other hand, inhered in the fact that once an employee made his choice both to become a member of the union and be subject to the check-off, he was bound to the provisions for the duration of the contract.

In the *United Shoe Machinery Co. case* (Case No. 304, August 14, 1942), the panel recommended a check-off provision similar to the one in the *Big* and *Little Steel cases*, accompanied by a standard maintenance of membership provision. The Board ordered the following provision:

> The Company will deduct from their wages and turn over to the proper officers of the Union the initiation fees and union dues of such members of the Union as individually and voluntarily certify in writing that they authorize such deductions.

The report of the panel pointed out that the check-off implemented the maintenance of membership clause and that both provisions were warranted on the ground that (1) the union had been certified by the National Labor Relations Board after an election; (2) the past and present attitude of the company created a condition of insecurity for the union which tended to breed resentment and suspicion; (3) without these provisions the union would be engaged in a continuous struggle for its existence; (4) the leadership of both the national and local organizations was believed to be sufficiently capable and responsible to promise fruitful results; (5) the company made no charges of irresponsibility against the union. The Board's vote on the maintenance of membership and check-off provisions was 8 to 1, with one employer member dissenting.

It will be noted that the check-off provision ordered in this case differed from the provision ordered in the Big and Little Steel cases. In this case it was provided that the check-off provision would apply only if the union members individually and voluntarily certified that they authorized such deductions.

In some cases in which a maintenance of membership provision was granted the Board has denied a union's request for a check-off provision where the facts in the case indicated that such a provision was not necessary to implement the maintenance of membership provision.

In the *Ranger Aircraft Engine Division case* (Case No. 24, June 24, 1942), the overwhelming majority which the union at one time had enjoyed at the plant had declined substantially. A need for the stabilization of the union membership was found by the Board. It was also found, however, "that a clause providing for maintenance of

membership would afford such measure of protection to the union as is needed under the circumstances."

In the *Consolidated Steel Corporation case* (Case No. 43, July 10, 1942), the facts found by the panel and accepted by the Board included a company record of hostility to the union, a responsible and efficient local, the union's difficulty in keeping its membership abreast of the growing number of employees, a notorious anti-union attitude in the Los Angeles area where the company's plant was located, the need for a form of union security.

A maintenance of membership clause was granted but a check-off denied on the ground (as stated in the panel report which was adopted by the Board): "that it is not necessary at the present time to supplement the union security * * * with the check-off * * * and there is no sound reason why the Company should be put to the trouble and expense of collecting the Union's dues for it, indeed it would be to the mutual advantage of the Union and its members for the Union to be responsible for the collection of its own dues, for the Union would then try to minimize this chore by making membership so worthwhile that most members would pay their dues without solicitation."

In the *Shell Oil Company case* (Case No. 92, August 13, 1942), the Board granted a maintenance of membership clause, but denied a check-off on the panel's recommendation that "check-off is not essential to stabilize bargaining relations * * * the maintenance of membership provision recommended provides the union with proper and sufficient security necessary for its protection."

In some early cases the Board, while denying a union's request for a maintenance of membership provision, granted a check-off provision. For examples, see the *Bower Roller Bearing Co.* (Case No. 12, March 11, 1942) and the *Remington Rand Co.* (Case No. 44, April 12, 1942), *cases.*

In some cases where the physical difficulties of collecting dues from union members was readily apparent, and where such difficulties threatened interference with production, the Board has ordered check-off provisions.

In the *White Sewing Machine Corporation case* (Case No. 65, May 1, 1942), the panel's findings, unanimously approved by the Board, included the following:

> Under the practice prevailing in the plant each of the 23 shop stewards followed the company paymaster as he distributed pay envelopes to the 850 employees. These stewards would each collect membership dues in their respective departments. The Company permitted the collection of these dues for many years on Company time and on Company property. The time lost by shop stewards was deducted from their earnings by the Company and these amounts were made good to the stewards by the Union. The Company has raised no objection to the continuance of this practice but has objected to any clause in a contract which requires it to collect membership dues and remit them to the financial secretary of the Union.
>
> The Company presently makes deductions from the pay of its employees for the following other purposes: social security, insurance, hospitalization, defense bonds, and membership dues for a social club. At the present time it costs the Union approximately $2500 a year to collect dues on Company property during working hours. In our opinion the cost to the Company through interference with production by the shop stewards during the process of collection is considerable.

It was accordingly recommended, and the Board unanimously directed, that the following provision be incorporated in the agreement, providing for a voluntarily authorized and revocable check-off:

> The Company agrees to honor dues assignments in the following form upon receipt of written orders from employees, reading:
>
> VOLUNTARY DUES ASSIGNMENTS
>
> Date_____
>
> To the White Sewing Machine Corporation: I hereby authorize you to deduct from my wages the sum of one dollar ($1.00) per month and remit said sum to the Union as my membership dues.
>
> I understand that this assignment is voluntary and that I revoke it at any time in writing.
>
> _____
> (Witness)
>
> _____
> (Signature)

It will be noted that the check-off provision in this case had a revocability feature. The employee could without prior notice revoke his authorization at any time in writing.

A similar provision was ordered by the Board in the *Montgomery Ward & Co. case* (Case No. 192, November 5, 1942), where the unanimous panel found the following facts:

> The Union stressed the importance of including a check-off clause in the Montgomery Ward agreement, because of the great practical difficulty of collecting dues under the working conditions prevailing in the Mail Order House. In that establishment, which occupies an entire city block, are some 6,000 employees. There is no yard or other surrounding space, as in most factories, in which dues can be collected. Nor is there, as in most factories, a regular lunch period in which it may be feasible for Union stewards to collect dues. The workers eat in cafeterias, in groups which are staggered through the day beginning around 11 o'clock and continuing till around 3 o'clock. The only time in which dues could be collected without interfering with production would be during these group luncheons, but the cafeterias are crowded and the attempt to collect would probably cause some unpleasantness, in addition to which the number of Union stewards would have to be greatly multiplied since there would be many groups not containing stewards.
>
> The Union stated that for a short time at Macy's there was a Union shop without a check-off, but the Company recognized that the situation was "absolutely impossible" and therefore agreed to honor voluntary and revocable checkoffs. Similar check-off arrangements have been made in Gimbels, Sterns, Hearns, Bloomingdale, the Fair Store and Boston Store in Chicago, and in many other establishments.

In conclusion it should be noted that the Board has never ordered a "compulsory" check-off provision, that is, a provision in which an individual employee is precluded from exercising some choice as to whether he desires the check-off provision to apply to him. A more limited choice appears in the *Big* and *Little Steel cases*, where the employee, in choosing to become a member of the union, at the same time chooses to be subject to the check-off provision for the duration of the contract. Greater freedom in choice was allowed in the *United Shoe Machinery Co. case*, where the employee, after he decided to become a member of the union, could choose in addition whether or not to be subject to the check-off provision. If he chose to be subject to the check-off provision, he did so for the duration of the contract. The greatest freedom of choice appears in the *White Sewing Machine and*

Montgomery Ward cases, where the employee is subject to the check-off provision only (1) if he so authorizes in writing, and (2) only for the time he wishes to be subject to it, and not for the duration of the contract, since he can revoke it at any time. Other variations of the revocation feature, in some of the Board's decisions, have involved a 30- or 60-day period of notice for revocation.

VACATIONS

On the issue of vacations the Board has frequently denied requests for extending vacation plans where the existing plan was reasonable. Thus, in the *General Chemical Company case* (N. W. L. B. Case No. 267, September 18, 1942), the Board rejected the union's request for a more liberal vacation plan, stating:

> The Board rejected the panel's recommendation that the well-established policy of the Company in this case should be changed * * * chiefly on the ground that in past cases the Board has followed the policy that where an existing vacation plan of a Company is a reasonably liberal one, it should not be modified during this war period. It is submitted that the Board's position on this matter is a reasonable and sound one.

Two further factors influenced the Board's decision in this case. The company operated several plants, and in all of them, the vacation plan was identical with the one in the case before the Board. Furthermore, a labor organization competing with the recognized union in this case was the collective bargaining representative in some of the Company's other plants. With respect to these facts, the Board observed:

> * * * Hence in view of all the circumstances surrounding the vacation issue, it is the opinion of the Board that it would not be justified in granting the Union in the instant case a vacation plan which is operative in the other plants of the Company.

The Board has in some instances, however, granted more liberal vacation periods. In *Phelps Dodge Copper Products Corporation* (Case No. 144, September 10, 1942), the company had previously given vacations of 1 week to employees with 1 year or more of service. The Board unanimously adopted the panel's recommendation that employees with more than 1 but less than 5 years' service receive a 1-week vacation, those with five years or more service receive a 2-week vacation, and that vacation pay should be given to employees whose services with the company terminate, but who otherwise are entitled to such vacation. In *General Motors Corporation* (Case Nos. 125, 138, September 26, 1942), the clause in the previous contract provided for 40 hours' pay for employees having at least 1 year's seniority. A majority of the Board (industry members Black, Roth, Derby, and Lapham dissenting) approved the union's request that employees having 1 year of seniority shall receive 40 hours' pay in lieu of vacation, and that employees with 5 years or more seniority shall receive 80 hours' pay.

Prevailing vacation practice in the area is a consideration in granting or denying vacation plans. Thus, in denying the union's request for a change in the existing vacation policy of the company, in the

General Cable Company case (N. W. L. B. Case No. 247, decided August 5, 1942), the Board stated:

> As pointed out by the panel the existing vacation plan is in accordance with the prevailing practice in the area, and it is a reasonably liberal one in view of the war emergency and the need for maximum production.

In a large multiplant company the prevailing practice in other divisions of the company was considered more important than a comparison with practices in the industry throughout the country. Thus, in the *Bethlehem Steel Company, Shipbuilding Division case* (N. W. L. B. Case No. 38, decided June 17, 1942), the panel on the basis of a study of vacation plans practiced by other ship yards throughout the country, recommended the adopting of the union's proposed plan. The Board, in directing the continuance of the company's current plan, stated:

> although the panel was unanimous as respects this provision, the Board concluded that it would not be in the best interests of stable operation to approve this recommendation which serves to designate a different vacation plan in the Company's shipbuilding Division than that which prevails in other divisions of the Company.

In the *White Sewing Machine Corp. case* (Case No. 65, May 1, 1942), the Board adopted the panel's report recommending a staggered vacation plan with pay, the vacation period being increased with the employees' length of service. The company had been paying a bonus for many years which it considered to be in lieu of a vacation.

With respect to the timing of the vacation periods, the panel took into account the need for maximum production of war materials, and recommended a provision which the Board adopted:

> *Time of vacation.*—As vacations must be timed so as to interfere as little as possible with operations, the Corporation shall have the sole right to schedule the vacations of employees, and the Corporation in its sole discretion may schedule all vacations at one time or some at one time and others at other times. Employees must take their vacation in accordance with the schedule fixed by the Corporation.

For other cases involving the issue of vacations, see page 52.

SENIORITY

As an issue in disputes, seniority frequently has been settled in the mediation process. For this reason the Board has not had occasion to comment at any length on the subject.

In cases before the Board the issue of seniority has occurred not only as a principle of preferential treatment in lay-offs and rehiring, but also as a principle applied to other matters, like transfers, promotions, shift-preference, etc. Several different types of seniority issues and their disposition follow:

In the *Arcade Malleable Iron Works case* (N. W. L. B. (MB) Case No. 84, decided May 1, 1942), the panel found it necessary to write most of the collective agreement, which it unanimously submitted as recommendations to the Board. The Board unanimously adopted the agreement. On the matter of seniority the company requested a clause establishing preferential treatment for citizens of the United

States and for residents of nearby towns, as well as a merit provision, the merit to be determined by the company. The union asked for the incorporation of a standard seniority clause. The panel wrote a standard departmental seniority clause, relating to lay-offs and rehiring, as follows:

> Section 1. In case of increase or decrease of working forces, the following factors shall be considered, and where factors (b) and (c) are approximately equal, length of departmental seniority shall govern
>
> (a) length of departmental service
> (b) knowledge, skill and efficiency on the job
> (c) physical fitness for the job.
>
> It is agreed that the Company will qualify each employee on the basis of the above named factors when a decrease or increase of force is necessary.
>
> Section 2. Seniority shall cease upon (a) discharge, (b) voluntary quitting, and (c) if an employee does not return to work after a lay-off within seven days after notice to return has been sent to his last address as shown by the Company employment records. Employees laid off for one year or more shall lose all seniority.

Seniority as a consideration in promotion and transfers was recommended by the panel and directed by the Board in the *American Brass Company case* (N. W. L. B. Case No. 131, decided June 17, 1942). In this case, there was evidence of favoritism in promotions and transfers at the expense of older and more experienced men and sometimes at the expense of union men. The panel recommended a clause which insured reasonable consideration of seniority. The clause recommended and adopted by the Board, read:

> When new jobs are created, or vacancies occur, the oldest employees in point of service shall be given preference in filling them so far as it is practicable and consistent with proper ability to perform the services required.

In the *American Magnesium Company case* (N. W. L. B. Case No. 33, decided August 18, 1942), the Board referred a question of departmental and plant-wide seniority back to the parties for direct negotiations.

In the *Bendix Products Division of Bendix Aviation Corporation case* (N. W. L. B. (MB) Case No. 78, decided July 6, 1942), the existing seniority clause defined a temporary lay-off as 2 days or less, and provided that it should not be affected by seniority. The clause also provided that seniority should govern shift assignments. Both the union and the company sought modifications of the clause. In denying both parties' requests, the Board stated:

> * * * The board sees no persuasive reasons for alteration of the agreement * * * in these respects and hereby directs the inclusion of those paragraphs as they appear in the * * * agreement.

"Super seniority" for union representatives to assure continuity of representation, was sought by the union in the *Armstrong Brothers Tool Company* (Case No. 32, decided May 6, 1942). The Board ordered the parties to negotiate immediately on this question, and to insert the agreed-upon clause in their agreement. This case is cited more to illustrate the type of question which can arise with respect to seniority, than to indicate any established Board policy.

