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MARITIME LABOR BOARD

Report

TO THE PRESIDENT

AND

TO THE CONGRESS

March 1, 1940

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MARITIME LABOR BOARD

OFFICE: 924 NEW YORK AVENUE N.W.
WASHINGTON, D. C.

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LETTER OF TRANSMITTAL

MARITIME LABOR BOARD,
Washington, D. C., March 1, 1940.

To the President and the Congress:

We have the honor to present herewith the report of the Maritime Labor Board in compliance with section 1010 of title X of the Merchant Marine Act of 1936, as amended.

ROBERT W. BRUÈRE, *Chairman.*

INTRODUCTION

This report is submitted in compliance with section 1010 of title X of the Merchant Marine Act of 1936, as amended, which reads as follows:

> On or before March 1, 1940, the Board shall submit to the President and to Congress a comprehensive plan for the establishment of a permanent Federal policy for the amicable adjustment of all disputes between maritime employers and employees and for the stabilization of maritime labor relations. As far as may be, the Board shall seek to secure through its mediatory efforts agreement between maritime employers and employees upon the plan it is hereby required to submit.

The recommendations in this report are based upon: (1) Experience of the Maritime Labor Board with the administration of title X; (2) conferences with representatives of organizations of maritime employers and employees held by the Maritime Labor Board; and (3) studies and investigations made by the Maritime Labor Board, including an examination of the various legislative proposals submitted during the Seventy-fifth Congress which eventuated in enactment of title X.

It is significant that almost from its origin the mediatory services of the Maritime Labor Board have been used both by employers and employees. Between the date of its establishment on July 6, 1938, and October 1, 1939, more than 70 disputes were handled by the Board covering in excess of 110,000 workers. These cases involved questions pertaining to the making and maintaining of written agreements, to the renewal of agreements, and to stoppages of work resulting from lock-outs and strikes. The experience of the Board has embraced practically all issues over which maritime employers and employees have been in conflict during recent years, and has brought the Board into close contact with the industry. The Board has thus gained a realistic appreciation of the day-to-day problems incident to collective bargaining which confront employers and workers in the maritime industry.

In compliance with section 1010, which provides that the Board shall seek to secure through its mediatory efforts agreement between maritime employers and employees upon the plan it is hereby required to submit the Board has conferred with representatives of the major employers' and workers' organizations.

These were conferences arranged for the purpose of eliciting the views of the parties directly at interest in maritime labor disputes, with regard to the kind of plan which should be submitted to the Congress for the amicable adjustment of labor disputes. To facilitate discussion an agenda containing specific questions was prepared by the Board and mailed to representatives of employers and workers in advance of the scheduled meetings.

But such conferences did not indicate the possibility of an early agreement between maritime employers and employees upon a plan to be submitted by the Board, as required under section 1010. Representatives of maritime employers and those of maritime employees have expressed widely divergent views with respect to the need of a special Federal mediatory agency for the promotion of collec-

tive bargaining and the mediation of disputes in the maritime industry. Some employers opposed legislation such as is contained in title X. Others expressed themselves to the effect that title X should be continued indefinitely in order that the Maritime Labor Board might have further opportunity to study problems of labor relations in the industry. Still other employers considered that the time was not ripe for a decision as to whether title X, or a similar law, should be continued subsequent to June 23, 1941.

The views expressed by the representatives of maritime labor were also widely divergent. There were those who held that title X was entirely unnecessary. Others believed that a special Federal mediatory agency for the maritime industry was desirable. Still others saw an advantage in a permanent Maritime Labor Board, so long as it was not vested with coercive powers.

This absence of agreement not only between maritime employers and their employees but also between organized groups of employers on the one hand and organized groups of employees on the other is a major reason for the Board's conclusion that for the immediate future the public interest requires a specialized Federal agency for the mediation of disputes and the establishment of Federal policy with respect to collective bargaining in the maritime industry.

The Board has assembled, studied, and analyzed available data bearing upon labor relations in the maritime industry. The studies included operation of collective agreements, the history of Federal intervention in maritime labor relations, the effect of existing seamen's statutes upon collective bargaining, the experience of the National Labor Relations Board as it relates to the maritime industry, the structure of maritime labor unions, maritime labor disputes, and the machinery used in foreign countries for the adustment of labor disputes in the maritime industry. In addition, the Board has analyzed the development of the Railway Labor Act.

In formulating its recommendations, the Board has taken account of the circumstances which focused the attention of the Congress upon the problem of implementing maritime legislation with special controls to insure labor peace. The different points of view and the conflicts of opinion arising in connection with the various legislative proposals submitted during the Seventy-fifth Congress have also received careful consideration.

The Board's experience with the administration of title X leads to the conclusion that the present declared policy of the United States with respect to labor relations in water-borne commerce, as embodied in section 1001 of title X, should be continued. This section reads as follows:

> It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of water-borne commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and the prompt and orderly settlement of all disputes concerning rates of pay, hours of employment, rules, or working conditions, including disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, hours of employment, rules, or working conditions.

The experience of the Board points clearly to the need of amending certain provisions of title X in order to make it more effective as a means of encouraging the practice and procedure of collective bargaining in the maritime industry.

This report covers many aspects of labor relations in the maritime industry. With respect to some phases of the problem, however, the Board can only call attention to their importance. In this connection the Board desires to point out that, to a degree which has never been adequately appreciated, the confusion in labor relations in the maritime industry is a reflection and a consequence of the confusion in the laws affecting these relations and of the confusion in the administrative policies of the governmental agencies entrusted with the administration of these laws.

The recommendations of the Board fall into two main categories: (1) Specific amendments to title X regarding measures necessary to strengthen existing facilities for making and maintaining collective agreements, and for the amicable adjustment of disputes; and (2) a general recommendation intended to encourage the development of collective bargaining in the maritime industry by removing existing impediments to its growth.

The Board does not assume that its recommendations constitute a final, full-grown plan designed to inaugurate an era of perfect harmony between maritime employers and employees. In a democratic country, orderly and amicable employer-employee relationships in any industry are predicated upon a gradual growth of mutual respect and understanding, which in the maritime industry are still in the formative stage.

The Board is fully aware of the immediate and imperative need for securing an uninterrupted flow of water-borne commerce, particularly because of the close connection between the merchant marine and the national defense. But the Board is also mindful of the fact that in seeking a basis for the development of an enduring and steadfast employer-employee relationship, primary emphasis must be placed upon normal conditions rather than upon those which might obtain during periods of national emergency.

The Board wishes to point out that there are today definite indications of the development of stable labor relations in the maritime industry. Among these indications is the recent 2-year agreement entered into between the American Merchant Marine Institute and the National Maritime Union, covering seamen on the Atlantic and Gulf coasts, and also the increasing tendency on the part of maritime employers and employees on the Pacific coast to settle their differences around the conference table and through the medium of long-term collective agreements.

The Board wishes to make it clear that in recommending the continuation of title X and of a special governmental mediatory agency for the maritime industry, it does not take the position that such a specialized agency will always be needed. The Board does believe, however, that present unsettled labor conditions in the maritime industry make it desirable that there should be a specialized Federal mediatory agency, with functions similar to those of the Maritime Labor Board. Such an agency will continue to be needed until such time as the maritime employers and employees have demonstrated their ability to protect their respective interests without jeopardizing the interest of the public through needless interruptions to the free flow of water-borne commerce, or until the parties themselves have been able to agree upon a plan for the stabilization of maritime labor relations which commands the support of the Congress.

PART I

RECOMMENDATIONS

SUMMARY OF PROPOSED AMENDMENTS TO TITLE X

The recommendations of the Maritime Labor Board for amending the several sections of title X are summarized below. Following this summary, the proposed amendments and the reasons for the proposed amendments are set out seriatim.

While these recommendations embody proposals for amending title X, the Board recognizes that the objectives sought through the suggested amendments may also be achieved by drafting a new bill which would incorporate the same proposals for making the provisions of title X more effective in bringing about the amicable adjustment of labor disputes, and the stabilization of labor relations in the maritime industry.

SECTION 1002

1. The Maritime Labor Board, or its successor, should be authorized to consider and determine questions concerning representation of employees of maritime employers;
2. The navigation laws of the United States or any other laws relating to seamen should not be so construed as to abrogate the right of seamen to strike in domestic harbors;
3. The receipt of Federal construction or operating subsidies should also be made conditional upon compliance with the provisions of section 8 of the National Labor Relations Act.

SECTION 1003

1. The jurisdiction of the Maritime Labor Board, or its successor, should be extended to personnel on all documented vessels upon navigable waters within the jurisdiction of the United States, except vessels covered by the Railway Labor Act;
2. The jurisdiction of the Maritime Labor Board, or its successor, should be extended to include employees engaged in ship repairing;
3. The jurisdiction of the Maritime Labor Board, or its successor, in matters relating to labor disputes in the maritime industry as defined by this section should be made exclusive;
4. The term "employee" should include the seagoing personnel on Government-owned merchant vessels operated for the account of the Government by managing agents or corporations. The term "maritime employer" should include managing agents or corporations operating Government-owned merchant vessels for the account of the Government.

SECTION 1004

1. It should be made the duty of maritime employers and employees to exert every reasonable effort to make and maintain written agreements and to settle all disputes;
2. The Maritime Labor Board, or its successor, should be authorized and directed to establish adjustment boards at the request of or with the consent of maritime employers and employees.

SECTION 1005

1. Maritime employers should also be obliged to file with the Maritime Labor Board, or its successor, copies of decisions of arbitrators or referees, within ten days after such decisions have been made;
2. Copies of all contracts, agreements, and decisions of arbitrators should be made available by the Maritime Labor Board, or its successor, to the direct

parties in maritime labor disputes, upon their request or upon the request of the duly authorized representatives of either of the direct parties when needed in connection with the adjustment of a dispute;

3. Copies of all contracts, agreements, and decisions of arbitrators should be made available to other Federal agencies for official use;

4. A maritime employer who is not a party to a written collective agreement should be required to furnish an annual statement to the Maritime Labor Board, or its successor, showing: (1) The number of his employees in each of the different classes of employment; (2) the hours worked by each class of his employees; (3) the wages paid to each class of his employees; and (4) whether or not he has a written agreement or written memorandum of employment with his own employees. In cases where such memoranda exist, employers should also furnish copies of them to the Maritime Labor Board, or its successor, together with copies of any changes or modifications made in such agreements or memoranda. Copies of such changes or amendments should be furnished to the Board, or its successor, within thirty days after they have been made.

Section 1006

1. The Maritime Labor Board, or its successor, should notify either the representatives of employees or the representatives of employers of the time and place of the conference only in cases when either party notifies the Board, or its successor, that it had served notice upon the other of its desire to confer.

Section 1007

1. The Maritime Labor Board, or its successor, should be empowered to appoint paid umpires at the request of the direct parties at interest in a dispute;

2. The Maritime Labor Board, or its successor, should be authorized to pay the office rent and other overhead expenses of adjustment boards established by the Board, or its successor, at the request of or with the consent of maritime employers and employees.

Section 1009

1 The Maritime Labor Board, or its successor, should be authorized to appoint neutral arbitrators.

Section 1010

1. The Maritime Labor Board, or its successor, should be required to make an annual report to the Congress upon its mediatory activities;

2. The Maritime Labor Board, or its successor, should continue to use its mediatory efforts to secure agreement between maritime employers and employees upon adequate methods for the stabilization of labor relations in the maritime industry.

Section 1012

1. Section 1012 should be eliminated, or amended to provide for an extension of title X beyond June 23, 1941.

Recommendation for the Revaluation of Seamen's Statutes

The Congress should take appropriate action as soon as possible to inaugurate a dispassionate and impartial study and analysis of all existing laws affecting seamen in order that these laws may be brought into line with present-day conditions of water transportation and with the declared policy of the Congress of the United States regarding the encouragement of the practices and procedures of collective bargaining in the maritime industry.

REASONS FOR PROPOSED AMENDMENTS

The recommendations of the Board for amending the present provisions of title X, together with the reasons for making these recommendations, are now set out in consecutive order.

AMENDMENTS TO SECTION 1002

Section 1002 now reads:

> The provisions of this title shall not in any manner affect or be construed to limit the provisions of the National Labor Relations Act, nor shall any of the unfair labor practices listed therein be considered a dispute for the purposes of this title. Questions concerning the representation of employees of a maritime employer shall be considered and determined by the National Labor Relations Board in accordance with the provisions of the National Labor Relations Act: *Provided, however,* That nothing in this title shall constitute a repeal or otherwise affect the enforcement of any of the navigation laws of the United States or any other laws relating to seamen.

It is recommended that:

1. The Maritime Labor Board, or its successor, should be authorized to consider and determine questions concerning representation of employees of maritime employers.

In making this recommendation no reflection whatever is intended upon the work of the National Labor Relations Board in the conduct of the elections it has held in the maritime industry. On the contrary, the studies of the Maritime Labor Board show that the National Labor Relations Board has been most effective in peacefully settling questions of representation in the maritime industry. Between January 15, 1936, and July 15, 1939, the National Labor Relations Board conducted more than 300 elections (or equivalent "ascertainments") involving more than 54,000 maritime employees.

The Board's recommendation that this section should be amended so that questions concerning representation should be considered and determined by the Maritime Labor Board, or its successor, instead of by the National Labor Relations Board, is based upon two considerations.

First, the Maritime Labor Board, or its successor, would be in a better position to expedite the determination of questions of representation than the National Labor Relations Board.

In many cases, the conduct of these elections has been protracted because of the large number of representation disputes which are handled by the National Labor Relations Board in many industries, and because of the special difficulties involved in elections among seafaring men and longshoremen. These special difficulties arise out of the nature of the employment of seamen and longshoremen. The former are usually at sea, signed on for short or long voyages, when elections are begun; so that the seamen employed by the same company are seldom in the same port at the same time. Longshoremen

often work for several employers during 1 week, or 2 or more successive weeks. Many longshoremen are casual workers employed on an hourly basis by several employers during the same day or the same week. Because these employment conditions tend to prolong elections involving the determination of questions of representation and because the National Labor Relations Board is preoccupied with numerous disputes concerning representation in other industries, the Board is of the opinion that it, or its successor, would be able to handle these questions for the maritime industry more expeditiously. Prompt handling of all disputes, including those relating to questions of representation, is essential in the interest of maintaining peaceful labor relations.

Second, the handling of disputes relating to questions of representation, by the Maritime Labor Board, or its successor, would strengthen its effectiveness as a mediatory agency.

At present the Maritime Labor Board has no jurisdiction in disputes involving questions of representation, not even in cases when such disputes threaten to interrupt the free flow of water-borne commerce. Since such disputes are referred to the National Labor Relations Board, the Maritime Labor Board is frequently unaware of their existence. When the existence of such disputes comes to the attention of the Board, it is unable to act in order to prevent their development into work stoppages.

Jurisdictional disputes between maritime unions have, in the experience of the Maritime Labor Board, given rise to situations which resulted in stoppages of work. Often such disputes can best be resolved by an election to determine by whom the affected maritime employees wish to be represented. But, because the Maritime Labor Board is prevented by section 1002 of title X from handling disputes involving questions of representation, it is also prevented from dealing with jurisdictional disputes which could only be settled by determining the collective bargaining agencies. The Board, or its successor, would be in a much better position to function effectively in the interest of the continuous flow of water-borne commerce if it were given jurisdiction over labor disputes arising out of questions of representation.

2. The navigation laws of the United States or any other laws relating to seamen should not be so construed as to abrogate the right of seamen to strike in domestic harbors.

The language of section 1002 pertaining to the National Labor Relations Act was obviously intended to protect seamen against unfair labor practices as they are defined in that act and to safeguard the right of seamen to organize and bargain collectively through their chosen representatives. But the provision of this section which reads, "That nothing in this title shall constitute a repeal or otherwise affect the enforcement of any of the navigation laws of the United States or any other laws relating to seamen," has cast some doubt upon the right of seamen to strike in domestic harbors when the vessel affected by the strike is safely moored to the dock. This doubt has arisen principally because of administration of the law relating to the creation of marine boards to investigate acts of

incompetency or misconduct not committed in connection with a marine casualty or accident. This law reads in part as follows:

(*b*) The Secretary of Commerce shall establish rules and regulations for the investigation of marine casualties and accidents not involving loss of life, any act in violation of any of the provisions of this title or of any of the regulations issued thereunder, and all cases of acts of incompetency or misconduct committed by any licensed officer or holder of a certificate of service while acting under the authority of his license or certificate of service, whether or not any of such acts are committed in connection with any marine casualty or accident * * *.[1]

Investigations of acts of incompetency and misconduct not committed in connection with marine casualties and accidents are made by boards, known as C boards, which are composed of representatives of the Bureau of Marine Inspection and Navigation, and appointed by the Director of that Bureau.

The law does not define "acts of incompetency or misconduct," but a survey of the charges preferred by the Bureau of Marine Inspection and Navigation in a number of C board cases seems to indicate that the Bureau construes the term as encompassing any behavior legally reprehensible under the navigation laws. This connotation brings within the purview of the C boards actions ranging from drunkenness and fighting among crew members to refusal in violation of articles, to obey a command issued by the master during a strike in a safe harbor.

The significance of these investigations for maritime labor arises from the fact that actions characterized as misconduct may occur in connection with strikes or other union activity directed toward establishing or enforcing the collective-bargaining rights guaranteed to labor.

The articles which all crew members in the foreign and intercoastal trade must sign provide, in part: "* * * the said crew agree to conduct themselves in an orderly, faithful, honest, and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of the said Master, * * *." This provision can be interpreted to make any refusal to obey a command while under articles an act of misconduct, even when such refusal takes place in connection with a lawful strike in a domestic harbor when the vessel is safely moored.

The Board is of the opinion that none of our navigation laws or other laws affecting seamen should be so construed as to make possible the suspension or revocation of certificates or licenses for engaging in lawful strikes.

It is the declared policy of the United States, as expressed in section 1001 of title X, "* * * to eliminate the causes of certain substantial obstructions to the free flow of water-borne commerce and to mitigate and eliminate these obstructions when they have occurred * * *" but it is not a part of this policy to prohibit lawful strikes by seafaring men. Thus, the purpose of title X is to eliminate, as nearly as is possible, the causes which may lead to strikes in the maritime industry, but not to penalize seafaring men for exercising their right to engage in lawful strikes when in their judgment such strikes are unavoidable as a means of protecting their economic interests.

[1] R. S. 4450, U. S. C. 239.

The recommendation of the Board that certificates and licenses of seafaring men should not be revoked for engaging in lawful strikes is fully in keeping with the declared policy of the United States, which seeks to establish peaceful labor relations in the maritime industry by means of advancing the principles and practices of collective bargaining, rather than by imposing legal restrictions upon the rights of maritime employees which are not applicable to other workers.

3. The receipt of Federal construction or operating subsidies should also be made conditional upon compliance with the provisions of section 8 of the National Labor Relations Act.

The amendments to section 1002, recommended by the Board, would leave maritime employees, not covered by the Railway Labor Act, under the jurisdiction of the National Labor Relations Act with respect to the unfair labor practices listed in that act.

It is the judgment of the Board that the observance of the provisions of the National Labor Relations Act with respect to unfair labor practices should be made a condition for receiving federal subsidies. To achieve this end section 1002 should be further amended to provide that persons or corporations, found guilty by a court of competent jurisdiction of any of the unfair labor practices prohibited by section 8 of the National Labor Relations Act, should become ineligible to receive, or to continue to receive, federal construction or operating subsidies for a specified period of time.

This recommendation is intended as a special inducement to those who are the direct beneficiaries of governmental aid to obey the provisions of the National Labor Relations Act. In the interests of orderly labor relations in the maritime industry, the Board believes it is imperative to stop effectively any attempt by unfair maritime employers to engage in practices inimical to the rights of maritime employees. Since many maritime employers are receiving governmental subsidies and others are likely to apply for such subsidies, it would be an added inducement to them to abide by the provisions of law as regards the fundamental rights of labor, if the law made maritime employers who are guilty of unfair labor practices ineligible for subsidies for a specified period. This additional penalty would do no harm to fair employers and could only be objectionable to those who have not as yet fully recognized the rights of their employees to self-organization.

AMENDMENTS TO SECTION 1003

Section 1003 now reads:

When used in this title—

(*a*) The term "water-borne commerce" means commerce by water between any State, the District of Columbia, or any Territory or possession of the United States and any foreign country, or commerce by water on the high seas or the Great Lakes between any State, the District of Columbia, or any Territory or possession of the United States and any other State, Territory, or possession of the United States.

(*b*) The term "maritime employer" means any person not included in the term "carrier" in title I of the Railway Labor Act, approved May 20, 1926, as amended, who (1) is engaged in the transportation by water of passengers or property in water-borne commerce; (2) is engaged in towboat, barge, or lighterage service in connection with the transportation of passengers or property in water-borne commerce; (3) operates or manages or controls the operation or management of any wharf, pier, dock, or water space, for the accommodation of vessels engaged in the transportation of passengers or property in water-borne commerce; (4) is engaged in the business of loading or unloading vessels en-

gaged in the transportation of passengers or property in water-borne commerce; or (5) operates any equipment or facility connected with the services set forth in clauses (1), (2), (3), and (4) hereof, which is necessary for the continuity of flow of passengers and property in such water-borne commerce.

(*c*) The term "employee" means any person who performs any work as an employee or subordinate official of any maritime employer, subject to its authority to supervise and direct the manner of rendition of service, when the duties assigned to or services rendered by such person directly or indirectly in any manner affect, relate to, or are concerned with the transportation of passengers or property in water-borne commerce, or the furnishing of equipment or facilities therefor, or service in connection therewith, as set forth in clauses (2), (3), (4), and (5) of subsection (*b*) of this section; it being intended that this title should apply not only to those persons whose work may be exclusively in connection with the movement by water of passengers and property in the interstate and foreign commerce of the United States but also to those persons whose work may have such a close relation to the movement of such interstate and foreign commerce that the provisions of this title are essential and appropriate to secure the freedom of that commerce from interference and interruption. The provisions of this title shall not apply to the master or members of the crew of any vessel not documented, registered, licensed, or enrolled under the laws of the United States.

It is recommended that:

1. The jurisdiction of the Maritime Labor Board, or its successor, should be extended to personnel on all documented vessels upon navigable waters within the jurisdiction of the United States, except vessels covered by the Railway Labor Act.

One of the Board's recommendations with regard to this section is that it should be so amended as to include clearly within the Board's jurisdiction all persons employed upon vessels and craft engaged in water-borne commerce upon all navigable waters within the jurisdiction of the United States, except the personnel of such vessels as come under the jurisdiction of the Railway Labor Act.

The Board's reason for this recommendation is that it believes the effectiveness of the Board, or its successor, would be enhanced if it were in a position to handle all labor disputes in which maritime employers and employees are involved, irrespective of the kind of water-borne trade involved in the dispute. The jurisdiction of the Maritime Labor Board, or of its successor, should be coextensive with that of the maritime labor unions where such jurisdiction covers employees on vessels upon navigable waters within the jurisdiction of the United States. The jurisdictions of these unions are not confined to vessels on the high seas and on the Great Lakes, but extend to inland waterways and to harbor craft. Thus, during a strike of employees on the inland waterways in 1939, the services of the Board were requested by the Inlandboatmen's Union and by the National Marine Engineers' Beneficial Association. Because it was not clear whether section 1003 gives the Board jurisdiction in cases of strikes on inland waterways, the Board was unable to respond. On the other hand, in a strike of inland boatmen on Puget Sound in 1939, the Board did offer its services and was helpful in terminating the strike by securing the consent of the parties to arbitration. But in all such cases the mediatory efforts of the Board have been hampered by uncertainty as to its jurisdiction. Strikes of Alaska fishermen and Alaska cannery hands in the salmon industry in 1938 and 1939 have had deleterious effects upon water-borne commerce between the Pacific Northwest and Alaska. While the Board may now have jurisdiction in disputes affecting these workers, section 1003 should be clarified to make such jurisdiction clear.

Strikes of ferryboatmen, tugboatmen, and of employees on towboats seriously interfere with water-borne commerce. Since section 1003 clearly gives the Board jurisdiction over mercantile commerce on the Great Lakes and on the high seas, its jurisdiction should also extend to other water-borne commerce not covered by the Railway Labor Act which is closely related to off-shore and coastwise commerce.

2. The jurisdiction of the Maritime Labor Board, or its successor, should be extended to include employees engaged in ship repairing.

"Ship repairing," according to the United States Maritime Commission, "is quite as essential to the maintenance of a merchant marine as the building of the ships. During the lifetime of a ship an average expenditure equal to at least three-fourths of its original cost is required for upkeep, surveys, modernization, and repair." [2] Delays to ship repairing, as distinguished from delays to shipbuilding, directly interfere with water-borne commerce in the same manner as do strikes of seafaring personnel.

Subsection (*b*) of section 1003 might perhaps be construed to inclued employees in ship-repair yards, but such construction would be subject to grave doubt because of the present wording of this subsection and of the entire section discussed.

3. The jurisdiction of the Maritime Labor Board, or its successor, in matters relating to labor disputes in the maritime industry as defined by this section, should be made exclusive.

At the present time, the Conciliation Service of the United States Department of Labor seems to have the same jurisdiction in maritime labor matters as does the Maritime Labor Board. This makes it difficult to allocate responsibility for mediation work in this industry and often hampers effective administration of title X. A mediator of the Maritime Labor Board engaged in settling a labor dispute affecting water-borne commerce is never sure when a representative of the Department of Labor will also step in, either as an "observer" or as an active mediator or conciliator. The fact that two governmental agencies have jurisdiction in the same industry in fulfilling the same function is confusing to employers, employees, and the public. Settling labor disputes in any industry is often a difficult and delicate task. It should not be made more difficult by jurisdictional questions between two or more governmental agencies.

The Board does not suggest that the Conciliation Service has not been cooperative in this respect, but believes that such cooperation would be more effective if the Conciliation Service would enter maritime labor disputes only upon request of the Maritime Labor Board, or its successor, and in cooperation with the Board.

4. The term "employee" should include the seagoing personnel on Government-owned merchant vessels operated for the account of the Government by managing agents or corporations. The term "maritime employer" should include managing agents or corporations operating Government-owned merchant vessels for the account of the Government.

The purpose of this recommendation is to insure the right of collective bargaining to the seagoing personnel on Government-owned merchant vessels which are not directly operated by a governmental

[2] U. S. Maritime Commission, Statement prepared by the United States Maritime Commission at the request of the chairman of the Senate Commerce Committee on H. J. Res. 306 (Neutrality bill), p. 16.

agency, but which are operated for such agency by a managing agent or corporation.

It is the judgment of the Board that if this amendment were adopted, it would materially assist in the stabilization of labor relations in the maritime industry, and would in no way infringe upon the sovereignty of the Federal Government.

Owing to the policy adopted by the United States Maritime Commission by which employees on Government-owned merchant vessels, operated by managing agents or corporations, are considered *Government employees*, such employees have been denied the privileges of collective bargaining granted to other maritime employees under the National Labor Relations Act. This has engendered among the maritime labor unions an attitude of antagonism toward the United States Maritime Commission—an attitude growing out of fear on the part of the labor unions that the Commission is antagonistic to the legitimate aims and aspirations of maritime labor. The refusal of the United States Maritime Commission to allow employees on the merchant vessels in question to vote for representatives for the purpose of collective bargaining and the refusal of the Commission to hire crews on such vessels from union hiring halls, as is done by other maritime employers, has been held by the maritime labor unions to be an attempt by the Commission to break down collective bargaining aboard merchant vessels in general and to do away with union hiring halls, which they regard as essential to their existence, and which have been generally accepted by maritime employers.

The Maritime Labor Board is of the opinion that employees on Government-owned merchant vessels, when they are operated by managing agents or corporations, should have the same rights of collective bargaining as do employees on privately owned merchant vessels, whether subsidized or not. If this view were taken by the Congress, it could designate the managing agents or corporations operating Government-owned merchant vessels as "maritime employers" for the purpose of title X, and employees on such vessels as "maritime employees" for the purpose of title X.

The present policy of the Federal Government is that the American merchant marine, whenever practicable, should be privately owned and operated. With respect to Government-owned merchant vessels, the policy is that such vessels, whenever practicable and as soon as possible, should be sold or chartered to private individuals and operated with the aid of subsidies, where such subsidies are necessary in the interest of maintaining the American merchant marine.

In cases where Government-owned merchant vessels cannot be sold or chartered, they may be operated by managing agents or corporations for the account of the Government, until such time as they can be advantageously disposed of or chartered to American citizens.

In the light of such policy, the employees on Government-owned merchant vessels may be Government employees today and private employees tomorrow. Granting that employees on Government-owned merchant vessels, privately operated for the account of the Government, *are* Government employees, it must be conceded that they are employees in a special category in that they have an entirely different status from Post Office employees, for example, who are permanent Government employees.

This distinction is important for the reason that the frequent transfer of employees from a governmental status to a private status recurrently brings into question the status of the collective bargaining rights of the seafaring personnel and the force of existing collective bargaining agreements. Thus, when a Government-owned merchant vessel is chartered to a private corporation, under a subsidy arrangement, the employees on such vessels may enter into a collective agreement with their employer. When such a vessel reverts to the United States Maritime Commission, to be operated for the account of the Commission by a managing agent or corporation, the employees on such vessel lose their right to bargain collectively and to work under a collective agreement which they had enjoyed immediately preceding the transfer of the vessel.

The question regarding the status of employment on Government-owned merchant vessels operated for the account of the Commission by managing agents or corporations has given rise to much harmful controversy and has resulted in delay in the operation of such vessels. The adoption of the Board's recommendation for including employees on Government-owned merchant vessels, operated by managing agents or corporations, within the term "employees" under section 1003 of title X, would do away with this needless controversy and would be conducive to better and more stable labor relations in the maritime industry.

AMENDMENTS TO SECTION 1004

Section 1004 now reads:

It shall be the duty of the Board to encourage all maritime employers, their officers and agents, and their employees or the duly selected representatives of such employees to exert every reasonable effort—

(1) to make and maintain written agreements concerning rates of pay, hours of employment, rules, and working conditions, which agreements shall provide, by means of adjustment boards or port committees, for the final adjustment of disputes growing out of grievances or the application or interpretation of the terms of such agreements;

(2) to settle all disputes, whether arising out of the interpretation or application of such agreements or otherwise, in order to avoid any interruptions to transportation of passengers or property in water-borne commerce.

It is recommended that:

1. It should be made the duty of maritime employers and employees to exert every reasonable effort to make and maintain written agreements and to settle all disputes.

At the present time, section 1004 makes it *the duty of the Board* to encourage maritime employers and employees to make and maintain written agreements and to settle all disputes. The Board's recommendation is that this section should be amended to make it also *the duty of maritime employers and employees* to exert every reasonable effort to make and maintain written agreements and to settle all disputes, whether arising out of the interpretation or application of such agreements or otherwise, in order to avoid any interruptions to transportation of passengers or property in water-borne commerce. Such an amendment would strengthen the effectiveness of the Board, or its successor, in encouraging maritime employers and employees to bargain collectively and would tend to avert lockouts and strikes.

It should be noted, in this connection, that under the Railway Labor Act, it is "* * * the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

2. The Maritime Labor Board, or its successor, should be authorized and directed to establish adjustment boards at the request of or with the consent of maritime employers and employees.

The Board now has the duty of encouraging maritime employers and employees to make and maintain agreements, which shall provide, by means of adjustment boards or port committees, for the final settlement of all disputes.

While bipartisan adjustment boards or port labor relations committees are provided for in most collective agreements in the maritime industry, these have often proved ineffective in preventing stoppages of work and in bringing about stable labor relations.

It should be made the continuous duty of the Maritime Labor Board, or its successor, to study the functioning of the existing adjustment boards or port labor relations committees, with a view to suggesting to maritime employers and employees methods for their improvement. In cases where existing adjustment boards can be improved through their reorganization and by the establishment of reorganized or additional adjustment boards, the Maritime Labor Board, or its successor, should recommend to the maritime employers and employees the establishment of such reorganized or additional adjustment boards.

When established, through the assistance of the Maritime Labor Board, or its successor, with the consent or at the request of the direct parties at interest, such bodies should be provided by the Board with office space, permanent secretaries, and with clerical assistance, as is done by the National Mediation Board under the Railway Labor Act. If this were done, it would greatly facilitate the promotion of the orderly processes of collective bargaining. The Board believes that the establishment of adjustment boards with the aid of the Federal Government would act as a stabilizing influence in the making and the maintaining of written collective agreements and would aid in the development of procedures for the orderly settlement of disputes by direct negotiations and by voluntary arbitration.

AMENDMENTS TO SECTION 1005

Section 1005 now reads:

Within thirty days after the date of enactment of this title, every maritime employer shall file with the Maritime Labor Board a copy of each contract with any group of its employees in effect on such date, covering rates of pay, hours of employment, rules, and working conditions. When any new contract is executed or any change is made in an existing contract with any group of its employees covering rates of pay, hours of employment, rules, or working conditions, any maritime employer shall file a copy of such contract, or a statement setting forth such change, with the Maritime Labor Board within ten days after such new contract has been executed, or such change has been made. Any maritime employer who willfully fails to file any copy of a con-

tract or statement as required by this section shall be subject to a fine of not more than $100 for each offense.

It is recommended that:

1. Maritime employers should also be obliged to file with the Maritime Labor Board, or its successor, copies of decisions of arbitrators or referees, within 10 days after such decisions have been made.

Section 1005 does not now require maritime employers to file with the Maritime Labor Board copies of the decisions of arbitrators made in the settlement of maritime labor disputes. Such decisions, interpreting the contract, supplement the contract and are made a part of it. Since employers are required to file changes made in the contract with the Board, they should also be required to file arbitrators' decisions relating to the contracts. A knowledge of the full provisions and the meanings of the contracts is essential to enable mediators to handle maritime labor disputes effectively.

There are substantial differences in the provisions of the contracts affecting both seamen and longshoremen on the Atlantic, the Gulf, and the Pacific coasts, and on the Great Lakes. To perform their work intelligently, the mediators of the Board should be fully aware of these differences, and of all provisions in the maritime agreements in connection with which they are called upon to act as mediators. These agreements are numerous and complicated, and require continuous study and analysis. The Board believes that it, or its successor, should have on its staff several experienced investigators, well trained in labor problems, to study and analyze these agreements, with regard to comparable provisions in all maritime collective agreements. The mediator handling a case in the field has no means of knowing whether the matter in a dispute he is concerned with has already been settled in some other agreement, and what the terms were of such settlement. The Board should be able to furnish to its mediators all facts concerning such provisions in contracts between maritime employers and employees. Possessed of the knowledge of how the same question has been handled in other ports, the mediator is in a better position to mediate the case before him. Thus, the payment of cash or the giving of time off for overtime worked may be the question in dispute, say, in the port of New Orleans. The mediator handling this dispute should know what are the contractual provisions pertaining to the payment of overtime in other ports, such as on the Pacific coast, or in the port of New York, or in Baltimore.

Divergent provisions in the seamen's contracts or in longshoremen's contracts in different ports, pertaining to the same working conditions, give rise to disputes. A knowledge of these differences may lead to such uniformity, where uniformity is logical and desirable, as would avert unnecessary bickering and wrangling.

Disputes in connection with the meaning of a contract cannot be avoided, but they can be minimized by proper handling. While a speedy settlement of a dispute is always desirable, the effectiveness of mediation should not be gaged merely by the rapidity with which a dispute is settled. Every effort should be exerted by a Federal mediation agency, especially by one established for a particular industry, to seek to prevent the recurrence of disputes over the same questions.

2. Copies of all contracts, agreements, and decisions of arbitrators should be made available by the Maritime Labor Board, or its successor, to the direct parties in maritime labor disputes, upon their request or upon the request of the duly authorized representatives of either of the direct parties, when needed in connection with the adjustment of a dispute.

Section 1005 is not clear as to the duty of the Board in cases where either of the direct parties to a dispute, or both, request of the Board the use of copies of any of the agreements filed with it under penalty. Since there is a penalty attached for willful failure to file the contracts, the question has arisen whether or not the Board is authorized to make them available to one of the parties in a dispute, or to both parties, when requested to do so. The law should be clarified on this point.

3. Copies of all contracts, agreements, and decisions of arbitrators should be made available to other Federal agencies for official use.

Other governmental agencies have had occasion to ask the Board to give them access to its files containing the maritime labor agreements, but the Board was not certain as to its authority in this matter. The Board recommends that Federal agencies wishing to have access to these files should be given such access in connection with the conduct of their official business.

4. A maritime employer who is not a party to a written collective agreement should be required to furnish an annual statement to the Maritime Labor Board, or its successor, showing: (1) The number of his employees in each of the different classes of employment; (2) the hours worked by each class of his employees; (3) the wages paid to each class of his employees; and (4) whether or not he has a written agreement or written memorandum of employment with his own employees. In cases where such memoranda exist, the employer should also furnish a copy of them to the Board, or its successor, together with copies of any changes or modifications made in such agreement or memoranda. Copies of such changes or amendments should be furnished to the Board, or its successor, within 30 days after they have been made.

While section 1005 makes it obligatory upon maritime employers to file with the Maritime Labor Board copies of the collective agreements they have entered into with any group of their employees, maritime employers having no collective agreements are under no obligation to file any statements with the Board regarding the conditions under which their workers are employed.

There are still many employers in the maritime industry who do not bargain collectively with their employees. How many of these there are the Board does not know, as they are not required to advise the Board of their labor relations policies and practices. Most petroleum companies and the bulk carriers of the Great Lakes belong to this class of employer. Since maritime employers who enter into collective agreements with their employees are compelled to file copies of these agreements with the Board, those who are not parties to collective agreements should also be obliged to file annual statements with the Board, or its successor. The first annual statements should be filed with the Board, or its successor, within 30 days after the enactment of this amendment, and subsequent annual statements should be filed on or before January 31 of each calendar year. These statements should show for each maritime employer: (1) The number of his employees, in the different classes of employment; (2) the hours worked by each class of his employees; (3) the wages paid to each class of employees; and (4) whether or not he has a written

agreement with his employees or a written memorandum of employment in which the conditions of employment are specified. Where such memoranda exist, the employers should also furnish them to the Maritime Labor Board, or its successor, as a part of the annual statement. When changes or modifications are made in such memoranda or agreements, they should be furnished to the Board within 30 days after they have been made.

Since it is the declared policy of the Congress to promote collective bargaining in the maritime industry as a means of mitigating or eliminating obstructions to the free flow of water-borne commerce, the Board, or its successor, should have complete knowledge of all maritime employers who do not engage in collective bargaining. With this information the Board, or its successor, would be in a better position to encourage maritime employers and employees to make and maintain written collective agreements.

AMENDMENTS TO SECTION 1006

Section 1006 now reads:

All matters relating to the making and maintaining of agreements, and all disputes between a maritime employer or employers and its or their employees shall be considered and, if possible, adjusted with all expedition, in conference between representatives designated and authorized by the maritime employer or employers and by its or their employees, respectively. It shall be the duty of the designated representatives of maritime employers, within five days after the receipt of notice of a desire on the part of either party to confer in regard to such matters and disputes, to specify a time and place at which such conference shall be held, and the Board shall notify the representatives of the employees thereof. The place so specified shall be reasonably accessible to both parties; and the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed ten days from the receipt of such notice. Nothing in this title shall be construed to supersede the provisions of any agreement as to conferences in effect between the parties.

It is recommended that:

1. The Maritime Labor Board, or its successor, should notify either the representatives of employees or the representatives of employers of the time and place of the conference only in cases when either party notifies the Board, or its successor, that it had served notice upon the other of its desire to confer.

Section 1006 requires the Board to notify the representatives of the employees of the time and the place where the conference is to be held, but provides no means by which the Board can learn that a notice of a desire to confer has been received by the maritime employers, and when and where the conference is to be held. For this reason, the Board recommends that this section should be amended to provide that the Board shall notify the representatives of the employees only in cases when the representatives of the employees notify the Board that they had sent to the employers a notice of a desire to confer. The Board, or its successor, would then be in a position to put itself into immediate communication with the employer to find out the time and place at which the conference is to be held.

AMENDMENTS TO SECTION 1007

Section 1007 now reads:

(*a*) There is hereby established as an independent agency in the executive branch of the Government a board to be known as the "Maritime Labor Board" (hereinafter referred to as the "Board") to be composed of three members ap-

pointed by the President, by and with the advice and consent of the Senate. The President shall name one of the members of the Board as Chairman. The terms of office of the members of the Board shall extend to the date of expiration of this title. Vacancies in the Board shall not impair the powers nor affect the duties of the Board nor of the remaining members of the Board. Two of the members in office shall constitute a quorum for the transaction of the business of the Board. Each member of the Board shall receive a salary at the rate of $10,000 per annum, together with necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while away from the principal office of the Board on business required by this title. No person in the employment of, or who is pecuniarily or otherwise interested in, any organization of maritime employees or any maritime employer shall enter upon the duties of, or continue to be, a member of the Board. A member of the Board may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause.

(*b*) The Board shall maintain its principal office in the District of Columbia, but it may meet at any other place whenever it deems it necessary to do so. The Board is hereby authorized to adopt all necessary rules and regulations to carry out the powers, duties, and functions vested in it by this title. The Board shall have a seal which shall be judicially noticed.

(*c*) The Board may (1) appoint such experts and assistants to act in a confidential capacity and, subject to the provisions of the civil-service laws, appoint such other officers and employees as are essential to the effective transaction of the work of the Board; (2) in accordance with the Classification Act of 1923, as amended, fix the salaries of such experts, assistants, officers, and employees; and (3) make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding, and including expenditures for salaries and compensation, necessary traveling expenses and expenses actually incurred for subsistence, and other necessary expenses of the Board) as may be necessary for the execution of the functions vested in the Board, and as may be provided for by the Congress from time to time. All expenditures of the Board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman or by any employee of the Board designated by the chairman for that purpose.

(*d*) The Board is hereby authorized by its order to assign, or refer, any portion of its work, business, or functions to an individual member of the Board, or an employee or employees of the Board, to be designated by such order, for action thereon; and by its order at any time to amend, modify, supplement, or rescind any such assignment or reference. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Board. In conformity with and subject to the order or orders of the Board in the premises, any such individual member of the Board or employee designated shall have power and authority to act as to any of said work, business, or functions so assigned or referred to him for action by the Board.

It is recommended that:

1. The Maritime Labor Board, or its successor, should be empowered to appoint paid umpires at the request of the direct parties at interest in a dispute.

It is recommended that the Board, or its successor, should be authorized to appoint, without regard to the civil-service laws, umpires to whom deadlocked disputes would be referred by adjustment boards. Such umpires should be appointed by the Board only upon the request of the adjustment board, or of any member thereof, or of the parties, or of either party to the deadlocked dispute, and only for the specific purpose of deciding the deadlocked cases submitted to them.

The Board, or its successor, should be authorized to compensate such umpires and to pay their necessary traveling expenses, together with such other expenses as, in the judgment of the Board, have been property incurred by them in hearing, investigating, and deciding the cases submitted to them.

Maritime labor unions have often been reluctant to resort to arbitration in cases of deadlocked disputes because of the cost of arbitration. This, at least, has been one reason which they have advanced for their reluctance to submit deadlocked cases to arbitration. Moreover, the Board believes that since it is to the interest of the public to maintain stable industrial relations in the maritime industry by means of adjustment boards and arbitration, the public should pay some of the cost of maintaining adjustment boards and the cost of umpiring deadlocked disputes.

2. The Maritime Labor Board, or its successor, should be authorized to pay the office rent and other overhead expenses of adjustment boards established by the Board, or its successor, at the request of or with the consent of maritime employers and employees.

In order to encourage the establishment of adjustment boards for the orderly settlement of labor disputes in the maritime industry, the Board believes it to be desirable that it, or its successor, be empowered to pay the office rent of adjustment boards, where free office space cannot be secured in a Government building, as well as to pay other overhead expenses incurred in the operation of such adjustment boards. These expenses should include, in addition to rent, telephone and telegraph service, supplies, and other expenses incident to the maintenance of an office.

The salaries and expenses of the direct representatives of organizations of maritime employers and employees on the adjustment boards should be paid by the respective organizations, but the secretaries of such boards and the clerical staff, when appointed by the Board, should be compensated by the Board, subject to the provisions of the civil-service laws.

Since subsection (*c*) of section 1007 now authorizes the Board to appoint "such other officers and employees as are essential to the effective transaction of the work of the Board," it, or its successor, would have authority to appoint secretaries of adjustment boards as well as clerical assistants to the adjustment boards. But without specific authorization so to do, the Board, or its successor, would be unable to pay the office rent and the overhead expenses of the adjustment boards.

AMENDMENTS TO SECTION 1009

Section 1009 now reads:

> If the Board should be unable through meditation to bring the parties to a dispute to agreement in whole or in part, it shall, as its last required action, use its best efforts to secure the assent of both parties to arbitration of the matter or matters in dispute.

It is recommended that:

1. The Maritime Labor Board, or its successor, should be authorized to appoint neutral arbitrators.

While section 1009 makes it the duty of the Board to use its best efforts to secure the assent of both parties to arbitration as its last required action, it does not provide for the appointment of boards of arbitration and does not authorize the Board to appoint neutral members of boards of arbitration.

This section should be amended to provide that whenever any controversy between maritime employers and employees is not settled by

them in conference, through adjustment boards or port committees, or through mediation; such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons, but that the failure or refusal of either party to submit a controversy to arbitration should not be construed as a violation of any legal obligation imposed upon such parties by law.

The board of arbitration should be chosen in the following manner:

First, in case of a board of three, the maritime employer or employers and the representatives of the employees, parties respectively to the agreement to arbitrate, should each name one arbitrator; the two arbitrators thus chosen should select a third arbitrator. If the arbitrators chosen by the parties should fail to name the third arbitrator within 5 days after their first meeting, such third arbitrator should be named by the Maritime Labor Board, or its successor.

Second, in case of a board of six, the maritime employer or employers and the representatives of the employees, parties respectively to the agreement to arbitrate, should each name two arbitrators; the four arbitrators thus chosen should, by a majority vote, select the two remaining arbitrators. If the arbitrators chosen by the parties should fail to name the fifth and sixth arbitrators within 5 days after their first meeting, the said arbitrators should be named by the Maritime Labor Board, or its successor.

Each member of any board of arbitration created under the provisions of this title named by either party to the arbitration board should be compensated by the party naming him. The arbitrator selected by the arbitrators, or named by the Maritime Labor Board, or its successor, should receive from the Maritime Labor Board, or its successor, such compensation as the Board, or its successor, may fix, together with necessary traveling expenses and expenses actually incurred for subsistence while serving as an arbitrator.

To make the work of the board of arbitration more effective, it should be authorized, subject to the approval of the Maritime Labor Board, or its successor, to employ and fix the compensation of such assistants as it may deem necessary in carrying on the arbitration proceedings. The compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence while so employed, and the necessary expenses of the boards of arbitration, should be paid by the Maritime Labor Board, or its successor.

AMENDMENTS TO SECTION 1010

Section 1010 now reads:

> On or before March 1, 1940, the Board shall submit to the President and to Congress a comprehensive plan for the establishment of a permanent Federal policy for the amicable adjustment of all disputes between maritime employers and employees, and for the stabilization of maritime labor relations. As far as may be, the Board shall seek to secure through its mediatory efforts agreement between maritime employers and employees upon the plan it is hereby required to submit.

It is recommended that:

1. The Maritime Labor Board, or its successor, should be required to make an annual report to Congress upon its mediatory activities.

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2. The Maritime Labor Board, or its successor, should continue to use its mediatory efforts to secure agreement between maritime employers and employees upon adequate methods for the stabilization of labor relations in the maritime industry.

In the judgment of the Board, the present recommendations constitute the next step in the development of the "comprehensive plan" contemplated by the Congress under section 1010.

As pointed out in the Introduction, the Board found no indication of the possibility of agreement at this time between maritime employers and employees upon any legislative program for a Federal policy for the adjustment of labor disputes and the stabilization of labor relations in the maritime industry. Although the spirit of mutuality needed to bring about such agreement is at present lacking, there are evidences of the growth of cooperation between maritime employers and employees which may in time generate the mutual confidence and trust needed to bring about agreement between them.

Experience may demonstrate the need for further amendments to title X or for additional legislation in order that the roots of the orderly procedures of collective bargaining may be more deeply embedded in the day-to-day relationship between maritime employers and employees. The time may well come when the direct parties to the collective agreements shall have learned to settle their disputes amicably, without recourse to needless interruptions to the free flow of water-borne commerce and without the need of a specialized Federal mediatory agency.

In the meantime the Board recommends that section 1010 should be amended to direct it, or its successor, to continue mediatory efforts in order to bring about agreement between maritime employers and employees with regard to future legislation pertaining to the stabilization of labor relations in the industry. These mediatory efforts should be also used with a view to inducing maritime employers and employees to adopt such sound collective bargaining methods as may best insure the uninterrupted flow of water-borne commerce.

It is further recommended that section 1010 be amended to require the Board, or its successor, to make an annual report to the Congress upon its mediatory activities and upon any Federal legislation which, in its judgment, will best serve the policy of the United States as expressed in section 1001 of title X.

AMENDMENTS TO SECTION 1012

Section 1012 now reads:

> This title shall expire at the end of three years from the date of its enactment.

It is recommended that:

1. Section 1012 should be eliminated, or amended to provide for an extension of title X beyond June 23, 1941.

The Board's mediatory experience and its studies and investigations confirm the wisdom of the Congress in establishing a specialized agency for the adjustment of disputes and the stabilization of labor relations in the maritime industry. The realization of the objectives of the policy of the United States as declared in section 1001 of title X, requires, in the judgment of the Board, the continuation of

a specialized governmental agency to act as the exponent of the public interest at least until such time as experience has fully demonstrated the ability of maritime employers and employees to insure the continuous flow of water-borne commerce through the systematic application of the practices and procedures of collective bargaining.

RECOMMENDATION FOR THE REVALUATION OF SEAMEN'S STATUTES

The proposed amendments to title X are considered by the Board to constitute the next necessary step toward a comprehensive plan for the establishment of a permanent Federal policy for the amicable adjustment of labor disputes in the maritime industry.

In addition to making these amendments immediately effective, there is need for a complete revaluation of our navigation laws and of other laws affecting seamen in the light of the expressed policy of the Congress of the United States to promote collective bargaining in the maritime industry as a means of insuring the uninterrupted flow of water-borne commerce. The studies and investigations undertaken by the Board with regard to the impact of laws pertaining to seamen upon collective-bargaining problems have brought into relief a series of pertinent questions which have led the Board to believe that at least some of these laws may need revision with a view to bringing them in line with modern conditions of water transportation and with modern concepts of employer-employee relationships. Among these questions are the following:

First, in what way does the requirement that seafaring men sign shipping articles conflict with the collective agreements which the seafaring men enter into with the shipowners?

Second, should the contents of shipping articles be revised to conform with modern conditions of water transportation, or should the requirement for signing shipping articles be entirely done away with?

Third, when does concerted economic action on the part of merchant seamen constitute a legal right and when can such action be construed as mutiny?

Fourth, is a command of a master of a merchant vessel "lawful" when such command infringes upon the rights of seamen collectively to refuse to perform work in order to enforce a lawful economic demand?

Fifth, should the duties of Shipping Commissioners, as defined in the law of 1872, be revised to meet changed conditions which have resulted from the establishment of collective agreements between maritime employers and employees?

Sixth, is there still need for the maintenance of registers of seamen by Shipping Commissioners?

Except for its recommendations as regard the revocation or suspension of certificates or licenses of seafaring men when engaged in lawful strikes,[3] the Board is not at present prepared to answer the preceding questions or to make recommendations with regard to similar problems which have arisen in connection with its study of the legal status of seamen in relation to collective bargaining. The whole subject of the legal status of seamen in relation to collective bargaining needs to be looked into with a view to clarifying existing statutes

[3] See amendment 2 to sec. 1002.

and making them conform to the accepted legal and economic concepts of the rights of workers, including seamen, to organize for the advancement of their economic interests.

The Board, therefore, recommends that as soon as possible the Congress take appropriate action to inaugurate a dispassionate and impartial study and analysis of all existing laws affecting seamen in order that these laws may be brought into line with present-day conditions of water transportation and with the declared policy of the Congress of the United States regarding the encouragement of the practices and procedures of collective bargaining in the maritime industry.

BACKGROUND OF RECOMMENDATIONS

In advancing the proposed recommendations for a permanent Federal plan for stabilizing labor relations in the maritime industry, the Board has been guided by conditions in the industry as a whole. On the one hand, this involves an understanding of the major aspects of employer-employee relationships in the maritime industry, while on the other, it necessitates a review of Federal policy over a period of years. To outline the components of industrial relations in the maritime industry, and to examine the trend of Federal policy from 1917 to the present, including the specific issues that led to the enactment of title X, as well as the practical mediatory experience of the Board, will, therefore, contribute towards viewing the recommendations of the Board in perspective. This is the purpose of the studies which follow: The Industry and the Worker; Federal Intervention in Maritime Labor Relations from 1917–39; The Origin of the Maritime Labor Board; and Mediatory Activities of the Maritime Labor Board.

Chapter I

THE INDUSTRY AND THE WORKER

The development of stable labor relations in the maritime industry is a question involving a complex of economic and human elements. The fact that industrial peace, or industrial conflict, is so intimately bound up with human emotion renders a strictly quantitative approach to the problem fruitless. It is not sufficient to measure the economic position of the industry and the economic position of the workers, alone. Indeed, those who are experienced in dealing with industrial disputes well know that it is primarily the attitude of the representatives of the two sides which, irrespective of the terms of the settlement, determines whether industrial peace or industrial conflict shall prevail. And that attitude on the part of both employers and workers is, in turn, conditioned by a subtle fusion of economic, legal, and psychological factors which are to a large extent bound up with the nature and history of the industry. It is therefore desirable to analyze briefly the major factors entering into labor relations in the maritime industry—the industry, the employers, the workers, and the relationship between those representing each.

THE INDUSTRY

The net total water-borne commerce of the United States during the calendar year 1937 amounted to 583,100,000 tons, valued at $20,900,000,000.[4] In its *Economic Survey of the American Merchant Marine*,[5] the United States Maritime Commission has set down a number of statistical facts with regard to the industry in a normal period. We know from this report that the United States stands among the foremost maritime nations of the world, ranking second in terms of value of its water-borne trade and in tonnage of its merchant vessels.

The strategic importance of the maritime industry derives from the facts that: (1) It is an essential part of the whole scheme of national defense; (2) it provides a cheap method of transportation for a large body of heavy and bulky industrial products; (3) it furnishes the only method of transportation for important commodities, both consumers' and producers' goods, such as coffee, cocoa, sugar, tin, and rubber, which must be transported by water because of their place of origin.

The history of the maritime industry over a long period of years has been characterized by extreme fluctuations in economic stability, in tonnage, and in management. Not only is the industry affected sharply by the general trends of national economy, by competition of foreign shipping, of railroads and trucks, but it also responds to al-

[4] U. S. War Department, *Report of the Chief of Engineers, U. S. Army—1938*, pt. 2, p. 4.
[5] U. S. Maritime Commission, *Economic Survey of the American Merchant Marine*, November 10, 1937.

most any action of the Government with regard to foreign relations, such as tariffs or trade treaties. Particularly, the national policy on merchant shipping and the national defense have a direct and profound repercussion upon it. A contributing factor to its instability is also the inescapable fact that shipping is conditioned by the elemental character of the sea which subjects it to risks, uncertainty, and insecurity unknown to any other industry.

In recognition of the peculiar risks inherent in shipping the Government has set up many restrictions and regulations to encourage safety at sea in an effort to secure protection for passengers and property. These include regulations regarding the construction and registration of ships, manning scales, the certification of seamen, and investing the ship's officers and certain governmental agencies, such as the Bureau of Marine Inspection and Navigation, with special authority involving the power to discipline employees under certain conditions.[6] With a view to aiding the industry to achieve economic stability, a substantial share of the risks to profits resulting from foreign competition has also been absorbed by the Federal Government.

Other factors, such as the increased size, speed, and efficiency of vessels, better navigation instruments, the electric cable and radio, and improved storage methods, have also reduced the risks of shipowners and of the public, while with the development of marine insurance, the remaining risks to ships and cargo have been covered. By such means the risks of the public, of the shipper, and of the shipowner have been met over a period of years.

One important aspect of insecurity and instability, however, has not yet been satisfactorily dealt with. This is the employer-employee relationship, which has for a number of years been a focal point of chronic industrial conflict. The roots of this conflict are in part bound up with the extreme fluctuations and the economic instability of the industry, and in part with the peculiar conditions of maritime employment and the unique legal position of seamen. Both of these interfere with the normal development of collective bargaining in the maritime industry.

THE MARITIME WORKER

Maritime workers fall into two main categories, those who work aboard ship and those who work on the shore, that is, seafaring personnel and longshoremen. In the United States they are also divided geographically on the basis of their home port or place of work into workers on inland waterways, the Atlantic coast, Pacific coast, Gulf, and Great Lakes. Workers aboard ship are further divided into licensed and unlicensed personnel. In the first group are the masters, mates, pilots, engineers, and others who have special training for their work and hold Government licenses to that effect. In the second group are the seamen whose entire training is usually their

[6] Though the severe physical discipline aboard vessels of the earlier period has been abolished, every seaman by signing the ship's articles as a condition of employment today binds himself in the following terms: "* * * the said crew agree to conduct themselves in an orderly, faithful, honest, and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of the said master, or of any person who shall lawfully succeed him, and of their superior officers in everything relating to the vessel, and the stores and cargo thereof, whether on board, in boats, or on shore; * * *." U. S. Department of Commerce, *Navigation Laws of the United States*. 1935, p. 74.

experience. A rough estimate of the number of workers engaged as seamen, deep-sea fishermen, and longshoremen in 1938 is 300,000. Of these, 140,000 are estimated to represent unlicensed seamen engaged in foreign and interstate commerce, the remainder being chiefly engaged in stevedoring.[7] The United States Department of Commerce estimates that the number of native-born Americans among unlicensed seamen is about 67 percent of the total, while 23 percent are naturalized, the percentage of Americans both native-born and naturalized being 90 percent of the total.[8]

The work done and the kind of life lived by maritime workers is essentially different from that of workers in other occupations. The maritime worker's job, whether that of engine-room hand, deck hand, steward, or longshoreman, is irregular and exacting; it alternates between dull routine and conditions demanding intense labor, quick intelligence, and high courage.

According to custom, seamen are employed for a single round-trip voyage only, longshoremen for the period required to load or unload a particular vessel. Though some workers remain attached to one ship or stevedoring company over a period of months or years, for the majority, employment in these occupations is both irregular and insecure. An indication of the extent of unemployment in this pursuit is given by figures showing that the number of unemployed persons in water transportation per 1,000 employed in 1937 was 120, compared with 103 on the steam railways, 88 in automobile factories, and 116 in cotton mills.[9] Considerable periods may also occur between jobs. The changes that have taken place in shipping incident to the development of modern science, though they have materially reduced the risks of employers and have in certain ways lightened the labor of workers, have, for the time being at least, considerably increased the risk of unemployment by creating an oversupply of labor.

The wages and earnings of seamen are also relatively low. For example, the prevailing monthly rate for able-bodied seamen on merchant vessels is $72.50 in addition to living quarters and food. Because of frequent spells of unemployment among seamen, the total annual earnings for most of the unlicensed personnel fall far short of the possible full-time cash earnings of $870, exclusive of overtime earnings.

In the case of longshoremen the hourly rate is relatively high, but in spite of frequent overtime the persistently intermittent character of the employment brings the annual earnings to a comparatively low level with some notable exceptions.

In view of all these circumstances it is not surprising that the labor turn-over is exceptionally high. The separation rate in deep-sea ship-

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[7] Estimated from data appearing in (1) U. S. Department of Commerce, *Merchant Marine Statistics,* 1938, p. 111, (2) *United States Census,* 1930, (3) Social Security Board, Kiehel and Sloan, *Examination of Employment Conditions and Proposals Concerning Provisions of a National Maritime Unemployment Compensation System for Seamen and Fishermen.*

[8] Computed on the basis of data prepared by the U. S. Department of Commerce, *Merchant Marine Statistics,* 1938, p. 111. All licensed officers and pilots of United States vessels and 75 percent of the crew, excluding officers, must be citizens of the United States (Public No. 808, 74th Cong., sec. 5). On subsidized cargo vessels on each departure from the United States all of the crew must be citizens, and on subsidized passenger vessels 90 percent of the entire crew including all licensed officers must be citizens (Merchant Marine Act of 1936, as amended, sec. 302 a, b, and c).

[9] Office of the Administrator, *Census of Partial Employment, Unemployment, and Occupations,* 1937, vol. 1, p. 17.

ping, for example, is five times the average rate in manufacturing.[10] Among longshoremen, accidents are also particularly prevalent, the frequency rate for longshoremen for the year 1936 being 17.6 as compared with 13.6 for all industries.[11]

Unlike other workers, when a seaman sells his labor he virtually sells himself, temporarily. Of necessity he lives on the ship. There is no possibility of changing his place of work or his occupation, whether or not conditions are satisfactory, until he reaches a safe port. While he is at sea, and to a less extent ashore, the seaman is restricted in matters which other workers consider definitely personal, such as food, clothing, living quarters, associates, and recreation. Frequently the "foc's'le" is crowded, unsanitary, and ill-ventilated, though conditions have been improved in recent years, especially on the newer vessels. Hours of work are irregular if not long, and there is little provision for recreation in off time. Aboard ship the seaman's working life is strictly disciplined; while on shore, lacking in general stabilizing home ties, he has little opportunity for normal participation in the social life of any place.

In contrast to the maritime employer, a great part of whose risks has been met by scientific improvements, insurance, and Government subsidies, the maritime worker of today finds himself in a uniquely unstable and inferior position among workers in general. Almost his entire life represents a departure from the normal way of living. Legally the seaman is restricted. Once he signs shipping articles he becomes a member of a group apart whose rights and duties are closely circumscribed by a special code of laws. Economically he is insecure; his right to industrial self-government is often unrecognized and his collective bargaining challenged, especially when in conflict with navigation laws. Politically he is virtually disfranchised owing to frequent absence at election time. Yet, no other group of industrial workers is asked, or is expected, to show the compliance, discipline, loyalty, courage, and the spirit of self-sacrifice demanded of seamen by the employer and the public. Taking his cue from the traditional status of the seaman, the employer often regards him as "irresponsible" and treats him accordingly. Instead of encouraging "responsible unionism" by conferring responsibility, many employers assume the traditional disciplinary role in preference to recognizing that self-respecting equality is the essential conditon of responsible contractual relationship. And the public, uninformed of the social and economic factors underlying sporadic outbursts of strikes, accepts the superficial explanation that they are simply due to subversive or irresponsible agitators.

EMPLOYER-EMPLOYEE RELATIONS

Prior to the World War the relation of the seaman to the master of his ship more nearly resembled that of a serf than that of a free worker. The Seamen's Act of 1915, however, practically completed the restoration of his civil rights, which had been in process for more than a century. Up to 1917 the efforts of the Federal Government in the field of maritime labor relations were confined to enact-

[10] Social Security Board, Constance A. Kiehel, *The Maritime Industry and Unemployment Compensation*, p. 27 (Mimeo.).
[11] National Safety Council, *Accident Rates in the Maritime Industry*, 1936, pp. 3–4.

ment of laws designed to discipline or to protect the seaman as an individual worker. With the entry of the United States into the World War in 1917, however, the Federal Government for the first time adopted a policy of encouraging collective bargaining in the maritime industry. This policy, actively promoted by the Shipping Board, led to such rapid expansion of collective bargaining in the industry that 1920 found union membership, collective bargaining, and wages at a high level.

By 1921, however, a post-war slump had set in, and with it a general drive against wage and other standards, and against the unions. In May of that year the Shipping Board decreed a 15 percent reduction along with other terms adversely affecting wages. A strike followed, but in 1922 further reductions in rates on both Atlantic and Pacific coasts were made by the Shipping Board.

During the 13-year period between the Atlantic coast strike of 1921 and the Pacific coast strike of 1934, wages and working conditions in American shipping reached a post-war low. With the attention of the Shipping Board focused upon problems involving the operation of ships, liquidations, and subsidies, labor relations were neglected.[12] An act of 1928 reaffirmed the shipping policy of 1920 and increased the construction loan fund, but failed to bring about orderly replacement of the rapidly aging merchant fleet. The depression of 1929 thus found the seamen's unions broken and the merchant fleet at a low ebb. The loss of their recently achieved civil and economic freedom created resentment among the maritime workers.

Passage of the National Industrial Recovery Act in 1933, with its section 7 (a) guaranteeing the right of collective bargaining, and later the National Labor Relations Act, served to revive self-organization among seamen and longshoremen as among other workers. The long-suppressed grievances of maritime workers came to a head on the west coast in 1934. Substantial improvements in wages and conditions of employment were secured by the longshoremen and seamen as a result of a bitterly fought strike.

Meantime, negotiations were initiated by the seamen of the Atlantic coast and an agreement was consummated in December 1934, which was somewhat less advantageous than the Pacific coast agreements signed in the spring of 1935. But these new agreements did not result in the expected stabilization of labor relations. The dissatisfaction of the east coast seamen with the 1934 agreement resulted in protest stoppages which were unauthorized by the officers of the union. These stoppages were followed in the spring of 1936 by widespread strike activity of Atlantic seamen, particularly in the New York area. These strikes were also unauthorized by the officers of the union. The conflict was further aggravated, on both coasts, by intraunion and interunion strife, as well as by conflicts between employers and workers giving rise to "quickie," "job action," "sit-down" strikes, and refusal to handle "hot cargo." When the second seamen's and longshoremen's strike was called on the west coast late in October 1936, a large number of Atlantic seamen followed suit, with the result that shipping on both coasts was wholly or partially strike-

[12] Elmo Paul Hohman, "Maritime Labour in the United States," reprinted from the *International Labour Review*, vol. XXXVIII, Nos. 2 and 3, August and September 1938, p. 37.

bound for a number of weeks. The year 1936 thus found the maritime industry in an upheaval, much of which grew out of the suppressions, conflicts, and indignities of preceding years.

Passage of the National Labor Relations Act in 1935 somewhat strengthened the position of collective bargaining in the maritime as in other industries, by making it possible to determine through elections whether a given unit of workers wanted collective bargaining and if so what organization they wanted to represent them in negotiations with their employer. But this act also raised certain difficult questions growing out of the anomalous legal position of seamen. Among these were questions involving the right to strike in a safe harbor, whether signing off the shipping articles at the expiration of a voyage represents a legal termination of employment, and the right of seamen to bargain collectively with a governmental agency engaged in proprietory activities.

During 1936 the Congress undertook to deal with the situation by passing a series of new maritime acts. Of these, three are particularly important. One amended the Seamen's Act of 1915 and improved the conditions of seamen aboard ship. A second was directed at better administration and enforcement of the steamship inspection laws in the interests of life and property. And a third, the Merchant Marine Act of 1936, embodied a new approach to the Government's merchant marine policy. Besides its main function of reconstructing the merchant marine, the United States Maritime Commission, created by the 1936 act, was also charged with the duty of investigating the conditions of seamen aboard ship and the determination of minimum manning scales, minimum wage scales, and working conditions on vessels receiving Government subsidy.

In spite of high hopes, none of these measures resolved the maritime labor problem. In its report of November 10, 1937, the Maritime Commission stated that employer-employee relations constituted one of the most difficult problems then facing the American merchant marine. As a means of fostering collective bargaining on a permanent basis and so serving the interests of employers, employees, and the general public, the Commission recommended establishment of a mediation board modeled after the National Mediation Board on the railroads, with some important modifications. Owing to the generally unsettled state of maritime affairs, however, Congress was not then prepared to establish a labor relations policy but did create the Maritime Labor Board in 1938 to encourage collective bargaining in that industry, to assist in the orderly settlement of disputes through mediation and the mediatory interpretation of agreements, and, on the basis of its experience, to submit to Congress a comprehensive plan for dealing permanently with labor relations in the maritime industry.

REQUIREMENTS OF INDUSTRIAL STABILITY IN THE MARITIME INDUSTRY

Retrospective analysis of the maritime labor situation in the United States over a long period of years shows that it has been characterized by evasion of the basic issues. This is due both to the peculiarities of the industry and to the difficulty of finding a satisfactory solution. Since instability constitutes the basic weakness of the maritime labor

policy up to now, the obvious need is the introduction of stabilizing elements at whatever points they are found to be lacking.

Labor instability grows out of the failure to recognize two fundamental desires of the worker: First, the desire for sufficient purchasing power to supply human needs; and second, the desire for power to control the conditions under which an individual shall live and work. Both are essential to self-respect and human dignity. Both have become recognized objectives of democracy. And in the past both have been singularly denied to maritime workers.

The right of an individual to determine his own living conditions within the limits of his income and other personal circumstances has long been accepted in the United States for all persons except those who are for some reason dangerous to society and for the seamen for whom, on account of the limitations imposed by their employment, complete self-determination in this respect is impossible.

The right of a worker to sufficient purchasing power to provide a bare subsistence standard of living is now recognized in the Fair Labor Standards Act. But the right to a voice in making labor contracts regarding the exact amount of individual wages above the subsistence level and the conditions under which work shall be performed is dependent under modern economic circumstances upon recognition of the right of collective bargaining. Not only from the point of view of purchasing power, that is to say the wage level, but from that of responsible self-government in industry, establishment of collective bargaining is essential to stable labor relations.