One of the simplest forms of seniority provisions was recommended in the *Montgomery Ward & Company case* (Case No. 192, November 5, 1942), and approved by the Board. The provision stated:

> In filling vacancies and determining lay-offs and call-backs, seniority shall govern when ability is substantially equal. Seniority shall be by departments or by such larger or smaller groups as the parties may from time to time agree upon.

As stated earlier, the issue of seniority has proved to be one which can usually be settled by mediation, and the Board has not infrequently referred the issue back to the parties for direct negotiations. Where it has done so, and also where it has made decisions on seniority, the Board has made its determination after carefully considering the facts in each case, and without formulating any general principles.

UNION ACTIVITIES ON COMPANY PREMISES

Generally two aspects of this issue have occurred in disputes before the Board. One relates to a union's organizing activities; the other to collective bargaining processes.

UNIONS' ORGANIZING ACTIVITIES

In the *Armstrong Brothers Tool Company case* (N. W. L. B. Case No. 32, decided May 6, 1942), the union had asked for a union security provision because of the company's alleged anti-union activities. Collective bargaining relations between the parties were very new, and the union had in fact suffered no loss of membership. A provision was directed by the Board, pledging the company to prevent the occurrence of activities which would undermine the union, and providing that,

> * * * neither the union nor its members will intimidate or coerce employees into joining the union, and the union further agrees that during working hours it will not solicit membership or conduct any union activities other than those of collective bargaining and handling of grievances in the manner and to the extent provided in the collective agreement between the parties.

In the *Marshall Field Company case* (decided March 5, 1942), the Board directed a voluntarily authorized maintenance of membership and check-off provision to be included in the parties' contract. The Board also ordered the inclusion of the following provision which reads in part:

> The mill will not interfere with the right of the employees to join the union or engage in union activities and the union agrees that such activities will not be carried on in the mill or on company time or in such a manner as to interfere with the efficient operation of the mill.

A similar clause was ordered by the Board in the *Bethlehem Steel Company, Shipbuilding Division case* (N. W. L. B. Case No. 38, decided September 1, 1942):

> No employee shall engage in any union activity or business during working hours or engage therein on the property of the company in any manner which shall interfere with production.

In that case the Board also ordered a maintenance-of-membership clause with a 15-day escape provision to be included in the parties' contract.

In the *General Chemical Company case* (N. W. L. B. Case No. 274, decided October 28, 1942) in which the Board denied the union's request for a union security provision, but indicated that the question could be opened within four months, the Board also ordered,

> Meanwhile the following clause shall be included in the contract between the parties: "The union agrees that neither it nor any of its officers or members will intimidate or coerce employees to join the union. The company agrees that neither it nor any of its officers or supervisory employees will intimidate or coerce employees to refrain from joining the union and that it will not tolerate activities on its premises designed to undermine the union's position as employees' representative with respect to this contract."

It will be noted that this provision is more definitive of the company's activities on its own premises than of the union's activities.

UNION ACTIVITIES ON COMPANY PREMISES RELATING TO COLLECTIVE BARGAINING

In the *International Harvester Company case* (N. W. L. B. (MB) 4, 4–A, 89 consolidated, decided April 15, 1942), an issue arose as to whether union representatives should be paid their regular wages for time spent handling grievances. The Board adopted the panel's unanimous report recommending such payment. Its opinion read:

> This ruling is solely in recognition of the practice in this regard among many plants making products similar to those manufactured by the International Harvester Company. However, the section of the collective bargaining agreement to be entered into by the company and the unions involved providing for such payments should contain certain conditions which will protect the employers from potential abuses and at the same time assure pay for time legitimately spent in handling grievances.

The Board then quoted part of the panel's report to the effect that such payments are as much in the interest of the company in its production program as of the union; that the practice would lead to greater efficiency in the disposition of grievances, as well as to a healthier company-union relationship. The precise clause reads as follows:

PAYMENT OF UNION REPRESENTATIVES HANDLING GRIEVANCES

> 1. Union representatives who are employees of the company shall not lose pay during time spent in handling grievances within the plant.
>
> 2. Rules and regulations governing the handling of all grievances and the administration of all grievance machinery in relation to clause one above shall be negotiated between the parties within two weeks from the date of this Order or as extended upon request of both parties.
>
> In the event that the parties are unable to reach agreement on all questions at issue in said negotiations on grievance procedure the unresolved questions shall be submitted to the War Labor Board for final determination.

In another case involving the same issue of payment of union representatives for time spent handling grievances, the Board denied the union's request for such payment. The Board in this case, *J. I. Case Company* (N. W. L. B. Case No. 130, decided June 13, 1942), adopted the panel's recommendation which read:

> The Panel recommends that the contract contain no clause providing for payment by the Company of stewards and members of the bargaining

committee for time spent in handling grievances. The Union has in the past reimbursed its members for time lost in the settlement of grievances and their records indicate that this has imposed no undue hardship. Extenuating circumstances, which might result in a different conclusion, have not been shown.

It should be emphasized that the illustrative cases cited above are merely instances of Board decisions with respect to the issue of union activity on company premises. The varying conditions of each case and the Board's method of considering each case on its own merits should be apparent.

GRIEVANCE PROCEDURE AND ARBITRATION

This issue has come before the Board in many cases in the form of a request by the union for some method of settling disputes concerning working conditions, the interpretation and application of clauses of a collective bargaining agreement, alleged violations of agreements, and related matters.

Executive Order No. 9017 provides that before the Secretary of Labor certifies a labor dispute to the Board, "the parties shall first resort to direct negotiations or to the procedures provided in collective bargaining agreements." Resort to adequate grievance machinery, if provision is made therefor in a collective bargaining agreement, may frequently succeed in settling disputes, and under this provision of Executive Order No. 9017 may effectively dispose of differences which might otherwise require the intervention of the Board. Such grievance procedure may or may not include arbitration as the final step in the adjustment of grievances.

Here again, whether or not the Board will order the inclusion of grievance machinery in a contract, and if so, what its precise character will be, depends on the facts and circumstances of the individual case.

In the *Atlas Powder Company case* (N. W. L. B. Case No. 521, decided December 28, 1942), the Board's opinion includes a full discussion of the problem of grievance procedure and arbitration. The peculiar circumstances of extremely hazardous employment conditions led the Board to deny the union's request for a modification of the existing grievance procedure. The prior contract between the parties provided for arbitration of all disputes, as the last step of the grievance procedure, except in cases involving transfers and promotions. In such cases the judgment of the plant manager was final. The union's request for a modification of the plant manager's final authority was denied by the Board, which declared: "The protection of all employees is of major importance in the making of job assignments in this plant where an act of carelessness on the part of one may imperil the lives of all. For this reason, the Board feels that final responsibility of management in making promotions and transfers cannot be restricted."

Although no change in the plant manager's final authority on the matters of transfers and promotions was granted, the Board did order a technique for additional discussions of such matters when allegations of discriminatory treatment occurred. The Board's directive order which was unanimous on this subject read:

If grievances concerning allegations of unfair discrimination in connection with transfer or promotion of employees cannot be settled through the regular grievance procedure established in the agreement, a further attempt at settlement shall be made by a panel of four people.

Two of these will be selected by the management of the company and, of these two, one shall be in a capacity above that of plant manager. Two of the members of this panel will be selected by the union and one of these shall be in a capacity above that of a local union representative.

The main body of the Board's opinion concerned itself with the discussion of grievance procedure and arbitration:

This decision if not to be construed, however, as indicating any lack of confidence in the arbitration process. The National War Labor Board is on record as strongly favoring the establishment by the parties themselves of grievance machinery which provides for the final determination of day-by-day differences over the application and administration of collective agreements. Such differences, real or imaginary, can be destructive of morale and hence of productive efficiency if they accumulate as unresolved grievances. It is apparent that the National War Labor Board cannot be unconcerned about such disputes over the application and the administration of agreements as may actually impede production.

In this area of labor relations, however, the parties are strongly urged by the Board to retain full control in their own hands. There is no need for them to give up any of their prerogatives in this regard. On the contrary, it is in the national interest that the parties themselves set up and operate their own grievance machinery in order to insure that local problems are finally settled by those on the scene who can, by and large, do a better job than can be done from afar. In addition the retention of grievance procedure in the hands of the parties bears a significant relationship to the problem of continuing the institution of collective bargaining in a day when governmental restrictions are necessarily imposed upon the limits within which collective agreements may be consummated.

Sufficient experience has accumulated in this country to show that the interests of all parties are served by a grievance procedure under collective agreements which provides for a final determination of disputes by an impartial person or by an impartial tribunal. The weight of experience is that the mere availability of such means of settlement actually results in a greater degree of settlement by the parties themselves. Untenable positions are more rapidly given up if holding them would finally result in their scrutiny by an impartial agency.

There is some misconception about the function of the arbitrator or impartial umpire under collective agreements which has tended to delay a general acceptance of this principle. It should be emphasized that such arbitration covers only the application of the terms of the agreement and does not cover any proposed change in the terms of the agreement. Such arbitration is an aid to collective bargaining but not a substitute for collective bargaining.

The present case is important in indicating another characteristic of arbitration as the final step in the grievance procedure. It indicates that the scope of such arbitration may be limited to the extent which is deemed necesasry, preferably by the parties themselves, for the mutual interests of the parties. The acceptance of grievance procedure arbitration does not necessarily mean, therefore, that the parties give absolute authority to a third person. In some agreements, the duties and responsibilities of "the third man" are almost without limit. In others, definite restrictions are agreed upon by the parties themselves. In the present case, the hazardous nature of plant operation demands that promotion and transfers be excluded from the arbitration process.

This opinion seeks to call attention to the unrealized possibilities of fortifying the process of collective bargaining by an intelligent use of arbitration as the final step in the grievance procedure. Despite the urgent needs of war, there is no need for the parties to surrender their control over a vital phase of their relationship, namely, the settlement of grievances. On the contrary, they can assist in both the needs of war and the firm establishment of collective bargaining by meeting this problem locally. It is to be hoped that American industry and American labor will provide for themselves the mechanisms which will insure the speedy and final disposition of intra-plant grievances over the application of collective agreements.

Other cases in which the Board decided issues on grievance procedure or arbitration are briefly noted below:

In the *Walker Turner Company, Inc. case* (N. W. L. B. Case No. 17, decided April 10, 1942), the Board directed the inclusion in the parties' contract of grievance procedure including the final step of arbitration.

In *Hotel Employers' Association of San Francisco case* (N. W. L. B. Case No. 21, decided June 4, 1942), the Board ordered the establishment of an "Adjustment Board" for the final settlement of "all complaints, disputes, and grievances arising between the parties * * * and all questions of interpretation and application of (the) agreement between the parties which cannot otherwise be adjusted". The Board's directive order spelled out the functioning of the Adjustment Board.

In the *Montgomery Ward & Company case* (Case No. 192, November 5, 1942), the panel recommended and the Board unanimously approved a grievance procedure including the final step of arbitration. One feature of this case is the definition of scope of grievances to be treated in the established machinery. On this matter, the approved provision read:

> Grievances, within the meaning of the grievance procedure, shall consist only of disputes about working conditions, about the interpretation and application of particular clauses of this agreement, and about alleged violations of the agreement, including alleged abuses of discretion by supervisors in the treatment of employees. Changes in general business practice, the opening or closing of new units, the choice of personnel (subject, however, to the seniority provision), the choice of merchandise to be sold, or other business questions of a like nature not having to do directly and primarily with the day-to-day life of the employees and their relations with their supervisors, shall not be the subject of grievances and shall not be arbitrable. If a question arises as to whether a particular dispute is or is not a grievance within the meaning of these provisions, the questions may be taken up through the grievance procedure and determined if necessary by arbitration.

The frequent difficulty encountered in choosing either a single arbitrator or the third man of an arbitration board has often delayed final disposition of grievances. In the *Champlin Refining Company case* (Case No. 238, September 11, 1942), the Board's directive order provided for a three-man "Board of Review," and spelled out the method of its establishment. The provision stated:

> If the parties remain in disagreement at the conclusion of the foregoing steps, (referring to the steps in the grievance procedure) and if the question involves the interpretation or application of any of the terms of this agreement, either party may request the submission of the question to a Board of Review consisting of three (3) men, one to be selected by the Company, one by the Union, and a third to be mutually agreed upon between the parties. In the event that the parties are unable to agree upon a third member within ten (10) days, the Chairman of the National War Labor Board shall appoint a third member. The decision of the Board of Review shall be binding upon the parties provided that in no event shall it alter or expand the provisions of this agreement, and provided that full legal rights of the parties in the courts shall not be restricted in any way.

The desirability of providing for an impartial umpire for arbitration purposes was discussed at length by the Board in terms of the facts of the case, in the *Chrysler Corporation case* (Case No. 240, October 2,

1942). The majority opinion of the Board (labor members Kennedy and Bittner dissenting) declared:

> The conversion of the Chrysler plants to war work involves the establishment of many new job classifications with new rates. Such new classifications and rates have so far been set up unilaterally by the Corporation. The union objects that it has no right to challenge such rates until after they have been placed in effect. They are then protested, if they are considered inequitably, in the form of individual grievances. The union protests that such a procedure entails an unduly long period of time for settlement of grievances and makes it difficult for the employees to receive back pay even though it is later agreed that they have been underpaid. The union seeks the establishment of an arbitration procedure to handle such disputes. The Corporation opposes the use of arbitration, particularly on such issues, and maintains that the present method of fixing new rates is equitable. It also insists that this matter is not a proper subject for consideration in the present proceeding which is related solely to its wage agreement with the union.
>
> The Panel upheld the Union contention and recommended that "The Corporation and the Union shall arbitrate any dispute over new rates and standards which cannot be settled after a reasonable period of negotiation. If the parties are unable to agree upon the selection of such an arbitrator, he shall be designated by the National War Labor Board."
>
> The above-outlined recommendation has been requested by the Board. Since this recommendation relates to a phase of the administration of a collective bargaining agreement by a continuing impartial party, the Board considered this suggestion of the Panel in relation to the desirability of establishing an impartial umpire under the agreement. This consideration, carefully made by the Board, has resulted in a recommendation that the parties make every effort to agree upon the designation of an impartial umpire under the new agreement.
>
> The Board is of the firm conviction that the interests of sound labor relations and, therefore, of efficient plant operation can be well served by the inclusion, in collective bargaining agreements, of a grievance procedure with provision for final determination of an impartial umpire of questions respecting the interpretation and application of the agreement. Collective bargaining is a day-by-day relationship; it is not confined merely to the consummation of an agreement once a year. The agreement must be applied and interpreted in all sorts of operating situations. In this connection, honest differences of opinion between the parties are bound to occur. The resulting issues should be promptly and finally determined in the interests of efficient operations in the plant.
>
> One of the reasons the Board looks with favor upon the impartial umpire arrangement is that its inclusion in a labor agreement is invariably accompanied in normal times by a "no strike" clause which can, moreover, be made effective without resulting in an accumulation of unadjusted grievances. In a very real sense, the "no strike" clause is automatically a part of every collective bargaining agreement in these days of war. We may use the lessons of peace-time collective bargaining to realize that the impartial umpire arrangement is the sensible corollary to full effectuation of the no-strike agreement and, at the same time, an insurance for adequate consideration of grievances.
>
> Let it be clearly understood that the impartial umpire has the duty of interpreting and applying the labor agreement. Ordinarily, he has no right to modify or to change any of the terms upon which parties have agreed. As respects new rates, he has the right, in certain agreements, to set rates in balance with those already agreed to by the parties. This particular jurisdiction is frequently denied to the umpire by specific understanding of the parties.
>
> The impartial umpire is an adjunct to collective bargaining; he is not a substitute for collective bargaining. Nor does his availability to decide issues usually mean that the parties turn over to him the making of all their decisions. Rather, the opposite result has been the experience

under most agreements which have been operated with an impartial umpire. The fact that unresolved grievances may go to an umpire for final determination on a reasonable and equitable basis serves to remove extreme and unreasonable positions from the bargaining of the parties over grievances. Parties are also quick to agree upon matters rather than to press an untenable position before the umpire.

The above discussion indicates some of the reasons which underlie the Board's conviction that collective bargaining agreements should include the "no-strike" clause and also provision for an impartial umpire. Despite a deep conviction held on this matter, the Board is of the belief that the contract provisions in mind are most effective when they are voluntarily agreed to by the parties.

The Board is thus in full accord and sympathy with the objective sought by the panel in recommending final determination of disputes over new rates by a continuing impartial umpire. On the other hand, it is fully cognizant of the fact that in the development of the impartial umpire arrangement in the mass production industries, the setting of new rates has rarely been within the jurisdiction of the umpire. In the judgment of the Board, the interests of a voluntary acceptance by the parties of a genuine impartial umpire arrangement would not be well served by directing the use of an umpire and by starting the development of such machinery through the establishing of new rates.

Under the circumstances discussed, the Board has not accepted the panel recommendation in this matter. The Board does recommend to both parties that, in their impending negotiations, they give earnest consideration to the desirability of including in their new contract a provision for an Impartial Umpire with such jurisdiction as may be agreed upon.

As respects the issue over establishment of new rates, the Board notes that they will be set up as heretofore. After they have been fixed by the Corporation, the Union may present grievances on rates it considers to be improper. If the matters raised are not settled by agreement between the parties, they may result in labor disputes subject to determination by the National War Labor Board. In line with the points of view expressed in this opinion, the Board would not act to change such rates if they constituted inequalities which result in discriminatory and unjust treatment by any employee.

The labor members' dissenting opinion declares:

The Panel recommended that the Union should have the privilege of presenting as grievances specific instances in which the Chrysler rate is lower than the industry's average rate for the same or closely similar job classifications; and if such grievances could not be settled through the grievance procedure, they should be referred to an arbitrator agreed upon by the parties or appointed by the War Labor Board. The Board rejected this proposal because, according to the majority opinion, it implied that *any* Chrysler rate below the average for the industry should be rectified.

There is little justification for the argument of the majority. In the first place, if there is such an implication, a little verbal ingenuity could easily eliminate it. Secondly, the Panel indicated that the only cases it had in mind were those in which the rates were *unreasonably* far below the industry average. It was estimated that probably no more than about twenty out of about 500 classifications might be involved. The Panel further indicated that its did not believe that differences in rates necessarily constituted inequalities. Lastly, the majority recognized that there may be rates which are unreasonably low, and therefore declares that such cases should be promptly negotiated and if no settlement is reached, the War Labor Board will resolve the dispute. The essential difference between the Board's decision and the Panel's recommendation, therefore, is that the Board will arbitrate the dispute rather than entrust it to an individual arbitrator, the method of whose selection is determined in advance.

The Board's proposal, however, constitutes merely a postponement of a definitive solution of the problem. The primary reason for the Panel's recommendation was that it did not have the necessary expert

knowledge to dispose of the specific inequalities cited by the Union, yet deemed that some procedure was necessary to allay the manifest unrest arising from present inequalities. It is not likely that, if this dispute comes back to the Board, some future Panel will have any greater competence. The Board, in all probability, will then have to appoint an expert to determine the disputes. This difference in procedure is small reason indeed to reject a recommendation designed to allay unrest by assuring employees of an expeditious handling of their grievances. Speed in the handling of grievances is almost as important as just settlement. The Board's proposal offers no such assurance of speed.

The majority opinion makes a forceful and effective plea for including in collective agreements a provision for an impartial umpire. It is only a plea, however, because the majority declines to order it in this case over the objection of the Company. The reason given is that an arbitration provision is most effective when voluntarily accepted by the parties. The same thing is true of many other provisions usually included in collective agreements. If this argument is extended to its logical conclusion, namely, that the War Labor Board should wait upon the pleasure of the disputants, it would become utterly impotent. Most of the orders of this Board are made against the more or less vigorous, and sometimes, violent opposition of the parties involved. Some of such orders—such as union security directives—affect the prerogatives of the parties and their day-to-day relationships quite as much as, if not more than, arbitration of occasional wage disputes. This Board has already made too many inroads into the processes of free collective bargaining to become suddenly coy and squeamish about requiring parties to a collective agreement to submit unsettled disputes about wage inequalities to an arbitrator.

The position of the majority is particularly untenable in view of the fact that the Board has ordered the parties to arbitrate unsettled disputes over the application of the principle of equal pay for equal work by female employees. We can see no distinction in principle between such disputes and disputes over other types of wage inequalities.

For a discussion of the establishment of grievance machinery in situations where no collective bargaining agency had been determined, see the following section.

RELATION OF NATIONAL WAR LABOR BOARD TO NATIONAL LABOR RELATIONS BOARD

Under Executive Orders No. 9017 and No. 9250 the provisions and operation of the National Labor Relations Act are not to be superseded or affected. Thus, cases involving questions of determination of collective bargaining representatives or "unfair labor practices" fall primarily within the jurisdiction of the National Labor Relations Board. However, upon occasion the War Labor Board has had to decide disputes involving such issues because of their effect on war production. In deciding such cases the War Labor Board has been careful to formulate its decisions in a way which would not preclude final and appropriate disposition of the cases by the National Labor Relations Board.

CASES IN WHICH NO COLLECTIVE BARGAINING REPRESENTATIVE HAD BEEN DESIGNATED

The War Labor Board has developed no "formula" in its treatment of cases in which there has been no recognition or certification of an exclusive bargaining agent. Instead it has made decisions to suit the particular circumstances of each case.

In the *Central Foundry Company case* (N. W. L. B. Case No. 195, decided June 10, 1942) the United Steelworkers of America, C. I. O.,

challenged the validity of a contract between the company and the International Molders and Foundry Workers Union of North America, A. F. L., on the grounds that it had not been notified of a cross check conducted by the National Labor Relations Board which had resulted in certification of the A. F. L. union. The National War Labor Board adopted as its own the recommendation of the panel which refused to invalidate the contract and instead referred the case to the National Labor Relations Board. In its recommendations, the panel stated:

> A majority of the panel does not feel that this Board can order the suspension of any provisions of the existing contract. Under the terms of the National Labor Relations Act
>
> A procedure is established for determining questions such as the one raised by the C. I. O. in this dispute. The present contract was entered into on the basis of certification of the A. F. L. as the exclusive bargaining agency by an authorized representative of the National Labor Relations Board. For this panel to recommend a suspension of any provision of the contract would be to usurp the function of another government agency.
>
> This Board has recognized in its decisions and in practice that certification by authorized representatives of the National Labor Relations Board are final and binding upon this Board until and unless modified or reversed by the National Labor Relations Board or appropriate judicial authority.

As an intermediate arrangement pending the disposition of the issue by the National Labor Relations Board the National War Labor Board ordered that dues collected by the A. F. L. union from persons claiming to be members of the C. I. O. union be held in escrow, to be refunded if the contract was found invalid by the National Labor Relations Board.

In the *Virginia Electric and Power Company case* (N. W. L. B. Case No. 41, decided November 3, 1942), the National Labor Relations Board had ordered the company to cease and desist from certain unfair labor practices, to reinstate two employees and to withdraw all recognition from and disestablish an independent union. An A. F. L. union was seeking certification, but a National Labor Relations Board hearing on the issue of representation was postponed until a National War Labor Board Mediation Officer had submitted his report to the War Labor Board. Upon receipt of his report that the company was continuing to bargain with the independent union, the War Labor Board directed that the Company recognize the A. F. L. union—

> as the representative of its members for the presentation and adjustment of grievances until such time as the National Labor Relations Board certified a labor organization as the exclusive representative of the Company's employees.

In several cases of varying circumstances, the War Labor Board, in ordering a limited form of recognition for the purpose of settling grievances, also specified a skeletal grievance procedure. One example of such procedure appears in the *Thompson Products, Inc. case* (N. W. L. B. Case No. 516, decided November 26, 1942), in which the Board ordered:

> (a) The grievance shall be taken up by the employee and/or his union representative with his Supervisor or Foreman of his department. If, within three (3) working days, no mutually satisfactory settlement is reached, then,
>
> (b) The grievance shall be reduced to writing and shall be taken up by the employee and his union grievance committee, not more than six (6) in number, with a representative of the Personnel Department or

the Shift Superintendent. If, within four (4) working days, no mutually satisfactory settlement is reached, then,

(c) The grievance shall be taken up by the employee and any representative of his own choosing, not more than six (6) in number, with the Executive Vice President of the Company or someone designated by him. If, within five (5) working days thereafter, no mutually satisfactory settlement is reached, then,

(d) The grievance shall be submitted for determination by the Permanent Arbitrator, as hereinafter provided.

A Permanent Arbitrator shall be designated by the National War Labor Board. If in one or more instances, the Permanent Arbitrator is unable to serve, he shall designate a Temporary Arbitrator who shall be vested with the same power and authority as the Permanent Arbitrator. In each case submitted to him, the Arbitrator shall first determine whether or not the dispute is properly a grievance. If the Arbitrator determines that the dispute is not properly a grievance, he shall dismiss the case. If the Arbitrator determines that the dispute is properly a grievance, he shall decide how the grievance shall be settled. All decisions of the Arbitrator shall be final and binding on the parties. The expenses and charges of the Arbitrator in each case considered by him shall be borne equally by the Company and the employee's union."

Although, as noted earlier, the War Labor Board directed the establishment of grievance procedure in other cases (for other examples see *Sperry Gyroscope*, N. W. L. B. case No. 70, decided May 6, 1942, *Sun Shipbuilding and Drydock Company*, N. W. L. B. case No. 427, decided October 1, 1942; *Baltimore Transit Company*, N. W. L. B. case No. 522, decided November 18, 1942; and *Western Cartridge Company*, N. W. L. B. case No. 491, decided November 25, 1942), the grievance procedure differed in each case and was adapted to the particular working arrangements existing in the company's plant.

In establishing a limited form of recognition for the purpose of settling grievances the War Labor Board has on occasion made it clear that such procedure does not obligate the company to bargain collectively nor to conclude an agreement. Thus in the *Sperry Gyroscope case*, it was made clear that the company was not obligated, "to enter into a full collective bargaining contract," and, "the term 'grievance' shall not be construed as including any matter properly the subject of collective bargaining." Similarly in the *Baltimore Transit Company case*, the War Labor Board's Directive Order stated, "This recognition shall apply only to grievances and does not obligate the company to enter into a full collective contract."

Nor was such a limited form of recognition to be a permanent arrangement. In every case cited above, the limited recognition was to cease when an exclusive bargaining agency had been established.

In only one case, and in none since, has the War Labor Board ordered more than such a limited form of recognition when the question of representation was still in dispute. In the *U. S. Cartridge Company case*, (N. W. L. B. Case No. 75, decided July 4, 1942), the Board ordered the company and the union to proceed to "negotiate and sign a contract for wages, hours and working conditions," covering the employees of a particular unit, such contract to continue in effect, "until it expires according to its terms or until such time as the National Labor Relations Board may determine a different unit or agency to be appropriate for the purposes of collective bargaining."

In the *Frank Foundries Corporation case* (N. W. L. B. Case No. 95, decided September 16, 1942), several employees had been discharged by the company. How these discharges were to be handled was one of the subjects of argument at the hearing before the National War Labor Mediator. In his report to the Board, the Mediator stated:

> If these cases are submitted to the National Labor Relations Board that body can only decide whether or not they occurred for the purpose of encouraging or discouraging union membership. Such proceedings would not necessarily settle the dispute between the parties, for the discharges might not be 'unfair labor practices' under the Wagner Act and yet might be without a just basis.