As far back as 1916, in the now-classic Final Report of the United States Commission on Industrial Relations, the importance of self-government in industry is recognized in the following words:[13]

> It has been pointed out with great force and logic that the struggle of labor for organization is not merely an attempt to secure an increased measure of the material comforts of life, but is a part of the age-long struggle for liberty; that this struggle is sharpened by the pinch of hunger and the exhaustion of body and mind by long hours of improper working conditions; but that even if men were well fed they would still struggle to be free.

Again in the words of Louis D. Brandeis the Report continued:[14]

> There must be a division not only of the profits, but a division of the responsibilities; and the men must have the opportunity of deciding, in part, what shall be their condition and how the business shall be run. * * *
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> And it is in that, in my opinion, that we will find the very foundation of the unrest; and no matter what is done with the superstructure, no matter how it may be improved one way or the other, unless we reach that fundamental difficulty, the unrest will not only continue, but in my opinion will grow worse.

Approximately 20 years after the foregoing statements were made, the National Labor Relations Act recognized and embodied the principle that free collective bargaining between equals is the prerequisite of stable industrial relations.

Clearly the fundamentals of stable labor relations in any industry are collective bargaining and the joint administration of written agreements, which supply a constructive use for the mental energy of working men and women as well as the satisfaction of their two basic human desires. In the maritime industry, however, the right

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[13] p. 62.
[14] p. 64.

of collective bargaining is not yet fully accepted as the permanent and sound basis of labor relations. By various peculiar circumstances and in devious ways it is limited, resisted, and challenged. In collective bargaining, then, lies the crux of the maritime labor problem. And until that problem involving industrial self-government in its wider ramifications is solved, stable labor relations in the maritime industry will be impossible.

Chapter II

FEDERAL INTERVENTION IN MARITIME LABOR RELATIONS, 1917–39

For more than 40 years the Federal Government has based its public labor policy upon the practice of collective bargaining. The beginnings of this policy are to be found in the Erdman Act of 1898, which sought to protect the right of workers to organize by prohibiting railroad companies from discharging employees because of union membership and from requiring workers to promise as a condition of employment that they would refrain from joining a labor organization. During subsequent years further legislation and reports of various governmental commissions have substantiated and developed the policy of collective bargaining as the most efficacious method of insuring industrial peace.

In 1901 the Industrial Commission, appointed by President McKinley, recommended collective bargaining as the basis for industrial peace. And the report of the commission appointed by President Theodore Roosevelt to investigate the anthracite strike in 1902 gave further governmental support to collective bargaining. This policy was again affirmed in the Clayton Act passed in 1914, during the administration of President Wilson, by its declaration that, "Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, * * * organizations, * * * or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof, * * *."

During the World War both the Mediation Commission and the National War Labor Board publicly recommended that collective bargaining should be recognized as the foundation of harmonious industrial relations. What is more, both the United States Railroad Administration and the United States Shipping Board followed the practice of negotiating collective agreements with the representative labor unions of the workers.

With the enactment of the Transportation Act of 1920, the Government temporarily digressed from the voluntary principle as the best guarantee of stable industrial relations in the railroad industry by introducing a measure of compulsory regulation. But dissatisfaction with the operation of this law led, in 1926, to passage of the Railway Labor Act. This act not only set up machinery for the amicable adjustment of disputes but also prescribed a definite procedure for collective bargaining between the freely chosen representatives of the carriers and the workers. Interpreting this act in the *Texas and New Orleans Railroad* decision of 1930,[1] the Supreme

[1] *Texas and New Orleans Railroad Co.* v. *Brotherhood of Railway and Steamship Clerks et al.*, 281 U. S. 548 (1930).

Court of the United States held for the first time that it was unlawful for a railroad employer to impose a company union upon his workers.

In 1932 the Congress passed the Norris-LaGuardia Anti-injunction Act which, among other things, curbed the power of the courts to issue injunctions in support of agreements whereby workers foreswore, as a condition of employment, the privilege of joining a trade union. In the declaration of policy attached to this act the necessity of collective bargaining as a means of equalizing the bargaining power of employers and employees was expressly affirmed. And in 1933 the National Industrial Recovery Act provided by section 7 (a) that all employers subject to the codes of fair competition must recognize the right of their employees to bargain collectively through representatives of their own free choice; section 7 (b) of the same act sanctioned collective bargaining as a permissible procedure for fixing wages, hours, and working conditions which should prevail in the codified industries and have legal force.

Although the United States Supreme Court found the National Industrial Recovery Act as a whole to be unconstitutional, the Congress promptly reaffirmed the declared policy with respect to collective bargaining. With adoption of the National Labor Relations Act in 1935 the policy of the United States in support of collective bargaining received its most comprehensive expression. The constitutionality of the act, which guarantees the right of self-organization to all workers covered by the act and renders refusal by an employer to bargain collectively an offense under the law, was upheld by the Supreme Court in a series of decisions handed down in 1937.

In 1934 the Congress amended the Railway Labor Act of 1926 in such manner as to make collective bargaining the basis of industrial relations in the railroad industry. In addition to the orderly settlement of disputes, the declared purposes of the act included the prevention of limitations upon freedom of association among employees or denial of the right of employees to join a labor organization, either as a condition of employment or otherwise. In order to encourage collective bargaining both the carriers and their employees were charged with the duty of exerting "every reasonable effort to make and maintain collective agreements," while employers were forbidden to engage in certain practices considered likely to prejudice the right of employees to "organize and bargain collectively through representatives of their own choosing."

Though the right of collective bargaining has been the avowed public policy of the Federal Government for a long period of years, it has not been consistently applied to the maritime industry. Briefly, what has been the course of Federal intervention in the field of maritime labor relations? From 1790 to the present time there has been a stream of legislation dealing with the conditions of seamen and with shipping. Prior to 1917, however, the intervention of the Federal Government in the field of maritime labor relations was confined to enactment of laws designed to discipline or to protect the seaman as an individual worker. Whether directed at the punishment of insubordination and desertion as were the earlier laws, whether aimed at the abolition of abuses practiced upon seamen like "shanghaiing" as was the Shipping Commissioners Act of 1872, or whether intended

to render seamen free to leave their vessels and their jobs as was the Seamen's Act of 1915, these laws uniformly concerned the relationship between the individual seaman and his individual employer.

THE WORLD WAR PERIOD, 1917–20

Entry of the United States into the World War changed the situation. In order to attract an increased supply of labor under war conditions and to prevent stoppages of work in an essential industry, it then became necessary for the Federal Government to assume a new attitude towards the group relationships between workers and employers in the maritime industry. Due to the urgent demand for expansion of shipping facilities in order to assure the unbroken flow of water-borne commerce in the exigencies of war, the Federal Government for the first time adopted a policy of collective bargaining in the maritime industry.

In addition to agencies of general jurisdiction such as the National War Labor Board, the War Labor Policies Board, and the Conference Committee of National Labor Adjustment Agencies, three other governmental agencies became concerned with particular phases of maritime labor relations during the War and immediate post-war years. These bodies were: (1) The United States Shipping Board, with jurisdiction over licensed and unlicensed vessel personnel; (2) the National Adjustment Commission, with jurisdiction over longshoremen and harbor workers; and (3) the New York Harbor Wage Adjustment Board, whose authority applied to workers on tugs, barges, lighters, and ferryboats in the port of New York.

The United States Shipping Board.[2]

The United States Shipping Board was composed of five commissioners appointed by the President. During the war years this body operated upon the premise that the organized shipowners and the seamen's labor unions should compose their differences by collective bargaining. Though the Board possessed broad powers with regard to adjustment of labor disputes involving seamen, the determination of wages, hours, and other conditions of work, the interpretation of awards and rulings made by arbitration tribunals, and the disposition of individual grievances and complaints, it deliberately chose not to exercise these powers arbitrarily. Instead, the Board followed a policy of "calling both shipowners and seamen into constant conference" and of "striving to set up representative adjustment bodies wherever possible."[3] As an operator of merchant vessels on its own account, the Board carried out the same policy. Thus, on the Atlantic and Gulf coasts the Board subscribed to the collective agreements which it had been instrumental in effecting between the private shipowners and the seamen's labor unions, while on the Pacific coast, it extended to its own vessels the terms and conditions of existing agreements. In view of the fact that the Shipping Board controlled about 300 vessels during and immediately following the war, its

[2] The wartime activities of the U. S. Shipping Board in the field of labor relations are fully described in its annual reports for these years and in two special studies prepared by its Division of Marine and Dock Industrial Relations: (1) *Marine and Dock Labor—Work, Wages, and Industrial Relations During the Period of the War* (submitted December 31, 1918); (2) *Marine and Dock Industrial Relations* (submitted March 1, 1922).

[3] H. B. Drury, "The Labor Policy of the Shipping Board," *Journal of Political Economy*, January 1921, p. 10.

labor policies largely determined the character of relations between operators and their employees for the entire industry. This resulted in the growth and recognition of labor organizations, the consummation of collective agreements and generally improved labor relations.

Through the good offices of the Shipping Board, a collective agreement was signed by the organized shipowners [4] of the Atlantic and Gulf ports, and also by the Shipping Board itself, and the International Seamen's Union in August 1917. This instrument, known as the "Atlantic Agreement," was the first written contract ever made between the International Seamen's Union and the Atlantic operators as a body. Moreover, the privileges and provisions which it contained became the basis for adjustment of maritime labor conditions in general throughout the War and post-war period. By agreement between the shipowners and the licensed and unlicensed vessel personnel, the Shipping Board was empowered, in March 1918, to determine wage rates and working conditions for all Atlantic and Gulf ports. The parties also agreed to appoint a joint advisory committee of employers and employees to aid the Board in setting the wage scale, an arrangement which resulted in higher wage rates.

In the following September (1918) the Board set up a Division of Marine and Dock Industrial Relations to act as a coordinating agency in all labor matters with which the Board was concerned. Emphasis was laid upon the peaceful adjustment of disputes and grievances and the encouragement of harmonious relations between maritime employers and their employees. On the Great Lakes, where wage rates were also set by the Board, a major strike was averted in 1918 by prevailing upon the organized bulk carriers [5] to discontinue temporarily a number of employment practices to which the International Seamen's Union was bitterly opposed. Chief among these were the use of continuous discharge books and registration of persons seeking work in hiring halls controlled by the operators. But the Board was not successful in bringing about agreement between the Lake Carriers' Association and the International Seamen's Union.

Although most of the water traffic to the war zones moved out of Atlantic and Gulf ports it was essential for the Shipping Board to maintain industrial peace on the Pacific coast as well. This task was simplified by the existence of collective agreements between the Sailors' Union of the Pacific and the shipowners and a tradition of collective bargaining. The Board consequently accepted the terms and conditions of employment fixed by the effective collective agreements as applicable to its own vessels operating on the Pacific coast.

With the end of the War a wave of strikes arose in shipping as in other industries due primarily to a combination of economic dislocations resulting from the cessation of hostilities and intraunion conflicts. After a successful strike for higher wage rates and better working conditions a collective agreement was negotiated in 1919 between the International Seamen's Union and the American Steamship Owners' Association which the Shipping Board also approved as applicable to the personnel employed on its own vessels. Somewhat modified in order to grant further concessions to the workers,

[4] The American Steamship Owners' Association.
[5] The Lake Carriers Association.

the terms of the 1919 agreement between the American Steamship Owner's Association and the International Seamen's Union were subsequently carried over into the collective agreement of 1920. This agreement, to which the Shipping Board was again a party, fixed a basic wage of $85 per month for able seamen, which represented approximately twice the pre-war rate, allowed union delegates access to docks and ships, granted an 8-hour day to the deck crew, recognized the principle of preferential hiring of union members, and set up grievance committees for the adjustment of individual complaints. Between the years 1915 and 1920 the membership of the International Seamen's Union increased from less than 20,000 to more than 100,000. In no small part this growth as well as the consummation of satisfactory agreements was due to the activities of the United States Shipping Board from 1917 to 1920.

The National Adjustment Commission.

The wartime requirements of the national economy made it just as essential to insure the undisturbed loading and discharging of vessels as to guarantee the free movement of water-borne traffic. Consequently the National Adjustment Commission was created in August 1917 to act as an arbitration tribunal of last appeal in all collective disputes regarding wages, hours, and working conditions between longshoremen and their employers.

The Commission was a tripartite body whose members were named by the several parties to the agreement by which it was brought into being; namely, the United States Shipping Board, the Federal Departments of War and Labor, the International Longshoremen's Association, the American Federation of Labor, and the principal shipping operators.[6] Although the jurisdiction of the Commission was originally limited to labor difficulties affecting longshoremen, its powers were eventually extended to cover workers on harbor vessels as well.

In the first instance all differences between workers and employers were to be settled in each port by a local organ of arbitration. When the local body was unable to adjust a difference, the case was to be submitted to the National Commission for a final and binding award. The fact that the Commission included representatives both of the shipowners and of the longshoremen's union indicated that the arbitration arrangements were based upon the acceptance of collective bargaining. Moreover, the standards of wages, hours, and working conditions adopted by the Commission as basic in arriving at its decisions and awards were those established by collective agreement as of August 1917 in the particular port where the issue had arisen.

Local tripartite tribunals composed of representatives of the Shipping Board and the War Department, of the International Longshoremen's Association, and of the carriers engaged in foreign, coastwise, and intercoastal trade were set up in most of the major ports of the United States and also in Honolulu and San Juan (Puerto Rico). Special agents acted for the National Commission in a number of ports

[6] Subsequently a representative of the Navy Department was added to the Commission as an advisor. See U. S. Shipping Board, Marine and Dock Industrial Relations Division, *Marine and Dock Labor—Work, Wages, and Industrial Relations During the Period of the War*, p. 28.

where no local bodies were established. The only important port where this system of arbitration did not function was San Francisco. There the National Adjustment Commission had no jurisdiction because the employers refused to deal with the International Longshoremen's Association.[7]

During the years 1917 and 1918 great strides toward industrial stability were thus made on the waterfront throughout the United States. A large number of disputes and grievances involving many thousands of wharf and harbor workers were successfully arbitrated at the various major ports along the three coasts and the Great Lakes. A serious problem arose, however, out of the overlapping of jurisdictions belonging to the National Adjustment Commission and the United States Railroad Administration, the latter having jurisdiction over wages, hours, and working conditions of wharf and harbor workers handling freight between vessels and trains. This problem, which was never satisfactorily solved, grew out of the unwillingness of the Railroad Administration to be bound by arbitral awards made by the National Adjustment Commission.

Most of the local bodies having ceased to function by September 1919, the National Adjustment Commission was reorganized according to the provisions of an agreement entered into by the United States Shipping Board, private shipping interests of the Atlantic and Gulf coasts, and the International Longshoremen's Association. By the terms of this agreement a tripartite National Adjustment Commission of five members was established. These comprised a chairman representing the Shipping Board, two members representing the shipowners, and two members representing the labor organization. To aid the Commission in arbitrating disputes, there was attached to it an equally divided panel of employer and employee representatives from each of the different seaboard areas and the Great Lakes. The national body was further implemented by a General Dock Council composed of representatives of the Railroad Administration and the Federal Departments of War, Navy, Commerce, and Labor, which exercised a purely advisory function. In addition, this Council issued recommendations for standardizing labor conditions as between ports, for decasualizing longshore labor and for improving health, safety, and efficiency. Subject to the authority of the National Commission as a court of last appeal, local tripartite boards were also set up in seven major ports.[8]

Expenses of the Commission were met from funds of the United States Shipping Board which also named its chairman. Awards of the Commission were solely dependent for enforcement upon public opinion while its range of effective action was largely confined to the North Atlantic ports where worker organization was strong enough to support it. In its new form the Commission proved unable to avert or settle a series of strikes among longshoremen that broke out in 1919 and 1920 at major ports throughout the country. After a brief existence during which several wage awards were handed down and following withdrawal of the Shipping Board from the arrangements, the National Adjustment Board ceased to function in October 1920.

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[7] *Ibid.*, p. 163.
[8] National Adjustment Commission, *Report of the Executive Secretary*, January 1, 1919—June 30, 1920, chart following p. 23.

The New York Harbor Wage Adjustment Board.

The New York Harbor Wage Adjustment Board was an independent agency established by two joint agreements dated October 1917, one between the United States Shipping Board and the chief harbor craft operators in the port of New York and the other between the Shipping Board and the labor unions representing the New York harbor workers employed on tugs, barges, lighters, and ferryboats. It was intended to avert an interruption in harbor traffic in New York and was empowered by the agreements creating it to hear and rule upon all disputes concerning wages, hours, and working conditions which could not be adjusted directly between employers and employees. Although the Board was excluded from ruling on the issues of the open or closed shop and of union recognition, it did have authority to pass on grievances alleging discrimination against workers because of union membership.

Owing to attempts to enforce conflicting wage standards and incomplete arbitration machinery the Board was not able to function effectively. It was consequently replaced by a new agency made up of representatives of the Shipping Board and the unions of harbor workers. Largely because of overlapping jurisdiction between the Shipping Board and the Railroad Administration, but also as a result of serious disputes over the issue of the 8-hour day, this new agency was likewise hampered in its usefulness. A proposal for still another form of board was rejected by the shipowners, and the problem, therefore, remain unsolved.

THE POST-WAR PERIOD, 1921–33

At the beginning of 1921 the major concrete result surviving from the Federal Government's wartime intervention in maritime labor relations was the collective agreement of May 1920 which involved the Shipping Board, and the American Steamship Owners' Association representing the operators at Atlantic and Gulf ports, and the International Seamen's Union representing unlicensed personnel. By the end of 1921, however, this agreement had broken down, and the shipping industry had for the most part reverted to individual bargaining. With the war emergency past, the Government withdrew from active participation in the making and maintaining of collective agreements in the maritime industry. The Shipping Board subsequently became so occupied with problems involving operation of ships, liquidations, and subsidies that labor relations were neglected.[9]

The collapse of collective bargaining, 1921–22.

The collapse of collective bargaining in the merchant marine was immediately due to an unsuccessful strike of Atlantic and Gulf seamen called in 1921. This strike, like a number of others occurring in the early post-war years, resulted from an effort of organized employers to return to the pre-war status under which collective bargaining was limited to a few industries and to a counter-effort by organized labor to consolidate the important gains made during the War by obtaining union recognition on a permanent basis. A general

[9] Elmo Paul Hohman, "Maritime Labour in the United States," reprinted from *International Labour Review*, vol. XXXVIII, p. 37.

economic dislocation incident to demobilization accentuated the conflict. In addition, extremist elements within the union and failure to establish a permanent governmental labor body strong enough to maintain the policy of collective bargaining in the face of wage reductions constituted other factors peculiar to the maritime situation.

The seamen's strike of 1921 was precipitated by announcement of a drastic cut in wage rates and a new set of working rules initiated by the Shipping Board in an effort to break a stalemate in negotiations between the American Steamship Owners' Association and the International Seamen's Union. It ended in a defeat of the workers. Seamen working on vessels operated by the Shipping Board returned on terms involving wage reduction of 15 percent, the abolition of overtime pay, lower subsistence rates for seamen ashore, the end of the policy of allowing preference to union members in the hiring of crews, and the elimination of guarantees on such basic points as the three-watch system for deck personnel. Workers employed on vessels operated by private owners returned to work on less favorable terms.

But the rout of the International Seamen's Union had still further to go. It reached its climax early in 1922 when first the Steamship Owners' Association and then the Shipping Board put into effect new and lower wage scales which almost cut in half the wage scales established during the War. These new arrangements, arrived at and issued by the unilateral action of the employers, signified that collective bargaining had ceased to function in Atlantic and Gulf coast shipping. As for the Great Lakes, the International Seamen's Union had been unable to win collective agreements with the bulk carriers' organization even under the favorable circumstances of the War. Only on the Pacific coast, where collective bargaining antedated the War, was the International Seamen's Union successful in maintaining any sort of foothold.

Shipping Board policies, 1922–33.

The conditions which prevailed in the shipping industry after the break-down of collective bargaining have been described as follows: [10]

> Wages and working conditions, by comparison with the generous scales of the war period, were low and remained so. Shipowners, harassed by the serious and continuing depression throughout the shipping industry, were in no mood to consider or to redress the grievances of their crews, and uncertainty and irregularity of employment remained serious problems even during the "boom" days of the late twenties. Various provisions of the Seamen's Act were inadequately enforced. In its efforts to treat with both the Shipping Board and the private operators the Seamen's Union was ignored or rebuffed time after time. Methods and conditions of hiring were completely controlled by the employers, who often enforced terms which were extremely irritating to the crews. This was especially true of the Employment Service Bureau on the Pacific and the employment requirements of the Lake Carriers' Association, though the Sea Service Bureau of the Shipping Board on the Atlantic also received its full share of criticism.

Notwithstanding these circumstances, the Shipping Board made official pronouncements in favor of collective bargaining "wherever possible" in its various annual reports.[11] Indeed, the Board actually entered into continuing collective agreements with the International

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[10] Elmo Paul Hohman, "Maritime Labour in the United States," reprinted from the *International Labour Review*, vol. XXXVIII, pp. 36–37.

[11] See, for example, *Eighth Annual Report of the United States Shipping Board*, 1924, p. 19, and *Eleventh Annual Report*, 1927, p. 26.

Longshoremen's Association at the port of New York and with such labor unions of its licensed deck and engine personnel as the National Organization Masters, Mates and Pilots, and the National Marine Engineers' Beneficial Association. Thus, though the Board never disavowed its previous policy of collective bargaining, it failed to extend it to the unlicensed members of the crew. And by not dealing with the International Seamen's Union, the Board followed a personnel program in harmony with that of the American Steamship Owners' Association, the Lake Carriers' Association, and other organized groups of shipowners.

Another point causing serious friction between the International Seamen's Union and the Shipping Board concerned the activities of the Board's Sea Service Bureau. This Bureau was first established in 1917 to recruit seamen for vessels operated by the Merchant Fleet Corporation during the War. The Bureau thus functioned as a seamen's hiring hall under the control of the employer, in this case an organ of the United States Government. The International Seamen's Union complained that the Bureau discriminated against seamen who belonged to the union and that for this purpose a blacklist was maintained. But the Shipping Board maintained that the Bureau aimed only at insuring high standards of efficiency among unlicensed members of the crew. Whatever the merits of the case, the relationship between the International Seamen's Union and the Shipping Board remained strained up to June 1933, when the Shipping Board was incorporated in the Department of Commerce.

REBIRTH OF COLLECTIVE BARGAINING, 1933

In the month that the Shipping Board was absorbed by the Department of Commerce, the National Industrial Recovery Act was passed, and with it came a revitalization of collective bargaining. Section 7 (a) of that act prescribed that all employees subject to codes of fair competition must accept the right of their employees to organize and bargain collectively through representatives of their own choosing and must not require their employees to join a company union or to refrain from becoming members of a labor union as a condition of employment. Like the textile, steel, automobile, rubber, coal mining, and other industries, the maritime industry was profoundly affected by this declaration. The International Seamen's Union, which had been dormant for many years, experienced a rapid expansion of membership on both the Pacific and Atlantic coasts. The longshoremen on the Pacific coast broke away from the employer's hiring hall system and flocked into the International Longshoremen's Association. In all salt-water ports, in all shipping trades, in all shore occupations, and in all departments of the vessel personnel the maritime workers thus began rapidly forming effective collective bargaining instrumentalities. In view of the antiunion tradition among maritime employers this sudden emergence of effective unionism provoked strikes of a magnitude unknown since the early post-war years. As a result the Federal Government was once more constrained to intervene in maritime labor relations, not only in order to avert or moderate industrial strife but also to insure application of the Federal policy of encouragement to collective bargaining.

THE PERIOD FROM 1934 TO 1939

The record of governmental action with regard to the maritime industry since 1934 is contained in the activities of four major agencies which have been set up to deal with various phases of the maritime labor problem. These are: (1) The National Longshoremen's Board, a temporary body appointed by the President to deal with the strike of waterfront workers on the Pacific coast in 1934; (2) the National Labor Relations Board, a permanent body established in 1935 to administer the National Labor Relations Act, which includes maritime workers within its scope; (3) the United States Maritime Commission, a permanent body which administers the Merchant Marine Act of 1936; and (4) the Maritime Labor Board, set up in 1938 to encourage the making and maintaining of written agreements and to settle disputes in certain branches of the maritime industry, pending permanent legislation.

The National Longshoremen's Board.

There was not time between the passage of the National Industrial Recovery Act and the date when it was declared unconstitutional by the Supreme Court for the completion and approval of a code of fair competition for the shipping industry. Technically, therefore, the guarantee of collective bargaining contained in that act never applied to seamen, longshoremen, or harbor workers except in those cases where their employers voluntarily subscribed to the Presidents' Reemployment Agreement.[12] But the psychological stimulus that section 7 (a) gave to labor organization influenced maritime workers as profoundly as it did workers employed in industries for which codes were approved. The struggle between militant labor organizations intent upon winning recognition in the form of written agreements and equally militant employers determined not to grant such recognition came to a head on the Pacific coast in May 1934. The International Longshoremen's Association demanded wage increases, a 6-hour day, union control of hiring halls, and a closed-shop contract. When the employers refused, a strike was called. Within a few weeks a stoppage involving both longshoremen and seamen at all Pacific coast ports had developed and shipping was tied up for almost 3 months. The climax was reached in a brief general strike of all labor unions in the San Francisco area.

So complete was the stoppage of shipping and so violent the conduct of the dispute on both sides that the President of the United States appointed the National Longshoremen's Board to intervene, after a mediation board which had been appointed to avert the strike had proved unable to bring about a settlement of the issues. Upon the termination of the general strike the longshoremen and the water-front employers agreed to submit the issues in dispute between them to arbitration by the National Longshoremen's Board. This was done with the understanding that the strike would be immediately terminated and that the award of the Board would be binding upon the longshoremen and their employers. The seamen

[12] Of 27 shipping codes submitted, only that of the Inland Water Carriers operating via the New York Canal System was approved. Information as to how many employers of maritime labor subscribed to the President's Reemployment Agreement is not available.

agreed to return to work at the same time with the understanding that questions of hours, wages, and working conditions would be submitted to arbitration in the event that collective bargaining with the chosen representatives of the seamen did not end in agreement. To determine the identity of the representatives, the Board conducted a coast-wide poll in which more than 12,000 seamen cast votes; these votes were never fully tabulated, mainly because the International Seamen's Union was recognized as the representative for collective bargaining by nearly all of the shipowners except those in the oil-tanker trade. The questions on which the union and the shipowners could not agree, following the recognition of the International Seamen's Union, were subsequently disposed of in an arbitration award by a special tribunal.

The arbitration proceedings occupied the National Longshoremen's Board for several months. The resulting award represented substantial gains for the International Longshoremen's Association. The Board's award provided, among other things, that hiring halls for longshoremen should be operated jointly by the longshoremen's union and the employers' association, but that the dispatchers in the hiring halls should be selected by the union.[13] The award also granted the longshoremen wage increases and the 6-hour day. In addition it provided for the establishment of port labor relations committees on which the union and the employers were to have equal representation, and provision was made that all issues not decided by such committees should be submitted to arbitration. The fundamental issues of union recognition and written agreement were thus settled favorably for both the seamen's and longshoremen's organizations.

Although this Board was created expressly to settle the waterfront strike, it engaged in a second significant task affecting seamen. Before its dissolution in 1935 the Board conducted an election of representatives for collective bargaining among the seamen employed in the Pacific coast oil tanker trade. Of 977 seamen on tankers who cast ballots, 709 voted for representation in collective bargaining by the International Seamen's Union. This union was therefore certified as the duly chosen representative of the seamen employed on tankers. It proved impossible to negotiate an agreement acceptable to both the union and the operators, however. A strike ensued in the spring of 1935 and a special mediation Board was appointed by the Secretary of Labor. But this body likewise failed to bring about a settlement.

The National Labor Relations Board.

Under the wide interpretation of the term "interstate commerce" in the Supreme Court decisions of 1937 by which the National Labor Relations Act was upheld, the authority of the National Labor Relations Board extends not only to manufacturing, mining, trade, finance, and agriculture, but also to the maritime industry. Aside from businesses falling outside the scope of "interstate commerce," the only employers not subject to the act are those specifically exempted by section 2 (2); i. e., the Government of the United States or

[13] Where hiring halls were operated on the Pacific coast before the strike, they were controlled exclusively by employers.

of any State or political subdivision thereof, together with carriers subject to the Railway Labor Act. Although it is clear that this exemption applies to railroad carriers in their capacity as employers of vessel personnel and of wharf, dock, and other harbor labor, it has not been determined judicially whether or not it also applies to the United States Maritime Commission in its capacity as a shipowner operating merchant vessels for its own account through managing agents.

The activities of the National Labor Relations Board in relation to maritime workers are three. First, the Board defines the appropriate unit for collective bargaining. Second, the Board conducts elections to determine what organization shall represent maritime workers in collective bargaining. Third, the Board rules on complaints in which maritime workers have charged their employers with engaging in unfair labor practices.

The United States Maritime Commission.

The Maritime Commission, as constituted under the Merchant Marine Act, 1936, is on the one hand a Government functionary charged with the duty of promoting the growth of the American merchant marine largely through ship construction and ship operation subsidies. On the other hand it is the owner of many merchant vessels, some of which are operated by corporations in which the Commission owns the majority of the common stock, some of which are chartered to private operators, but others of which are operated by managing agents for the Commission's own account. In this latter capacity the Commission has been brought into controversy with the labor unions of the seamen over the question of its status as an employer of maritime labor.

Though disclaiming any intention to interfere with the process of collective bargaining or to hinder the development of stable unionism,[14] the Commission adopted a labor policy diametrically opposed to that taken by the United States Shipping Board in 1917–21. The Commission held that both the licensed and unlicensed members of the crews working on vessels operated for the account of the Commission had the status of Government employees. On the ground that the United States Government does not engage in collective bargaining with the organizations of Federal employees to which its members belong, the Commission has refused to enter into collective agreements with the unions of maritime workers. Without regard to membership in a union, the Commission has followed the policy of hiring its unlicensed personnel from the registers of seamen maintained by the United States shipping commissioners at the various ports, instead of submitting its crew requirements to the hiring halls maintained by the seamen's unions. Despite the stand taken by the National Labor Relations Board in interpreting those provisions of the National Labor Relations Act which exempt the Government as an employer of labor from the force of that act, the Commission has held that the statutory guarantees of the right of collective bargaining do not extend to seamen employed on vessels forming part of the fleet operated directly for the Commission's account and in competition with vessels operated by private shipowners. The attitude

[14] U. S. Maritime Commission, *Economic Survey of the American Merchant Marine*, p. 49.

of the Commission toward collective bargaining is particularly significant because in addition to setting the wage rates, manning scales, hours of work, and other working conditions for crews of its own fleet, the Commission is empowered by the Merchant Marine Act to prescribe the minimum standards of wages, manning, and quarters which shall prevail on privately owned vessels in foreign trade receiving an operating differential subsidy.

As a result of the Commission's stand on collective bargaining under the National Labor Relations Act and the use of union hiring halls, its relations with the National Maritime Union on the Atlantic coast as well as with the Sailors' Union of the Pacific have become strained. On the Atlantic coast the National Maritime Union has been pressing for legislation to require the Commission to employ seamen for its own fleet through union hiring halls and accept the obligations of the National Labor Relations Act. Pending such legislation the National Maritime Union has sought to persuade the National Labor Relations Board to enforce on Government-owned vessels operated by managing agents for the Commission's account, the rights of collective bargaining as guaranteed to seamen by the National Labor Relations Act. In 1939 efforts of the Maritime Commission to organize an American-flag service between ports on Puget Sound and those of the Far East brought it into conflict over the hiring hall issue with the Sailors' Union of the Pacific and with other maritime labor unions active in that region.

The Maritime Labor Board.

Establishment of the Maritime Labor Board in 1938 represents an effort on the part of the Government to reaffirm the public policy of collective bargaining in the maritime industry, thus bringing this industry into line with the general public policy of the Federal Government.

Prior to the creation of the Maritime Labor Board in 1938, the Conciliation Service of the Department of Labor was the only Federal agency with continuous authority to engage in the adjustment of labor conflicts in the maritime industry. Its intervention in maritime disputes was and is, however, only a small part of its broad function of making adjustment facilities available to all industries, occupations, trades, and crafts in the United States.

Under title X of the Merchant Marine Act, by which the Maritime Labor Board is established, it has been free to act not only in disputes involving the merchant marine engaged in foreign, coastwise, intercoastal, and the Great Lakes trade, but also in disputes involving longshoremen and harbor workers at ports on all the seaboards and the Great Lakes. Thus when engaged in mediation work, the Board's activities have in part overlapped and in part supplemented those of the United States Conciliation Service. Notwithstanding the fact that section 1004 of title X makes it the duty of the Board to encourage employers and employees to settle all disputes, the act neither vests the Board with exclusive jurisdiction over maritime labor disputes nor excludes the intervention of any other governmental agency in controversies of this kind.

There are two segments of water transportation which do not fall within the purview of the Maritime Labor Board. These are: (1) Inland water transportation other than that on the Great Lakes or

at other inland ports, and (2) water transportation subject to the Railway Labor Act. Disputes falling within the first segment of the industry now come under the aegis of the United States Conciliation Service. Those belonging to the second group are dealt with by the National Mediation Board established by the Railway Labor Act passed in 1926 and amended in 1934. The adjustment machinery set up under the Railway Labor Act thus, to a limited extent, supplements the Maritime Labor Board in promoting stable labor relations between maritime employers and employees. Like the Railway Labor Act, title X of the Merchant Marine Act falls in line with the declared public policy of the Government.

Chapter III

THE ORIGIN OF THE MARITIME LABOR BOARD

Enacted by the third session of the Seventy-fifth Congress in 1938, and approved by the President on June 23 of that year, title X adds to the Merchant Marine Act a series of provisions intended to promote stable relations between maritime employers and their employees, pending formulation of a permanent Federal policy for the amicable adjustment of disputes.

The legislative proposals that resulted in the enactment of title X were the outcome of many acute stresses and severe strains to which labor relations in the maritime industry had been subjected between 1933 and 1938. First, there was the crescendo of maritime strikes between 1934 and 1937. Except, perhaps, for the immediate post-war years from 1919 to 1921, there has been no period in the history of labor relations at sea and along the waterfront during which strikes occurred so frequently, affected such large numbers of workers, and involved such a great loss of man-days. The ship and waterfront strike on the Pacific coast in the summer of 1934 was the first major explosion of this kind. It was followed by such extensive stoppages as the Pacific coast oil tanker strike of 1935, by the strike of the Atlantic coast seamen in the spring of 1936, and by the strikes of Atlantic and of Pacific coast seamen and of the Pacific coast longshoremen in the fall of 1936 and the winter of 1937. Throughout 1937, moreover, seamen at almost all ports, and longshoremen at Pacific and Gulf ports, engaged in a continuous series of brief, local "sit down," "quickie," and other "job action" stoppages.