The War Labor Board, in adopting the report and recommendations of its Mediator, ordered with respect to the discharges:

> * * * the Union shall have the choice of promptly either filing charges or unfair labor practices with the National Labor Relations Board or submitting the discharges to the grievance arbitration procedure established in the existing agreement between the parties.

In the *Western Cartridge Company case*, cited earlier, the War Labor Board directed the company to comply with an order of the National Labor Relations Board and offer immediate reinstatement to a discharged employee, but, "without back pay and without prejudice to the company's legal right of appeal." In the same case a matter involving the discharge of 19 employees was pending determination by the National Labor Relations Board. The War Labor Board directed their reinstatement without back pay, "pending the National Labor Relations Board's determination of the questions concerning the discharges and any appeal which may be taken from the decision of the National Labor Relations Board."

In several cases, the War Labor Board was confronted with disputes in which the National Labor Relations Board had ordered the disestablishment of an independent union, from which order there had been an appeal to the Circuit Court. In the same *Western Cartridge Company*, the War Labor Board directed:

> The company shall comply with the order of the National Labor Relations Board disestablishing the independent union and shall not recognize or deal with said independent union unless and until such time as a superior court modifies of reverses the order of the National Labor Relations Board.

In another case where such an appeal was pending, the War Labor Board did not find it necessary to formally direct compliance with the National Labor Relations Board order. This was the *Sun Shipbuilding and Drydock Company case*, discussed earlier, in which the Board, however, unanimously adopted its panel's findings:

> It is clear to the Panel * * * that * * * the order of the National Labor Relations Board disestablishing the Sun Shipbuilding Employees Association and invalidating its contract must be assumed to be in full force and effect.

In several cases, the Board has ordered employers to bargain with unions which had been certified by the National Labor Relations Board as exclusive collective bargaining agents. In *Ohio Public Service Company* (Case No. 169, July 31, 1942), the company refused to recognize and bargain with the union after its certification by the

National Labor Relations Board. The Board found that because of this refusal, a stoppage of work was threatened which would interfere with the successful prosecution of the war. The Board, therefore, unanimously directed the company immediately to recognize and bargain with the union in accordance with its certification.

In *Lebanon Steel Company* (Case No. 333, August 14, 1942), the company had been directed by the National Labor Relations Board to bargain with the union and to embody any understanding in a written agreement, if requested to do so by the union. The U. S. Circuit Court of Appeals had affirmed the order and the company was appealing to the Supreme Court. The Board unanimously directed the company immediately upon request from the union to bargain collectively with the union according to the National Labor Relations Board order and that, if within 30 days subsequent to a request for bargaining, no agreement had been reached, the case was to be referred back to the War Labor Board for appropriate action. The opinion of Chairman William H. Davis, stated in part:

> The decision of the National Labor Relations Board affirmed by Court of Appeals must and will be given full faith and credit by this Board. The decisions of the National Labor Relations Board are recognized by this Board at whatever stage they may have reached. For the purposes of the National War Labor Board they are assumed to be valid unless and until they are reversed by a superior authority. This Board has, therefore, no occasion to hear any discussion of the merits or demerits of the findings or conclusions of the National Labor Relations Board in this case * * *
>
> The Company has no inherent right to a review of the decision of the Circuit Court of Appeals by the United States Supreme Court. That is a matter that rests wholly in the discretion of the Supreme Court and that Court has ample process to protect any rights of the Company in the interim, if it is moved to extend any such protection.
>
> Whatever may be the situation in times of peace this Board does not hesitate to exercise its authority to require the Company to proceed with collective bargaining negotiations with the Union in order to avoid interruption of work which might contribute to the effective prosecution of the war.

In *Pacific Gas and Electric Company* (Case No. 310, October 16, 1942), the company refused to bargain with the union certified by the National Labor Relations Board on the ground that the bargaining unit was inappropriate. The company insisted that it was entitled to a court review. The Board unanimously ordered the company to recognize and bargain with the union as the exclusive bargaining representative for the unit declared appropriate by the National Labor Relations Board; in the event the parties failed to negotiate a contract within 45 days of the day of the Directive Order the parties were to refer the case back to the National War Labor Board for further proceedings. The Directive order stated that it was to be understood that the National War Labor Board was not in any way reviewing the findings of the National Labor Relations Board.

In dealing with cases involving representation and "unfair labor practices" issues, the War Labor Board has followed the practice of leaving ample room for final and appropriate disposition of such issues by the National Labor Relations Board, where such issues really belong. However, when it was necessary to dispose of such issues in order to settle a labor dispute interrupting work "which might contribute to the effective prosecution of the war" the War Labor Board has followed

its usual practice of examining carefully the facts and deciding each case on its own merits.

Except for the subject of union security, where a list of cases is supplied on pages 24–26, the following list of cases may be found useful for further consultation:

	Case No.	*Date decided*
Arbitration:		
Armour Leather Company	98	June 10, 1942
Brown and Sharpe Manufacturing Company	296	Sept. 25, 1942
Caterpillar Tractor Company	63	Sept. 9, 1942
Toledo Peoria and Western Railroad Company	48	Nov. 7, 1942
Walker Turner and Company	17	Apr. 10, 1942
White Construction Company	200	
S. A. Woods Machine Company	160	Aug. 1, 1942
Worcester Pressed Steel	141	Oct. 8, 1942
Check-off:		
American Brass	131	June 25, 1942
American Steel Foundries	306	Oct. 9, 1942
Bower Roller Bearing	12	Mar. 12, 1942
Buckeye Cotton Oil Company	59	July 31, 1942
Dallas Manufacturing Company	153	July 29, 1942
Federal Shipbuilding and Drydock	46	Apr. 25, 1942
Marshall Field and Company	10	Mar. 6, 1942
Tennessee Coal, Iron, and Railroad Company	465	Oct. 19, 1942
Walker Turner Company, Incorporated	17	Apr. 10, 1942
Williams Company	225	Sept. 18, 1942
Grievance procedure:		
J. I. Case Company	130	July 22, 1942
Frank Foundries	95	Sept. 17, 1942
General Chemical	267	Sept. 19, 1942
General Motors	125–128	Sept. 26, 1942
Hotel Employers of San Francisco	21	Nov. 25, 1942
International Harvester	89	Apr. 15, 1942
Montgomery Ward and Company	192	Dec. 8, 1942
Norma Hoffman Company	120	Jan. 13, 1943
Sperry Gyroscope Company	70	May 7, 1942
Walker Turner Company	17	Apr. 10, 1942
National Labor Relations Board and National War Labor Board:		
Central Foundry Company	195	June 11, 1942
Frank Foundries Company	95	Sept. 17, 1942
Lebanon Steel Company	333	Aug. 14, 1942
Los Angeles Railway Corporation	1	Feb. 19, 1942
Ohio Public Service	169	July 31, 1942
Pacific Gas and Electric Company	310	Oct. 19, 1942
Shell Oil	92	Sept. 23, 1942
Virginia Electric and Power Company	41	Nov. 4, 1942
Seniority:		
American Brass	131	June 25, 1942
Bemis Brothers Bag	262	Aug. 18, 1942
Caterpillar Tractor Company	63	Sept. 9, 1942
Dallas Manufacturing Company	153	July 29, 1942
Golden Belt Manufacturing Company	151	July 29, 1942
Montgomery Ward Company	192	Dec. 8, 1942
Vacations:		
Aluminum Co. of America, American Magnesium Company	64–33	Aug. 18, 1942
Babcock and Wilcox Company	68	Apr. 6, 1942
Bethlehem Steel Company, Shipbuilding Division	38	Sept. 1, 1942
Bower Roller Bearing	12	Mar. 12, 1942
Colorado Fuel and Iron	51	Nov. 3, 1942
Employers Negotiating Committee	90	July 3, 1942
Ford Motor Company	234	Nov. 23, 1942
General Motors Corporation	125–138	Sept. 26, 1942
Pacific Northwest Foundry Industry	287	Aug. 31, 1942
Parke Davis Company	205	Aug. 19, 1942
Phelps Dodge	114	Feb. 3, 1942
Underwood Elliott Fisher	178	Oct. 8, 1942

WAGES AND SALARIES

GENERAL POLICY

The base wage policy directive under which the Board operates is contained in Executive Order No. 9250, issued October 3, 1942. This order provides that no increase in wage rates shall be approved by the Board beyond the prevailing level of 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."

No decreases shall be approved "below the highest wages paid between January 1, 1942, and September 15, 1942, unless to correct gross inequities *and* to aid in the effective prosecution of the war."

On November 6, 1942, the Board issued a statement describing its policy in applying these standards.[8] It stated that the Executive order had created a presumption that the wage level existing on September 15, 1942, was proper. On each applicant seeking approval of an increase above that level rested the burden of proving that his was an exceptional case. With respect to such cases the Board said: "The National War Labor Board will examine carefully each claim for such exceptional treatment before approving any increase."

The importance of following the criteria thus promulgated cannot be overemphasized. The preamble to the Executive order states its purpose to be "to control so far as possible the inflationary tendencies and the vast dislocations attendant thereon which threaten our military effort and our domestic economic structure, and for the more effective prosecution of the war * * *"

Unless September 15, 1942, is made the terminal point in the race between wages and prices, it will be impossible to execute the Presidential policy 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."

DEFINITIONS OF MALADJUSTMENTS, INEQUALITIES AND GROSS INEQUITIES

Executive Order No. 9250 recognizes four circumstances in which increases above the wage rates prevailing on September 15, 1942, may be approved. They are: (a) Maladjustments; (b) Inequalities and gross inequities; (c) Substandards of living; (d) Effective prosecution of the war.

MALADJUSTMENTS

A "maladjustment" has been defined as the failure of a group of employees to receive increases of 15 percent in their average straight-time rates over the wage level prevailing on January 1, 1941. In the *Little Steel cases* (June 16, 1942, Nos. 30, 31, 34, 35), the question was discussed at length:

> For the period from January 1, 1941, to May 1942, which followed a long period of relative stability, the cost of living increased by about 15 percent. If any group of workers averaged less than a 15 percent increase

[8] See appendix for full text.

in hourly wage rates during, or immediately preceding or following this period, their established peace-time standards have been broken. If any group of workers averaged a 15 percent increase or more, their established peacetime standards have been preserved.

By May 1942 a cycle of adjusting our domestic life to a wartime economy had, in a sense, been completed. Cost of living had increased by 15 per cent. In a general way, a round of wage increases had been received by workers which actually acted as an offset to the increased cost of living. The big question before the Nation was 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.

The National Economic Policy was devised in a large measure to call a halt to the inequity-producing race between prices and wages. A price-stabilization act was passed by Congress to halt general upward rises in prices. It was determined by the President in his April 27 message that such action would make it possible to call off the pursuit by wages.

The race between cost of living and wages which was terminated on April 27, 1942, clearly resulted in the loss of established standards for those groups of workers whose average wage-rate adjustments from January 1, 1941, to May 1, 1942, totaled less than the 15 per cent cost of living increase which occurred in this period.

The Board summarized the Wage Stabilization Program in the "*Big Four*" *Meat Packing cases* (Cases Nos. 181, 186, 187, 189, and 245, February 8, 1943). In an opinion written by Dr. George W. Taylor and concurred in by the public and employer members, the Board stated:

Like all wage cases which now come before the National War Labor Board, these must be considered in relation to the Economic Stabilization Act. This Act of Congress, approved on October 2, 1942, authorized and directed the President to issue a general order "stabilizing prices, wages and salaries affecting the cost of living" and specified that "such stabilization shall so far as practicable be on the basis of the levels which existed on September 15, 1942." Adjustments of the prices, wages and salaries prevailing on September 15 are specifically contemplated in the Act of Congress only to the extent "necessary to aid in the effective prosecution of the war or to correct gross inequities."

On October 3, the President issued Executive Order No. 9250 to effectuate the Economic Stabilization Act. The National War Labor Board was assigned certain responsibilities by the President for stabilizing wages as far as practicable at the September 15, 1942, levels. This duty was outlined principally by Title 11, Section 2 of Executive Order No. 9250 which reads in part,

> The National War Labor Board shall 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.

The Economic Stabilization Act of Congress and Executive Order No. 9250 set forth the national policy under which wage levels and price levels as they existed on September 15, 1942, are to be stabilized. The general relationship between wages and prices as it existed on September 15 has been adopted by the Congress and is not subject to modification by the National War Labor Board.

The significance of the stabilization date of September 15, 1942, was emphasized by the National War Labor Board in its statement of policy issued on November 6, 1942. It was stated, in part, that "the Board will act on the presumption that wage rates prevailing on September 15, 1942, are proper. The Board will grant wage increases over the level prevailing on September 15, 1942, only in exceptional cases.

The primary and controlling purpose of this stabilization is to protect the incomes of all, and particularly wage earners, against the de-

structive effects of uncontrolled inflation. It has become increasingly evident that the stabilization of our domestic economy as conceived by Congress and by the President can only be achieved by a determination to maintain present levels. This applies to both wages and prices. Increases in the cost-of-living since September 15, 1942, have understandably given concern and have raised doubts in many quarters about the possibility of effecting wage stabilization at present levels. On the other hand, recent wage increases have given rise to doubts about the possibility of maintaining the existing price level. The National War Labor Board feels that these increases point up the dangers of inflation so clearly as to necessitate the immediate exercise of coordinated efforts to prevent the start of another tragic race between prices and wages. The possible consequences of such a course are so detrimental to our domestic economy, and even to the prosecution of the war itself, as to call for the exercise of every effort to prevent such an occurrence. As a war agency proceeding under the Act of Congress and the Executive Order of the President, the National War Labor Board is duty-bound to stabilize wages at September 15, 1942, levels. The National War Labor Board faces its responsibilities with the assurance of the Director of Economic Stabilization that such a stabilization of wages will be accompanied by a stabilization of prices.