Second, the maritime strikes which took place during the years 1934 to 1937 were the outward symptom of a profound conflict over the balance of bargaining power between the labor unions of seamen and longshoremen on the one hand and the shipping and waterfront employers on the other. This conflict arose out of and centered around the Federal policy of collective bargaining as formulated originally in section 7 (a) of the National Industrial Recovery Act of 1933 and later in the National Labor Relations Act of 1935. Like the labor unions in most other industries where collective bargaining was not yet firmly established, maritime labor responded to section 7 (a) and to the National Labor Relations Act by undertaking extensive organization drives and by pressing the employers for agreements granting union recognition. Such efforts were bound to result in resistance from maritime employers, many of whom had been long and firmly attached to an anti-union and "open shop" tradition.

Even by 1938 it was not yet certain that the conflict between maritime labor and employers over the fundamental issues of collective bargaining had run its course. Despite the many collective agreements executed between 1934 and 1937, and despite the decisions of the Supreme Court upholding the constitutionality of the National

Labor Relations Act, maritime labor relations were still disturbed and some sections of the industry remained largely unorganized.[1]

A further and a major factor focusing the attention of Congress upon labor unrest in the maritime industry was the enactment of the Merchant Marine Act of 1936, which committed the United States to a comprehensive policy of rehabilitating the American merchant fleet. To carry out this policy, which was considered essential both for trade purposes and for the national defense, the Federal Government undertook to grant subsidies both for constructing and operating American merchant vessels. It soon became apparent that this policy would be seriously hampered if the operations of American merchant vessels were to be subjected to frequent stoppages because of labor disputes. At the same time, the realization grew that in a subsidized industry, such as merchant shipping, it was particularly desirable that labor relations should be shaped in accordance with the Federal Government's policy in support of orderly collective bargaining.

LEGISLATIVE PROPOSALS

Title X is a compromise measure arising out of several more elaborate proposals introduced at the sessions of the Seventy-fifth Congress in 1937 and 1938. These proposals were embodied in the Bland bill [2] and the virtually identical Guffey bill,[3] introduced in the House and Senate, respectively, at the first session, together with the revised Bland bill in the House [4] and the companion Copeland bill [5] in the Senate, which were introduced at the second session.[6] Both sets of measures (H. R. 5193, S. 1710; H. R. 8532, S. 3078) aimed to apply to the maritime industry procedures and mechanisms for averting labor disputes and implementing collective bargaining, similar to those applied to the railway industry.

The first set of measures proposed [7] would have brought the maritime industry under provisions essentially like those of the Railway Labor Act of 1926, but not like those of the act as amended in 1934. The main difference between these bills and the Railway Labor Act of 1926 was a redefinition of the terms "carrier" and "employee" to cover water-borne commerce and water-front operations. Had these proposals become law, the resulting framework of Federal control would have been roughly as follows: (1) Maritime employers and employees would have been obliged to exert every reasonable effort, in accordance with prescribed conference and adjustment procedures, to

[1] As, for example, the operators of oil tankers on the Pacific coast and of bulk carriers on the Great Lakes.
[2] H. R. 5193, 75th Cong., 1st sess.
[3] S. 1710, 75th Cong., 1st sess.
[4] H. R. 8532, 75th Cong., 2d sess.
[5] S. 3078, 75th Cong., 2d sess.
[6] All of these proposals were introduced as amendments to the Merchant Marine Act of 1936. H. R. 5193 and S. 1710, introduced at the first session, dealt exclusively with the regulation of labor relations. H. R. 8532 and S. 3078, introduced at the second session, were designed to amend the Merchant Marine Act in numerous respects, but each included a special title (to become title X of the Merchant Marine Act) dealing with the regulation of labor relations. At the third session, several other proposed amendments to the Merchant Marine Act of 1936 were introduced, the most important of which were H. R. 9710 and H. R. 10315. Neither of these bills in their original form contained any labor provisions, but when H. R. 10315 was passed late in the session, to become Public No. 705, there was appended to it the final compromise version of title X, which had been agreed to in joint conference a short time earlier.
[7] H. R. 5193 and S. 1710, 75th Cong., 1st sess.

make and maintain collective agreements;[8] (2) the mediation of maritime labor disputes would have been assigned to the "Board of Mediation" created by the Railway Labor Act of 1926, vested, for these purposes, with the same function and duties as it possessed when engaged in mediating railroad labor disputes;[9] (3) in cases where mediation failed, either the parties to the dispute would have been required to explore the possibility of arbitrating their differences, or, if they could not agree to arbitration, the President would have been authorized to set up an emergency fact-finding board; (4) for the purpose of settling grievances, differences, and misunderstandings under collective agreements, maritime employers and employees would have been instructed to establish local boards of adjustment with power to render final and binding decisions; (5) while the machinery of adjustment, mediation, arbitration, and fact-finding was at work, employers and employees would have been obliged to postpone resort to forceful measures, such as lock-outs and strikes.

Because they were patterned after the original text of the Railway Labor Act passed in 1926, rather than the act as amended in 1934, H. R. 5193 and S. 1710 did not specifically prohibit certain practices by which employers could violate the basic rights of their employees to organize and bargain collectively through representatives of their own choosing. In other words, the bills failed to legislate expressly against "company unions," or other unfair labor practices. Nor was it specifically stated in the maritime labor bills first proposed to the Seventy-fifth Congress that the National Labor Relations Board should maintain its authority to restrain "unfair labor practices" and to settle representation disputes within the meaning of the National Labor Relations Act.

The maritime labor bills as redrafted (H. R. 8532[10] and S. 3078) and subsequently proposed to the second session of the Seventy-fifth Congress aimed likewise to adapt the Railway Labor Act to the special circumstances of the maritime industry. The basis of these bills was the Railway Labor Act as amended in 1934. But there were certain significant alterations and omissions which were so important that only four of the substantive provisions applicable to railroad carriers and workers would have been applied to maritime employers and workers. First, the National Mediation Board would have had the same duties and powers with regard to mediation of maritime labor disputes as it now has in the case of railroad labor disputes. Second, maritime employers and workers would have been required to go through the same procedure for settling their disputes as is required of railroad carriers and workers. Third, like the parties to railroad labor disputes, the parties to maritime labor disputes would have been

[8] The language of H. R. 5193, sec. 104, and S. 1710, sec. 105, added a requirement not found in the Railway Labor Act. No one could act as an accredited representative of the parties negotiating agreements or adjusting differences who was not a "* * * native-born or fully naturalized citizen of the United States."

[9] Because these bills were intended to apply the provisions of the Railway Labor Act of 1926 to maritime labor, they vested the regulatory powers in the "Board of Mediation" created by that act. In 1934, however, the Railway Labor Act had been amended, greatly altering and expanding the powers of the mediation body set up in 1926 and changing its name from "Board of Mediation" to "National Mediation Board." It seems obvious that had these first maritime bills been passed vesting regulatory powers over maritime labor in a technically nonexistent Board (the Board of Mediation), an anomalous situation would have been created.

[10] H. R. 8532 as originally introduced did not contain detailed provisions for the regulation of labor relations, but among the first amendments added to the bill was one (proposed title X of the Merchant Marine Act of 1936) dealing with that subject. The same provision was a part of the companion bill, S. 3078, when the latter was introduced in the Senate.

obliged to observe waiting periods; i. e., maintain the status quo pending further attempts at settlement in order to maintain public service, before resorting to strikes or lock-outs. Fourth, both maritime workers and their employers were nominally to be protected under the terms of the Railway Labor Act, as amended, against coercion or influence from the opposing party in the free selection of their respective representatives for collective bargaining.

At the same time, H. R. 8532 as amended and S. 3078 omitted those sections of the Railway Labor Act as amended in 1934 which, by forbidding employers to engage in a number of specified practices, give concrete meaning to the right of workers to organize and bargain collectively through representatives of their own choosing.

The proposed application of the 1934 amendments of the Railway Labor Act to the maritime industry also omitted those provisions which empower the National Mediation Board to investigate, hold elections, and certify representatives for collective bargaining in disputes arising over questions of representation. It was provided that power to determine the representative for collective bargaining should be vested in the National Labor Relations Board. But this was made subject to a condition not expressly required by the National Labor Relations Act as it now stands; namely, that the National Labor Relations Board must undertake such determinations whenever requested by "any party to the dispute" or by "the maritime employer."

Certain language used in the bills might also have been construed as abolishing the jurisdiction of the National Labor Relations Board over the maritime industry.[11]

Still another respect in which the Railway Labor Act as amended in 1934 would have been substantially modified in its application to maritime labor relations, concerned the provisions for the final submission of all differences arising under collective agreements to the National Railroad Adjustment Board. Although provision was made for setting up local and regional adjustment boards, similar to those called for by the Railway Labor Act of 1926, no provision was made for attaching to the National Railroad Adjustment Board, created by the amendment of 1934, an additional section or panel with authority over differences arising under maritime collective agreements. Instead, it was proposed to vest the National Mediation Board with the power, if and when that body deemed it necessary, to establish a National Maritime Adjustment Board, with functions similar to those exercised by the National Railroad Adjustment Board.

Finally, that clause of the Railway Labor Act which empowers the President to appoint emerency fact-finding boards was also altered in the proposed maritime bills. Provision was made for the appointment of emergency boards, but the power to appoint their members was vested in the United States Maritime Commission instead of the President of the United States.

Although opinion changed to some extent with introduction of the second set of maritime labor bills, spokesmen of the maritime em-

[11] This clause reads: "*Except as provided in this title with respect to maritime employers and their employees,* nothing herein shall be construed to repeal or amend any provisions of the National Labor Relations Act or to restrict the powers and duties conferred on the National Labor Relations Board by said Act." H. R. 8532, title X, sec. 1007, and S. 3078, title X, sec. 1007. [Italics inserted.]

ployers were almost uniformly in favor of enacting the proposed legislation. Spokesmen of the maritime labor unions, on the other hand, opposed applying any version of the Railway Labor Act to the maritime industry.[12] The governmental agencies expressing an opinion were divided in their views. The National Labor Relations Board, the National Mediation Board, and the Department of Labor found fault either with the proposed plan as a whole or with specific parts of it. But the United States Maritime Commission strongly favored bringing maritime employers and their employees under the particular version of the Railway Labor Act[13] set forth in S. 3078.

ATTITUDE OF THE PARTIES

In supporting the proposed measure, spokesmen for the maritime employers emphasized the general necessity for vigorous governmental intervention in order to restore order and discipline at sea and along the waterfront, instead of pressing for the specific method of averting and adjusting maritime disputes embodied in the Railway Labor Act. These spokesmen almost unanimously mantained that labor relations in the maritime industry were "chaotic," "deplorable," or "intolerable." Great emphasis was laid by many of them upon instances of what was alleged to be insubordination at sea, insolence of seamen to passengers, inefficiency of the unlicensed members of crews, drunkenness, communism, and the like. In the view of representatives of the maritime employers, the unlicensed personnel of the American merchant marine was in a state of almost chronic unruliness, disorder, and mutiny that was driving passengers and cargoes away from vessels sailing under the American flag. Considerable emphasis was laid upon the financial losses suffered during maritime strikes by shippers of merchandise, such as lumber and fruit, from the Pacific Northwest, who were dependent upon water transportation for access to their markets.

In opposing the proposed measures, the spokesmen of the maritime labor unions maintained that the procedures and mechanisms of composing labor disputes under the Railway Labor Act were entirely inapplicable to the maritime industry. The elaborate methods of averting direct economic action, they argued, might conceivably work in an industry like railroad transportation, where the practice of collective bargaining was widespread and deep-rooted, and where powerful trade unions had long since won recognition of the basic rights of labor. In the maritime industry, they contended, unions were still struggling to make collective bargaining effective, and to achieve recognition in the form of written agreements. In circumstances like these they feared it would arrest labor relations at an immature phase of development if the right to strike were restrained

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[12] Mr. Scharrenberg, speaking for the International Seamen's Union, had supported H. R. 5193 on grounds of the urgent need for eliminating "* * * sit-down strikes, 'quickie' strikes, outlaw strikes, and other brands of unauthorized strikes on American ships * * *." *Hearings on H. R. 5193,* May 1937, p. 147. He later expressed opposition, however, to H. R. 8532. *Hearings on H. R. 8532,* December 1937–January 1938, p. 646.

[13] It should be noted that the U. S. Maritime Commission recommended against the enactment of H. R. 5193 (and S. 1710) at the first session of the 75th Cong. At the later session, however, the U. S. Maritime Commission appeared as the principal sponsor of S. 3078 (and H. R. 8532), presenting elaborate arguments in favor of these bills. See the statements by Mr. Kennedy, then Chairman of the United States Maritime Commission. *Hearings on H. R. 5193,* p. 173; *Hearings on S. 3078,* pp. 12–28.

by elaborate machinery for mediation and arbitration. Furthermore, the spokesmen of the unions considered that the proposed measures would deprive maritime workers of the benefits and safeguards of the National Labor Relations Act; that they would no longer be protected against company unions, against "yellow dog" contracts, or against discriminatory discharge.

In support of S. 3078 the United States Maritime Commission stated that it was indispensable to reduce the frequency and to diminish the force of maritime labor stoppages if the United States was to develop an adequate merchant marine, in accordance with the policy laid down in the Merchant Marine Act of 1936. Unless orderly labor relations were assured aboard merchant vessels, the national shipping industry would be ruined. The Commission held that the policy set forth in the Railway Labor Act was as valid and necessary for the maritime as for the railroad industry. In the maritime, as in other fields of employment, the Commission argued, it was desirable that employer and employees be required to "exert every reasonable effort to make and maintain agreements * * * to settle all disputes * * * in order to avoid the interruption of commerce." Neither did the proposed legislation, in the view of the Commission, abridge the existing rights of employees to organize and bargain collectively through representatives of their own choosing, or affect the right to strike in any other way than to restrict the ill-considered and irresponsible use of that weapon. Instead of destroying the maritime labor unions, the Commission believed that the proposed bills would actually promote their growth, as evidenced by the experience of trade unions under the Railway Labor Act. Mediation and arbitration of disputes between labor and management were widespread and long-established methods of assuring harmonious industrial relations in the United States. Fifty years of experience in the railroad industry proved, the Commission held, that mediation and arbitration could be completely successful in settling labor disputes peacefully and in maintaining efficient, uninterrupted service. Like the railroad industry, the maritime industry also involved a public interest. Considerations of safety at sea, the national defense, and international relations rendered it even more urgent, in the opinion of the Commission, to curb irresponsible labor tactics in shipping than in railroad transportation. The Commission regarded the National Mediation Board as well qualified to take jurisdiction over maritime labor disputes because of its long and successful experience in dealing with such disputes on steamship, harbor craft, marine terminals, and piers operated by railroad carriers.

A number of other governmental agencies, however, opposed the legislative proposals embodied in H. R. 5193 and 8532 and/or in S. 1710 and 3078. Some of the leading arguments which they advanced were that it would be a backward step in the development of orderly labor relations to transfer maritime workers from the coverage of the National Labor Relations Act to the coverage of the Railway Labor Act. Particularly it was felt that the administrative proceedings of the National Labor Relations Board for enforcing the rights of labor under the National Labor Relations Act are more effective and better suited to protect the rights of labor in the maritime industry than the criminal prosecutions in the Federal courts as under the Railway

Labor Act. It would lead to a tangle of overlapping administrative jurisdictions if, as proposed, the Federal control of maritime labor relations were to be dealt with under three distinct laws, the Railway Labor Act, the National Labor Relations Act, and the Merchant Marine Act, and to be put into effect by three different agencies, the National Mediation Board (mediating disputes), the National Labor Relations Board (holding elections of representatives), and the United States Maritime Commission (naming emergency fact-finding boards). It was further contended that the provisions of the Railway Labor Act for settling labor disputes are specifically adapted to the particular circumstances of the railroad industry. These provisions could not be lifted bodily, they argued, out of one act and made to apply to another relating to labor relations under the different circumstances of maritime employment. Whatever might be said in support of their provisions for settling labor disputes by adjustment, mediation, arbitration, and fact finding, the proposed measures, in their judgment, fell short of the National Labor Relations Act and of the Railway Labor Act, as amended, in the extent to which they safeguard the specific rights of collective bargaining to labor. On account of such circumstances the National Labor Relations Board, the National Mediation Board, and the Department of Labor held that insofar as it was feasible to apply the Railway Labor Act to the maritime industry, that act should be applied as an articulated and well-rounded whole, rather than piecemeal and mingled with fragments of other laws.

In view of the immaturity of maritime labor relations they considered it especially important that the emphasis should be laid upon guaranteeing the right of collective bargaining, rather than upon devising complex and costly machinery for mediation and arbitration which might be appropriate at a more advanced development of labor relations. Other objections raised by these agencies in connection with the proposed application of the Railway Labor Act to the maritime industry were that such provisions as those making it mandatory on the National Labor Relations Board to call for an election upon the request of *employers* or *employees* would upset established administrative routines, and that the failure to distinguish clearly between labor disputes arising out of efforts to make or modify an agreement and those arising under existing agreements would run counter to experience with industrial relations in other industries.

Besides these bills a number of other proposals for legislative action issued from the hearings on the maritime labor bills introduced in 1937 and 1938. Mr. Leifur Magnusson, then in charge of the Washington Branch of the International Labor Office, made three alternative suggestions as follows: (*a*) A body of special mediators, analogous to the commissioners of the Conciliation Service of the Department of Labor, might be attached to the United States Maritime Commission; (*b*) the United States Maritime Commission might be authorized to arrange for the establishment of a joint advisory committee, made up of an equal number of shipowners and seamen, to advise it on labor problems and on the settlement of labor disputes; (*c*) a wholly independent mediation board might be established for the maritime industry with power not only to deal with labor

disputes but also to prevent unfair labor practices and to determine representation controversies.

Mr. Paul Scharrenberg of the International Seamen's Union proposed to amend the National Labor Relations Act so that all the duties and powers now exercised by the National Labor Relations Board in the maritime industry would be transferred to the exclusive jurisdiction of a Maritime Labor Relations Board.

Senator Guffey redrafted his original bill (S. 1710) to provide for a scheme of Federal control under which, among others, the United States Maritime Commission would be empowered to prescribe minimum wages and manning scales and reasonable working conditions for all American-flag merchant vessels engaged in foreign and interstate commerce, whether subsidized or not; the Secretary of Labor would be empowered to appoint temporary mediation boards to settle all maritime labor disputes which could not be settled by direct negotiations between the parties; the United States Maritime Commission would be empowered to recommend to the President that he appoint an emergency fact-finding board in disputes threatening serious interruption of water-borne commerce; all collective agreements would have to provide for the establishment of "port committee" machinery to adjust differences under the agreement; jurisdictional disputes between maritime labor unions would be dealt with by the National Labor Relations Board; certain restrictions would be imposed on the right to strike, on the behavior of seamen under shipping articles, on union activities aboard ship; and all seamen would have to be hired through the offices of United States Shipping Commissioners, instead of through union hiring halls.

The conflict of interests, opinions, and attitudes on the Bland and Copeland bills of 1938 turned out to be so deep-seated that these proposals were put aside. Nevertheless, the Congress recognized that conditions had reached a point which called for the establishment of some agency to deal with maritime labor disputes. As a step toward this end, the Seventy-fifth Congress finally enacted the present title X as an amendment to the Marchant Marine Act of 1936. In enacting that title, the Congress seems to have agreed with one of the witnesses at the hearing on S. 3078, that the complex problem of maritime labor relations "should be approached circumspectly, experimentally, tentatively."

Chapter IV

MEDIATORY ACTIVITIES OF THE MARITIME LABOR BOARD

(September 1, 1938, to September 30, 1939)

The Maritime Labor Board is primarily a mediatory agency designed for the improvement of labor relations in the maritime industry.[1] The policy of the United States with regard to maritime labor relations as stated in title X is twofold: First, to encourage the practice and procedure of collective bargaining; and second, to encourage the orderly settlement of labor disputes. The stated object of this policy is to eliminate the causes of certain substantial obstructions to the free flow of water-borne commerce and to remove these obstructions where they have occurred.[2]

PROVISIONS OF TITLE X

As defined by the act, "water-borne commerce" covers domestic as well as foreign trade. Since no specific limitations are set upon the scope of foreign trade, it follows that the definition includes commerce not only on the high seas, but also on lakes, rivers, canals, harbors, bays, sounds, coastal waters, etc. In the case of domestic trade, however, the purview of the Board is restricted to commerce by water on the high seas and on the Great Lakes.[3]

Subject to the express exclusion of all carriers within the scope of the Railway Labor Act, five groups of persons are defined as "maritime employers":[4] (1) Those engaged in transportation of passengers or property by water as defined by title X; (2) those engaged in operating towboat, barge, or lighterage services in connection with transportation of passengers or property in water-borne commerce; (3) those who manage or control wharves, piers, docks, or water space for the accommodation of vessels which transport passengers or property in water-borne commerce; (4) those who engage in loading and unloading vessels operating in the type of commerce covered by the act; and (5) those who operate facilities and equipment which are used in connection with and are necessary for the continuous flow of passengers and property in water-borne commerce.

With the exception of the master or members of the crew of any vessel not documented, registered, licensed, or enrolled under the laws of the United States, the term "employee" covers the entire labor force employed by any maritime employer. It is explicitly stated

[1] Public No. 705, title X, 75th Cong.
[2] *Ibid.*, sec. 1001.
[3] *Ibid.*, sec. 1003 (a).
[4] *Ibid.*, sec. 1003 (b).

that the term "employee" shall include workers whose duties are directly or indirectly connected with the transportation of passengers or property in water-borne commerce, with the operation of various services attendant thereupon, or with furnishing of equipment and facilities therefor. In addition to persons whose work is carried on exclusively in connection with the movement of passengers and property in water-borne commerce, the term "employee" also includes other persons whose work is so closely related to water-borne traffic that it might otherwise be subject to interference and interruption.[5]

Power to administer the provisions of title X with regard to maritime employers and their employees is vested in the Maritime Labor Board, which is an independent agency composed of three members appointed by the President with the advice and consent of the Senate.[6] Aside from the usual administrative powers relating to the employment of staff, to the expenditure of appropriated funds, and to the assignment of individual duties,[7] the Board is instructed and authorized to keep a file of collective agreements and to engage in three lines of activity involving: (1) Mediation; (2) encouragement of arbitration; and (3) formulation of a plan for a permanent Federal labor policy.

With regard to the mediation of labor disputes between maritime employers and their employees, the Board has a twofold duty:

> (*a*) It shall be the duty of the Board, upon request of either the duly selected representatives of a maritime employer or employers or its or their employees who are parties to the making of a labor agreement, to encourage and assist in the making of such agreement, or, upon the request of both parties at interest, to assist in the interpretation of the provisions of an agreement already in existence.
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> (*b*) The parties to a dispute between an employee or a group of employees and a maritime employer or group of maritime employers, may request the Board to act as mediator in such disagreements. The Board may proffer its services in case any maritime labor dispute is found by it to exist at any time. * * *[8]

In cases where mediatory efforts of the Board fail to bring the parties into agreement, the Board is instructed to use its best efforts to secure the assent of both parties to arbitration.[9]

On or before March 1, 1940, the Board is also required to submit to the President and to the Congress

> * * * a comprehensive plan for the establishment of a permanent Federal policy for the amicable adjustment of all disputes between maritime employers and employees and for the stabilization of maritime labor relations. As far as may be, the Board shall seek to secure through its mediatory efforts agreement between maritime employers and employees upon the plan it is hereby required to submit.[10]

In exercising its powers, the Board is bound to perform two special duties. First, it must encourage maritime employers and employees to exert every reasonable effort to make and maintain written agreements which shall provide, among other things, for settling all grievances, complaints, differences, and misunderstandings under the agreement by means of adjustment boards or port

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[5] *Ibid.*, sec. 1003 (c).
[6] *Ibid.*, sec. 1007 (a).
[7] *Ibid.*, sec. 1007 (b)–(d).
[8] *Ibid.*, sec. 1008.
[9] *Ibid.*, sec. 1009.
[10] *Ibid.*, sec. 1010.

committees. Second, the Board must encourage maritime employers and employees to exert every reasonable effort to settle all their disputes whether or not such disputes arise out of the interpretation or application of collective agreements.[11]

Upon maritime employers is placed the special duty of filing with the Maritime Labor Board copies of all existing collective agreements or those newly executed, as well as statements setting forth changes in collective agreements which have been previously filed. Willful failure to comply with these requirements is punishable by a fine.[12]

It is further provided that all negotiations attendant upon making and maintaining collective agreements, as well as all disputes between maritime employers and employees shall be considered and, if possible, adjusted with a minimum of delay by means of conferences between the duly designated representatives of both parties. A suitable procedure for initiating such conferences is defined in some detail. But no penalties are specified for failure to engage in conference negotiations, though it is expressly affirmed that the provisions of existing agreements as to conferences shall not be superseded.[13]

Section 1002 of title X provides: (1) That the provisions of title X shall not affect or be construed to limit any of the provisions of the National Labor Relations Act; (2) that none of the unfair labor practices listed in that act shall be considered as a labor dispute within the meaning of title X; (3) that questions touching upon the representation of the employees of a maritime employer shall continue to be dealt with by the National Labor Relations Board; and (4) that nothing in title X shall be regarded as repealing or otherwise affecting the enforcement of any navigation law of the United States or of any other law relating to seamen.[14] Finally, section 1012 provides that title X shall expire at the end of 3 years from the date of its enactment.

PROBLEMS OF MEDIATION IN THE MARITIME INDUSTRY

In performing its mediatory duties the Board has encountered problems, some of which are common to all industries in which collective bargaining is of comparatively recent origin, while others derive from the special character of the maritime industry itself.

Almost all of the disputes in which the Board has acted as a mediator have arisen in the course of making or renewing, modifying, or applying collective agreements. In dealing with such disputes, the Board has been confronted with a twofold task: First, to bring about a meeting of minds on issues of wages, hours, and working conditions; and second, to do this within the framework of immature and ineffectual machinery for dealing with complaints and grievances. While most maritime agreements now in effect provide for such machinery, the effectiveness of its operation is in most cases unsatisfactory. Yet in no other industry, perhaps, is it so essential to have

[11] *Ibid.*, sec. 1004.
[12] *Ibid.*, sec. 1005.
[13] *Ibid.*, sec. 1006.
[14] *Ibid.*, sec. 1002.

well-developed and smoothly functioning adjustment machinery as in the maritime industry. This is particularly true of merchant shipping because of the peculiar conditions under which seamen work and because many problems of labor relations affecting seafaring personnel are inextricably bound up with the Federal statutes which govern seamen.

The collective agreements applying to seamen necessarily differ from other labor agreements. Since the vessel is the seaman's home as well as his place of work, agreements deal not only with questions relating to working conditions but also with questions relating to living conditions aboard the vessel. These collective agreements, consequently, go into minute details with regard to such matters as food, shelter, recreation, sanitation, health, and safety. The complexity of the agreement itself gives rise to many possible points of friction and of misunderstanding. Had collective bargaining been an established tradition in the American merchant marine, these frictions might not lead to disputes resulting in stoppages of work. In fact, however, serious difficulties do arise, both in negotiating agreements and in settling disputes, because the tradition of collective bargaining in the maritime industry is still in the making.

Another difficulty arises out of the fact that the working and living conditions of seamen are regulated by law to a degree unknown and inconceivable in any other industry. In consequence, some labor disputes involving seamen arise not so much out of the interpretation and application of collective agreements as out of the interpretation and application of Federal statutes. Collective bargaining procedures, including the adjustment of disputes under collective agreements, are complicated in the case of seamen by shipping articles, the mutiny laws, and the desertion laws, which make the legal status of seamen unique among industrial workers. The signing of the articles, for example, represents the making of an individual contract of employment between the *master* and the *member of the crew*. When superimposed upon the collective agreements between *shipowners* and the *labor unions*, this arrangement may and does often give rise to difficulties.

Another obstruction to mediation in the maritime industry is the difficulty of obtaining statistical or other data bearing upon the substantive issues of wages, hours, and other working conditions that underlie labor disputes. Lack of authoritative data on such matters as how the weekly, monthly, or yearly earnings of longshoremen compare in the different ports of the same shipping region, or the extent to which seamen ship and reship on vessels belonging to the same employer despite the signing-on and signing-off of articles, hampers effective work on the part of a mediatory body.

EXAMPLES OF CASES MEDIATED BY THE MARITIME LABOR BOARD

In cases requiring intervention the general policy of the Board has been to encourage the parties involved to work out solutions by discussion and negotiation, rather than to depend upon the Board for decisions or rulings on specific issues. In evolving satisfactory adjustments the emphasis has been placed upon the development of mutual confidence and reliance on the technique of direct negotiation. When negotiations have become deadlocked the Board has made

proposals as a basis upon which negotiations could be continued. By these means the Board has frequently been instrumental in preventing resort to direct economic action, which in the absence of the Board's intervention would have been the probable alternative. The avoidance of stoppages is significant, not only because of its effect on commerce and transportation, in which the public has a direct and vital interest, but also because it is an important link in the evolution of orderly collective bargaining procedure.

A discussion of several cases mediated by the Board will amplify and clarify its functions and procedures. These cases illustrate the activities of the Board in the performance of its duties to encourage and to assist in the making and maintaining of collective agreements and to aid all maritime employers and their employees "to settle all disputes, whether arising out of the interpretation and application of such agreements or otherwise."

1. *Contracting Stevedores, Ports of Milwaukee, Wis., and Chicago, Ill.—International Longshoremen's Association (A. F. of L.).* In March 1939 the services of the Maritime Labor Board were requested in connection with the renewal of agreements between the major stevedoring companies in the port of Milwaukee and the International Longshoremen's Association. The new agreement proposed by the union called for wage increases for straight and overtime, continuation of the union hiring hall, one additional holiday per year, and more favorable working rules. The employers felt that it was impossible to grant increases because of a "slow-down" on the part of the longshoremen, which was resulting in greatly increased operating costs.

The Board entered the situation when a series of joint conferences had come to an impasse on the issue of wage increases. By means of separate conferences with representatives of each side, the Board's mediator was successful in preparing the way for a joint conference, which resulted in the signing of an agreement. By the terms of this agreement, the workers received an increase in overtime rates and an additional holiday. The employers received assurances that the "slow-down" would be eliminated, in addition to certain concessions on working rules tending to reduce operating costs.

In May of the same year, the same group of companies requested further assistance in renewing agreements with the International Longshoremen's Association covering the port of Chicago. With the aid of the Board, agreements were concluded.

2. *American Tankers Corporation—National Organization Masters, Mates and Pilots of America (A. F. of L.).* The assistance rendered by the Maritime Labor Board in the negotiations between the American Tankers Corporation and the National Organization Masters, Mates and Pilots consisted of both mediation and technical aid in the formulation of agreements. The union had made its first attempt to establish contractual relations with the American Tankers Corporation and its affiliated companies in August 1938. It was unsuccessful, however, as the parties had failed to arrive at a definition of the issues. This was largely due to the failure of both sides to analyze and compare the terms of various current agreements in order to arrive at a satisfactory basis for negotiation. When the Board intervened it was able, by means of separate conferences with each side, to limit and narrow the field of controversy. The issues involved additional payments for pilotage by officers other than the captain, the closed shop, and the employment of relief officers in port or the payment of compensatory overtime in lieu of providing such relief officers. As no agreement could be reached on the last issue, negotiations were broken off for some time. Conferences were resumed in May of 1939, and with the assistance of the Board resulted in signed agreements. These were chiefly significant in that they set up contractual relations in a portion of the tanker trade which, as a whole, has been the slowest section of the maritime industry to come under collective agreements.

3. *Waterfront Employers Association of the Pacific Coast—International Longshoremen's and Warehousemen's Union (C. I. O.).* The west coast longshore dispute between the International Longshoremen's and Warehousemen's Union and the Waterfront Employers Association of the Pacific Coast arose in

connection with renewal of the collective agreement due to expire on September 30, 1939. While this section of the maritime industry, comprising some 13,000 men, has been operating under written agreements since the arbitration award of 1934, difficulty in renewing the agreement had been anticipated for some time. Several attempts to reach a settlement by direct negotiation had ended in deadlock. The situation was made more difficult by an attitude of distrust on the part of both parties.

The chief demands made by the union concerned higher wages, the right to respect bona fide picket lines, joint control over the introduction of labor-saving devices, and the straight 6-hour day. The employers offered to renew the 1938–39 agreement or to submit all issues to arbiration.

As it became evident that negotiations could not proceed and that failure to agree on renewal by September 30 might result in a complete tie-up of the Pacific coast, the Maritime Labor Board offered its services to mediate the dispute. This offer was accepted by both sides, conditionally by the employers, whereupon the Board's representative called a series of joint meetings with a view to finding a basis on which negotiations could be resumed. An agreement was finally reached which provided for the indefinite extension of the existing agreement, with a 60-day termination clause to permit continuation of negotiations over the terms of a final settlement. It is probable that the intervention of the Board averted a coast-wide tie-up.

4. *Lykes Brothers Steamship Co.—National Maritime Union of America (C. I. O.).* The assistance of the Maritime Labor Board was requested by the Lykes Brothers Steamship Co. on May 6, 1939, in connection with the maintenance of the terms of an agreement between that company and the National Maritime Union. The situation arose as the result of a strike by the seamen on the steamer *West Cobalt*, then in the harbor of Galveston, Tex., in violation of a provision prohibiting stoppages during the life of the agreement. The strike was called by the seamen because a tug used to tow the steamer had also been used to service tankers belonging to the Standard Oil Co. of New Jersey. This latter company was currently classified as "unfair" as a consequence of the east coast tanker strike then in progress. This sympathetic action was supported by local union officials, who refused to replace the striking crew as requested by the employer.

The Board presented the situation to the national union officials in New York and asked cooperation in releasing the vessel. Recognizing the sanctity of contracts, the union made the necessary arrangements, permitting the vessel to sail.

5. *Savannah Maritime Association—International Longshoremen's Association (A. F. of L.).* The services of the Maritime Labor Board were requested by the International Longshoremen's Association in October 1938, to terminate a strike of longshoremen in Savannah, Ga. The strike had been called when the union membership refused to ratify an agreement negotiated by the union and the deep-sea operators, represented by the Savannah Maritime Association. The union demands concerned wage increases, time and one-half for overtime, and the 8-hour day.

At the suggestion of the Board's representative, the union agreed to return to work pending the outcome of continued negotiations, provided the operators agreed to discharge nonunion men employed during the strike. These conditions were met, and the men returned to their jobs. After further discussion the union membership ratified the terms of the proposed agreement, which then went into effect.

6. *Seas Shipping Co.—National Maritime Engineers' Beneficial Association (C. I. O.).* In February of 1939 the Board received a request from the Marine Engineers' Beneficial Association for its assistance in the conclusion of an agreement between that organization and the Seas Shipping Co. The union had been certified by the National Labor Relations Board as the collective bargaining representative of the company's licensed engineers some 2 years earlier. However, negotiations carried on intermittently after that time had failed to produce a signed agreement. When the Board's services were requested, there remained only one deadlocked issue—the inclusion of an arbitration clause—which prevented the consummation of an agreement. The company refused to include such a clause, insisting that disputes arising under the agreement should be settled by recourse to the courts.

In accordance with section 1004 (1), title X, the Board pointed out the value of an arbitration clause in promoting greater stability of labor relations and succeeded in persuading the company to reconsider its stand. However, the

union agreed to sign the contract without an arbitration clause, as it felt that successful experience under an agreement, combined with the company's more favorable attitude toward arbitration procedure, would result in the inclusion of such a clause in future agreements.

7. *Puget Sound Navigation Co.—Inlandboatmen's Union of the Pacific (C. I. O.).* The controversy between the Puget Sound Navigation Co. and its employees, represented by the Inlandboatmen's Union of the Pacific, resulted from unsuccessful negotiations over proposed amendments to the existing collective agreement. The proposed amendments represented demands made by the union for the improvement of wages and working conditions for the unlicensed men employed by the company on its Puget Sound ferryboat system. These demands consisted primarily of wage increases for straight and overtime, the elimination of part-time employment for regular employees, increase in manning scales, and 1 week of paid vacation per year. As the company refused to give consideration to these demands, the union requested the intervention of the Maritime Labor Board in an effort to avert strike action. Nevertheless a strike was called on August 2. While this action involved only the 280 employees of the company, it adversely affected the thousands of passengers and shippers for whom the ferries were the only means of transportation. As no satisfactory formula could be devised to break the deadlock by direct negotiation, the Board proceeded to use its influence to bring the parties to agree on arbitration. On August 23, an agreement was finally reached whereby the disputed issues were submitted to arbitration.

8. *East Coast Tanker Companies—National Maritime Union of America (C. I. O.).* The strike on the Atlantic coast called on April 17 by the National Maritime Union of America against four tanker companies resulted from unsuccessful negotiations over the renewal of collective agreements that expired March 31, 1939. The four companies directly concerned were: Standard Oil Co. of New Jersey (Esso), Standard Oil Co. of New York (Socony-Vacuum Oil Co., Inc.), C. D. Mallory & Co., Inc., and Tide Water Oil Co., together operating a fleet of 130 tankers employing about 4,000 men.

The Maritime Labor Board offered its services as mediator when negotiations between the parties concerned had deadlocked, chiefly on the issue of the hiring halls in New York City. For the passenger and dry cargo trades, hiring is done through halls maintained by the National Maritime Union of America; but in the tanker trade, practice varies. The large operators, that is, the two Standard Oil Co.'s, hire all replacements through their own employment offices, while the smaller companies use both their own hiring halls and that of the National Maritime Union. In order to provide uniform practice as well as to strengthen its organization, the National Maritime Union of America proposed separate tanker hiring halls to be operated either by the union alone or jointly with the employers. But the companies insisted on retaining the existing arrangements. It was at this point that the Maritime Labor Board offered its services. A series of conferences was held at which the representative of the Board suggested compromise proposals as a basis of settlement. These proposals, which were at first regarded favorably by the conferees, were later rejected by the union and, after the strike started, by the employers. The Board did succeed, however, in bringing two other companies which were also concerned in the negotiations—the Gulf Oil Co. and the Pennsylvania Shipping Co.—into agreement with the National Maritime Union of America, thereby eliminating their 1,300 employees from the subsequent strike.

STATISTICAL ANALYSIS OF THE BOARD'S MEDIATORY ACTIVITIES

From the beginning of its mediatory activities around September 1, 1938, to September 30, 1939, the Board had on its docket a total of 73 mediation cases.[15] Of these 73 cases, 61 were closed as of September 30. Of the 61 closed cases, the Board participated actively in 51; for various reasons the remaining 10 cases did not require the Board's formal intervention. These cases are referred to in the following dis-

[15] These cases do not include a number in which the Board has given advice or information, or cases in which the mediators in the field rendered technical assistance; on the other hand one or two cases are included in which the records are not clear as to the exact degree of the Board's formal participation.

cussion as "informal cases" in contrast to the "formal cases" in which the Board participated actively. Of the 51 formal cases, 24 involved strike situations. Due to the initial difficulty in securing mediators and in setting up forms for reporting mediatory activities in the field, it was impossible to secure information on the number of workers involved in all the cases in which the Board participated. Such information is available, however, for 35 formal cases which are presented in separate tabulations.

Analysis of all cases in terms of their final disposition affords a quantitative evaluation of the effectiveness of the Maritime Labor Board in its mediatory activity. Of the 51 formal cases, 46 cases were brought to a satisfactory conclusion, while 5 failed of adjustment. In terms of the number of workers involved, available figures for 35 cases, involving 108,857 workers, show that 31 cases, involving 104,749 workers, reached adjustments, while 4 cases, involving 4,108 workers failed of adjustment. These results are summarized in Table 1.

TABLE 1.—*Results of 35 formal mediation cases*

Result	All cases		Strikes		Other disputes	
	Number of cases	Number of workers	Number of cases	Number of workers	Number of cases	Number of of workers
All types	35	108, 857	16	44, 243	19	64, 614
Satisfactory adjustment	31	104, 749	13	40, 139	18	64, 610
Failed of adjustment	4	4, 108	3	4, 104	1	4

Requests for Board's services.

Though section 1008 of title X provides that the Board may intervene either upon the request of one or both parties to a dispute or may offer its services on its own initiative, analysis of the 61 closed cases shows that a total of 47 requests came from a union, an employer, or both. Of this total, 27 requests were submitted by unions, 15 by employers, and 5 by employers and employees jointly. The Board proffered its services in 14 cases.

Aside from the disputes in which the mediatory services of the Board were requested by either or both parties, the Board was able to make its services available only in cases of controversies of which it had knowledge from announcements in the press or from reports of its field mediators. Although it is unlikely that there occurred any major stoppage of work during this period in which the services of the Board were neither requested nor proffered, it is probable that certain minor strikes or threats of strikes escaped the Board's attention. Extension of the Board's sphere of usefulness to cover all cases of dispute is largely a matter of time. On the one hand the increase in the Board's activities is an administrative problem which involves establishing contacts, developing sources of information, and organizing the work of field mediators. But on the other hand, it is a matter of the extent to which labor unions and employers acquire the habit of informing the Board in advance of incipient disputes likely to provoke strikes or lockouts.

Regional distribution of cases.

Of the 61 closed cases, 30 occurred on the Atlantic coast, 13 in Gulf ports, and 9 each on the Pacific coast and the Great Lakes as shown in Table 2. Of the 51 formal cases in which the Board participated actively, 24 were on the Atlantic coast, 8 on the Pacific coast, 11 on the Gulf coast, and 8 on the Great Lakes. Out of a total of 108,857 men involved in 35 formal cases, over 48,000 were on the Atlantic coast and an approximately equal number on the Pacific coast. The remaining cases were distributed in other areas.

TABLE 2.—*Regional distribution of 61 closed cases*

Region	All cases	Formal cases		Informal cases
		Strikes	Other disputes	
All regions	61	24	27	10
Atlantic coast	30	11	13	6
Pacific coast	9	7	1	1
Gulf coast	13	5	6	2
Great Lakes	9	1	7	1

Classes of workers involved in disputes.

The majority of cases handled by the Board involved the personnel of seagoing merchant vessels, including licensed officers, seamen, and radio operators. Longshoremen, together with towboat and tugboat workers on harbor craft, constituted the second largest occupational group involved in cases handled by the Board. Despite the concentration of the Board's mediatory activities upon vessel personnel, longshoremen, and workers employed aboard harbor craft, its services have extended over the entire range of the maritime industry as defined by title X.

The distribution of cases by occupational groups is shown in Table 3.

TABLE 3.—*Types of personnel directly involved*[1] *in 61 closed cases*

Type of personnel	All cases	Formal cases		Informal cases
		Strikes	Other disputes	
All types of personnel	61	24	27	10
Seafaring personnel	36	12	19	5
Licensed	20	3	15	2
Unlicensed	15	9	3	3
Radio operators	1		1	
Shore employees	16	7	7	2
Longshoremen	11	4	6	1
Clerks and checkers	4	3	1	
Ship repair workers	1			1
Harbor craft personnel[2]	7	3	1	3
Fishermen	2	2		

[1] Although several cases directly affected more than one class of personnel, each case is attributed to the group with whom the dispute originated.
[2] Includes personnel on towboats, canal boats, and ferries.

Of the 61 cases, seafaring personnel, including both licensed and unlicensed workers, were involved in 36 disputes, of which 31 were formal cases. Longshoremen were involved in a total of 11 cases, 10 of which were formal. The remaining 14 included 4 disputes involving clerks and checkers, 7 involving harbor craft personnel, 2, fishermen, and 1, ship repair workers.

Table 4 shows what unions took part in the disputes which the Board mediated. The total number of disputes in which the various types of personnel were involved, as shown in Table 4, does not correspond to the figures given in Table 3 due to the fact that several disputes have involved more than one type of personnel. Thus a dispute involving vessel engineers may also be a dispute involving deck officers. Both Tables 3 and 4 indicate that officers of the deck and the engine departments have figured in more cases handled by the Board than has the unlicensed vessel personnel. This is due to two facts: (1) In 1938–39 the labor organizations representing licensed personnel were involved in many negotiations establishing contractual relations with employers for the first time; and (2) in negotiating new agreements the unions of licensed personnel deal, as a rule, with individual companies rather than with a group of companies, as is more frequently the case with the unlicensed vessel personnel.

TABLE 4.—*Labor unions involved in Maritime Labor Board mediation cases classified by types of personnel*

Types of personnel	All cases	Formal cases	Informal cases
Licensed personnel:			
National Marine Engineers' Beneficial Association	15	15	----------
National Organization Masters, Mates and Pilots of America	14	12	2
American Communications Association (marine division)	3	3	----------
Unlicensed personnel:			
National Maritime Union of America	10	8	2
Seafarers' International Union of North America	4	3	1
Marine Cooks' and Stewards' Association of the Pacific Coast	2	2	----------
Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers' Association	2	2	----------
Harbor craft personnel:			
Inlandboatmen's Union of the Pacific	1	1	----------
Inlandboatmen's Division of the National Maritime Union of America	2	2	----------
International Longshoremen's Association	4	1	3
Fishermen:			
Alaska Fishermen's Union	1	1	----------
Atlantic Fishermen's Union	1	1	----------
Longshoremen:			
International Longshoremen's and Warehousemen's Union	3	2	1
International Longshoremen's Association	9	9	----------
Clerks and checkers:			
Ship Clerks' Association, Local 134 of International Longshoremen's and Warehousemen's Union	2	2	----------
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees	2	2	----------
Ship repair workers:			
Industrial Union of Marine and Shipbuilding Workers of America, Local 22	1	----------	1

Origin of disputes.

That most of the disputes with which the Board has dealt originated in the making of new collective agreements, the renewal of existing collective agreements, and the interpretation of existing collective agreements is shown in Table 5. Thus, of the 51 formal cases, 16 originated in the efforts made by maritime labor unions to nego-

tiate new collective agreements, 18 arose in the process of renewing collective agreements, and 15 had to do with the interpretation of existing agreements, while 2 were not related to making and maintaining collective agreements.[16]

TABLE 5.—*Distribution of 61 closed cases by origin of dispute*

Origin of dispute	All cases	Formal cases		Informal cases
		Strikes	Other disputes	
All types	61	24	27	10
Making a new collective agreement	21	6	10	5
Renewal of agreement	22	7	11	4
Interpretation of agreement	16	10	5	1
Not related to a collective agreement	2	1	1	0

Among the strike cases alone, the most frequent source of dispute has been the interpretation of existing collective agreements. Of the 24 formal strike cases, 10 can be placed in that group, while 6 cases have originated in connection with the making of new collective agreements, and 7 with the renewal of existing collective agreements.

The 35 formal cases for which information is available as to the number of workers involved show, however, that by far the largest number of workers was involved in disputes originating in connection with the renewal of existing collective agreements. Of the 108,857 workers involved in these 35 formal cases, 99,820 were concerned in 15 disputes growing out of the renewal of existing collective agreements, as compared with 7,732 workers in 8 cases where disputes with employers originated in connection with the interpretation of existing collective agreements. Only 1,304 workers were involved in 11 disputes over the making of new collective agreements.[17] The relatively small number of workers in these 11 cases is attributable to the fact that most of these cases involved licensed vessel personnel, who represent a relatively small group in merchant shipping.

Major issues involved in disputes.

Table 6 shows that the most important issues occasioning the disputes handled by the Board are wages, hours, and working conditions. Disputes over wages occurred as a major issue in 22 cases, while disputes over working rules also occurred in 22 cases. The issues of open, preferential, and closed shop and the hiring hall continued to be vital in the maritime industry. In the formal cases involving strikes, issues concerning wages and working rules appear most frequently. Next come issues involving sympathetic strikes, union recognition, and open, preferential, or closed shop, each of which occurred in 4 cases.

[16] One of these cases involved alleged discriminatory discharge of a union worker, while the other concerned the employment of nonunion men. In both cases the employers customarily hired union men although not maintaining formal contractual relations with the unions involved.

[17] The one remaining case does not fall into any of these categories.

TABLE 6.—*Frequency of specified major issues in 61 closed cases*

Major issues	All cases	Formal cases		Informal cases [1]
		Strikes	Other disputes	
Wages	22	9	12	1
Hours	10	3	4	3
Working rules [2]	22	8	14	
Open, preferential, or closed shop	10	4	4	2
Overtime	5	3	2	
Discriminatory discharge of union workers	5	2	3	
Demanded discharge of nonunion workers	4	3		1
Operation of hiring halls	4	2	2	
Union recognition	7	4	2	1
Sympathetic strikes	6	4	1	1
Other questions	12	5	6	1

[1] Incomplete data for some of these cases.
[2] Includes seniority, manning scales, crew quarters, etc.

Table 7 shows, however, that the 5 disputes concerning union recognition involved a total of only 394 men, while 3 disputes over the hiring hall issue affected more than 22,000 men. The relative infrequency of disputes over claims for recognition as agencies for collective bargaining reflects the degree to which the maritime labor unions have been affected by the National Labor Relations Act of 1935.

TABLE 7.—*Frequency of specified major issues in 37 cases*

Issues	All cases		Formal cases		Informal cases [1]	
	Number of cases	Number of workers	Number of cases	Number of workers	Number of cases	Number of workers
Wages	17	29,313	17	29,313		
Hours	7	66,384	7	66,384		
Working rules [2]	11	22,691	11	22,691		
Open, preferential, or closed shop	7	6,322	6	6,302	1	20
Overtime	3	5,300	3	5,300		
Discriminatory discharge of union workers	4	1,612	4	1,612		
Demanded discharge of nonunion workers	2	2,010	2	2,010		
Operation of hiring halls	3	22,100	3	22,100		
Union recognition	5	394	5	394		
Sympathetic strikes	2	6,600	2	6,600		
Other questions	7	55,704	6	42,704	1	13,000

[1] Incomplete data for some of these cases.
[2] Includes seniority, manning scales, crew quarters, etc.

Disposition of disputes.

The records show that intervention by the Maritime Labor Board resulted in adjustment in 46 out of the entire 51 disputes in which it took an active part. Of these 51 cases, 26 were terminated by making, renewing, or modifying a collective agreement; in 9 cases the parties agreed to renew negotiations or to submit the issues to arbitration; in 10 cases the parties effected a settlement of the alleged violation of the agreement that had precipitated the dispute; while 5 cases failed of settlement.

Of the 24 strike cases, 21 reached a satisfactory adjustment. Of these, 18 were settled by direct negotiation between the parties, assisted by the Board. The remaining 3 cases involved unauthorized

strikes in violation of the agreement, which were terminated when the Board brought the situation to the attention of the national union officials. Three cases failed of adjustment.

Table 8 shows that in only 4 cases out of the 35 in which the Board participated formally, and for which information on the number of workers involved is available, did the Board fail to bring about a satisfactory adjustment. Of these 35, 20 cases, involving 83,732 men, were terminated by the making, renewing, or modifying of the collective agreement; 5 other cases, involving 20,009 workers, were terminated by agreement of the parties to settle the dispute by direct negotiation or by submitting the disputed issues to arbitration; and 5 cases, involving 1,007 workers, were settled directly between the parties. There was 1 other case, involving only 1 worker, which was settled by other means. The 4 cases which failed of adjustment affected 4,108 men.

TABLE 8.—*Distribution of 35 closed cases by types of settlement and by number of workers involved*

Types of settlement	Number of cases	Number of workers
All types	35	108,857
Collective agreement made, modified, or renewed	20	83,732
Parties agreed to negotiate a settlement or to submit issues to arbitration	5	20,009
Direct settlement of alleged violation of agreement	5	1,007
Other types of adjustment	1	1
Failed of adjustment	4	4,108

SUMMARY

The cases presented in this analysis do not comprise all of the Board's mediatory experience. They do, however, indicate the type of problem the Board has dealt with and, therefore, the type of problem which this Board or its successor will confront in the future. It is apparent from the analysis that union recognition is no longer the principal issue in disputes arising between maritime employers and their employees. This shift in emphasis marks a transition in the development of industrial relations in some segments of the maritime industry from a phase characterized by struggles over union recognition and the establishment of collective bargaining, to a more mature phase in which the making and administration of written collective agreements have become paramount. The issues that now occasion disputes arise predominantly out of divergent interpretation of existing agreements, out of negotiations for the renewal of expiring agreements, and such substantive issues as wages, working rules, and the control of hiring halls. The solution of this latter type of problem calls not only for the establishment of effective adjustment machinery but also for the development of such attitudes and techniques in the use of that machinery as will reasonably insure the adjustment of controversies without resort to economic force.

PART II

STUDIES IN COLLECTIVE BARGAINING

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INTRODUCTION

Collective bargaining has two phases comprising, on the one hand, the negotiation of collective agreements, and on the other, the interpretation of those agreements. The instrument embodying a working equation between the organizations of workers and employers is the written agreement, while the instrument through which such agreements are made effective is the adjustment machinery usually established by the agreement itself.

It is of paramount importance to achievement of stability in maritime labor relations that the principle of collective bargaining shall be both established and evidenced, and that adjustment mechanisms for the settlement of disputes and grievances shall be provided and utilized.

Considerable progress has been made in the extension of collective bargaining in the maritime industry during the past 7 years. It is the purpose of these studies to indicate the present status of collective bargaining in the industry and to describe the machinery which has been established for the purpose of effectuating collective agreements.

The first five studies indicate the state of collective bargaining in the maritime industry. Chapters V and VI summarize the organizational framework through which collective bargaining is carried on. Chapter VII indicates the extent of collective bargaining in the industry, while chapter VIII examines the activities of the National Labor Relations Board as they bear upon collective bargaining in the maritime industry, and chapter IX considers the special implications of hiring and firing as they relate to collective bargaining.

The last five studies are concerned with methods of adjusting disputes and grievances. An analysis of the provisions of the maritime agreements with respect to the adjustment and arbitration of disputes and grievances is presented in chapter X. This is followed by two chapters, XI and XII, which contain the results of a field investigation into the machinery and processes of adjustment which are actually in use among west coast longshoremen and among seamen on both the Pacific and Atlantic coasts. For purposes of comparison, there is in chapter XIII a review of the development and present status of the adjustment machinery instituted by the railway unions and carriers, and in chapter XIV a summary of the techniques of collective bargaining and adjustment of disputes used in certain selected foreign countries. The concluding section summarizes the major points emerging from all of the chapters.

Chapter V

UNION ORGANIZATION IN THE MARITIME INDUSTRY[1]

Union organization, in one form or another, is almost universal in the maritime industry. The tanker crews on the Pacific coast and those engaged in the bulk cargo trade on the Great Lakes constitute the only significant segments of the working force which remain largely unorganized. In certain other departments of the industry, labor unions, while officially recognized by some employers, have been unable to win all eligible workers to membership. This is true, for example, of the licensed seagoing personnel and of inland boatmen and fishermen in some areas. Viewing the industry as a whole, however, recognized unionism operating under written collective agreements with the employers, is the rule rather than the exception.

Following is a brief discussion of the union organizations within the following major occupational categories in the industry: licensed officers, radio operators, unlicensed seamen, longshoremen, inland boatmen, and certain miscellaneous groups which are economically or organizationally related to maritime workers.[2]

LICENSED PERSONNEL

Officers in the American merchant marine are required by law to possess licenses issued by the Bureau of Marine Inspection and Navigation of the United States Department of Commerce. The licensed personnel is divided into two categories: deck officers, consisting of masters, mates, and pilots; and engine-room officers, comprising chief and assistant engineers.[3]

Collective bargaining, involving positive efforts to obtain improved wages, hours, and working conditions, was relatively slow in developing among the licensed personnel. Early organizations were more concerned with benevolent and fraternal activities than with trade union demands. Toward the close of the last century, however, as a result of the rapidly changing technique and organization

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[1] Major sources: field interviews with union representatives; materials supplied directly by the unions, such as constitutions, by laws, directories, and miscellaneous reports; convention proceedings of the principal maritime unions and of the American Federation of Labor and Congress of Industrial Organizations; maritime union periodicals; daily newspaper and magazine articles, including Elmo P. Hohman, "Maritime Labour in the United States" in the *International Labour Review,* August and September 1938; Government publication, especially U. S. Department of Labor, Bureau of Labor Statistics, A. E. Albrecht, *International Seamen's Union of America,* 1923, and U. S. Department of Labor, Bureau of Labor Statistics, E. M. Stewart, *Handbook of American Trade Unions,* 1936; commercially published books dealing with maritime labor problems, the most important of which were P. Eliel, *Waterfront and General Strikes, San Francisco, 1934,* H. E. Hoagland, *Wage Bargaining on the Vessels of the Great Lakes,* 1917, and F. S. Taylor, *Sailors' Union of the Pacific,* 1923; unpublished manuscripts, theses, and dissertations, and unpublished transcripts of hearings before various government agencies.

[2] The principal maritime and related unions are summarized in tabular form at the end of this chapter.

[3] For a discussion of the duties of the principal officers in both departments, and of the requirements for licensing, see Federal Coordinator of Transportation, *Hours, Wages and Working Conditions in Domestic Water Transportation,* 1936, vol. I, pp. 21–23, 164–165.

of the industry, the principal organizations of officers became trade-unions in the accepted meaning of that term. These organizations are the National Organization Masters, Mates and Pilots of America, to which licensed deck officers belong, and the National Marine Engineers' Beneficial Association, composed of licensed engine-room personnel. In addition to these older unions, two other organizations of licensed personnel are active in the field. These are the United Licensed Officers of the United States of America and the International Union of Operating Engineers.

Throughout the history of maritime labor organization, fraternal and benevolent associations, company unions, and local employee representation plans have been more common among the licensed than among the unlicensed personnel. In addition to the standard organizations, there are or have been in recent years several other organizations of licensed personnel, all nominally independent but believed by the major maritime unions belonging to the American Federation of Labor and Congress of Industrial Organizations to be company-sponsored. Some of these organizations are confined to the licensed employees of individual companies or lines.

The National Organization Masters, Mates and Pilots of America and the National Marine Engineers' Beneficial Association have encountered competition, not only from the numerous independent unions of licensed officers, but also from the International Longshoremen's Association, which in the past 2 or 3 years, has organized a number of licensed officers' locals. The National Organization Masters, Mates and Pilots seems to have suffered more from this activity than the National Marine Engineers' Beneficial Association, although both the National Organization Masters, Mates and Pilots and the International Longshoremen's Association are American Federation of Labor affiliates.

National Organization Masters, Mates, and Pilots of America.

This organization originated in New York City in 1887 as the American Brotherhood of Steamboat Pilots. During the subsequent years its jurisdiction was enlarged to include the three grades of licensed deck officers, and its name was changed several times prior to 1916, when its present name was adopted. At first the organization was largely a benevolent and fraternal association, little interested in active trade unionism. After 1902, however, it entered definitely into the trade union field, greatly enlarged its membership, and engaged in vigorous collective bargaining with employers. After more than a decade of quiescence during the post-war years an active organizing campaign was instituted in 1934 with resultant gains in membership, primarily among the mates, where organization had been very weak.

The National Organization Masters, Mates, and Pilots claims territorial jurisdiction over the whole United States and the Panama Canal Zone. It has 34 locals in 28 cities on the 3 coasts, the Great Lakes, and the Canal Zone. Its claimed occupational jurisdiction includes all licensed masters, mates, and pilots; whether on ocean-going, coastwise, lake, or inland river and harbor craft. In 1939 the total membership was given as 3,000.

The National Organization Masters, Mates, and Pilots is currently affiliated with the American Federation of Labor and with the Rail-

way Labor Executives Association. In 1935 the west coast locals affiliated with the Maritime Federation of the Pacific, but withdrew in 1938.

National Marine Engineers' Beneficial Association.

Marine engineers were first organized on a national basis in 1875 with the founding of the National Marine Engineers' Association of the United States of America. After several changes, its present name was adopted. Until near the end of the century it was primarily a fraternal and benevolent organization. By 1900, however, its former policy was modified, and a program of aggressive collective bargaining was instituted. The Marine Engineers' Beneficial Association is today the outstanding union of licensed engineers in the industry.

The Marine Engineers' Beneficial Association claims jurisdiction over all licensed marine engineers on all types of vessels flying the American flag, in the United States, its possessions, and the Panama Canal Zone. It maintains 45 locals, distributed regionally over the three coastal areas, the Great Lakes, the inland rivers, the Canal Zone, and the Hawaiian Islands. Its membership in 1938 was reported as 6,350.

Although affiliated with the American Federation of Labor in 1918, the Marine Engineers' Beneficial Association withdrew in 1923. It is currently affiliated with the Congress of Industrial Organizations, the Railway Labor Executives Association, and the Maritime Federation of the Pacific.

United Licensed Officers of the United States of America.

The United Licensed Officers of the United States of America was organized in New York City in 1933 as an amalgamation of the Neptune Association, covering licensed deck officers, and the Ocean Association of Marine Engineers. It thus includes licensed officers of both the deck and engine departments. At present it is not affiliated with either the American Federation of Labor or the Congress of Industrial Organizations.

The organization claims territorial jurisdiction over the entire United States, but nearly all its membership is concentrated on the Atlantic coast. Occupational jurisdiction is limited to licensed marine officers. In 1936 the United Licensed Officers of the United States of America reported a membership of 2,000.

International Union of Operating Engineers.

This organization was founded in 1896 at St. Louis, Mo., as the National Steam Engineers' Union. During the following years its name and jurisdiction changed several times. The present name was adopted in 1927 after amalgamation with a union of steam shovel and dredge operators. The union has been affiliated with the American Federation of Labor since its inception.

The International Union of Operating Engineers has territorial jurisdiction over the United States, Canada, and the Canal Zone. Traditionally an organization primarily of stationary engineers, the union was given jurisdicton over marine engineers in 1923, when the National Marine Engineers' Beneficial Association withdrew from the American Federation of Labor. Although the union reported its total membership as 42,000 in 1938, very few of these were marine

engineers. In the same year the union relinquished jurisdiction over marine engineers. Due to conflicting jurisdictional claims, the disposition of this group now rests with the Executive Council of the American Federation of Labor. The union, however, is signatory to nine collective bargaining agreements covering marine engineers, two of these on the Great Lakes and the remaining seven on the Atlantic coast.

RADIO OPERATORS

Marine radio operators are sometimes referred to as "officers," but they are not licensed as such by the Department of Commerce. They do hold licenses issued by the Federal Communications Commission, however. By custom or courtesy, radio operators aboard ship are frequently accorded much of the distinction and privilege of officers licensed by the Department of Commerce. But their status as marine officers is not legally recognized, a fact which has caused considerable dissatisfaction among radio operators and has brought about efforts to amend the maritime law so as to include this group among the licensed officers. Spokesmen have claimed that in the merchant fleets of most foreign countries, radio operators possess the rank and status of legally recognized officers.

There are only two unions among marine radio operators: the American Communications Association (formerly the American Radio Telegraphists' Association), which is affiliated with the Congress of Industrial Organizations, and the Commercial Telegraphers' Union, affiliated with the American Federation of Labor. Both organizations include workers in other branches of the radio and telegraphic communications industry as well as marine radiomen.

American Communications Association—Marine Division.

The American Radio Telegraphists' Association was organized in New York City in 1931 as an outgrowth of a regional association, the Commercial Radiomen's Protective Association, which was founded on the Pacific coast earlier in the same year. At first the organization covered marine radio operators exclusively, but after 1936 its jurisdiction was extended and its name correspondingly changed. These changes resulted, in part, from the failure of its proposed amalgamation with the Commercial Telegraphers' Union, an American Federation of Labor affiliate.

The American Communications Association claims jurisdiction over all workers in the communications industry in the United States, its Territories and possessions, and the Dominion of Canada. Its occupational divisions include communications workers in the following sections of the industry: broadcast, marine, point-to-point radio, aviation and cable, telegraph, and telephone. In 1938 the American Communications Association claimed a total membership of 13,220. In 1937, the union reported 2,000 members in the marine division, representing approximately 95 percent of the radio operators in the maritime industry. Membership in the marine division was unofficially estimated as 1,950 at the end of 1939.

The American Communications Association is affiliated with the Congress of Industrial Organizations, and its marine division on the west coast is actively affiliated with the Maritime Federation of the Pacific.

Commercial Telegraphers' Union.

The Commercial Telegraphers' Union is the result of an amalgamation in 1902, under American Federation of Labor auspices, of two smaller unions of commercial telegraphers with conflicting jurisdictions. The amalgamated union has undergone several changes of name since 1902, the present designation having been adopted in 1935.

Traditionally the union's jurisdiction has covered all branches of the telegraph service except the railroad. About 1935, an amalgamation was projected with the then independent American Radio Telegraphists' Association, now the American Communications Association, which controlled the majority of marine radio operators in the country. When these plans failed to materialize and the former organization affiliated with the Congress of Industrial Organizations, the Commercial Telegraphers' Union began actively to organize marine radio operators.

At the American Federation of Labor Convention in 1939, the Commercial Telegraphers' Union was allotted votes representing a total of 3,500 members. It has been unofficially estimated that membership in the marine division is approximately 500.

UNLICENSED PERSONNEL

Seamen in the American merchant marine are required by law to possess certificates of service or efficiency issued by the Department of Commerce. The work of the unlicensed personnel aboard ship is usually organized in three or four separate departments as follows:

(1) Deck department, consisting of able seamen, ordinary seamen, boatswains, quartermasters, and certain other ratings. As a group, these employees are commonly referred to as deck hands or "sailors."

(2) Engine department, comprising firemen, oilers, watertenders, and wipers, and frequently machinists and repairmen. The generic term "firemen" is sometimes used with reference to this group.

(3) Stewards' department, including stewards, stewardesses, cooks, porters, bartenders, and messmen. The chief steward is responsible for all work in connection with the kitchen, dining room, living quarters, and recreation rooms. Naturally, the importance of the stewards' department is much greater on passenger vessels than on freighters.

(4) On large passenger vessels the chief purser, his assistants, and clerical help may constitute a separate unit known as the purser's department. On small vessels and freighters the purser's functions may be performed by radio operators or others, usually with extra compensation.

In each department the men holding the higher ratings direct the work of their subordinates and are often classed as petty officers. Each petty officer is responsible to a designated member of the licensed personnel.[4]

There are five major unions among the unlicensed personnel. The National Maritime Union of America covers the majority of the unlicensed personnel in all departments on the Atlantic and Gulf coasts.

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[4] For a discussion of the duties of unlicensed personnel in the principal occupational categories and of the requirements for certification, see Federal Coordinator of Transportation, *Hours, Wages and Working Conditions in Domestic Water Transportation,* 1936, vol. I, pp. 24–26, 164–167.

It is industrial or semi-industrial in form and is affiliated with the Congress of Industrial Organizations. On the Pacific coast the unlicensed men in the deck, engine, and stewards' departments are organized in three separate unions, each including virtually all eligible employees in its respective sphere, except for the tanker trade, which is largely unorganized. The Sailors' Union of the Pacific, composed of deck personnel, is affiliated with the American Federation of Labor. The Marine Cooks' and Stewards' Association of the Pacific Coast is an affiliate of the Congress of Industrial Organizations. The Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers' Association is independent, not being affiliated with either of the national movements. The Seafarers' International Union of North America is an industrial union chartered by the American Federation of Labor in October 1938. It claims jurisdiction over unlicensed personnel in all departments throughout the industry.

One other organization of seagoing personnel that must be mentioned is the International Seamen's Union of America. The three west coast unions of seamen were formerly affiliated with the International Seamen's Union. The National Maritime Union in the east, Gulf, and Great Lakes districts is the result of a rank and file rebellion which arose within the International Seamen's Union between 1935 and 1937. The International Seamen's Union officially ceased to exist in October 1938, but its place and tradition in the maritime labor movement, coupled with the fact that its final decline and fall were coincidental with the rise of some of the most prominent organizations now in the field, justify its inclusion in any account of maritime union development. The current organizational structure in the industry cannot be understood without reference to the position occupied until recently by this once great maritime union.

International Seamen's Union of America.[5]

In 1892 a convention called by the Sailors' Union of the Pacific resulted in the formation of the National Seamen's Union, a federation of four district sailors' unions. The following year this organization affiliated with the American Federation of Labor, and in 1894 changed its name to the International Seamen's Union. The International Seamen's Union was a federation of local and district craft unions at first, the members being chiefly unions of unlicensed deck personnel. As unions began to appear among the firemen, and marine cooks, and the stewards, however, these groups were also encouraged to affiliate. At various times this International also included unions of fishermen, inland boatmen, bargemen, and others. Although each of these unions had the right to negotiate agreements, to call and terminate strikes, and to adopt policies not inconsistent with those of the International, there was a tendency for the latter to exert considerable influence over the affairs of its affiliates.

The International Seamen's Union reached the height of its power during and immediately after the World War with a membership in excess of 100,000 in 1921. However, wage reductions and an unsuccessful strike greatly weakened the union between 1922 and 1934. With the resurgence of unionism in 1934, the International Seamen's Union regained some of its former strength. But with the defection

[5] Ceased to exist officially in 1938.

of its west coast affiliates after 1936, and with the rise of the National Maritime Union on the east coast in 1937, the International Seamen's Union disintegrated. By 1938 the International Seamen's Union claimed a membership of only 2,200, and the American Federation of Labor revoked its charter.