EQUITY OF STABILIZING WAGES AT PRESENT LEVELS

In the Economic Stabilization Act the basis for stabilization of our domestic economy is set forth. A simultaneous stopping of any general upward rise of wages, salaries and prices was to be effected. Neither wages nor prices were to be frozen at September 15, 1942, levels. Certain adjustments above those levels were contemplated. The nub of the program, however, is that such adjustments would be relatively small in total effect and would be controlled so that, in general, September 15 levels would be preserved.

Numerous expressions have recently been heard of the point of view that increases in the cost of living have already made it impossible to stabilize wages at the September 15 level. It is suggested by some that the National War Labor Board's decision in the "Little Steel" cases has inequitably held wages to a point 15 percent above January 1, 1941, levels, while the cost-of-living has advanced approximately 20 percent above that level. This is a complete misinterpretation of the purpose and effect of the "Little Steel" determination. It ignores the fact that most wage earners have had wage increases since January 1, 1941, in excess of 15 percent and, indeed, in excess of 20 percent; it disregards the determination of Congress that wages and prices are to be stabilized as of September 15, 1942, and it overlooks the greater burden in increased cost-of-living which is carried by the relatively low wage groups which spend a large percentage of their total income on food.

From early in 1941 to the present, wage earners by and large have secured added incomes by increases in hourly wage rates and by increases in hours worked and by overtime premium payments. According to Bureau of Labor Statistics data, by November, 1942, average weekly earnings (take-home) of all factory workers had increased more than 50 percent over January, 1941. Average hourly earnings including overtime payments for all factory workers were approximately 30 percent greater in November, 1942, than in January, 1941; (for durable goods 32.8 percent and for non-durable goods 23.1 percent. It is estimated that average *straight time* hourly earnings, excluding overtime payments, of all factory workers increased by 25.3 percent; (for durable goods 26.6 percent and 20.5 percent for non-durable goods).

By November, 1942, the Bureau of Labor Statistics cost of living index was 18.8 percent above January, 1941. It is realized that this cost of living increase bears most heavily on the lowest wage groups because of the more rapid increase in the price of goods. But for wage-earners in general, taking the increased cost of living into account, the average real weekly earnings (take-home) for employees in all manufacturing industries had increased by 27.6 percent. The average increase in real hourly earnings including overtime amount to 9.9 percent, and average

gain in real earnings even on a straight time basis, excluding overtime, was 5.5 percent.

There have been some further increases in both wages and prices since November, but such increases have not by any means been so pronounced or uncontrolled as to suggest that the national stabilization program cannot be achieved.

The above-outlined data should not be taken to indicate the absence of all wage problems. On the contrary, there are undoubtedly exceptional cases of inequality and gross inequity which should be rectified. The data do show, however, that wages in general can justly be stabilized at September 15, 1942, levels, although it should be frankly recognized that such stabilization demands a correlative stabilization of prices.

It is unthinkable that this fight on the domestic front against inflation should be lost. Certainly the fight will not be lightly abandoned. The National War Labor Board holds the conviction that wages and prices can be stabilized on the basis of September 15, 1942, levels. It has no alternative but to conform its actions to the Congressional and Presidential mandates to stabilize wages at those levels. That is its duty under the Act of Congress and the Executive Order of the President.

In terms of its analysis of the Wage Stabilization Program in the "Big Four" meat packing cases, the Board refused to modify its maladjustment formula in denying the employees of these companies a general wage increase. Dr. George W. Taylor's opinion, from which the labor members of the Board dissented, stated wth respect to the maladjustment formula:

The primary duty of the Board is to stabilize the general wage levels that existed on September 15, 1942. The Board found it not inconsistent with this duty to provide that if any appropriate unit of employees has not received at least a 15 percent general increase in straight time hourly rates since January 1, 1941, their wage rates could be made up to that figure, under certain circumstances, as a step in the stabilization program. The Board realized full well that a rigid application of such a principle would bring different results for the very low paid employee groups as compared to the high wage groups. In actual practice this consideration has been taken into account in applying the Little Steel formula. The very low paid groups have frequently been given general wage increases somewhat beyond the 15 percent limit. On the other hand, the Board has taken the position, as in the Lever Brothers case, that there are cases where relatively high paid workers would not receive the full 15 percent adjustment if the effect would be to unstabilize wages.

The Little Steel formula was not designed to equalize in cents per hour or in percentages, the general wage increases in all industries that have been made available to some industries. General wage increase have not been uniform in times of peace and could not be made so in time of war, particularly at a time when the national policy is to stabilize wages at September 15, 1942, levels. The Board has felt, however, that certain industries or groups of employees, where general wage increases of less than 15 percent had been provided, could not equitably be stabilized without correcting this maladjustment. The Little Steel formula was devised, therefore, to provide sufficient flexibility, as contrasted to wage freezing, to permit the elimination of situations in which general wage increases had been relatively too low.

The Board concluded that the Little Steel formula should still be used under Executive Order No. 9250 as a guide to determining those cases where general wage increases should be given despite the national policy of stabilizing wages at September levels. Actually, most of the cases coming to the Board since October 3, 1942, have not involved maladjustments as defined by the Board. To be sure, many more general wage increases would be granted if a relaxed interpretation were to be given to "maladjustments." It is the judgment of the Board, however, that any relaxation of its present maladjustment formula would tend to

negate the objective of the Economic Stabilization Act which is to stabilize wages, as far as practicable, at September 15 levels.

In their dissenting opinion, commenting both upon the wage stabilization program and the maladjustment formula, the labor members stated:

The Board has reaffirmed its determination to abide by its Little Steel formula. It does so with the assurance of the Director of Economic Stabilization that such a stabilization of wages will be accompanied by a stabilization of prices. Once before this Board acted on a similar assumption. When its present formula was first enunciated in July, 1942, Chairman Davis declared that "The Board acts on the assumption that prices and living costs will be stabilized under the President's seven-point program". Allowances were therefore to be made for increases in the cost of living only up to the date, approximately, when the President stated his program. But living costs have not been stabilized. Even if we limit ourselves only to the official index, the average monthly rate of increase in the cost of living since May, 1942, has been almost as great as it was in the period between January 1941 and May 1942. In the first sixteen months the index rose 15 percent; in the seven months following May 1942 the index rose over 5 percent. The anonymity that inheres in statistical averages conceals the fact that food prices have risen twice as high as the overall cost of living. The price of the meat which the packing-house workers processes has increased twice as fast since January 1941 as the wage of that worker.

This is not the stabilization of living costs which the President envisaged in April 1942; this is not the stabilization of living costs which the Board assumed would occur when it adopted the Little Steel formula. The only approach that would not be fair and equitable, that would preclude imposing on wage earners a disproportionate sacrifice relative to other groups in our economy, is one permitting wage adjustments which make allowances for the increase in the cost of living since May 1942. If effective systems of price control and rationing are now adopted, if adequate and equitable taxation is imposed, if, in short, the promised stabilization is realized, no further changes in the Board's wage formula would hereafter be required.

The Board is fortified in its resolution to "hold that line" by its interpretation of the Stabilization Act of October 2, 1942. The majority opinion reiterates time and again that the wage levels of September 15, 1942, must be maintained. It is stated, for example, that "The general relationship between wages and prices as it existed on September 15 has been adopted by the Congress and is not subject to modification by the National War Labor Board." But that relationship has been changed, and the Board cannot escape that obvious fact by resorting to excessively literal, and unwarranted, interpretations. The legislative history of that Act demonstrates beyond any doubt that Congress expected the Act to be interpreted in the light of the Board's previous practice. The Act went even further, by permitting wage adjustments "necessary to aid in the effective prosecution of the war or to correct gross inequalities." The Executive Order No. 9250, issued on October 3, 1942, spelled out the Board's authority in more detail, permitting it to approve increases "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 grant of authority is sufficiently flexible to permit the Board to exercise an informal discretion. On November 6, 1942, the Board issued a Statement of Policy defining the significant terms in the Stabilization Act and Executive Order No. 9250. That statement was drafted in the light of economic conditions and the Board's experience up to that date. But there is nothing to prevent a redefinition of those terms on the basis of additional experience gained since that date. For this Board to insist now, therefore, that wages must be maintained at the levels of September 15, 1942 is a gratuitous and unwarranted surrender of the prerogatives that Congress and the President granted to it, a surrender which will inevitably result, as in this case, in discriminatory and inequitable denials

of wage increases. The Stabilization Act and the President's Executive Order were not designed to freeze the Board's wage policy any more than they were intended to freeze wages.

The majority opinion urges the "equity" of preserving, in general, the September 15th wage levels. It points out that real *weekly* earnings in manufacturing industries increased 27.6 percent from January 1941 to November 1942 and that the average take-home had increased 50 percent during the same period. Reference is also made to increases in real straight time earnings. In an opinion that hews so closely to past practice and rigid interpretations, an argument based on weekly wages is anomalous. The Board has heretofore rejected it, as for instance, in the Little Steel decision. The declaration was there made that the "National War Labor Board has acted in wage cases almost exclusively on the basis of comparative hourly rates whenever wage comparisons were pertinent." Increases in weekly earnings have been due far more to increases in production and in hours worked, rather than to increases in wage rates. Increases of the former type are presumably not inflationary. Director Byrnes declared on February 9, 1943, that "Paying more for extra work does not (make for inflation)." Executive Order No. 9250 declares specifically that the authority of the National War Labor Board covers increases or decreases in wage rates; no reference is made to weekly wages as a criterion. If the Board now intends to adopt such a measuring rod, it must drastically modify its wage policy.

At any event, the use of statistics of weekly earnings can give little comfort in this case. According to the Bureau of Labor Statistics, in December 1940 the average weekly earnings of packing-house workers were $28.77; in November 1942 they were $34.52. This is an increase of 20 percent; the increase in the cost of living in that period is approximately 19 percent. There has actually been little change, therefore, in the real weekly earnings of these workers. In other words, these workers are at a disadvantage of about 27 percent in relation to workers in all manufacturing industries.

The majority opinion makes some comment on the Little Steel formula which requires examination. It is stated that the Board has realized that a rigid application of the formula would bring different results for the very low paid employee groups as compared to the high wage groups, and that in actual practice the former groups have frequently been given general wage increases somewhat beyond the 15 percent limit. But this explanation only partly meets a serious objection. There is no reason in the nature of things why the Board should not adjust its formula so that the very low income groups—the board has still to define "very low" and "substandard"—will receive more than 15 percent. It is the Board, not the proponents of a modification of the Little Steel formula, which "overlooks the greater burden in increased cost-of-living which is carried by the relatively low wage groups which spend a large percentage of their total income on food." When the formula was first announced the Board declared that it would seek to preserve peacetime standards as of January, 1941. It is a cruel jest to say to low income groups among wage earners that they have standards of living. Their lot is and has been one of privation. The effect of the Board's determination was to preserve that privation. Certainly as to those groups at least the Board should explicitly modify its rules so as to give relatively more consideration to their needs and permit them, perchance, even to attain a standard of living. The necessities of the war program demand that those workers have the income they require to maintain their health and working efficiency.

The Board, in considering maladjustments, never speaks of particular occupational classifications or individual workers, but always of appropriate groups composed of all the employees in a bargaining unit, a plant, a company, or an industry, depending on each case's circumstances.

> Under the terms of the formula, any group of workers who seek a general wage increase before the Board * * * will not receive any wage

increase at all if, between January 1, 1941 and *May 1942*,[9] they were the recipients of wage increases amounting to 15 percent above their January 1 wage levels (*General Cable Co.*, Case No. 247).

In computing the increase in straight-time rates of a group of employees, the Board does not include certain types of adjustments, such as pay in lieu of vacations, merit increases or promotions or the increase in average earnings that result from the hiring of a greater proportion of higher paid employees.

> Changes in the average hourly rate for a group of employees may occur because of such factors as promotions, merit increases, the hiring of relatively greater numbers of employees in the higher paid brackets and the progress of learners to the status of experienced operators. Such changes cannot properly be considered as wage increases. On the other hand it cannot properly be concluded that general wage increases applicable to all employees are the only increases for which account is to be taken in computing the cost of living adjustment. Adjustments in the wage rate schedule, even though they affect a small proportion of the employees, are bona fide wage increases, particularly when they effect a change in wage schedules agreed upon by the parties to a collective bargaining agreement (*Chrysler Corporation*, Case No. 240).

In cases involving any substantial change in method of production in numbers of employees, or if operations were begun after January 1, 1941, the maladjustment formula may be inapplicable, as the following statement illustrates:

> The Statistical Division of the Board reports that in January, 1941, the company employed 21 persons, and by April, 1942, the number of employees had increased to about 150. Of the 149 employees covered by April, 1942, Bureau of Labor Statistics survey, 102 were women, although the company employed no women before December, 1941.
>
> Thus, the Board is confronted in this case with an extraordinary set of facts in that the wage increases which have been granted by the company since January, 1941, have affected only a very few of the total number of workers now employed by the company * * *
>
> In view of the seven-fold increase in employment over the period from January, 1941 to April, 1942, any application of the cost-of-living formula of the "Little Steel" case would be quite unrealistic (*Rausch Nut and Manufacturing Co.*, Case No. 88).

The fact that the cost of living may have risen more or less than 15 per cent in the particular locality where the workers involved in the dispute are employed is generally not to be taken into account in computing the cost of living adjustment:

> This formula makes reference to the increase in the nation-wide cost of living between the dates designated. It does not call for an application of any formula which is based upon differences in costs of living between local communities. The Board cannot take such local disparities into account in correcting wage maladjustments (*Hotel Employers' Association of San Francisco, California*, Case No. 21).

INEQUALITIES AND GROSS INEQUITIES

The Board's statement of wage policy of November 6, 1942, defines wage rate inequalities and gross inequities which may require correction under the stabilization program as those which represent "manifest injustices that arise from unusual or unreasonable differences in wage rates."

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[9] This period has, of course, been extended to correspond to the date on which a given wage question comes before the Board.