Seafarers' International Union of North America.

The Seafarers' International Union was chartered by the American Federation of Labor in the fall of 1938 to fill the place once occupied by the International Seamen's Union of America. The charter of the new organization was entrusted to the administration of the Sailors' Union of the Pacific, a former affiliate of the International Seamen's Union of America. The Seafarers' International Union of North America absorbed the remaining locals of seamen belonging to the American Federation of Labor and began an aggressive organizing campaign, particularly in the Atlantic, Gulf, and Lake regions.

The Seafarers' International Union of North America claims jurisdiction over all unlicensed seagoing personnel throughout the industry, as well as fishermen and inland boatmen. This brings it into conflict with the National Maritime Union in the East, Gulf, and Lake districts and with the unions of firemen, marine cooks and stewards, inland boatmen, and fishermen on the Pacific coast. All of these groups, except the independent west coast firemen, are affiliated with the Congress of Industrial Organizations. At the American Federation of Labor convention in 1939, the Seafarers' International Union of North America was allotted votes representing a membership of 11,000.

National Maritime Union of America.

The National Maritime Union was the outgrowth of a membership revolt within the ranks of the International Seamen's Union. Early in 1935 International Seamen's Union seamen in the port of New York organized a "Rank and File Committee" in opposition to the International's officers. The committee reorganized in 1937 and became the National Maritime Union, affiliated with the Congress of Industrial Organizations. Within the following year the new organization succeeded in winning a series of National Labor Relations Board elections held on the Atlantic and Gulf coasts to determine collective bargaining representatives for unlicensed personnel, and negotiated a collective agreement with the operators represented by the American Merchant Marine Institute.

The National Maritime Union claims jurisdiction over all unlicensed seagoing personnel and over inland boatmen and fishermen. Its effective territorial jurisdiction is at present limited to the Atlantic, Gulf, and Great Lakes areas. The union includes five occupational divisions: the deck division, the engine division, the stewards' division, the pursers' division, and the inlandboatmen's division. In 1939, its total reported membership approximated 63,000[6] of whom about 51,000 were in the seagoing divisions, and the remaining 12,000 in the inlandboatmen's division, which also includes fishermen.

Sailors' Union of the Pacific.

The union was founded in San Francisco in 1885 as the Coast Seamen's Union, adopting the present name in 1891. In 1892 it took

[6] Cf. tabulation at the end of this chapter, footnote 8.

the initiative in organizing the International Seamen's Union, and was long considered the International's strongest affiliate. The Sailors' Union of the Pacific obtained its first agreement with the operators in 1902, thereby establishing a collective bargaining relationship that continued unbroken until the seamen's strike in 1921. After the strike of 1921 the Sailors' Union of the Pacific, along with most other maritime unions, was all but destroyed. It regained its strength with the revival of unionism in 1934. Today it claims a membership of about 8,000, covering all unlicensed deck personnel sailing from west coast ports, except those engaged in the tanker trade. In 1938 the Sailors' Union of the Pacific became part of the Seafarers' International Union, which claims jurisdiction over all unlicensed personnel.

Although at one time active in the Maritime Federation of the Pacific, the Sailors' Union of the Pacific withdrew in June 1938. It is at present affiliated with the American Federation of Labor.

Marine Cooks' and Stewards' Association of the Pacific Coast.

The Marine Cooks' and Stewards' Association of the Pacific Coast was organized in 1901 as the Pacific district unit of the International Seamen's Union, covering stewards' department personnel. From 1921 to 1933 the cooks' and stewards' union, in common with most other maritime organizations, was weak and ineffective. It was revived and reorganized in 1933, but it remained a part of the International Seamen's Union. After 1936 it gradually became inactive in the International Seamen's Union, and in 1938 affiliated with the Congress of Industrial Organizations.

The union's jurisdiction is confined territorially to the Pacific coast and occupationally to members of the stewards' department. At the Congress of Industrial Organizations convention in 1938 its membership was reported as 8,212. All marine cooks, stewards, messmen, and related employees sailing from west coast ports, except in the tanker trade, are members of the union.

The Marine Cooks' and Stewards' Association is currently affiliated with the Congress of Industrial Organizations and with the Maritime Federation of the Pacific.

Pacific Coast Marine Firemen, Oilers, Watertenders, and Wipers' Association.

A union called the Marine Firemen, Oilers, Watertenders and Wipers of the Pacific was formed in 1907 as an amalgamation of two firemen's unions established some years earlier. The amalgamated union affiliated with the International Seamen's Union and from 1907 to 1933 constituted the International's Pacific district unit of engine department personnel. With the onset of depression, the union virtually ceased to exist. In 1933 west coast firemen reorganized and adopted the present name. The reorganized union was affiliated with the International Seamen's Union until after 1936, but with the subsequent disintegration of the International, the marine firemen became an independent organization.

The Association claims a membership of approximately 4,000. With the exception of the tanker trade, the union controls all unlicensed engine-room personnel sailing from west coast ports.

LONGSHOREMEN AND RELATED GROUPS

Longshoremen and related occupational groups are organized in two unions, the International Longshoremen's Association, affiliated with the American Federation of Labor, and the International Longshoremen's and Warehousemen's Union, affiliated with the Congress of Industrial Organizations.

International Longshoremen's Association.

The International Longshoremen's Association is the outgrowth of a regional union of lumber handlers organized in Detroit, Michigan, in 1892. During the following years jurisdiction was extended to all longshore workers in the United States and Canada. The present name was adopted in 1894. In 1902 the International Longshoremen's Association attempted to assume jurisdiction over seamen, but was ordered by the American Federation of Labor to readopt its original scope because of jurisdictional conflicts with the International Seamen's Union. During the course of this dispute, most of the Pacific coast locals of the International Longshoremen's Association withdrew, and agreed to reaffiliate only when the International Longshoremen's Association granted a general charter to the Pacific coast district with a relatively high degree of autonomy. During the post-war and depression years the International was greatly weakened or destroyed in all but a few areas. After the revival of unionism in 1934, the west coast longshoremen again became involved in controversy with the International, which ended in the complete withdrawal of the Pacific coast district and the founding of a new union. On the other coasts, however, the International Longshoremen's Association succeeded in regaining its former strength.

The International Longshoremen's Association claims broad jurisdiction, both geographically and occupationally, covering all ports both in North and South America.

At present the International Longshoremen's Association has 45 locals outside the United States proper, most of them in Canada. Its extensive occupational claims cover all types of longshoremen, dock and harbor workers, inland boatmen, fishermen, and even licensed and unlicensed seagoing personnel. Its chief strength is concentrated on the Atlantic and Gulf coasts. In 1939 its total membership was 66,300.

The International Longshoremen's Association is affiliated with the American Federation of Labor and also with the Trades and Labor Congress of Canada.

International Longshoremens and Warehousemen's Union.

The International Longshoremen's and Warehousemen's Union was established in 1937, when the Pacific coast district of the International Longshoremen's Association severed its affiliation with the parent body. Although the new union did not come into being until 1937, the west coast longshoremen began to move away from the International Longshoremen's Association as early as 1934. In 1937 the Pacific coast longshoremen withdrew from the International Longshoremen's Association and in August of that year received a charter from the Congress of Industrial Organizations as the International Longshoremen's and Warehousemen's Union.

The territorial jurisdiction of the International Longshoremen's and Warehousemen's Union nominally includes ports throughout the

United States, its possessions, and Canada. At present the union's strength is confined almost entirely to the Pacific coast district, which consists of ports in Alaska, British Columbia, Washington, Oregon, California, and Hawaii. The occupational jurisdiction of the organization is not formally defined, but in practice it includes a number of occupational groups in addition to longshoremen; i. e., warehousemen, cold storage workers, elevator and milling plant employees, cotton compress workers, gatemen and watchmen, ship scalers and painters, bargemen, maritime office employees, marine clerks, checkers, and weighers. In 1938 the International Longshoremen's and Warehousemen's Union reported a total membership of 33,210.

The International Longshoremen's and Warehousemen's Union is affiliated with the Congress of Industrial Organizations and with the Maritime Federation of the Pacific.

INLAND BOATMEN

The term "inland boatmen" is usually taken to include employees on tugboats, lighters, barges, dredges, ferryboats, river steamers, and other craft whose principal activity is confined to restricted bodies of water such as bays, harbors, lakes, rivers, and canals. Sometimes it is difficult to determine whether men employed on craft plying large bays and sounds, such as Chesapeake Bay or Puget Sound, should be classed as inland boatmen or coastwise seagoing personnel. The same holds true with respect to men employed on extensive protected waterways such as the "inside passage" along the coast of British Columbia and southeastern Alaska. Where such men are organized, the distinctions recognized by the unions may be safely accepted. Employees on Great Lakes vessels, outside harbor areas, are not referred to in the trade as inland boatmen but as seamen.

In the Atlantic, Gulf, Great Lakes, and Mississippi River regions, both the National Maritime Union (Congress of Industrial Organizations) and the International Longshoremen's Association (American Federation of Labor) exercise some jurisdiction over inland boatmen. The inlandboatmen's division of the National Maritime Union, which includes fishermen as well as inland boatmen, claims some 12,000 members on the Atlantic and Gulf coasts and on the Mississippi River, especially south of St. Louis. The National Maritime Union does not claim jurisdiction over licensed officers on inland boats.

The International Longshoremen's Association has numerous locals of inland boatmen. The membership cannot be estimated, but in this group the International Longshoremen's Association appears to be relatively strong in the New York area and in some other north Atlantic ports, as well as on the Great Lakes and in the northern part of the Mississippi River system. The International Longshoremen's Association has not confined its organizing work among inland boatmen to the unlicensed personnel, but has also established locals of licensed officers.

Inlandboatmen's Union of the Pacific.

This organization was founded in San Francisco in 1918 as the Ferry Boatmen's Union of California. In the following year it affiliated with the International Seamen's Union. For many years the union confined its activities entirely to the unlicensed employees

on the ferryboats in San Francisco Bay. It was able to retain its effectiveness throughout the post-war decade, and in 1931 began to extend its organizing activities to other areas and related occupations. In view of its extended jurisdiction, the union changed its name in 1936 to Inlandboatmen's Union of the Pacific. In 1937 it affiliated with the Congress of Industrial Organizations.

The Inlandboatmen's Union of the Pacific claims jurisdiction over all unlicensed personnel on inland craft on the Pacific coast. Organization is reported to be about 90 percent complete in the three Pacific coast States, but comparatively little progress has been made among the estimated 1,500 inland boatmen of British Columbia. In 1939 the Inlandboatmen's Union of the Pacific claimed a total membership of about 3,500.[7]

OTHER RELATED ORGANIZATIONS

There are several labor organizations in industries not actually a part of but directly or indirectly related to the maritime transportation industry. The three principal activities of this nature are certain railway operations, shipbuilding and repair, and fishing and fish packing. Not only is there a close economic relationship between the maritime industry and railway transportation, shipbuilding, and fishing, but many of the organizations of workers in these industries are affiliated in some manner with one or another of the strictly maritime unions. Consequently, no survey of maritime labor can be complete without some mention of these related organizations.

Railway transportation.

The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees includes a considerable number of persons engaged in work related to maritime operations. The files of the Maritime Labor Board contain several agreements negotiated by representatives of the union on behalf of such groups. The Board has also been called upon to mediate disputes between members of this union and maritime employers. The organization originated in 1898 as the Order of Railway Clerks. Several changes in name and scope occurred in subsequent years, jurisdiction being extended to cover steamship clerks and related groups (except employees handling freight between marine warehouses and deep-water vessels and between railroad cars and deep-water vessels) in 1919. The union has been affiliated with the American Federation of Labor since 1926.[8] In October 1939, its voting strength at the American Federation of Labor convention was based on a total membership of 91,000.

Shipbuilding and repair work.

The largest existing union of shipbuilding workers is the Industrial Union of Marine and Shipbuilding Workers of America, which is affiliated with the Congress of Industrial Organizations. The organization was formally launched in Setember 1934. It was the outgrowth of a movement started during the preceding year on a local basis in the shipyards of Camden, N. J., in opposition to the company union in existence there at that time. The union grew rapidly and

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[7] Cf. tabulation at the end of this chapter, footnote 16.

[8] Twice earlier the union had been affiliated with the American Federation of Labor, but in each instance the relation was subsequently terminated.

reported a membership of 10,800 in 1936. It affiliated with the Congress of Industrial Organizations in November 1936. At the Congress of Industrial Organizations constitutional convention in November 1938, the shipbuilders reported a membership of 24,709. In the summer of 1939, union leaders unofficially estimated that membership had grown to approximately 30,000. The Industrial Union of Marine and Shipbuilding Workers of America is organized on an industrial basis, and is designed to include workers of all categories employed in shipbuilding and repair work. It is represented on the Congress of Industrial Organizations Maritime Committee, a joint body of maritime union representatives established to promote the organization of marine workers and to secure favorable legislation.

Three unions belonging to the American Federation of Labor have members engaged in shipbuilding and repair work. These are: the International Brotherhood of Boilermakers, Iron Shipbuilders, Welders and Helpers of America; the International Association of Machinists, and the United Brotherhood of Carpenters and Joiners (locals composed of shipwrights, joiners, and boatbuilders). The boilermakers' organization was founded in 1880. In 1936, membership was reported as 19,000 and in 1939, as 20,000. It is believed that comparatively few members of this union are engaged primarily in marine work. On the Pacific coast, certain locals, having members so engaged, are affiliated with the Maritime Federation of the Pacific. The number of members in these locals is estimated by Maritime Federation officials as approximately 300.[9]

Machinists are engaged not only in shipbuilding and repair, but in maintenance work while vessels are in service. The International Association of Machinists, founded in 1889, is a large organization with broad jurisdiction over persons employed in the construction, installation, maintenance, repair, and dismantling of practically every type of machinery. The types of work to be performed in marine operations are set forth in detail in the union's constitution. The total membership was given as 110,000 in 1936, and as 190,000 in 1939. The number of machinists in the maritime and shipbuilding industries throughout the nation is not known, but the Maritime Federation of the Pacific reports a membership of approximately 500 in affiliated machinists locals on the west coast.

The Shipwrights, Joiners, and Boatbuilders are locals of the United Brotherhood of Carpenters and Joiners of America, an American Federation of Labor affiliate founded in 1881. Total membership in 1936 was 156,528 and had grown to 300,000 by 1939. Members of the shipwrights' locals are engaged both in shipbuilding and repair and in maintenance work aboard vessels in service. West coast locals are affiliated with the Maritime Federation of the Pacific and are estimated by Federation officials to possess a membership of approximately 300.[10]

Fishing and fish packing.

Organization is relatively undeveloped among fishermen on the Atlantic and Gulf coasts and on the Great Lakes. The National Maritime Union appears to have made considerable progress through

[9] Membership in these groups was reported in *Voice of the Federation* for April 17, 1938, as 490.

[10] The *Voice of the Federation,* April 17, 1938, reported membership in these locals as 612.

organizational campaigns carried on by its Inlandboatmen's Division. The number of fishermen, as distinct from inland boatmen, enrolled in that division cannot be ascertained accurately, but is estimated by union representatives at approximately 1,500. Most of these are on the Gulf coast west of the Mississippi River, but some 200 or 300 members are said to have been organized in the fisheries of New England. The International Longshoremen's Association has several locals of fishermen, including 1 at Gloucester, 1 in Nova Scotia, 7 on the Great Lakes, and 1 in Louisiana.

Organization among the workers in fish canneries and other processing plants on the Atlantic, Gulf, and Great Lakes is less extensive than among the fishermen. The United Cannery, Agricultural, Packing, and Allied Workers of America, affiliated with the Congress of Industrial Organizations, has but two locals in this industry other than the Pacific coast. These are located at Crisfield and Baltimore, Maryland, and, according to union officials, have a combined membership of approximately 500. The International Longshoremen's Association has 3 locals of sea-food workers, 2 at Boston and 1 at Gloucester. In addition, it is reported that the American Federation of Labor has chartered a few Federal locals in the fish-processing industry.

Organization of both fishermen and fish processing plant workers is much farther advanced on the Pacific coast than in the Atlantic, Gulf, and Great Lakes areas. For the most part, the present movement on the Pacific dates from about 1933, although small unions of fishermen have been in existence in some sections for many years. Until recently, most of the organizations were either independent or affiliated with the American Federation of Labor, but at present the majority belong to the Congress of Industrial Organizations.

The largest union in the field is the recently organized International Fishermen and Allied Workers of America, chartered by the Congress of Industrial Organizations. This organization was founded early in 1939 as the outgrowth of a loose federation of fishermen's unions on the coast, known as the Federated Fishermen's Council. The new International, although possessing a more centralized organization than the former Council, has retained the federated form and the various unions composing it have retained their identities and some degree of autonomy. The International Fishermen's and Allied Workers of America late in 1939 reported a combined membership of some 14,000, though some estimates run as high as 22,000. It is by far the largest fishermen's organization on the coast and, for that matter, in the entire country.

At the present time the workers in fish packing and processing plants on the Pacific coast are organized chiefly in the United Cannery, Agricultural, Packing and Allied Workers of America. This union was founded in 1937 and is affiliated with the Congress of Industrial Organizations. In November 1938, it reported a total membership of 124,750. In 1939 it had 15 locals of fish plant workers on the Pacific coast with an estimated combined membership of approximately 7,000. The largest locals are those in Seattle and San Francisco, consisting of salmon cannery workers employed in Alaska. These workers were organized for the first time in the history of the industry in 1933.[11]

[11] Those in San Francisco were not effectively organized until 1936.

For a period they operated under direct local charters granted by the American Federation of Labor, but changed to the Congress of Industrial Organizations as soon as the Cannery and Agricultural Workers' International came into being. The Seattle local claims approximately 3,100 members and that in San Francisco about 1,500. In addition there is a local at Portland with a membership of 500, also principally Alaska salmon cannery employees. The salmon cannery locals and some of the others are affiliated with the Maritime Federation of the Pacific.

Miscellaneous.

Several other labor unions are signatory to one or more collective agreements on file with the Maritime Labor Board, covering small groups of members engaged in work related to maritime operations. All of these unions are largely nonmaritime in character and, so far as is known, are not affiliated with any of the maritime organizations.

THE MARITIME FEDERATION OF THE PACIFIC

The Maritime Federation of the Pacific was established in April 1935 as a means of maintaining the unity achieved by the participating maritime organizations during the 1934 strike. The organization is a federation, with the member unions retaining their identities and full autonomy. However, the affilated groups are pledged to terminate and to renew their agreements simultaneously, and to take no strike action without notifying the federation. Federation officials stand ready to aid member unions in the settlement of disputes with employers. The organization serves as a clearing house for information of interest to all maritime unions and aids in the formulation of joint policy and in coordinating negotiations and strike activities.

The principal administrative body of the federation is the executive committee, composed of a president, vice president, and secretary-treasurer elected by the delegates at the annual convention, and one representative from each component union, affiliated on a coast-wide basis, selected as that union may determine. The four major ports of the coast are the headquarters of district councils representing the locals of the affiliated unions in each area. Most of the larger maritime unions are affiliated with the federation on a coast-wide basis, their locals and branches likewise being affiliated with the district councils. Some unions, however, do not maintain a coast-wide affiliation, although the individual locals may be represented in one or more district councils. This is true, for example, of some of the organizations of fishermen and cannery workers.

The Congress of Industrial Organizations, American Federation of Labor, and independent unions affiliated with the Maritime Federation of the Pacific on a coast-wide basis at the present time are as follows:

Congress of Industrial Organizations:

International Longshoremen's and Warehousemen's Union.

Marine Cooks' and Stewards' Association of the Pacific.

American Communications Association (west coast marine division).

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National Marine Engineers' Beneficial Association (west coast units).
Inlandboatmen's Union of the Pacific.
Alaska Fishermen's Union (part of the International Fishermen and Allied Workers of America).
United Cannery, Agricultural, Packing, and Allied Workers of America (west coast salmon cannery locals).

American Federation of Labor:
International Brotherhood of Boilermakers, Iron Shipbuilders, Welders, and Helpers (west coast marine units).
International Association of Machinists (west coast marine units).
United Brotherhood of Carpenters and Joiners of America (west coast locals of Shipwrights, Joiners, and Boatbuilders).

Independent:
Pacific Coast Marine Firemen, Oilers, Watertenders, and Wipers' Association.

PRINCIPAL MARITIME AND RELATED UNIONS

Name and classification of unions	Year of origin [1]	Estimated or claimed membership	Present affiliations	
			A. F. of L., C. I. O., or Independent	Other
SEAFARING PERSONNEL				
Licensed:				
National Organization Masters, Mates and Pilots of America.	1887	[2] 3,000	A. F. of L.	Association of Railway Labor Executives.
National Marine Engineers' Beneficial Association.	1875	[3] 6,350	C. I. O.	Association of Railway Labor Executives; Maritime Federation of the Pacific.
United Licensed Officers of the United States of America.	1933	[4] 2,000	Independent.	
Radio operators:				
American Communications Association (Marine Division).	1931	[5] 1,950	C. I. O.	Maritime Federation of the Pacific.
Commercial Telegraphers' Union (Marine Division).	[6] 1903	[7] 500	A. F. of L.	
Unlicensed:				
National Maritime Union of America.	1937	[8] 67,512	C. I. O.	
Seafarers' International Union of North America.	1938	[9] 11,000	A. F. of L.	
Sailors' Union of the Pacific	1885	[10] 8,000	A. F. of L.	Seafarers' International Union of North America.[11]
Marine Cooks' and Stewards' Association of the Pacific Coast.	1901	[12] 8,212	C. I. O.	Maritime Federation of the Pacific.
Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers' Association.	1907	[13] 4,000	Independent.	Do.
LONGSHOREMEN				
International Longshoremen's Association.	1892	[14] 66,300	A. F. of L.	Trades and Labor Congress of Canada.
International Longshoremen's and Warehousemen's Union.	1937	[15] 33,210	C. I. O.	Maritime Federation of the Pacific.
INLAND BOATMEN				
Inlandboatmen's Union of the Pacific.	1918	[16] 3,117	C. I. O.	Do.
OTHER RELATED GROUPS				
Shipbuilding and repair:				
Industrial Union of Marine and Shipbuilding Workers of America.	1934	[17] 24,709	C. I. O.	Do.[18]
Fishing and fish packing:				
International Fishermen and Allied Workers of America.	1939	[19] 14,000	C. I. O.	Do.[20]
United Cannery, Agricultural, Packing and Allied Workers of America.	1937	[21] 7,500	C. I. O.	Do.[22]

(For footnotes to this table, see p. 85)

(Footnotes for table on p. 84)

[1] The dates given are those usually cited in literature on the subject of union origins or those claimed by the organizations themselves. Many of the unions have undergone one or more changes in name, as well as in other respects, since the dates of origin shown.

[2] On the basis of voting strength at the A. F. of L. convention, October 1939. See *Proceedings*, p. 43.

[3] On the basis of voting strength at the C. I. O. convention, November 1938. See *Proceedings*, p. 16.

[4] See E. M. Stewart, *Handbook of American Trade Unions*, p. 236.

[5] Estimate of union officials at the end of 1939. Applies to Marine Division only.

[6] Apparently no marine operators were included until about 1937.

[7] Unofficial estimate of A. F. of L. representatives at the end of 1939. Applies to Marine Division only.

[8] On the basis of voting strength at the C. I. O. convention, November 1938. See *Proceedings*, p. 16. The union's official organ, the *Pilot* (February 1939) reported seagoing membership as 51,308, and union officials later in the year estimated that an additional 12,000 inland boatmen and fishermen were organized. This would make a total of approximately 63,000.

[9] On the basis of voting strength at the A. F. of L. convention, October 1939. Undoubtedly included membership of the Sailors' Union of the Pacific. See *Proceedings*, p. 43. Paid-up membership was later reported at the same convention as 15,000. See *Proceedings*, pp. 48, 395.

[10] Based on newspaper reports at the time plans for the new A. F. of L. international union of seamen (the Seafarers' International Union of North America) were announced (August 1938). See for example *New York Times*, August 23, 1938. Membership reported in the *Voice of the Federation*, March 17, 1938, as 6,185.

[11] See text for an indication of the relationship between the S. U. P. and the S. I. U. N. A.

[12] Based on voting strength at the C. I. O. convention, November 1938. See *Proceedings*, p. 36. Union officials estimated in 1939 that active membership was approximately 4,500. Membership reported as 4,000 in *Voice of the Federation*, March 17, 1938.

[13] Estimate of union officials in 1939. Membership reported as 3,500 in *Voice of the Federation*, March 17, 1938.

[14] Based on voting strength at A. F. of L. convention, October 1939. See *Proceedings*, p. 42.

[15] Based on voting strength at C. I. O. convention, November 1938. See *Proceedings*, p. 36.

[16] Based on voting strength at C. I. O. convention, November 1938. See *Proceedings*, p. 36. Union officials estimated a membership of 3,500 in 1939. Membership reported as 2,000 in *Voice of the Federation*, March 17, 1938, and as 3,000 in the *Inlandboatmen's Union of the Pacific, Its Birth and Growth* (about 1938).

[17] Based on voting strength at the C. I. O. convention, November 1938. See *Proceedings*, p. 16.

[18] Apparently certain locals are affiliated with the district councils of the Federation but are not affiliated on a coast-wide basis. See *Voice of the Federation*, June 16, 1938.

[19] Approximate total of memberships of constituent unions as reported in the *Voice of the Federation*, December 7, 1939. Unofficial estimates of the membership of this union have placed the figure at more than 20,000.

[20] Apparently not affiliated on a coast-wide basis but through the District Councils of the Federation only.

[21] Fish packing workers only. Estimate of union officials in 1939.

[22] West coast fish packing workers only.

Chapter VI

EMPLOYERS' ASSOCIATIONS IN THE MARITIME INDUSTRY[1]

Collective bargaining may involve dealings between the labor union and the individual employer, or between the labor union and many employers organized as a group. Maritime employers, as well as maritime employees, are organized for collective bargaining in most of the industry. Through its mediatory efforts and through the provisions of section 1005 of title X of the Merchant Marine Act of 1936, as amended, which provides that every maritime employer shall file with the Maritime Labor Board a copy of each contract with any group of its employees, the Board has established relationships with 42 associations, as well as with hundreds of individual employers in the industry.

Maritime employers' associations are more numerous, and more varied as to form and coverage, than the maritime unions. Many employers' associations are designed to deal with a particular occupational category or with certain closely related categories of employees. An association organized to bargain with seafaring personnel does not usually bargain with longshoremen, and vice versa. Some associations still further limit their scope by dealing primarily with unlicensed seafaring personnel, or they may deal with seafaring personnel in the offshore and intercoastal trade but not with that employed on coastwise vessels. Similarly, an association may bargain with longshoremen engaged in the handling of offshore and intercoastal cargo but not with those handling coastwise traffic.

The activities of the various individual employers' associations are not only confined to designated occupational groups of workers but also to certain areas. On a numerical basis, most of the 42 associations in the industry are local or port-wide in scope, and bargain principally with local groups of longshoremen and other shore workers, inland boatmen, and fishermen. Only a few associations bargain on a coast-wide or regional basis, but each of these covers a major portion of the tonnage and of the employees within its sphere. Because of the nature of seagoing traffic, the associations organized to deal with seafaring personnel are likely to cover a wider area than those bargaining primarily with longshoremen or with workers on harbor or inland craft. An important exception is the coast-wide association of longshore employers on the Pacific coast.

Several of the local employers' associations are informal in character, being unincorporated and having no written constitutions or bylaws. Some of them are simply joint employers' committees,

[1] The data for this chapter have been taken principally from the following: correspondence with the various employers' associations; constitutions, bylaws, articles of incorporation, annual and special reports; and minutes of meetings of the associations.

standing or temporary, formed to conduct negotiations or to aid and advise the various individual employers with respect to collective bargaining and labor relations.

Regardless of form and scope, the various associations in the industry exhibit marked differences of function in relation to the collective bargaining process. Some have full power to negotiate and conclude agreements and appear as sole signatories on behalf of their respective memberships. Others, although empowered to conduct negotiations and to sign agreements, do not have authority to bind their individual members unless the latter also sign the final documents. A few associations do not sign collective agreements at all, either because their role is largely advisory, or because they are composed of operators opposed in principle to bargaining collectively with organized groups of employees.

It is readily apparent that a large individual shipping company may, in the course of its operations, employ numerous categories of maritime workers, such as seafaring personnel, both licensed and unlicensed, longshoremen, marine clerks and checkers, and others. Its operations may also extend over a wide area. Consequently many of the major concerns in the industry belong to more than one employers' association.

The extent of employer organization in the principal areas and departments of the maritime industry at the present time may be summarized as follows:

On the Pacific coast practically all offshore and intercoastal lines, except those engaged in the tanker trade, are organized for coast-wide collective bargaining with the unions of both licensed and unlicensed seafaring personnel. The operators engaged primarily in the coastwise lumber and general cargo trade, tanker companies again excepted, are organized in a separate association, also coast-wide in scope, for collective bargaining with the same unions of licensed and unlicensed personnel. Employers of longshore labor on the west coast are organized in a coast-wide association and bargain collectively with the longshoremen's union on a coast-wide basis. In addition, there are several smaller employers' associations on the Pacific coast, which are local in scope and deal with groups of inland boatmen, carloaders, or others.

In the Atlantic and Gulf areas the major offshore intercoastal, and coastwise lines, again with the exception of those engaged in the tanker trade, are organized for coast-wide collective bargaining with the unlicensed seamen. Bargaining with the licensed officers may be carried on through smaller employer groups or by the companies individually. For the most part, Atlantic and Gulf coast employers of longshoremen and related groups and inland boatmen are organized in separate port associations. In certain sections, however, notably greater New York and the west Gulf coast area, cooperation among the various employer groups in negotiating with the several longshore locals results in contracts that are, in effect, regional in coverage.

Only two small employers' associations in the Great Lakes region have filed collective agreements with the Maritime Labor Board. Most Great Lakes operators belong to the Lake Carriers Association, which does not engage in collective bargaining with any of the maritime unions and has filed no collective agreements with the Maritime Labor Board.

The following pages present a brief account of the maritime employers' associations concerning which the Maritime Labor Board has been able to obtain information. The associations in each major area are discussed in turn, the principal emphasis being given to those associations that appear to be broadest in scope and of greatest importance in their respective spheres.

PACIFIC COAST ASSOCIATIONS

There are two employers' associations on the west coast dealing with seafaring personnel. The Pacific American Shipowners' Association consists of the 20 principal American operators of vessels in the foreign, intercoastal, Alaskan, and island trades with home ports on the Pacific coast. The organization regularly negotiates on behalf of its members coast-wide collective bargaining agreements with all unions of licensed and unlicensed seafaring personnel in the region. Where the membership is the same, negotiations with the longshore union are conducted through the Waterfront Employers Association.

The Shipowners' Association of the Pacific coast, which is also a coast-wide organization, bargaining on a coast-wide basis with the unions of licensed and unlicensed seagoing personnel, consists principally of the operators of steam schooners carrying lumber and general cargo along the Pacific coast. It was incorporated in 1904 and at present includes 33 members. Although several members of the Shipowners' Association of the Pacific Coast are likewise members of the Waterfront Employers Association of the Pacific Coast, the former bargains collectively with the longshore union and is signatory, along with the Waterfront Employers Association of the Pacific Coast, to the coast-wide longshore agreement.

The Northwest Towboat Association and the Washington Shipowners' Association, both of Seattle, Washington, and the Boat Operators of the Columbia River District, at Portland, Oregon, consist principally of operators of harbor, river, and other "inland" craft. They regularly negotiate agreements with inland vessel personnel, covering their respective operations.

As a result of the insistence of the longshore union upon coast-wide collective bargaining, the Waterfront Employers Association of the Pacific Coast was incorporated in June 1937. By January of 1939 the membership included 91 steamship companies, 38 stevedore companies, and 20 terminal operators.

The Waterfront Employers Association of the Pacific Coast is composed of four regional units:

1. The Waterfront Employers of Seattle which was incorporated in 1934 and includes employers in the State of Washington except those on the Columbia River.

2. The Waterfront Employers of Portland which was incorporated December 12, 1934, and covers all ports in the State of Oregon and those on the Columbia River.

3. The Waterfront Employers Association of San Francisco which was incorporated February 8, 1935, and covers all ports in the San Francisco Bay area and in the northern part of California.

4. The Waterfront Employers Association of Southern California which was incorporated in 1936 and includes the port of San Pedro and all other ports in the southern part of the State.

Employers of longshore labor in Seattle have been organized as an association since 1908, in San Francisco since 1914, in Portland since 1921, and in San Pedro since 1923. The association in San Francisco was reorganized in 1934 as the Waterfront Employers Union of San Francisco. In February 1935 it was incorporated under the present name, Waterfront Employers Association of San Francisco. The southern California organization was formerly called the Marine Service Bureau of Los Angeles.

In the spring of 1936 representatives of the four groups met in San Francisco and established a permanent committee, known as the Coast Committee for the Shipowners. It was this committee which negotiated on behalf of the four regional employers' associations of the coast before, during, and after the strike of 1936–37. The settlement agreements in February 1937 were signed by the Coast Committee on behalf of the four organizations.

The purposes of the Waterfront Employers Association of the Pacific Coast are stated in article II of the amended articles of incorporation which reads in part as follows:

The said corporation is one which does not contemplate pecuniary gain or profit for its members and is formed for the following purposes and objects:

(1) To encourage the establishment and maintenance of fair and reasonable wages and working conditions for longshore work and other work ashore relating to steamship service and, by the establishment and maintenance of harmonious and peaceful industrial relations between employer and employee, to promote dependable and efficient steamship service in the public interest;

(2) To fix, establish, and maintain on behalf of its members policies in all matters relating to longshore work and other employments ashore at Pacific coast ports of the United States (except Alaska ports);

(3) To represent its members and others in matters relating to the employment of longshoremen and other shore employees at said ports including the negotiation, execution, and performance of contracts with other employers or groups thereof and contracts with groups or associations of longshoremen and other shore employees governing wages, hours, and conditions of such employment;

(4) To assist, represent, and act in behalf of the members and others in connection with any violations of agreements relating to longshore or other employments ashore at said ports, to the end that all such agreements shall be faithfully performed by all parties thereto;

(5) To collect, compile, and distribute information and statistics relating to any of the matters herein;

(6) To act on behalf of its members in the development, establishment, and maintenance of safe working conditions and rules relating thereto; * * *

Sections 1 and 2 of article XVIII of the bylaws set out in detail the policy of the association regarding labor contracts and labor controversies.

SECTION 1. This corporation shall have power to establish policies for its members and the corporation in all matters relating to labor contracts and labor controversies and shall have power to represent and act on behalf of its members in any negotiations carried on by the corporation on behalf of its members with unions of longshoremen or other employments ashore and, subject to the provisions of article V of these bylaws, any contracts, commitments, or undertakings made by this corporation on behalf of its members with any union shall bind the members of this corporation. If any member shall violate, directly or indirectly, any rule of policy established by this corporation, or procure, encourage, or assist in any such violation by any other person, whether a member of this corporation or not, or shall, directly or indirectly, violate any provision of any contract or agreement made by the corporation on its behalf with any longshoreman or other employments ashore or unions thereof, or procure or encourage or assist in any such violation by any other person, whether a member of this corporation or not, or shall violate

any other provision of this section or of these bylaws, then, in any such event, the Board of Directors shall have the power, in its discretion, to suspend any such member for such period of time as the Board of Directors shall prescribe or to expel such member from membership in this corporation.

SEC. 2. If any union, its members or officials, shall violate any labor contract or award relating to wages, hours, or working conditions to which agreement or award this corporation or any of its members is a party, whether by strikes, stoppages of work, or in any other manner, any member affected thereby shall notify the corporation. All appropriate means for peaceful settlement of any such matter shall be pursued with the appropriate officers of the union or unions involved in an endeavor to secure compliance with the terms of such agreement or award. If compliance is not secured, a meeting of the members of this corporation shall forthwith be called and all members of this corporation shall take whatever action shall be determined by a vote of members holding at least a majority of the voting power of the membership, provided that there shall be no suspension or termination of any such contract or agreement for breach thereof without the consent of members representing at least two-thirds of the voting power of the entire membership. Provided further that written notice of any such vote or consent shall be immediately given by registered mail to all members and no such vote or consent shall bind any member who did not join therein and who resigns within seven days after the date of mailing of such notice.

Article XX of the bylaws is quoted in part, and is entitled "Financial Assistance to Members":

If any labor union or association of working men or any members of any such union or association shall violate any agreement with this corporation, or with any member thereof, or shall refuse to work for any member or members of this corporation, the Board of Directors shall, upon application, cause investigation to be made, and if the Board of Directors shall find that such union or association is at fault, and fails or refuses to make reparation or otherwise remedy such violation or refusal to the satisfaction of the Board of Directors, and if this corporation after investigation shall desire to resist the demands of such union or member thereof, this corporation shall render to such member or members of this corporation the fullest moral support, and shall pay such expenses incurred by such member in any strike, lock-out, or other labor trouble caused by such action of the union, association, or member or members thereof, as shall be approved and limited by the Board of Directors of this corporation in advance. * * *

The Waterfront Employers Association of the Pacific Coast negotiates only one agreement which, however, covers all longshore operations (general cargo handling) for all members in all west coast ports. As pointed out above, the association of coastwise steam schooner operators is also signatory to this agreement. Additional agreements covering specialized and localized operations are negotiated by the district organizations and/or the individual employers. For example, the Portland association has five additional agreements, covering longshore operations other than cargo handling; Seattle has four; San Francisco, two; and southern California, two.

In 1935 the Dock Checkers Employers Association was formed for the purpose of collective bargaining with the marine clerks and checkers of San Francisco. Its membership was approximately the same as that of the Waterfront Employers Association of San Francisco. In the latter part of 1939 the Dock Checkers Employers Association ceased to exist, and its functions were taken over by the Waterfront Employers Association of San Francisco.

The Car Loaders and Unloaders Association of San Francisco (San Francisco Bay Carloading Conference) is composed of a few independent contractors who contract the loading and unloading of

railway freight cars for steamship companies. The Association negotiates an agreement with the longshore union.

Another San Francisco organization is the San Francisco Employers Council, established in December 1938 for the purpose of protecting the rightful interests of employers and groups of employers through collective bargaining, and mutual aid in relations between employers and employees.

The objectives of the council as stated in Article II of its Articles of Incorporation are as follows:

1. To secure collective action by employers and groups of employers to the end that stable, peaceful, and harmonious relations between employers and employees will be prompted and established and that wages and working conditions fair and just both to employer and employe be maintained and honest and faithful observance of all agreements and obligations by all parties concerned be procured, always recognizing the public interest as paramount;
2. To promote and encourage the organization of autonomous groups among employers and to promote cooperation among such groups and individual employers for mutual counsel and aid in matters relating to labor relations;
3. To promote the recognition and exercise of the right of employers to bargain collectively;
4. When requested, to assist its members and others in matters relating to the negotiation, execution, and performance of fair labor contracts;
5. To collect, compile, and distribute information and statistics relating to any of the matters mentioned herein; * * *

Since the council desires to make San Francisco a recognized center of equitable, stable industrial relations, its membership is open to: (1) Industry associations, such as the Hotel Employers Association, the Waterfront Employers Association, and the Motor Car Dealers Association of San Francisco; (2) individual employers, whether members of a group association or not; and (3) individuals who are not employers but who have a direct interest in industrial stability. The membership as of July 1, 1939, included 1,398 individual employers, 888 of whom held membership directly in the council and 510 through affiliation with associations which were members of the council.

According to the "Report of Activities for the Period from February 20, 1939, to June 30, 1939" the council engaged in the following activities: negotiation of contracts, adjustment of complaints, arbitration, counsel and advice, special services, and legal services.

Particulary worthy of note are the recommendations contained in the above-mentioned report of activities. These recommendations, which were unanimously adopted in meeting, are as follows:

1. More aggressive efforts at joint cooperation with union leadership in the objective study of fundamental problems of common interest to both employers and employees.
2. A cooperative effort with unions to eliminate propaganda and actions designed to create class hatred and ill-will between employers and employees.
3. Full recognition of the sanctity of employment agreements by all parties thereto and insistence upon the observance thereof during the period covered thereby.
4. The fullest possible support to every industry or employer in its resistance to slow-down, quickie strikes, or other forms of job-action.
5. That this Council declare its opposition to restrictive agreements between management and labor which result in curtailed production and consequent increased costs to the consumer and the public.
6. As the representative of more than 1,200 business concerns in this city, the San Francisco Employers Council urges both the Waterfront Employers and I. L. & W. U. to eliminate all uncertainty concerning any possible disruption of the commerce of this port by the immediate renewal of the existing longshore contracts * * *

ATLANTIC AND GULF COAST ASSOCIATIONS

The most extensive employers' association dealing with vessel personnel on the Atlantic and Gulf coasts is the American Merchant Marine Institute, Inc., with headquarters in New York City. Its predecessor, the American Steamship Owners' Association, so named in 1919, was established in 1905 as the American Steamship Association, and was composed of coastwise freight and passenger lines located on the Atlantic coast. A reorganization took place in 1913, and the scope of the membership was extended to include all steamship lines under the American flag.

The American Merchant Marine Institute was incorporated under the laws of the State of New York on June 30, 1938, and has a membership of 44 American-flag companies operating close to 600 ocean-going vessels of approximately 4,000,000 gross tons. "The purpose of the Institute is to advance the mutual interests of American shipowners and to further the development of an adequate American merchant marine privately owned and operated.[2]" Agreements are negotiated by a committee of the association and cover unlicensed vessel personnel only. Atlantic and Gulf coast operators who negotiate agreements with the licensed officers' unions do so independently.

The Canal Carriers' Association, the Harbor Carriers of the Port of New York, the New York Towboat Exchange, the Employers' Wage Adjustment Committee, and the Brick Manufacturers' Association of New York, Inc., are other New York employer groups which negotiate agreements covering the vessel personnel of their members. As the titles imply, their operations are more or less localized and their employees principally inland boatmen.

The Federated Fishing Boats of New England and New York [3] was incorporated about 1930 and represents the boat owners.

"Persons, firms, or corporations owning or operating one or more boats, vessels, or trawlers, registered in the States of New England or New York, for the purpose of engaging in the commercial capture of Salt-Water Fish, are eligible for membership.[4]" Two agreements with unlicensed personnel are in existence.

The five towboat owners and operators in Baltimore, Maryland, have joined together in an informal association in order to simplify the process of negotiating agreements. They meet together, agree on wages and working conditions, and then negotiate and sign agreements with inland boatmen's groups in the vicinity. At present they have three contracts covering their vessel personnel.

In contrast to the west coast, where one longshore agreement covers all of the ports, employers on the Atlantic coast either negotiate agreements individually or by ports.

At Portland, Maine, for example, the Portland Deepwater Steamship Lines and Contracting Stevedores, an informal association, is composed of all steamship agents and stevedores operating at that port. A general meeting is called each year for the purpose of discussing any proposed changes in agreements. At that time a commit-

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[2] Letter from the American Merchant Marine Institute to the Maritime Labor Board, dated January 13, 1940.

[3] Name originally "Federated Fishing Boats of America, Inc." This Association is a member of the Massachusetts Fisheries Association.

[4] Article III, sec. 1, bylaws.

tee of three members is appointed and granted full power to act for all employers governed by the agreement reached between that committee and the employees' committee. In the event of a dispute, the issues are submitted to a board of arbitration composed of two members from the employers and two from the employees.

At Boston, Massachusetts, the Boston Conference of Steamship Operators and Contracting Stevedores in some instances negotiates agreements for its members covering wages and working conditions of longshoremen, checkers, pier office clerks, and watchmen in the port.

The Massachusetts Fisheries Association, organized in 1927 as a general trade association representing production, processing, manufacturing, and distribution of New England fish and fishery products, is also located in Boston. It also handles labor problems and negotiates agreements with longshoremen and other shore employees, on behalf of its members, which are approximately 100 in number.

The Retail Fuel Institute of Boston, while not strictly a maritime association, negotiates agreements for its members covering longshoremen and operating engineers in Boston and the north shore—Lynn, Salem, and Lowell. Eight dock operators are party to the longshore agreement, and five are party to the operating engineers' agreement.

An outstanding Atlantic coast employers' organization concerned with shore operations is the New York Shipping Association, an unincorporated association of agents for, and operators of, ships engaged in deep-water service from and to the port of greater New York and vicinity. This association was organized in June 1932 to promote the mutual welfare of its members and of their waterfront employees. Its activities are confined to the negotiation of labor agreements with the International Longshoremen's Association and its affiliated locals in the New York area. For about 15 years prior to the organization of the association, the same functions were carried on through the medium of a standing committee of Deepwater Steamship Lines representative of the various shipping interests involved.

Negotiations for renewal of its eight agreements are conducted between the conference committee of the association, the members of which are representative of the different services of the membership as a whole, and the wage scale committee and officers of the International Longshoremen's Association. During the course of the negotiations, the conference committee reports to the membership as a whole, at special meetings, in order to obtain instructions on proposals submitted or approval of tentative understandings. When the agreements are consummated, they are signed by the negotiating committees. Later, members of the association, and also various contracting stevedores and contracting watching agencies, sign such of the agreements as are applicable to their respective activities.

The Warehousemen's Association of the Port of New York is named as party to agreements covering shore operations of its members.

Representatives from the group of employers operating at the port of Albany meet after the conclusion of the New York agreements, choose a committee, meet with representatives of the International Longshoremen's Association, and negotiate an agreement covering longshore operations in their port. This informal association is called the Conference Committee, Steamship Operators and Contracting Stevedores, Port of Albany, and Rensselaer.

A similar group, called the General Committee of Steamship Interests and Employing Stevedores, exists in Philadelphia. The chairman of the general committee is empowered to appoint a subcommittee, known as the employers standing committee, which is authorized to negotiate and conclude agreements with the International Longshoremen's Association covering longshore operations of deep-water shipping companies.

The Steamship Trade Association of Baltimore was incorporated in January 1929. One of its purposes was to promote "* * * just and friendly relations between members of the corporation and their employees and associations of employees; * * *."[5] Steamship owners, operators, and stevedoring companies having offices in Baltimore are eligible for membership. At present there are about 30 members. The Steamship Trade Association of Baltimore, through the medium of its trade practice committee, engotiates agreements covering longshore operations. Seven such agreements are now in effect.

No distinct maritime employers' association exists in Hampton Roads, Virginia. However, the duties of such a group are carried out by the Hampton Roads Maritime Exchange, a port promotional association which was incorporated in 1920 in recognition of the need for an organization which would devote its time and attention to the development of the port and its commerce. Consequently, its membership is made up of representatives of not only shipping interests but also of banking institutions, public utilities, railroads, attorneys, and merchants. Insofar as collective bargaining is concerned, the exchange assists the employers informally, actual negotiations for agreements being handled by the separate employer or employer groups. For many years the words "Master Stevedore Association" appeared on Hampton Roads contracts. However, since that association had not been in existence for nearly 20 years, the name was omitted from the 1938–39 agreements. Now, the employers act as a group in cooperation with, but not as a subdivision of, the Hampton Roads Maritime Exchange.

Employers in Savannah are organized in the Savannah Maritime Association. Since many of the nine members are agents or representatives of other companies, they really act on behalf of about 48 companies. The association, incorporated on March 6, 1911, acts in matters of general interest to its members, negotiating agreements and dealing with labor problems.

Since many of the employers whose vessels call at Gulf ports are members of the American Merchant Marine Institute, most of the employers' associations in this region cover local, port, or district areas and are interested mainly in shore operations.

The chairman of the Merchants and Stevedores Association at Pensacola, Fla., advised the Maritime Labor Board that the association has been in existence for more than 50 years. On March 13, 1939, "a Declaration" was signed by 10 employers stating that while the association is unincorporated, it consists of deep-sea steamship agents and contracting stevedores, who are associated for the purpose of bargaining collectively with longshore labor or their representatives.

Employers at Tampa, Fla., are affiliated with the Tampa Maritime Association. However, this organization does not attempt to negoti-

[5] Certificate of incorporation.

ate labor contracts for its members. It is primarily a medium for joint discussion.

The Mobile Steamship Association is particularly active in labor matters and is a party to agreements covering longshoremen and checkers.

The New Orleans Steamship Association is one of the largest employers' organizations of the Gulf coast, having a present membership of 26. In commenting on its constitution and bylaws, the association stated:

> * * * membership is not limited insofar as nationality of vessels is concerned, but is available to owners, agents, and operators of all vessels entering the port. Due to this diversity of membership longshore labor matters are the only labor matters handled through the Association.[6]

The Labor Committee, appointed by the president and confirmed by the directors of the association, meets with the longshoremen's representatives and negotiates agreements. Each shipping representative thereafter signs the agreement individually and on his own behalf. After the contracts are signed, the labor committee continues to function as a grievance committee which keeps in close touch with labor, thus attempting to avoid disputes or to settle disputes as quickly as possible without resort to its arbitrational machinery. The present New Orleans Steamship Association was incorporated under the laws of the State of Louisiana, August 12, 1912. It was preceded by an informal organization known as the New Orleans Steamship Conference.

Longshore operations of the deep-sea operators in all Texas ports and that of Lake Charles, Louisiana, are covered by a single agreement negotiated and signed on behalf of their members by the Houston Maritime Association, the Galveston Maritime Association, and the Master Stevedores Association of Texas. In addition, the Houston and Galveston associations each have contracts covering their local operations.

The Galveston Maritime Association was incorporated in June 1937 to act as a board of trade. Prior to that time the steamship agents were voluntarily associated.

In March 1922 the Maritime Committee of the Houston Cotton Exchange and Board of Trade was organized to deal with various matters pertaining to the steamship business, at the Port of Houston. The membership of the maritime committee was drawn from the steamship members of the Houston Cotton Exchange and Board of Trade. The committee functioned more or less independently. In May 1937 this committee was dissolved and a Texas charter was granted to its successor, the Houston Maritime Association. The membership of the association was the same as that of the maritime committee, but it is now entirely independent of the Houston Cotton Exchange. The Houston Maritime Association represents deep-sea operators only.

Longshoremen, clerks, checkers, and warehousemen employed by intercoastal operators in all Texas ports and at Lake Charles, Louisiana, are covered by agreements negotiated by the Gulf Intercoastal

[6] Letter from New Orleans Steamship Association to the Maritime Labor Board, dated July 30, 1938.

Conference, on behalf of its three members. Those employed by coastwise operators are covered by contracts negotiated with the individual companies.

GREAT LAKES ORGANIZATIONS

Employers on the Great Lakes, although well organized, do not bargain collectively with the standard maritime unions to the same extent as employers on the Pacific, Atlantic, and Gulf coasts.

The largest employers' group on the Great Lakes is the Lake Carriers Association, which has been in existence in one form or another since 1886. In 1903 it was incorporated under the laws of the State of West Virginia. At present the members of the association operate approximately 90 percent of the entire lake fleet tonnage.

The general objects for which it was organized are, according to section III of its Articles of Incorporation:

> To establish and maintain shipping offices for the convenient securing of seamen for vessels on the Great Lakes, their connecting and tributary waters; to establish and maintain and procure the establishment and maintenance of aids to navigation, and improve and secure the improvement of channels, docks, wharves, loading and unloading, and terminal facilities; to establish and maintain by contract or otherwise such amicable relations between employers and employed as will avoid the public injury that would result from lockouts and strikes in the lake carrying service; to provide for the prompt and amicable adjustment of matters affecting shipping and the interests of vessel owners of the Great Lakes and their connection and tributary waters; and to lease, rent, purchase, or sell such real or personal property as may be necessary or convenient in carrying out the foregoing purposes.[7]

In 1903 the association made its first agreement with the Lake Seamen's Union, and that agreement was renewed from year to year until the spring of 1908. On April 9 of that year the association adopted the following resolution:

> 1. That the owners of ships on the Great Lakes do now declare that the open shop principle be adopted and adhered to on our ships.
> 2. That the Lake Carriers Association stands for the foregoing principle.
> 3. That the matter be referred to the executive committee, with full power to act and carry out this principle.
> 4. That it should be the aim of the committee in the means they shall adopt to recognize a fair and equitable rate of wages, to insist upon such regulations as shall promote the comfort and well-being of the employees, shall put the discipline of the ship in the hands of her executive officers, and, tendering liberal, appropriate wages and conditions requiring in response appropriate, diligent, and prompt service from the members of the crew.
> 5. And at this meeting, representing 91 percent of the tonnage of the Association, as a definite and specific support to the committee, it is voted to adhere to and observe this action, referring also any and all special cases to the committee.[8]

At that time the association renewed its efforts to establish a welfare plan, primarily concerned with affording good working and living conditions to its employees. This plan has been developed and continues to operate. It now provides for the education and training of employees in association schools, recreational facilities, banks, and other welfare features. Few, if any, of the members of the association now negotiate or sign labor agreements.

There are only two employer's groups in the Great Lakes area which have filed agreements with the Maritime Labor Board. The

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[7] Paul F. Brissenden, *Employment System of the Lake Carriers Association*, 1918, p. 10.
[8] *Ibid.*, p. 12.

first, the Maher Coal Bureau, is composed of 18 coal operators on whose behalf agreements have been made with various longshore locals since 1934. The second is a group of 10 sand boat owners in the vicinity of Chicago who joined together very informally for the purpose of making uniform agreements with their vessel personnel.

Similar informal arrangements among vessel operators and contracting stevedores exist in Milwaukee, Chicago, and other lake ports for the purpose of coordinating negotiations with the longshoremen's union. These informal groups are not named in the longshore agreements on file with the Board, the individual employers signing separately with the various longshore locals.

In addition to the foregoing local and regional employers' associations, there is an organization, called the National Association of Stevedores, with headquarters in New York City. The association includes in its membership contracting stevedores in many ports throughout the country. It is not signatory to any of the longshore or other contracts on file with the Maritime Labor Board, and apparently limits its activities in connection with collective bargaining to the giving of aid and advice to its members. In 1939 the National Association of Stevedores requested, on behalf of a Great Lakes stevedoring concern then engaged in negotiations with longshoremen, the mediatory services of the Maritime Labor Board.

SUMMARY

The following pages present, in tabular form, a summary of the principal employers' associations in the maritime industry. The size and nature of the membership of each is indicated, as well as the number of agreements with either vessel personnel or shore workers to which each is signatory.

EMPLOYER'S ASSOCIATIONS IN THE MARITIME INDUSTRY

Association and headquarters	Members		Number of agreements [1]	
	Number	Type	Longshoremen and other shore workers	Vessel personnel
Pacific coast:				
Pacific American Shipowners' Association, San Francisco, Calif.	20	Offshore, intercoastal, and Alaska lines operating from Pacific coast ports.	----------	6
Shipowners' Association of the Pacific Coast, San Francisco, Calif.	33	Coastwise steam schooner (lumber and general cargo) operators on Pacific coast.	----------	6
Northwest Towboat Association, Seattle, Wash.	30	Towboat operators in vicinity of Seattle.	----------	2
Washington Shipowners' Association, Seattle, Wash.	(*)	(*)	----------	1
Boat Operators of the Columbia River District, Portland, Oreg.	20	Operators of river and other inland boats on Columbia River.	----------	3
Waterfront Employers' Association of the Pacific Coast, San Francisco, Calif.	149	Steamship, stevedore, and terminal companies.	1	--------
(*a*) Of Seattle	88	do	4	--------
(*b*) Of Portland	50	do	5	--------
(*c*) Of San Francisco	40	do	2	--------
(*d*) Of Southern California	73	do	2	--------
Dock Checkers Employers Association, San Francisco, Calif.[2]	40	Steamship, stevedore, and terminal companies of San Francisco.	----------	--------

*No information received.

[1] On file with the Maritime Labor Board.

[2] Dissolved in late 1939 and agreements taken over by Waterfront Employers Association of San Francisco.

Employers' associations in the maritime industry—Continued

Association and headquarters	Members		Number of agreements	
	Number	Type	Longshoremen and other shore workers	Vessel personnel
Pacific Coast—Continued.				
San Francisco Bay Carloading Conference (Car loaders and Unloaders Association), San Francisco, Calif.	(*)	Contractors for the loading and unloading of railway freight cars for steamship companies in San Francisco.	1	----
Marine Terminal Association, San Francisco, Calif.	5	Terminal operators in San Francisco	----	----
San Francisco Employers' Council, San Francisco, Calif.	(*)	Employers' associations, individual employers or other persons interested in stable labor relations in San Francisco.	1	----
Atlantic and Gulf coasts:				
American Merchant Marine Institute, Inc., New York City.	44	Any American flag shipping companies.[3]	----	1
Atlantic Coastwise Steamship Association, New York City.	5	Coastwise steamship operators, Atlantic and Gulf.	----	----
Canal Carriers' Association, New York City.	13	Operators of New York State barges (canal).	----	1
Harbor Carriers of the Port of New York, New York City.	47	Owners of floating equipment in New York Harbor.	----	3
Employers' Wage Adjustment Committee, New York City.	(*)	(*)	----	1
New York Towboat Exchange, New York City.	(*)	(*)	----	----
Brick Manufacturers' Association of New York, New York City.	11	Brick manufacturers	----	1
Federated Fishing Boats of New England and New York, Boston, Mass.	56	Operators of salt-water fishing boats, New England and New York region.	----	2
Towboat Owners and Operators of Baltimore, Baltimore, Md.	6	Towboat owners and operators in Baltimore and vicinity.	----	3
New York Shipping Association, New York City.	52	Agents and operators of deepwater services operating in New York and vicinity.	8	----
Warehousemen's Association of the Port of New York, New York City.	41	Warehousemen	1	----
Portland Deepwater Steamship Companies, Portland, Maine.	11	Steamship agencies and stevedoring companies.	2	----
Boston Conference, Steamship Operators and Contracting Stevedores, Boston, Mass.	28	Steamship operators and contracting stevedores.	4	----
Massachusetts Fisheries Association, Inc., Boston, Mass.	100	Producers, manufacturers, and distributors of New England fish and fish products.	1	----
Retail Fuel Institute, Boston, Mass.	[4] 12	Dock operators	2	----
Providence Steamship Operators and Contracting Stevedores, Providence, R. I.	5	Steamship operators and contracting stevedores.	1	----
Albany Conference, Steamship Operators and Contracting Stevedores, New York City.	11	Steamship operators and contracting stevedores.	3	----
General Committee of Steamship Interests and Employing Stevedores for the Port of Philadelphia.	46	Steamship operators and stevedoring companies.	3	----
Steamship Trade Association of Baltimore, Baltimore, Md.	30	Stevedoring concerns, vessel agents, owners, and operators.	7	----
Hampton Roads Maritime Exchange, Norfolk, Va.	[5] 48	All employers and others interested in improving the port.	5	----
Savannah Maritime Association, Savannah, Ga.	9	Steamship operators and agents	2	----
Tampa Maritime Association, Tampa, Fla.	(*)	(*)	----	----
Merchants' and Stevedores' Association, Pensacola, Fla.	10	Steamship agents and stevedores (deep-sea).	1	----

*No information received.

[3] Membership consists of offshore, intercoastal, and Atlantic and Gulf coastwise lines. Representatives of each have signed the agreement, but all together they comprise only about one-third of the total members.

[4] Membership list not released by the association; the figure given represents those members covered by longshore and operating engineer agreements on file with the Maritime Labor Board.

[5] Shipping.

Employers' associations in the maritime industry—Continued

Association and headquarters	Members		Number of agreements	
	Number	Type	Longshoremen and other shore workers	Vessel personnel
Atlantic and Gulf coasts—Continued.				
Mobile Steamship Association, Mobile, Ala.	(*)	(*)	2	
New Orleans Steamship Association, New Orleans, La.	26	Steamship owners, operators, agents, and stevedores.	2	
Houston Maritime Association, Houston, Tex.	13	Deep-sea steamship operators.	2	
Galveston Maritime Association, Galveston, Tex.	14	Steamship agents	3	
Master Stevedores' Association, Galveston, Tex.	(*)	Stevedores	1	
Gulf Intercoastal Conference, New Orleans, La.	4	Intercoastal operators	3	
Great Lakes:				
Lake Carriers Association, Cleveland, Ohio.	[6] 387	Great Lakes operators of vessels of American registry.		
Great Lakes Sand Boat Owners, Chicago, Ill.	10	Sand boat owners		3
Maher Coal Bureau, St. Paul, Minn.	14	Coal dock operators	2	

*No information received.
[6] Vessels in 1936.

Chapter VII

EXTENT OF COLLECTIVE BARGAINING IN THE MARITIME INDUSTRY

The purpose of this chapter is to indicate the extent of collective bargaining in the maritime industry of the United States. The primary data upon which the statistics used in this discussion are based consist of the collective agreements filed with the Maritime Labor Board by maritime employers in compliance with the requirements of title X of the Merchant Marine Act of 1936, as amended. In only three segments of the industry, however, has the Board made a thorough canvass of maritime employers, with the intention of obtaining all or substantially all of the agreements in effect. This attempt to measure the extent of collective bargaining is therefore limited to three groups of maritime workers, which are:

1. Vessel personnel of the salt-water merchant marine.
2. Vessel personnel of the Great Lakes.
3. Longshore workers at salt-water ports.

In addition, there is certain information of a nonstatistical character concerning the prevalence of union agreements covering the crews of harbor craft of various types and certain water-front workers other than longshoremen. But information regarding agreements affecting the longshoremen of the Great Lakes and inland waterways, as well as the crews of vessels on the inland waterways, is lacking.

The technique employed here to show the extent of collective bargaining in the three segments of the industry listed above is not fully satisfactory. Obviously, the best method would be to compare the number of workers under agreement with the total number of workers, but since figures are not available, it has been necessary to find other approaches.

Thus with vessel personnel, of both the salt-water and Great Lakes merchant fleets, the best that can be done is to show the proportion of total tonnage that is covered by agreements as regards some occupational group, or as regards various combinations of occupational groups. It would be an error, however, to assume that the proportion of tonnage under agreement for a given occupational group is a reliable or accurate measure of the proportion of workers in that group which is directly affected by such agreements. The proportion of workers in each category covered by agreements cannot be so measured for two reasons. First, the number of workers employed per ton of merchant shipping varies considerably according to the type of vessel; i. e., passenger, dry-cargo freighter, or tanker. The proportion of the labor force under collective agreements is largely dependent, therefore, on how the total tonnage under agreements happens to be distributed among the different types of vessel. Second, the relative proportion of each class of personnel employed on any vessel depends upon the size of the vessel and the trade in which it is engaged.

To determine the proportion of workers in each category it would, consequently, be necessary to consider the distribution of vessels by size and type in the segment of the industry covered by collective agreements and in the segment not so covered. As such information is not available, it is advisable to employ the tonnage figures alone as a measure of the extent of collective bargaining without attempting to draw any inference from these figures as to the proportion of workers so covered.

COVERAGE OF THE SALT-WATER MERCHANT MARINE BY COLLECTIVE AGREEMENTS

For purposes of this study the salt-water merchant marine is taken to include the entire fleet of ocean-going vessels [1] engaged in overseas foreign, nearby foreign, intercoastal, or coastwise trade under the United States flag. Considering only vessels with a capacity of at least 1,000 gross tons, it is estimated for the 12 months ended June 30, 1939, that the salt-water merchant marine averaged 1,295 vessels, totaling 7,389,149 gross tons as shown in Table 1.

TABLE 1.—*Gross tonnage of the United States merchant marine, 1938–39*

[Vessels of 1,000 gross tons or over]

Type of vessel	Number of vessels	Gross tonnage of vessels	Percent of total gross tonnage
All steam or motor vessels engaged in foreign or coasting trade	1,295	7,389,149	100.0
Passenger and freight vessels	913	4,708,727	63.7
Privately owned vessels [1]	870	4,431,353	60.0
Government-owned vessels [2]	43	277,374	3.7
Tankers	382	2,680,422	36.3

[1] Including those laid up for all or part of the year.
[2] Excluding the laid-up remnants of the wartime fleet.

Source: U. S. Maritime Commission, Division of Research, *Report 300*, Sept. 30, 1938, Dec. 31, 1938, Mar. 31, 1939, June 30, 1939. Averages derived.

Table 2, Part A, shows that on the basis of collective agreements filed with the Maritime Labor Board as of June 30, 1939, as many as 121 operators of salt-water merchant vessels subscribed to collective agreements fixing the terms and conditions of employment for at least 1 occupational group of the vessel personnel during all or part of the 12 months ended June 30, 1939.[2] The passenger vessels, dry-cargo freighters, combination carriers, tankers, and colliers operated by these 121 companies totaled 5,433,544 gross tons or 73.5 percent of the national shipping capacity. The remaining 26.5 percent of the salt-water tonnage was not covered by any collective agreements either with regional or national labor unions or with employee representation plans. Of the 5,433,544 tons of salt-water merchant shipping

[1] Except the Government-owned, laid-up wartime vessels.
[2] All but a few of the agreements filed were actively in force on or about June 30, 1939. Counting renewals or changes as part of one continuing agreement, all but a few of them had been in force on or about that date for a full year or more. In substance, therefore, these agreements measure the extent to which collective bargaining prevailed in particular segments of the maritime industry during the 12 months ended June 30, 1939.

under collective agreements 29.2 percent was completely covered by collective agreements, all with regional or national labor unions representing all classes of vessel personnel; that is, licensed deck and engine-room officers; unlicensed workers in the deck, engine, and stewards' departments; and radio operators. This tonnage may therefore be said to have been completely unionized. Somewhat more than 40 percent of the salt-water tonnage was partially covered by collective agreements. This latter group of vessels usually had collective agreements with labor unions of the unlicensed personnel, but not with those of the licensed officers.

TABLE 2.—*Coverage of the salt-water merchant marine by collective agreements affecting at least 1 occupational group and in effect for part or all of the 12 months ended June 30, 1939*

A. TONNAGE COVERED BY COLLECTIVE AGREEMENTS WITH NATIONAL OR REGIONAL LABOR UNIONS, WITH EMPLOYEE REPRESENTATION PLANS, OR WITH BOTH

Type of vessel	All shipping regions			Atlantic coast			Gulf coast			Pacific coast		
	Number of companies	Gross tonnage operated [1]	Number of agreements [2]	Number of companies	Gross tonnage operated [1]	Number of agreements [2]	Number of companies	Gross tonnage operated [1]	Number of agreements [2]	Number of companies	Gross tonnage operated [1]	Number of agreements [2]
All merchant vessels	121	5,433,544	485	63	3,215,946	166	6	582,914	18	52	1,634,684	301
Freight and passenger vessels	89	3,583,997	405	35	1,530,632	91	5	560,736	17	49	1,492,629	297
Tankers	26	1,682,691	56	22	1,518,458	51	1	22,178	1	3	142,055	4
Colliers	6	166,856	24	6	166,856	24	----	----	----	----	----	----

B. TONNAGE COVERED BY COLLECTIVE AGREEMENTS WITH NATIONAL OR REGIONAL LABOR UNIONS ONLY

All merchant vessels	112	3,809,728	460	57	1,998,136	154	6	582,914	18	49	1,228,678	288
Freight and passenger vessels	84	3,061,362	386	32	1,281,938	84	5	560,736	17	47	1,218,688	285
Tankers	22	581,510	50	19	549,342	46	1	22,178	1	2	9,990	3
Colliers	6	166,856	24	6	166,856	24	----	----	----	----	----	----

C. TONNAGE COVERED BY COLLECTIVE AGREEMENTS WITH EMPLOYEE REPRESENTATION PLANS ONLY

All merchant vessels	2	212,598	2	1	80,533	1	----	----	----	1	132,065	1
Tankers	2	212,598	2	1	80,533	1	----	----	----	1	132,065	1

D. TONNAGE COVERED BY COLLECTIVE AGREEMENTS WITH BOTH LABOR UNIONS AND EMPLOYEE REPRESENTATION PLANS

All merchant vessels	7	1,411,218	23	5	1,137,277	11	----	----	----	2	273,941	12
Freight and passenger vessels	5	522,635	19	3	248,694	7	----	----	----	2	273,941	12
Tankers	2	888,583	4	2	888,583	4	----	----	----	----	----	----

[1] Gross tonnage as reported for individual salt-water operators in American Bureau of Shipping, *The Record*, 1938, in U. S. Department of Commerce, Bureau of Marine Inspection and Navigation, *Merchant Vessels of the United States*, 1938, or in the *Marine Directory* for 1939.

[2] By an agreement is meant not a document (which may include 2 or more employers) but a contractual relationship between a given employer and a given labor organization.

Of these 5,433,544 tons of salt-water merchant shipping, 3,809,728 tons were covered by agreements with national or regional labor unions only (Table 2, Pt. B), 212,598 tons by agreements with employee representation plans only (Table 2, Pt. C), and 1,411,218 tons by agreements with both labor unions and employee representation plans (Table 2, Pt. D). To the total of 5,433,544 tons, passenger vessels, dry-cargo freighters, and combination carriers contributed 3,583,997 tons; tankers, 1,682,691 tons; colliers, 166,856 tons. By shipping regions, vessels operating from Atlantic coast ports contributed 3,215,946 tons; those on the Pacific coast, 1,634,684 tons; and Gulf coast vessels, 582,914 tons.