TRADITIONAL OR HISTORICAL DIFFERENCES

It is important to note that traditional or historical differences in wage rates paid in different plants or establishments do not represent inequalities or inequities which will be corrected by the Board. In its November 6th statement, the Board said: "Wage differentials which are established and stabilized are normal to American industry and will not be disturbed by the Board."

A typical case in point is that of the *Chrysler Corporation* (Case No. 240) in which regional wage differences had long been recognized by the parties in collective agreements. The following conclusion was reached:

> The presumption is, therefore, that they are not gross inequalities which result in discriminatory treatment to the affected employees.

A similar statement is to be found in the *Lever Brothers case* (Case Nos. 149, 176), pointing out:

> Differences in rates are not necessarily inequalities in rates. On the contrary, the wages paid in American industry are normally characterized by all sorts of differentials, created for many different reasons. Under any sound program for stabilizing wages in this time of war, it must be presumed that well-established differences in wages are not inequalities.

The preservation of established differentials is not an inflexible rule, however, but may be modified in the interests of maximum war production. This view is presented in the following statement:

> It should be pointed out that differences in rates are not necessarily inequalities in rates. On the contrary, the wages paid in American industry are normally characterized by all sorts of differentials created for many different reasons. Under any sound program for stabilizing wages in this time of war it must be presumed that well established differences in wages are not inequalities. This approach was accepted by the Board in considering the question of north-south differentials in the textile cases. Such an approach is particularly to be followed when such differences in wages have been established by collective bargaining procedures. One must not interpret the above-stated presumption, however, as an indication that established differences in wages can never become inequalities. They may be subject to adjustment if they have become inequalities which must be rectified in the interests of full production of war goods. The point is, however, that a showing of an inequality in wages requires much more than a showing of differences (*Chrysler Corporation*, Case No. 240).

INTRA-PLANT INEQUALITIES.

In general, inequalities or inequities may be of two types: (i) intraplant inequalities and (ii) interplant inequalities. An intraplant inequality arises when unusual or unreasonable individual or occupational rate differences exist within the same establishment. The National War Labor Board has laid down the principle that:

> The rectification of any unreasonable variations in wages within the company's internal wage structure, which constitute inequalities, can properly be undertaken in conformance with the stabilization program. Such adjustments may be necessary in order to secure stabilized wage rates (*Aluminum Company of America*, Case No. 64).

In the *Chase Brass and Copper Company* (Case No. 28) an increase of from 2 cents to 3 cents per hour, in addition to a general increase of 4 cents per hour, was approved in order to achieve internal wage stabilization:

> Some employees, probably one-half of the total, now receive relatively high rates in their job classification and will receive no more than the increase of 4 cents per hour. On the other hand, other employees whose present rates are relatively low, will receive substantially greater increases as the standarization program is carried out. This will be the result of the provision that not less than 2 cents per hour nor more than 3 cents per hour will be used to provide for standarization of base rates within occupational groups. The inequalities in the wage scale and the rectification of resulting inequalities at the Cleveland mill are to receive immediate attention as an important part of the wage stabilization program * * *

In the *General Motors Corporation case* (No. 125, 128, 234, 240), the Board ordered the establishment of a fund equal to $0.015 per hour times the number of men in certain specified occupations. It was provided that:

> This fund shall be distributed by collective bargaining in such a manner as to provide increases ranging from zero to a maximum of $0.06 per hour to those employees in the remaining skilled and semi-skilled classifications who merit such increases by virtue of individual skill and ability and where retention in their present jobs is essential to the war effort.

In the *Pacific States Cast Iron Pipe Company case* (No. 67), a wage increase was given for the specific purpose of eliminating an inequality in pay between employees working on straight-time and those working under a bonus plan:

> The Board approved the above 2 cents increase on May 15, 1942 and instructed a public member to draw up an appropriate order. In giving its approval to the investigator's findings the Board, on May 15, 1942, was impressed with need for the required wage adjustment as the first step in eliminating marked inequalities within the wage-rate structure at this plant. There was undoubtedly an improper balance between earnings and hourly-rated employees and employees working under the bonus plan.

INTER-PLANT INEQUALITIES

Interplant inequalities may exist between plants in the same locality or industry, between different plants of the same company, or between different regions of the country. For example an interplant inequality exists where there are unusual or unreasonable individual or occupational differences between the rates received in two or more establishments doing comparable work in the same locality.

A case of interplant inequality is typified by *Chase Copper and Brass* (Case No. 28), in which the Board ordered an increase of 4 cents an hour in the wage rates at the Cleveland, Ohio, mill of the company with the following explanation:

> It is evident, therefore, that the increases provided in this directive order will stabilize wages at the Cleveland plant in relation to other mills in the Cleveland area and, as far as practical, to other mills in the brass industry.

In *Hotel Employers' Association of San Francisco* (Case No. 21), the rates of hotel employees in San Francisco were increased largely upon the same basis:

> They [the wage increases] can be further justified in that they will tend to narrow the inequalities which exist between the wage rates in the industry herein involved and industry in general in the San Francisco area * * * The record also discloses that in May, 1942, the unions herein involved executed an agreement with two of the leading

hotels in Oakland, California, (Oakland also being in the San Francisco Bay Area) which is said to contain wage scales higher than those now in effect in San Francisco. It is plain, therefore, that unless hotel employees in the instant case receive wage increases, the intra-industry inequality in wages will be a source of constant irritation.

In *U. S. Cartridge Company* (Case No. 75), a similar conclusion was reached. Note the emphasis on hourly earnings as the basis for comparison:

> The amount of the wage increase to be granted to the employees so classified shall be the amount necessary to raise their average hourly earnings to the average hourly earnings of 19 other plants having comparable metal fabricating operations in this St. Louis area as disclosed by the wage study prepared by the Division of Wage Analysis of the Bureau of Labor Statistics * * *

APPROPRIATE LOCALITY

The concept of a locality is somewhat elastic, and depends upon the circumstances of each case. For example, in *Mead Corporation* (Case No. 60), the entire State of Virginia was considered an appropriate locality.

> (2) The wage rates at the Heald Division are below the average of the rates paid by concerns making similar products in Virginia. (3) Wage rates at this plant are substantially below the average wage rates of employees in the paperboard industry as a whole,

Where one out of nine plants of a company had failed to receive a wage increase which was otherwise company-wide, an adjustment has been permitted by the Board:

> It having appeared, in the mediation hearing before the Panel in the above-entitled case, that wage increases approximating 5 cents per hour were given in April, May and June, 1942, to all of this Company's major plants with the exception of the Edgewater Works in Cleveland, Ohio, thereby creating an inequality between the Company's plant at Edgewater and its other major plants, the parties have agreed to make certain adjustments at the Edgewater Plant designed to correct this inequality * * * The Board finds that the terms of the wage adjustments stipulated by the parties and set forth below are in conformity with the National wage stabilization program, as designed to eliminate inequalities (*National Carbon Company, Inc.* (Case No. 246).)

NO RULE OF THUMB

An inequality or inequity does not automatically warrant an adjustment. The following situation is typical of how the Board applies this principle:

> The wages in the American Magnesium Company plant in Buffalo are six (6) cents below the average for three magnesium foundries in the Detroit area and one in the New York area. There is no magnesium foundry in the Buffalo area other than this American Magnesium plant. There are four iron and steel foundries in Buffalo which average two (2) cents less than the wages in the plant of the American Magnesium Company. The Board holds that it would not be in line with the stabilization program to adjust the wages in the plant of this Company in the Buffalo area to the wages in the three magnesium plants of other companies in the Detroit area and another plant in the New York area (*Aluminum Company of America*, Case No. 64).

Increases may also be denied on the ground that the existing wage structure within an industry is already in balance, so that any further

increases might create a situation of disequilibrium which cause another turn in the inflationary spiral:

> The granting of a general wage increase in this case would amount in fact to creating a gross inequity when viewed from the standpoint of the wages paid in the industry as a whole. This would follow because the granting of a general wage increase would have an unstabilizing effect upon the wage structure of the industry in that it would tend to cause employees elsewhere in the industry to feel that their wages should be increased accordingly. Thus, another inflationary cycle of wage increases would be started. It is obvious that a halt of wage advance must be called at some point, and it is the opinion of the National War Labor Board that when the wages of the entire industry are taken into account, the conclusion is inescapable that the wages which now exist in the industry constitute a fair and equitable stabilization wage pattern for the time being (*Ford Motor Co.*, Case No. 234).

However, when all of the wage rates of an industry have traditionally moved together, the Board has awarded increases to maintain this relationship:

> There can be no reasonable doubt about the applicability of the $0.055 per hour wage increase specified in the "Little Steel" cases to the plants of the United States Steel Corporation involved in this case. In view of the long and voluntarily established policy under which uniform wage adjustments have been made by all plants in the basic steel industry, it would be quite unthinkable for the Board now to specify a different rate of wage increase for the subject companies as compared with the "Little Steel" concerns. Such an unstabilizing action could not properly be contemplated under established practices and certainly not under the national program for the stabilization of wages (*Carnegie Illinois Co.* et al., Case No. 364).

In the interest of maintaining the economic status quo, as far as possible, for the duration of the war, increases will not be granted to eliminate long-standing regional differentials. The Aluminum Workers of America demanded the elimination of existing wage differentials between the Northern and Southern plants of the Aluminum Company of America. Some of the factors considered in the Board's decision were the cost of living of the workers in each area, prevailing wages in competing plants, and the effect on the war production program of any wage increase. The conclusion was:

> Elimination of the differential would have an undesirable disrupting effect at this time on the general economy of the areas in which the plants in question are located * * * produce repercussions and negative effects on industrial expansion programs, competition for labor and the continued operation of some industrial concerns. It is obvious that such effects should be avoided during the war period because they are not in the best interest of aiding the prosecution of our war program (*Aluminum Company of America*, Case No. 66).

In another representative case, involving the cotton textile industry, the problem of the North-South regional differential was complicated by its long standing, and by the fact that the mills had relocated and specialized on different fabrics because of different labor costs. The same conclusion was reached as in the *Aluminum Company case:*

> There is little merit, indeed, to the proposition to readjust the differential now, primarily in preparation for post-war competition, at the cost of increasing 80% of the industry's employees who work in the South beyond that point which is now necessary to stabilize wages in that area. Such an approach would be in utter disregard of the responsibility of the Board to stabilize wage rates in conformance with

the national stabilization program. (*Eleven South Cotton Mills*, Cases Nos. 72, 116, 121, 133, 134, 137, 138, 151, 153, 170, and 313).

Regional differentials, however, have been reinstated to a previous position where there was a clear showing that a customary relationship existed between the wages paid in each region within a particular industry:

> Representatives of the New Jersey [textile] operators have written to the Board claiming there is an important competition between the two areas [New England and Metropolitan New York and New Jersey] requesting the Board to recommend an increase in the New England area in order that wage rates in the industry might be stabilized * * *
>
> A review of all the pertinent facts and evidence leaves no doubt that there is competition between the various sections of the textile finishing industry. The New England group competes mainly with the Southern area, but certain of its members are in direct competition with the Metropolitan area. There is no doubt, moreover, that the wage levels in the New England area bear a relationship to wages paid in other branches of the finishing and of the textile industry. It is evident, therefore, that a significant change in the wage rates paid in other areas of the finishing industry has a bearing upon the rates to be paid in New England under any practical program for wage stabilization * * *
>
> In order to effect a stabilization of wages in the textile finishing industry, it is incumbent upon the War Labor Board at least substantially to narrow the wage differential between the New England and the Metropolitan areas so that former relationships may, in general, be reinstituted (*New England Textile Operators*, Case No. 147).

EQUAL PAY FOR EQUAL WORK

The Board's general principle that wages should be paid to female employees on the basis of "equal pay for equal work" is a central one. Therefore, the existence of an inequality between the wages paid to men and women for equal work is subject to correction.

> The Board has directed the parties to include in their new agreement a provision that wage rates for women shall be the same as for men where they do work of comparable quantity and quality in comparable occupations. The wording of this paragraph in the Directive Order indicates the impropriety of using slight or inconsequential changes in a job as reason for setting up a wage differential against women employees. Wage-setting on such a basis is not compatible with the principle of equal pay for equal work (*General Motors Corporation*, Case No. 125).

This principle does not imply an automatic equalization of the wages of men and women. The point is important enough to warrant a rather complete exposition taken from the *General Motors case:*

> The quantity and quality of production must also be considered. Female employees assigned to an operation which has been or which is performed by men should receive the same pay when they produce the same quality and quantity of output. Any differential which results in lower pay to women under such conditions would be discriminatory. On the other hand, where lower production or performance standards must be established for women, an adjustment of wage rates is compatible with equal pay for equal work.
>
> The Board has already, in the case involving Norma-Hoffman Bearings Corporation and the United Electrical, Radio and Machine Workers of America, CIO, and more recently in the case of the Browne and Sharpe Manufacturing Company and the International Association

of Machinists, AFL, taken cognizance of the fact that it is often impossible or inadvisable for female employees to undertake heavy physical labor which has been established as a part of certain jobs when performed by men. In such cases, the employment of women workers may entail extra supervision, extra set-up men, or extra carry-off men. As pointed out in the Browne and Sharpe opinion, extra labor costs can be computed in these circumstances and can be given pro-rata weight in establishing an equitable rate of pay for the female workers. Such an adjustment of rates is in line with the equal pay for equal work principle where it is necessary to prevent an increase in unit labor costs. On the other hand, such a division of work and specialization of tasks may frequently be made without increasing labor costs even though the female employee continue to receive the established rate for the operation. In such cases, there is no sound basis for setting a differential rate against the female employee. Such division of tasks has often been used on jobs manned by male employees as a means of reducing unit costs while maintaining hourly rates. There are sound reasons therefore for guarding against the use of the procedure to cut women's rates under such circumstances.

There may, of course, be an inequality between the wages of different groups of women working within the same plant. In the Remington-Rand plants, there was a 2 cents per hour differential between men working on an incentive basis and men working on a straight-time basis, in favor of the latter, while the differential between women similarly situated was 5 cents per hour. The Board decided—

the 5 cent differential existing between the wages paid to women working on an incentive basis and the wages paid women working on a straight-time basis, especially when contrasted with the 2 cent differential in the wage rates for men, results in an inequality within the terms and meaning of the President's message of April 27, 1942.

NARROWING AN INEQUITABLE DIFFERENTIAL

The existence of an inequitable differential may be justification for a wage increase which narrows the differential rather than eliminates it entirely. If a wage differential is historically justified, but the spread has become so great as to constitute a manifest injustice the Board may grant an increase narrowing the differential to restore it to its historic proportion.

In the Detroit tool and die occupations, the so-called "manufacturers'" shops traditionally paid lower wages than the "job" shops, primarily because of greater stability of employment in the former. In considering a petition for an increase in the "manufacturers'" shops, the Board said:

Their [manufacturers' shops] rates had traditionally been lower than the job shops but never so relatively low as at present after wages in the job shops have been bid up. In consequence, an unstabilized wage rate situation prevailed in this vital industry * * *

A failure to narrow these inequalities would, in the opinion of a majority of the Board, perpetrate an inequitable relationship * * *

The Board has found that the increase in wage rates of tool and die employees in the manufacturers' shops is necessary to correct the inequalities that have resulted from the recently developed differential in rates of such employees as compared with like employees in job shops. In carrying out its responsibilities, however, the Board has not eliminated the differential since a certain differential has traditionally characterized these rates. The traditional differential has been restored (*General Motors Corporation*, Cases Nos. 125, 128, 234, 240, 251).

SUBSTANDARDS OF LIVING

This term has never been defined by the War Labor Board in terms of a fixed hourly rate. The issue has often been raised, however, and may be considered in the context of individual cases.

In the *International Harvester Company case* (Nos. NDMB 4, NDMB 4–A, NDMB 89) the following basic wartime principle concerning living standards were enumerated:

> First, all workmen should 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 no 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.

Where annual earnings were unreasonably low, due to seasonality or irregularity of employment, a wage increase has been granted on the basis of substandards of living. In the case of stevedores on the Great Lakes, it was shown that these incidents of the work resulted in a low annual "take home." The Board, in approving a 5 cent per hour increase, said:

> The 5 cent increase is not out of line with the wage stabilization pattern which is being involved by the War Labor Board. It is clearly justified because of the fact that the annual earnings of the employees involved in this case, due to the casual and seasonal nature of the employment, are so low that a denial of the wage increase allowed them in this decision would work an unreasonable hardship upon them (*W. J. Conners Contracting Company*, Case No. 118).

Wages of 78 cents per hour for men and 60 cents per hour for women in Bayonne, N. J., were held not substandard.

> Such rates of pay do not entitle the union to an increase in pay under the principle of the War Labor Board's wage stabilization program that pay increases will be allowed when it is shown that substandard wages are being paid. The Board has made clear that by substandard wages it means wages which do not permit of the maintenance of a standard of living of health and decency. The wages paid the employees in this case do permit of such a standard of living (*General Cable Company*, Case No. 247).

In a case involving waiters and waitresses in San Francisco who were receiving a basic wage of $3.25 per day, plus meals and tips, the Board refused to follow an Arbitrator in holding that this constituted a substandard wage.

> Further it is to be noted that these particular wage rates were arrived at through the process of collective bargaining and in the absence of a clear showing to the contrary, it is to be presumed that when the union agreed to them it did not sanction or approve substandard wage rates. (*Hotel Employers' Association of San Francisco*, Case No. 21).

The problem of substandard wages must be approached with some particularity, for industry averages may yield misleading results:

> It should be pointed out * * * that one cannot logically approach the question of adjustment for substandard wages by general wage increases based upon average wages for the industry. Granting that the wage average is low, it does not follow, that therefor, every * * * worker should receive an equal adjustment of wages in order to enable him to maintain a living standard of health and decency. Individual earnings necessarily vary from the average. It is not clear, certainly not from the record in this case, how an argument based upon maintaining a wage on a minimum of health and decency can support the granting of the same increase through a general wage adjustment, to a group of workers who earn from 40 cents to 70 cents an hour (*36 New England Cotton Manufacturing Corporations.* Case No. 104).

EFFECTIVE PROSECUTION OF THE WAR

This term has not been given a positive definition by the National War Labor Board. Insofar as it embraces manpower considerations, it is discussed below.

PARTICULAR SUBJECTS UNDER WAGES AND SALARIES

RETROACTIVITY

The Board has adopted a variety of practices with respect to fixing the extent and nature of retroactive payment, depending largely on the circumstances of particular cases.

In a number of cases the Board has made wage increases retroactive to dates on which the parties were able to agree, as indicated in the following extract from a Directive Order:

> The above increase is to be made effective retroactively to January 4, 1942, in accordance with a mutual agreement of the parties, governing the effective date of any wage adjustment, made during the mediation proceedings held by the Board on this case (*Mead Corp.*, No. 60).

In one case the Board made the wage increase retroactive to the retroactive date which the employers had offered during negotiations:

> All rate increases are to be made retroactive to June 1, 1942. The employers had offered this proposal during negotiations and it was never withdrawn (*13 Jobbing Shops*, No. 232).

In another case the Board made payment retroactive to a date which the Union contended the parties had agreed upon as the retroactive date:

> The Board is satisfied that the preponderance of the evidence supports the contention of the Union and the finding of the panel that it was understood by the parties that any general wage increase allowed in this case should be made retroactive to March 18, 1942 (*General Chemical Company*, No. 267).

In some situations the Board has made wage increases retroactive to cover the entire period of the contract between union and management. Thus, in one case it was made retroactive to the beginning date of the contract:

> The wage increases above described shall be made retroactive to July 28, 1942, the beginning date of the interim contract between the parties (*U. S. Cartridge Company*, No. 75).

In other cases language similar to the following has been used:

> That the date of the new contract be the date on which the new agreement is signed by both parties, and that its term be extended to and including April 24, 1943 (the date agreed upon by both parties during the course of the Mediation Hearings of the War Labor Board) (*Fifteen Paint Manufacturers*, No. 227).

In one case, however, where the Board found that the provisions of the contract were ambiguous with respect to the nature of the wage increase, the Board made the increase retroactive only for part of the contractual period:

> Hence in view of the fact that the Board is satisfied that both parties to this dispute are equally responsible for the ambiguities in the contract which gave rise to this controversy, it rules that the Company shall not be required to pay back pay for the first six months of the contract. However, from the end of the first six months' period until its termination date, the contract shall be applied in accordance with the Board's interpretation and, where due, back wages shall be paid (*Midland Steel Products Co.*, No. 85).

In a large number of cases the Board has awarded back pay in terms of the length of time involved in all or part of the proceedings before the Board, the Board Panel, or an arbitrator. In one case, for instance, the Board adopted the following unanimous panel recommendation on this question:

> The existing collective agreements which provide for the reopening of the questions of wages, union security and vacations make no reference to the date at which any wage increase resulting from such negotiations should become effective. The Panel believes, however, that in all fairness the wage increase we have here recommended should be made retroactive to April 16, 1942, the date on which the case was certified to the Board. We so recommend (*Phelps Dodge Corporation*, No. 5).

In one other situation the Board used the date when the case was first heard before the panel as the retroactive date:

> The unanimous recommendation of the Panel on the question of the retroactive date is hereby adopted. The Company shall make all increases resulting from this Directive Order retroactive to the payroll period beginning nearest to June 18, 1942, the date when the case was first heard before the Panel (*Tennessee Coal, Iron & Railroad Co.*, No 74).

In another case the Board used the date on which the Mediation Panel was set up:

> It is further recommended that the wage increases shall be deemed retroactive to Februaryq 16, 1942, the date when this mediation panel was set up (*Arcade Malleable Iron Co., Inc.*, No. MB–84).

In still another case the Board used the date of the arbitration award:

> All wage increases shall be retroactive to September 14, 1942, the date of the arbitrator's award (*Los Angeles Steel Casting Co.*, No. 335).

In a number of cases special equities have determined the extent of the retroactive period. In a case involving reduction in pay, for instance, the Board ordered retroactive payment made to the date on which reduction had taken place:

> It is the Directive Order of the Board that pending final disposition of this matter the Amazon Knitting Mills shall pay the same piece-work rates and other wages as were in effect on the date of the certification

of this dispute to this Board. This order shall be retroactive to the date on which the reduction in piece-work rates, described above, became effective.

In some cases the Board has made payment for the employees involved in the case retroactive to the date when other employees of the same company received similar increases:

The Board approves the unanimous recommendation of the panel that a wage increase "of 50 cents per day or shift" be provided for the crafts here presented retroactive to January 16, 1942. This adjustment is necessary to eliminate an inequality in wages paid employees in these crafts as compared with employees represented by the Railroad Brotherhoods working at the New Mexico properties of the Company. The latter employees received a wage increase, comparable to that provided by this order as of January 16, 1942. For about 35 years, practically identical wages have been paid to employees in the two categories in question. This relationship is reestablished by the present Board order (*Nevada Consolidated Copper Corporation*, No. 99).

It having appeared, in the mediation hearing before the panel in the above-entitled case, that wage increases approximating 5 cents per hour were given in April, May and June, 1942 to all of this Company's major plants with the exception of the Edgewater Works in Cleveland, Ohio, thereby creating an inequality between the Company's plant at Edgewater and its other major plants, the parties have agreed to make certain adjustments at the Edgewater plant designed to correct this inequality, provided that such adjustments are ordered by the National War Labor Board. The Board finds that the terms of the wage adjustments stipulated by the parties and set forth below are in conformity with the national wage stabilization program, as designed to eliminate inequalities. Accordingly, under the provisions of Paragraph 3 of the Executive Order of January 12, 1942, it is the Directive Order of the board that the parties institute the following wage increases and procedures:

1. There shall be a 5-cent an hour increase on the rates of all hourly and incentive workers, men and women alike. In the case of incentive workers, the rates shall be so adjusted that the average hourly earnings shall be increased 5 cents.
2. There shall be no top limit on the wage rates to which these increases will be applied.
3. These increases shall be paid to those workers on the payroll of the week beginning July 26, 1942, and shall be granted retroactively to May 31, 1942 (*National Carbon Co.*, No. 246).

In the *Carnegie Steel Corporation Case*, No. 364, the Board made the wage payment retroactive to the same date which had been ordered for other steel companies in the *Little Steel case*, on the ground that industry-wide considerations were so important as to indicate the need for continuing the past industry practice of putting all wage adjustments into effect as of the same date. In this case Dean Morse prepared a detailed opinion on the retroactive question which should be read by all those who are dealing with the problem of retroactive payment, but which is too long for reproduction or quotation here.

In some cases the Board has announced in advance of a wage decision its intention of making any wage increase given retroactive to a certain date, as it did in the following case:

Without any commitment whatever as to whether there will be a wage increase, it is the order of the National War Labor Board that if there is any general wage increase, it shall be effective at some date to be later decided upon by the Board but in no event later than on June 18, 1942 (*Alabama Mills, Inc.*, etc., Case Nos. 72, 116, 121, 133, 134, 137, 138, 151, 153, 170 and 313).

In a number of cases the Board has laid down special instructions for procedure with respect to persons who have left employment of the Company after the retroactive date but prior to the Board decision:

> The wage increases granted under this order shall be made retroactive to June 11, 1942. The amount due under this provision shall be paid over a three-month period commencing with the date of this directive order and spread equally over the pay periods of each employer during the three months between the retroactive date and the date on which this order is placed in effect, shall receive the amount of the increase up to the date on which his employment with the company involved was terminated, providing he makes application in writing to that company within sixty (60) days after the order has been issued. The sixty (60) day limitation shall not apply to employees who have become members of the armed forces of the United States (*Minneapolis Employers Negotiating Committee*, No. 309).

A notable exception to this were the non-ferrous metal cases in which the Board, after giving an increase designed to solve a manpower problem, made the following statement with respect to retroactivity, with the manpower aspects of the case in mind:

> That the increase shall be retroactive to May 16, 1942 and the retroactive portion thereof shall be payable in Government bonds and savings stamps, provided however, that no retroactive payment shall be made to any employee who does not immediately return to employment with the companies at this date unless his separation from employment has been due to enlistment in the armed services, the operation of the Selective Service Act, or other causes beyond the employee's control.

The Board has also authorized the making of retroactive payments in installments:

> Any wage increase required by the new agreement and approved by the National War Labor Board shall be made retroactive to October 25, 1942: *Provided, however,* That upon the direction of the Impartial Chairman, and with the approval of this Board, payment of all or a portion of the sums due for retroactive wage increases may be made in monthly or bi-monthly installments during the first six months after the agreement is executed (New York, New Jersey Metropolitan Milk Distributors War Conservation Committee, No. 197).

Of general interest with respect to retroactivity is the following resolution adopted unanimously by the Board on August 27, 1942:

> It is hereby resolved that in all cases in which a wage increase retroactive to an earlier date has been awarded, any employee who has either quit or been discharged between the retroactive date and the date on which this order is placed in effect, shall receive the amount of the increase up to the date on which his employment with the company involved was terminated, providing he makes application in writing to that company within sixty (60) days after the order has been issued. However, in no case shall the period during which the employee can apply be less than sixty (60) days after the adoption of this resolution. The sixty (60) day limitation shall not apply to employees who have become members of the armed forces of the United States. All companies and unions involved in such cases shall be notified immediately.

NIGHT SHIFT BONUS

The physical and social disadvantages in night work have been regarded by the Board as a generally persuasive basis for approving premium payments for night work. However, the Board has applied this principle in the light of the facts surrounding a particular case and has considered prevailing practice in the industry, the area, or in other plants of a company.

In an early case, that of the *Aluminum Company of America* (Case No. MB 66), the Board's approach was carefully set forth:

> The position of the Company against paying any additional premium rates for the "B" and "C" shifts in the New Kensington plant because of the accepted fact that such premium rates are not the prevailing custom in the area is not a tenable position for this company on the merits of the case. Night work tends to disrupt normal living and often results in irregular eating and sleeping habits. The "B" shift comes during the hours when family life is at its best. These are the hours when the children are home from school. These are the hours of the best social, athletic, recreational, and educational programs. The "C" shifts come during the hours when human beings have become accustomed to sleep by nature and nurture, by biological set and inheritance, and by social and personal habit. The worker during the night shifts has to sacrifice many of the values and satisfactions of social, family, and personal life.
>
> Some companies in the New Kensington and the larger Pittsburgh area pay premium rates for the night shifts. A competitor of the Aluminum Company in Detroit and another competitor in Louisville pay extra compensation for the disadvantages of the "B" and "C" shifts.
>
> The Company has recognized that night workers are due compensation for these disadvantages by paying a 3¢ premium for the "B" shift and a 5¢ premium for the "C" shift in its plants in Cleveland, Detroit, and Los Angeles; also a ½¢ addition was made a part of the present rates of all workers in recognition of the fact that all did some night work. The work in the New Kensington plant is substantially the same as or similar to the work in the Cleveland, Detroit, and Los Angeles plants. The premium rates of 3¢ for the "B" shift and 5¢ for the "C" shift was arrived at by collective bargaining between this Company and this Union for the Cleveland, Detroit, and Los Angeles plants. The company in this case should not be bound by the prevailing custom in the New Kensington area but should, on account of its general position and ability, be a leader in that area and bring its own position in that area in line with its better practices in some other areas.

The Board has also given attention to the fact that night shift workers may suffer a wage inequity because of the additional expense in maintaining their homes:

> The War Labor Board is satisfied that the unanimous recommendation of the panel allowing extra pay of three cents (3¢) per hour for night shifts is justified on the basis of the principle that it will iron out an an existing wage inequity in the two plants.
>
> * * * as pointed out by the panel in the instant case, night work generally results in a wage inequity because of financial loss caused by the extra home expenses incident to night work (*General Cable Company*, Case No. 247).

While approving premium payments for night work as a general principle, recent decisions of the Board indicate that the prevailing practice in the industry or area is an important factor in particular cases. Thus, the Board in three recent decisions reversed the recommendations of its referee that a night shift bonus be established to recompense for physical and social disadvantages "even though such a practice has not previously been in effect in an industry" (*Alabama By-Products Corporation*, Case No. AR 1; *Sloss-Sheffield Steel and Iron Company*, Case No. 423; *Tennessee Products Corporation*, Case No. 329).

Prevailing practice in the area or industry has been the basic criterion for determining whether existing night shift premiums should be increased or adjusted in any way.

For example, in the case of the *American Can Company*, (Case No. AR 149) the Board approved the recommendation of its referee that

the Union's request for increasing the premium be denied on the ground that "the employer's practice in this respect is comparable with that of other companies."

Likewise, in the case of the *San Francisco Hotel Employers Association* (Case No. 21) the Board approved an arbitrator's award which states as the reason for denying the Union's request for an increase in the night shift rate: "To change it would be to create inequalities in the hotel industry."

The establishment of a night shift bonus is not regarded by the Board as a general wage increase and is not to be included in computing the cost of living formula.

> We do not regard the payment (night shift premium), moreover, as a general wage increase which would be barred in this case by the Board's stabilization policy. Rather, it is a wage adjustment to compensate for unusual and inconvenient hours of work, which brings this Company in line with the general practice in its area (*Towne Robinson Nut Company*, Case No. 270).

PROGRESSION INCREASES

The Board defines wage increases as more money for the same work. Therefore, schedule or progression increases are not to be considered as general increases. This principle was the basis for General Order No. 5 (December 26, 1942), in which five categories of increases not requiring Board approval were laid down. These categories included "merit increases within established rate ranges," "established plan of wage increases based on length of service," etc.

In the mediator's report on *Diamond State Telephone Company* (Case No. 366), the question was clearly developed that automatic increases, such as "(1) * * * promotional increases designed to reward increased skill and proficiency; (2) * * * fulfillment of the rate agreed to be paid an employee when he enters the system," were not to be rated as general increases. The Board clearly indicated in its directive order to this company that it did not regard progression increases as general increases when it ordered the company to raise its wage progression schedules by amounts averaging $2 per week.

The application of this policy by the Board has required that it be adjusted to contingencies which arise in various situations. The simplest application of the policy is to be found in those cases where the Board ordered automatic periodical wage increases of fixed amounts, exemplified in the following three cases:

> The starting rates mentioned * * * be automatically increased by five cents (5¢) in three (3) months and again by five cents (5¢) in six (6) months from the date upon which employment began (*Norma-Hoffman Bearings Corporation*, Case No. 120).
>
> * * * the Company shall establish a standard hiring rate of 60 cents per hour; 60 days after date of hiring it shall be increased to 65 cents per hour; 90 days after date of hiring it shall be increased to 70 cents per hour; and 120 days after date of hiring it shall be increased to 74 cents per hour, or to the standard rate of pay for the classification if such standard is higher (*Breeze Corporation, Inc.*, Case No. 23, May 22, 1942).
>
> Approval is granted to the agreement of the parties to put into effect * * * a hiring rate of sixty (60) cents per hour for apprentices, with the provision for an increase of five (5) cents per hour at the end of each period of 910 hours of work for eight (8) periods of

910 hours (*General Motors Corporation*, Case No. 125, November 13, 1942).

The Board has also made automatic increases dependent upon the ability of the workman to meet job standards and/or his fulfilling a certain period of time on his job before qualifying for the increase.

> New employees shall be hired at a rate no lower than ten (10) cents below the rate of the job classification and shall receive an automatic increase of five (5) cents at the expiration of thirty (30) days. Every employee who is retained by the Corporation in the job classification shall receive an increase to the rate for the job classification within ninety (90) days or as soon as he or she can meet the standard requirements for an average employee on the job, whichever occurs first, provided, however, that deviation from the above rule may be made pursuant to negotiation between the local shop committee and local management, for jobs requiring more than ninety (90) days to attain average proficiency (*General Motors Corporation*, New Departure Plant, Meriden, Connecticut, Case No. 654, December 2, 1942).

In an other instance the Board tried to remove employer-employee friction by introducing the automatic factor into a wage bracket system. The bracket system had previously operated to allow several wage rates for the same grade of work, but left to the employer the sole discretion of advancing workers as he saw fit. In attempting to straighten out such a problem, the Board's directive order in the *East Alton Manufacturing Company case* provided that the "parties be ordered to meet with each other in an attempt to define in writing the specific duties of employees within each grade of employment, which writing is to be attached to and shall become a part of their contract."

On this question the Board's directive order read further:

> The parties, if they are unable to agree upon more fundamental changes in the present bracket system, are ordered to include in their new contract.
>
> (a) A provision that progression of all workers kept in the Company's employ shall be automatic from bracket to bracket within grades and independent of real or supposed differences in the merit of the individual's work, and
>
> (b) A provision that the Company shall at the end of each month supply the union with a detailed statement of the then status of every employee within the bracket system (*East Alton Manufacturing Co.*, Case No. 458, November 27, 1942).

In another instance the Board ordered that the company's proposed wage system, providing progression increases, be instituted. Provision was made in these schedules for automatic increases for learners, and for periodic increases for experienced operators contingent on their meeting standards of merit, efficiency, and attendance.

> (b) The tentative Schedules A and B on rate progression for learners and experienced operators is hereby approved.
>
> (c) There shall be a new starting rate of 60 cents which shall be increased 5 cents per hour per month until 75 cents is reached (*Curtiss-Wright Corporation*, Case No. 560, December 12, 1942).

MANPOWER

The Board laid down its basic policy on the manpower question in its statement of wage stabilization policy, issued November 6, 1942:

> Under Executive Order 9250, the National War Labor Board may approve any increase of the wage rates prevailing on September 15, 1942

if such an increase is necessary "to aid in the effective prosecution of the war." Every adjustment in September 15, 1942 wage levels that the Board may make will be, in its judgment, for a more effective prosecution of the war.

The National War Labor Board will not approve wage increases for the purpose of influencing or directing the flow of manpower.

When in a particular case management and labor, in cooperation with the War Manpower Commission and other government agencies, have taken concerted action to solve a manpower need, the Board will consider a request in that case to correct whatever inequalities or gross inequities may then need correction.

It has since reiterated this position, in its decision on the first major case of this type since the November 6th statement:

It is obvious that if the Board should attempt on its own initiative to remedy manpower shortages by granting wage increases whenever an employer alleges that his workmen are leaving his plant for higher paying jobs, the effect would be to accelerate a spiral movement of inflationary wage increases. Such a policy would be inconsistent with the wage stabilization aims of the Executive Order of October 3, 1942, in that it would tend to encourage demands for wage increases equal to the highest paid in an industry or in a community.

It should be recognized by all concerned that when parties to a wage agreement ask the National War Labor Board to approve a wage increase on the sole ground that the increase is necessary in order to keep men from going to another war plant, they ask the Board in fact to rule that the men should remain at that plant in preference to going to some other plant. It is the opinion of the War Labor Board that it should not determine a manpower policy in a given case either directly or indirectly through the medium of granting agreed upon wage increases, unless the parties in cooperation with the War Manpower Commission and other government agencies can show that it is of controlling importance that the employees remain at the plant involved. After all, the supply of the Nation's manpower is limited, and it is not for the War Labor Board to say whether the workmen should remain at a plant processing soybeans or should go to a magnesium plant, to a munitions plant, or to some other vital war plant. It should be recognized as a matter of principle that if men are expected or required by manpower authorities to remain on the job in a given plant, it would not be fair under such circumstances to require them to remain on low paying jobs if they can go nearby and get higher paying jobs (*Staley Manufacturing Company*, Case No. WA–12).

The Board has authorized a wage increase only in one case on manpower grounds. Its action in this case was taken in conjunction with a general governmental attempt to remedy a severe manpower situation:

It was represented to the Board that the recommended wage increase would be a substantial aid in the campaign of holding, returning and recruiting miners, in which all other agencies of government have now done their part * * * they think that these miners whose special skill is now critically necessary to the war effort are entitled to the recommended amount of increase on the ground that if they are given less they would, under all the circumstances of the case, have been unjustly discriminated against. Under those circumstances our conclusion was that our responsibility to the nation would not permit us to reject the suggestion. We have felt that this experiment must be tried. We have also felt that in the concerted plan referred to, the experiment has been surrounded by all possible safeguards (*13 Metal Mining Companies*, Case No. 218, etc.).

APPENDIX

The text of the Board's wage policy, unanimously adopted November 6, 1942, and referred to above, follows:

WAGE STABILIZATION POLICY OF THE NATIONAL WAR LABOR BOARD

The policy directive given the National War Labor Board by Congress and by the President is clear. Under that directive, the Board will act on the presumption that wage rates prevailing on September 15, 1942, are proper. The Board will grant wage increases over the level prevailing on September 15, 1942, only in exceptional cases and in accordance with the following paragraph of Executive Order No. 9250 of October 3, 1942:

> The National War Labor Board shall not approve any increases 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.

The National War Labor Board will examine carefully each claim for such exceptional treatment before approving any increase. In considering specific cases, the Board will be guided by the following general principles. The application of these principles by regional directors will be subject to all general orders of the Board and to its announced rules of procedure.

MALADJUSTMENTS

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.

Beginning about January 1, 1941, a race between wages and prices began. Between that date and May 1942, when the President's seven point program to stabilize the cost of living was announced, the cost of living has risen 15 percent as measured by the general index of the Bureau of Labor Statistics.

In the same period, very considerable but varying increases in wage rates were made. The irregularity of wage increases caused many maladjustments in the wage relationships between different plants and industries. A substantial majority of industrial workers had received more than 15 percent increase; some had received less.

To correct these maladjustments, the Board will consider requests for general increases in straight-time rates up to 15 percent above the level prevailing on January 1, 1941. This policy sets a terminal point for general wage increases. It is not applicable to individual workers or to employees in particular job classifications. It will be applied only to groups composed of all employees in a bargaining unit, in a plant, a company, or an industry, depending upon the circumstances of each case. . . .

INEQUALITIES AND GROSS INEQUITIES

The wage rate inequalities and the gross inequities which may require adjustment under the stabilization program are those which represent manifest injustices that arise from unusual and unreasonable differences in wage rates.

Wage differentials which are established and stabilized are normal to American industry and will not be disturbed by the Board.

The Board itself will review cases where evidence is submitted to show that existing differences in wage rates are so discriminatory as to make their continuance a manifest injustice. . . .

SUBSTANDARDS OF LIVING

In the President's Message of April 27, 1942, and again in the Executive Order of October 3, 1942, the word "substandard" is used with reference to the need for eliminating substandards of living. 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 to govern the adjustment of wages to eliminate substandards of living. The Board will not undertake to measure substandards of living by any fixed wage rate.

Such cases involving substandards of living as may arise will be considered by the Board on their individual merits until sufficient experience has accumulated to permit the statement of a more general policy.

EFFECTIVE PROSECUTION OF THE WAR

Under Executive Order 9250, the National War Labor Board may approve any increase of the wage rates prevailing on September 15, 1942 if such an increase is necessary "to aid in the effective prosecution of the war." Every adjustment in September 15, 1942, wage levels that the Board may make will be, in its judgment, for a more effective prosecution of the war.

The National War Labor Board will not approve wage increases for the purpose of influencing or directing the flow of manpower.

When in a particular case management and labor, in cooperation with the War Manpower Commission and other Government agencies, have taken concerted action to solve a manpower need, the Board will consider a request in that case to correct whatever inequalities or gross inequities may then need correction.