Because regional or national labor unions differ from employee representation plans in the scope of collective bargaining, the extent of coverage under each group is shown in two separate tables, numbered 3 and 4 respectively. Also, because both labor unions and employee representation plans engage in collective, as distinct from individual, bargaining, the extent of coverage for both groups is combined in Table 5. The extent to which particular labor unions engage in collective bargaining is shown in Table 6.

Tonnage covered by collective agreements with labor unions.

During 1938–39 labor unions of the unlicensed personnel in the deck, engine, and stewards' departments, negotiated collective agreements covering approximately two-thirds of the ocean-going tonnage. Labor unions of the licensed personnel held agreements covering 47.7 percent of the tonnage with regard to engine-room officers, 38.3 percent with regard to deck officers, and 45.5 percent with regard to radio operators. Although all of the unlicensed personnel was covered by collective agreements on 65.3 percent of the salt-water tonnage, the corresponding figure for all licensed officers was 38.3 percent of that tonnage.

Table 3 makes it clear that agreements with national or regional unions cover a larger proportion of the freight and passenger tonnage than of the tanker tonnage. For the unlicensed personnel the figures are 72 percent of the freight and passenger tonnage and 53.6 percent of the tanker tonnage. The spread is even greater for licensed officers; 67.7 percent of the passenger and freight tonnage having its engine officers covered by agreements, as against 12.4 percent of the tanker tonnage, while in the deck department, the percentages are 57.1 and 5.2, respectively. The summary figures indicate that all personnel is covered by agreements affecting 43 percent of the passenger and freight tonnage as against 5 percent of the tanker tonnage.

It is thus apparent that the practice of collective bargaining in the salt-water merchant marine is more advanced among the unlicensed personnel than among the licensed officers or radio operators, while it has gone very much farther in the freight and passenger trade than in the tanker trade.

Tonnage covered by collective agreements with employee representation plans.

As shown on Table 2, Parts C and D, the 9 salt-water operators who were party to collective agreements with employee representation plans during 1938–39 controlled 1,623,816 tons or slightly

more than one-fifth of the national shipping capacity. Two-thirds of this tonnage, or 1,101,181 out of 1,623,816 gross tons, was concentrated in the oil tanker trade. The tonnage under agreement with employee representation plans for the most part comprised vessels operated by the great oil-refining companies. So marked was this concentration that whereas agreements with employee representation plans covered 522,635 tons or 11.1 percent of the total passenger and freight tonnage, they covered 1,101,181 tons or 41.1 percent of the total tanker tonnage.

TABLE 3.—*Coverage of the salt-water merchant marine by collective agreements with regional or national labor unions representing specified occupational groups, 12 months ended June 30, 1939*

[Vessels of 1,000 gross tons or over]

Occupational group	All merchant vessels		Passenger and freight vessels		Tankers		Colliers
	Tonnage under agreement	Percent of total tonnage	Tonnage under agreement	Percent of total tonnage [1]	Tonnage under agreement	Percent of total tonnage	Tonnage under agreement
All occupational groups [2]	2,159,930	29.2	1,858,141	43.0	134,933	5.0	166,856
All licensed personnel	2,827,250	38.3	2,521,138	57.1	139,256	5.2	166,856
Deck officers	2,827,250	38.3	2,521,138	57.1	139,256	5.2	166,856
Engine-room officers	3,522,591	47.7	3,022,483	67.7	333,252	12.4	166,856
All unlicensed personnel	4,826,601	65.3	3,221,820	72.0	1,437,925	53.6	166,856
Deck department	5,012,149	67.8	3,397,378	75.7	1,447,915	54.0	166,856
Engine room	4,834,853	65.4	3,230,072	72.1	1,437,925	53.6	166,856
Stewards' department	4,827,656	65.3	3,222,875	72.0	1,437,925	53.6	166,856
Radio operators	3,361,640	45.5	2,912,230	65.4	282,554	10.5	166,856

[1] Figures include collier tonnage under agreement as no separate figures for total collier tonnage were available.
[2] Except pursers.

Employee representation plan agreements covering salt-water vessel personnel during 1938–39 were largely limited to licensed deck and engine officers.[3] Table 4 shows that on 38.1 percent of the tanker tonnage, but on only 3.7 percent of the passenger and freighter tonnage were licensed officers covered by collective agreements between the operator and his employees under an employee representation plan. On only 2.9 percent of the salt-water tonnage, however, was the unlicensed crew in all three departments similarly covered. This tonnage consisted entirely of tanker vessels.

Moreover, of the 1,623,816 gross tons of salt-water shipping under employee representation plans, 1,411,218 tons, or 87 percent, consisted of vessels where the employee representation plan was limited to licensed officers, while the unlicensed workers held collective agreements negotiated by regional or national labor unions. Both unlicensed members of the crew and licensed deck and engine-room officers were covered by a common agreement under an employee representation plan on only 2.9 percent of the salt-water tonnage, all of which was in the oil tanker trade.

[3] Only one of the nine employee representation plan agreements on file extended to both licensed officers and unlicensed members of the crew; all the other plans were restricted to licensed officers, or to unlicensed personnel, or to radio operators, or to pursers.

The figures presented in Table 4 thus show that collective bargaining in the salt-water merchant marine through the instrumentality of employee representation plans was largely restricted to licensed deck and engine officers employed by operators of oil tankers. To a considerable degree this reflects differences between the personnel policies of the oil-refining companies that operate most of the tanker fleet and those of the shipping companies that operate passenger and freight vessels.

TABLE 4.—*Coverage of the salt-water merchant marine by collective agreements with employees under employee representations plans, according to specified occupational groups, 12 months ended June 30, 1939*

[Vessels of 1,000 gross tons or over]

Occupational group	All merchant vessels		Passenger and freight vessels [1]		Tankers	
	Tonnage under agreement	Percent of total tonnage	Tonnage under agreement	Percent of total tonnage	Tonnage under agreement	Percent of total tonnage
All licensed personnel	1,196,110	16.2	175,462	3.7	1,020,648	38.1
All unlicensed personnel	212,598	2.9	----------	----------	212,598	7.9
Radio operators	135,669	1.8	135,669	2.9	----------	----------
Pursers	211,504	2.9	211,504	4.5	----------	----------

[1] Includes collier tonnage for which no separate figures were available.

All tonnage covered, whether by agreements with labor unions or employee representation plans.

Whether carried on through the agency of a regional or national labor union or of an employee representation plan, the practice of collective bargaining is most widespread among unlicensed members of the deck, engine, and stewards' departments. Table 5 shows that collective agreements held by labor unions or by employees belonging to employee representation plans for each of these groups covered 68.2 to 70.7 percent of the total salt-water tonnage. On the other hand, the practice of collective bargaining is least developed among pursers, who had only 2.9 percent of the total tonnage under collective agreement.[4] Among licensed personnel, a coverage of 63.9 percent of the shipping capacity for engine officers compares with 54.5 percent for deck officers and 47.3 percent for radio operators.

For each occupational group, collective agreements covered a substantially larger proportion of the passenger and freighter than of the tanker tonnage. For particular occupational groups among the licensed or unlicensed personnel,[5] collective agreements covered from 60.8 to 75.7 percent of the passenger and freighter tonnage as compared with 43.3 to 61.9 percent of the tanker capacity. As for radio operators, 64.7 percent coverage of passenger and freighter tonnage is to be compared with a 10.5 percent coverage of tanker tonnage.

[4] This represents the tonnage of a single company, which had an agreement with an employee representation plan.

[5] Excluding radio operators and pursers.

TABLE 5.—*Coverage of the salt-water merchant marine by collective agreements with regional or national labor unions or with employees under employee representation plans, according to specified occupational groups, 12 months ended June 30, 1939*

Occupational group	All merchant vessels			Passenger and freight vessels			Tankers		
	Percent of tonnage under agreement with:			Percent of tonnage under agreement with:			Percent of tonnage under agreement with:		
	A labor union	An employee representation plan	Any labor organization	A labor union	An employee representation plan	Any labor organization	A labor union	An employee representation plan	Any labor organization
All licensed personnel	38.3	16.2	54.5	57.1	3.7	60.8	5.2	38.1	43.3
Deck officers	38.3	16.2	54.5	57.1	3.7	60.8	5.2	38.1	43.3
Engine-room officers	47.7	16.2	63.9	67.7	3.7	71.4	12.4	38.1	50.5
All unlicensed personnel	65.3	2.9	68.2	72.0	----------	72.0	53.6	7.9	61.5
Deck department	67.8	2.9	70.7	75.7	----------	75.7	54.0	7.9	61.9
Engine department	65.4	2.9	68.3	72.1	----------	72.1	53.6	7.9	61.5
Stewards' department	65.3	2.9	68.2	72.0	----------	72.0	53.6	7.9	61.5
Radio operators	45.5	1.8	47.3	61.8	2.9	64.7	10.5	----------	10.5
Pursers	-------	2.9	2.9	-------	4.5	4.5	-------	----------	--------

Tonnage covered by collective agreements with particular labor unions.

When examining the figures on salt-water shipping capacity covered by the collective agreements of particular unions, as shown in Tables 6–A and 6–B, it is important to bear in mind that individual unions differ in the territorial range of their activity. Not only do unions of national range, which cover the licensed officers and radio operators, contrast with unions of regional range, which cover the unlicensed crew, but several of the regional unions are active in different shipping regions. Great care must, therefore, be taken not to make uncritical use of figures on the tonnage covered in comparing the relative effectiveness or importance of particular unions.

However, the following valid comparisons may be made from Table 6–A:

1. The National Marine Engineers' Beneficial Association, covering licensed engine-room officers, had under contract during 1938-39 an appreciably larger proportion of the salt-water tonnage than the National Organization Masters, Mates, and Pilots of America, representing licensed deck officers, that is 43.5 as compared with 31.7 percent of the total; while only 6.6 percent of the tonnage was under contract to the United Licensed Officers of the United States of America.

2. The National Maritime Union of North America, representing unlicensed personnel in Atlantic and Gulf shipping, had 39.4 percent of the country's salt-water tonnage under agreement, as compared with 7.7 percent of the total tonnage held by the Seafarers' International Union of North America.

3. On the Pacific coast, the Sailors' Union of the Pacific, representing the unlicensed deck personnel, which held agreements covering 20.7 percent of the national shipping capacity, had slightly more tonnage under agreements than the Pacific Coast Marine Firemen, Oilers, Watertenders, and Wipers' Association and the Marine Cooks' and Stewards' Association of the Pacific Coast, each with agreements covering about 18 percent of the total salt-water tonnage.

4. Of the labor unions bargaining collectively on behalf of radio operators, the tonnage under agreement with the American Radio Telegraphists' Association, which was 38 percent of salt-water capacity, was nearly seven times as great as that under agreement with the Commercial Telegraphers' Union, which was 5.5 percent of the total.

Table 6–A indicates that the practice of collective bargaining is much further advanced on the Pacific coast than on the Atlantic coast for licensed officers and radio operators.[6] Although Atlantic coast shipping far exceeds that of the Pacific coast in total volume, the National Marine Engineers' Beneficial Association, the National Organization Masters, Mates, and Pilots of America, and the American Radio Telegraphists' Association each had more Pacific coast than Atlantic coast tonnage under contract during 1938–39.

TABLE 6–A.—*Coverage of the salt-water merchant marine by collective agreements with specified regional and national labor unions, according to shipping regions, 12 months ended June 30, 1939*

Occupational group and labor union	Gross tonnage				Percent of total gross tonnage			
	All shipping regions	Altantic coast	Pacific coast	Gulf coast	All shipping regions	Atlantic coast	Pacific coast	Gulf coast
LICENSED PERSONNEL								
National Marine Engineers' Beneficial Association	3,217,287	1,274,785	1,427,151	515,351	43.5	17.3	19.3	6.9
National Organization Masters, Mates and Pilots of America	2,341,745	636,939	1,189,455	515,351	31.7	8.6	16.2	6.9
United Licensed Officers	485,505	485,505	----------	---------	6.6	6.6	--------	--------
UNLICENSED PERSONNEL								
National Maritime Union	2,913,631	2,536,501	----------	377,130	39.4	34.3	--------	5.1
Seafarers' International Union [1]	567,795	384,189	----------	183,606	7.7	5.2	--------	2.5
Sailors' Union of the Pacific	1,530,723	28,104	1,502,619	---------	20.7	0.4	20.3	--------
Marine Cooks' and Stewards' Association of the Pacific Coast	1,346,230	----------	1,346,230	---------	18.2	--------	18.2	--------
Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers' Association	1,353,427	----------	1,353,427	---------	18.3	--------	18.3	--------
RADIO OPERATORS								
American Radio Telegraphists' Association [2]	2,808,444	945,763	1,463,373	399,308	38.0	12.8	19.8	5.4
Commercial Telegraphers' Union	407,804	362,419	----------	45,385	5.5	4.9	--------	0.6

[1] Also includes tonnage under agreement with the International Seamen's Union, the American Federation of Labor Seamen's Union, and the American Federation of Labor's Seamen's Reorganization Committee, now part of the Seafarers' International Union.
[2] Now the marine division of the American Communications Association.

As shown in Table 6–B, for all but one labor union, the salt-water tonnage under collective agreement was predominantly or entirely made up of passenger and freight vessels. The one exception was the National Maritime Union of America whose agreements covered

[6] Allocation of tonnage to one coast or another is to some extent arbitrary.

1,323,940 gross tons of passenger and freighter vessels, while tankers contributed 1,422,835 tons.[8] On the Pacific coast, however, only 9,990 tons of tanker tonnage were under contract with the Sailors' Union of the Pacific, while the Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers' Association and the Marine Cooks' and Stewards' Association of the Pacific had no contractual relations in the tanker trade.[9]

TABLE 6–B.—*Coverage of the salt-water merchant marine by collective agreements with specified regional and national labor unions, according to type of vessel, 12 months ended June 30, 1939*

Occupational group and labor union	Gross tonnage				Percent of total gross tonnage of:			
	All merchant vessels	Passenger and freight vessels	Tankers	Colliers	All merchant vessels	Passenger and freight vessels[1]	Tankers	Colliers[2]
LICENSED PERSONNEL								
National Marine Engineers' Beneficial Association	3,217,287	2,717,179	333,252	166,856	43.5	61.2	12.4	------
National Organization Masters, Mates and Pilots of America	2,341,745	2,050,723	124,166	166,856	31.7	47.1	4.6	------
United Licensed Officers	485,505	470,415	15,090	---------	6.6	10.0	0.6	------
UNLICENSED PERSONNEL								
National Maritime Union	2,913,631	1,323,940	1,422,835	166,856	39.4	31.7	53.1	------
Seafarers' International Union[3]	567,795	552,705	15,090	---------	7.7	11.7	0.6	------
Sailors' Union of the Pacific	1,530,723	1,520,733	9,990	---------	20.7	32.3	0.4	------
Marine Cooks' and Stewards' Association of the Pacific Coast	1,346,230	1,346,230	---------	---------	18.2	28.6	------	------
Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers' Association	1,353,427	1,353,427	---------	---------	18.3	28.7	------	------
RADIO OPERATORS								
American Radio Telegraphists' Association[4]	2,808,444	2,499,567	142,021	166,856	38.0	56.6	5.3	------
Commercial Telegraphers' Union	407,804	392,714	15,090	---------	5.5	8.3	0.6	------

[1] This percentage is computed so as to include collier tonnage under agreement, as figures on total collier tonnage were not available.
[2] Included under freight and passenger tonnage.
[3] Also includes tonnage under agreement with the International Seamen's Union, the American Federation of Labor Seamen's Union, and the American Federation of Labor's Seamen's Reorganization Committee, now part of the Seafarers' International Union.
[4] Now the Marine Division of the American Communications Association.

METHODS OF NEGOTIATING AGREEMENTS

Most of the important operators of passenger vessels, dry-cargo freighters, and combination carriers in Atlantic coast shipping are members of the American Merchant Marine Institute. With regard to unlicensed seamen in all three departments of the crew, the collective agreements between the member operators and the National

[8] On June 17, 1939, which was only 2 weeks before the end of the 12-month period on which the present analysis is based, a coast-wide strike by the National Maritime Union of America against the operators of Atlantic and Gulf tankers terminated unsuccessfully for the union. The failure of this strike ended the contractual relationship existing up until that time between the National Maritime Union of America and some of the most important operators of tanker fleets; this relationship had not been reestablished by the end of 1939.
[9] These figures reflect the continuing inability of the Pacific coast unions to overcome the failure of the 1935 oil tanker strike.

Maritime Union of America are negotiated directly through the Institute. In contrast, the agreements of these member operators with the labor unions of the licensed officers and radio operators are negotiated by the individual employers.

Practically all Pacific coast operators of merchant vessels, other than tankers, in foreign or intercoastal trade belong to the Pacific American Shipowners' Association. This Association negotiates collective agreements on behalf of its member operators, the so-called "off-shore" agreements, with the labor unions of licensed personnel and radio operators as well as with those of the unlicensed crew.

Almost all Pacific coast operators of merchant vessels, other than tankers, in coastwise trade belong to the Shipowners' Association of the Pacific coast. This association also negotiates collective agreements on behalf of its member operators, the so-called "steam schooner" agreements, with the labor unions of licensed personnel, unlicensed personnel, and radio operators.

Although the operators of oil tanker fleets are not organized in regional associations which negotiate collective agreements with labor unions, the more important operators act in informal concert when carrying on such negotiations. Some of the minor operators, however, deal individually with labor unions.

The operators of collier vessels on the East coast act together informally when engaged in negotiating collective agreements with labor unions.

To sum up, the practice of collective bargaining by seafaring labor unions is well beyond that earlier phase in which individual employers negotiate agreements with given labor unions independently of their fellow employers although some individually negotiated agreements of this kind still occur. For all occupational groups in Pacific coast shipping, however, as well as for unlicensed personnel in Atlantic and Gulf shipping, collective agreements are made, renewed, or modified from time to time through the direct instrumentality of regional employer associations or informal employer groups.

COVERAGE OF GREAT LAKES MERCHANT SHIPPING BY COLLECTIVE AGREEMENTS

The Great Lakes fleet of merchant vessels here includes American-flag ships plying between two or more ports on the Lakes, but excludes harbor craft of any kind. Considering only vessels with a capacity of at least 2,000 gross tons, a recent estimate gives the number of vessels in active service as 421 totaling 2,278,832 gross tons, as shown in Table 7.

TABLE 7.—*Gross tonnage of the Great Lakes merchant fleet, 1937*

[Vessels of 2,000 gross tons or over]

Type of vessel	Number of vessels	Gross tons
All types of vessels	421	2,278,832
Passenger vessels and combination carriers	18	72,598
Dry-cargo freighters	393	2,168,946
Tankers	10	37,288

SOURCE: U. S. Maritime Commission, Division of Research, *Report No. 1111*, Dec. 31, 1937.

The organized labor movement is markedly retarded in Great Lakes shipping as compared with the salt-water merchant marine. This fact is generally attributed to a pronounced opposition to trade unionism on the part of the bulk carrier [10] operators, who are members of the Lake Carriers Association and control about nine-tenths of the total shipping capacity.[11] Despite the stimulus given by section 7 (a) of the National Industrial Recovery Act and by the National Labor Relations Act since 1935, the labor unions of licensed and unlicensed personnel have made little or no progress toward winning recognition from the member operators of the Lake Carriers Association or from the operators of tanker vessel on the Great Lakes. Such recognition as the maritime labor unions have achieved on the Great Lakes has been limited almost entirely to the relatively small volume of shipping represented by vessels operating in the passenger and package freight trade.

According to the collective agreements on file with the Maritime Labor Board, 15 shipping companies on the Great Lakes were party to a total of 50 collective agreements during 1938–39. Operating passenger and package freight vessels almost entirely, these 15 companies controlled vessels with a combined carrying capacity of 190,418 gross tons, or about 8 percent of the total tonnage of the Great Lakes merchant fleet, as shown in Table 8.

TABLE 8.—*Coverage of Great Lakes merchant shipping by collective agreements according to occupational groups, 12 months ended June 30, 1939*

Occupational group	Tonnage under agreement	Percent of total tonnage [1]
At least one occupational group	190,418	8.4
All licensed and unlicensed personnel	176,018	7.7
Radio operators	37,122	1.6

[1] The total tonnage is 2,278,832 as shown in Table 7.

Table 8 indicates that of the 190,418 tons under one or more collective agreements 176,018 tons, or 93 percent, were covered by agreement with all licensed and unlicensed personnel. In short, if we ignore the numerically unimportant radio operators, Great Lakes tonnage falls into two major divisions as follows:

1. Tonnage which was covered by agreements with every occupational group on shipboard, comprising 8.4 percent of the total.
2. Tonnage which was not covered by agreement for any occupational group, comprising 91.6 percent of the total.

Table 9 gives detailed figures for individual labor unions classified by occupational groups. All of the Great Lakes agreements filed with the Maritime Labor Board had a labor union as one party to the agreement. While it is possible that a few employee representation plans existed, no agreement with such an organization has been filed with the Board.

[10] A bulk carrier in the language of the Great Lakes is a vessel specially fitted by structure, rigging, and equipment to transport full boat loads of such dry cargo as iron ore, coal, grain, limestone, etc. Tankers on the Great Lakes and elsewhere are also bulk carriers but carry liquid cargo.

[11] According to the membership list furnished by the Association and the tonnage figures given in the *Marine Directory* for each member operator, some 361 vessels of 2,000 tons or over, totaling 2,072,084 gross tons, are owned by the members of the Lake Carriers Association.

TABLE 9.—*Coverage of Great Lakes merchant shipping by collective agreements with specified regional and national labor unions, 12 months ended June 30, 1939*

Labor union	Tonnage under agreement	Percent of total tonnage
Licensed officers:		
National Organization Masters, Mates and Pilots of America	187,772	8.2
National Marine Engineers' Beneficial Association	185,045	8.1
Unlicensed personnel:		
National Maritime Union	98,632	4.3
Seafarers' International Union	80,972	3.6
Marine Cooks' and Stewards' Union of Great Lakes	49,303	2.2
Radio operators:		
American Radio Telegraphists' Association [1]	37,122	1.6

[1] Now the marine division of the American Communications Association.

COVERAGE OF LONGSHORE OPERATIONS BY COLLECTIVE AGREEMENTS

Longshore operations are here understood to include not only the work done by longshoremen in loading and unloading merchant vessels, but also the work done by such kindred occupational groups as freight handlers; checkers, talliers, and weighers; coal, grain, or banana handlers; cargo repairmen, etc.[12] The discussion is limited, however, to longshore operations at salt-water ports on the Atlantic, Gulf, and Pacific coasts,[13] these being the only ports for which the Maritime Labor Board made a systematic effort to obtain copies of all collective agreements applying to longshore workers in effect during all or part of the 12 months ended June 30, 1939.[14]

According to the Maritime Labor Board's count of collective agreements, contracts with labor unions representing longshore workers were in effect during 1938–39 at 74 salt-water ports including 26 east coast ports, 16 Gulf coast ports, and 32 Pacific coast ports. Together, these agreements applied to the loading and unloading of vessels operated by 198 American-flag shipping enterprises and 158 foreign-flag shipping enterprises, as well as to the handling of cargo at 63 marine freight terminals and at 25 industrial plants equipped with their own docks. The 74 ports covered include almost every salt-water port through which any considerable share of the water-borne commerce of the United States passes. In all of these ports, there is good reason to believe that substantially the whole body of water-front employers subscribed to the longshore agreements in effect. Characteristically grouped in port or regional associations, such employers included shipping companies (or their agents), stevedore contractors, operators of maritime freight terminals, and manufacturing or processing enterprises with water-front plants.

[12] Practically speaking, "longshore operations" include all the water-front occupations over which the International Longshoremen's Association and the International Longshoremen's and Warehousemen's Union have jurisdiction. The harbor craft personnel of the former and the warehouse workers of the latter are excluded, since neither is a "water-front" occupation.

[13] The classification used by the Corps of Engineers, United States Army—which is the classification here employed—attributes to a particular "coast" certain ports such as Albany, New York, and Washington, D. C., which are not commonly regarded as "salt water" ports. That same classification attributes the ports of Puerto Rico to the Atlantic coast and those of Alaska and Hawaii to the Pacific coast.

[14] Practically all of the agreements available for analysis were the product of a collective bargaining relationship in force continuously for the whole of the 12 months ended June 30, 1939.

Atlantic coast ports.

The agreements filed during 1938–39 indicate that collective bargaining determined the wages, hours, and working rules for all or part of the longshore labor force at 26 east coast ports.[15] In 17 of these ports, including the 5 major ports of New York, Baltimore, Philadelphia, Boston, and Hampton Roads, it is believed that the collective agreements covering longshoremen, pier clerks, freight handlers, etc., were adhered to by practically all water-front employers and therefore applied to virtually the entire labor force of longshore workers. As shown in Table 10, these ports account for almost nine-tenths of the tonnage and more than nine-tenths of the value of all water-borne traffic handled at Atlantic coast shipping harbors.[16] Of the remaining Atlantic coast ports where longshore agreements were in effect, it is probable that these agreements were adhered to by all or almost all of the water-front employers.[17] Those Atlantic coast ports for which no longshore agreements were filed, are all of minor importance. It therefore appears that the process of collective bargaining covers virtually the whole labor force of longshore workers on the Atlantic coast.

TABLE 10.—*Volume and value of water-borne commerce, at selected Atlantic coast ports, 1937*

Port	Unadjusted total of cargo handled [1]		Port	Unadjusted total of cargo handled [1]	
	In millions of short tons [2]	In millions of dollars [2]		In millions of short tons [2]	In millions of dollars [2]
Albany	4.8	150.6	Savannah	3.6	231.8
Baltimore	28.7	1,007.7	Wilmington, N. C.	2.0	70.7
Boston	18.4	955.3			
Charleston, S. C.	2.9	130.3	All selected ports	286.6	18,800.1
Fernandina, Fla.	0.1	0.9			
Hampton Roads, Va.[3]	28.7	951.3	All Atlantic coast ports	327.7	20,013.5
Jacksonville	3.5	194.3			
New York	159.3	13,419.0	Water-borne commerce of all selected ports as a percent of water-borne commerce of all Atlantic coast ports	87.5	93.9
Philadelphia	23.9	963.8			
Portland, Maine	3.3	73.1			
Providence	5.8	512.4			
Puerto Rico [4]	1.6	138.9			

[1] Unadjusted in that the port total counts twice or more traffic which moves by water between different parts of a large port while the coast total counts both the shipment from one port and the receipt at another port of cargo moving coastwise by water.

[2] Does not include traffic moving by general ferry or car ferry or cargoes in transit.

[3] Includes the ports of Norfolk, Va., and Newport News, Va.

[4] Includes the ports of San Juan, Ponce Harbor, and Mayaguez Harbor.

Source: U. S. War Department, *Report of the Chief of Engineers U. S. Army—1938*, Pt. 2, Table 4.

The International Longshoremen's Association, affiliated with the American Federation of Labor, negotiates the collective agreements covering longshore workers at all east coast ports where such agree-

[15] These ports were: Searsport, Maine; Portland, Maine; Everett, Massachusetts; Boston; New Bedford; Providence; New London, Connecticut; Albany; New York; Philadelphia; Chester, Pennsylvania; Baltimore; Hampton Roads, including Norfolk and Newport News; Richmond, Virginia; Wilmington, North Carolina; Charleston, Savannah, and Brunswick, Georgia; Fernandina, Florida; Jacksonville and Fort Pierce, Florida; Miami, and three Puerto Rican ports.

[16] The figures are for 1937.

[17] While an occasional water-front employer in Atlantic or Gulf ports is not, technically, a signer of the local longshore agreement or agreements, it is assumed by the International Longshoremen's Association that the employer in question will live up to the agreement. The agreement is in effect "the law of the port."

ments are in force.[18] Separate agreements are negotiated by the International Longshoremen's Association for the various occupational groups; such as longshoremen, checkers, talliers, and weighers, freight handlers, coal, banana, or grain handlers; horse and cattle fitters, cargo repairmen, etc. At the port of New York in particular, the International Longshoremen's Association was party during 1938–39 to no less than eight such occupationally differentiated agreements of port-wide force affecting the deep-sea trade and an almost equal number for the coastwise trade. New York, however, exhibits an extreme of specialization. At the other extreme are ports with only a single, comprehensive agreement.

Although each Atlantic port has its own agreement or series of agreements, negotiated between the International Longshoremen's Association and the water-front employers, basic rates of pay and working hours for longshore workers are virtually uniform at all the north Atlantic ports[19] covered by agreements of the International Longshoremen's Association, as far south as and including Hampton Roads. Below Hampton Roads, however, the labor standards, as fixed by collective agreements, vary from port to port and are inferior to the north Atlantic standards. The virtual identity of rates of pay and working hours under agreements of the International Longshoremen's Association affecting the various north Atlantic ports is easily explained. The union and the employers at each port follow the practice of basing their local agreements on the wages and hours agreed to each year by the International Longshoremen's Association and the organized water-front employers of the port of New York. The annual renewal of the agreement between the International Longshoremen's Association and the New York Shipping Association may therefore be regarded as determining what longshore labor standards shall be throughout the most important shipping region of the country.

Of 17 east coast ports where there is good reason to believe that the agreements of the International Longshoremen's Association are adhered to by substantially all of the water-front employers, at least 9 are ports where the longshore agreements for 1938–39 were negotiated by the union and a formal employers' association acting on behalf of the water-front employers.[20] For 7 other ports, all minor, it was not definitely ascertained whether the water-front employers were formally organized to negotiate collective agreements. On the other hand, the fact that the individual employers of the same ports filed virtually identical agreements suggests the probability that the water-front employers at each of these ports at least conducted their negotiations in informal concert.

Gulf coast ports.

The agreements filed with the Board indicate that collective bargaining for all or part of the longshore labor force extended to 16

[18] Of all the east coast employers party to a longshore agreement for 1938–39 on file with this Board, only one was party to an agreement with a labor organization other than the International Longshoremen's Association. This exception was a Philadelphia employer who adhered to an agreement under an employee representation plan.

[19] Except, it appears, at the port of Searsport, Maine.

[20] These ports and the employers' associations were: Portland, Maine—Portland Deepwater Steamship Lines and Contracting Stevedores; Boston—Boston Conference of Steamship Operators and Contracting Stevedores; Albany—Steamship Operators and Contracting Stevedores, Port of Albany and Rensselaer; New York—New York Shipping Association; Warehousemen's Association of the Port of New York; Philadelphia—Employers Standing Committee; Baltimore—Steamship Trade Association of Baltimore; Hampton Roads, including Norfolk and Newport News—Hampton Roads Maritime Exchange; Savannah—Savannah Maritime Association.

Gulf coast ports.[21] The list includes not only the major ports of New Orleans, Houston, and Galveston, but also most of the minor shipping harbors of any appreciable consequence.[22]

For all but one of these ports,[23] it may be assumed that the collective agreements covering longshore work were adhered to by substantially all of the water-front employers. As shown in Table 11, these ports account for close to nine-tenths of the tonnage and for over nine-tenths of the value of the water-borne traffic handled at all Gulf coast ports.[24] On the Gulf as on the east coast, therefore, the technical coverage of longshore operations by collective agreement is not far from complete, while the practical coverage is probably 100 percent.[25]

TABLE 11.—*Volume and value of water-borne commerce at selected Gulf coast ports, 1937*

Port	Unadjusted total of cargo handled [1]		Port	Unadjusted total of cargo handled [1]	
	In millions of short tons [2]	In millions of dollars [2]		In millions of short tons [2]	In millions of dollars [2]
Beaumont	20.5	234.3	Texas City	9.4	109.5
Corpus Christi	5.9	133.3			
Galveston	5.0	435.2	All selected ports	118.9	3,141.0
Houston	26.9	643.6			
Lake Charles, La.	4.6	57.5	All Gulf coast ports	138.2	3,388.0
Mobile	4.8	159.2			
New Orleans	17.2	986.2	Water-borne commerce of all selected ports as a percent of water-borne commerce of all Gulf coast ports	86.0	92.7
Orange, Tex.	0.1	3.1			
Pensacola	0.6	20.4			
Port Arthur, Tex.	20.1	267.7			
Tampa	3.8	91.0			

[1] Unadjusted in that the port total counts twice or more traffic which moves by water between different parts of a large port while the coast total counts both the shipment from one port and the receipt at another port of cargo moving coastwise by water.

[2] Does not include traffic moving by general ferry or car ferry or cargoes in transit.

Source: U. S. War Department, *Report of the Chief of Engineers, U. S. Army, 1938*—Pt. 2, Table 4.

As on east coast water fronts, it is the International Longshoremen's Association that exercises control over collective bargaining on the water fronts of the Gulf. At Pensacola, Mobile, and New Orleans, the agreements of the International Longshoremen's Association for 1938–39 were negotiated with formal associations representing the water-front employers of each port,[27] while at Tampa, they were apparently negotiated with an informal group of water front employers. Lake Charles, Louisiana, however, and the various Texas ports were covered by a single agreement affecting cargo handlers.

[21] These ports were: Tampa, Pensacola, Mobile, Gulfport, New Orleans, Lake Charles; Port Arthur, Port Neches, Orange, Beaumont, Houston, Galveston, Texas City, Corpus Christi, Port Isabel, and Brownsville.

[22] Among the minor ports for which no agreements were filed are Baton Rouge, La.; Port Aransas, Tex.; and Biloxi, Miss.

[23] Gulfport.

[24] The figures are for 1937.

[25] Of all Gulf coast employers bound contractually by a longshore agreement during 1938–39, only three were under contract to a labor organization other than the International Longshoremen's Association. These three exceptions included two Houston employers under contract to an employee representation plan and one New Orleans employer under contract to a local of the International Longshoremen's and Warehousemen's Union (Congress of Industrial Organizations).

[27] At Pensacola, with the Merchants and Stevedores Association; at Mobile, with the Mobile Steamship Association; at New Orleans, with the New Orleans Steamship Association.

This agreement was negotiated by the International Longshoremen's Association with the Houston and Galveston Maritime Associations, the two employer groups apparently acting as a regional association for the whole of the west Gulf.

Pacific coast ports.

The agreements filed with the Board indicate that collective bargaining between longshore workers and their employers was the accepted practice along the water front of the entire Pacific coast. Collective agreements applying to longshore workers were thus in effect at the major ports of San Francisco, Los Angeles, Seattle, and Portland, and also at 28 secondary ports [28] and 50 "loading points" too small to be classified as ports. At each major port and nearly all secondary ports and loading points,[29] moreover, the longshore agreements were adhered to by all or almost all of the water-front employers.

It is therefore plain that virtually the entire tonnage and value of water-borne traffic on the Pacific coast [30] is loaded and unloaded by longshore workers under the terms and conditions of employment fixed by collective bargaining. A practice peculiar to the Pacfic coast requires sailors on coastwise "steam schooners" to participate in loading and unloading the vessel, but these sailors belong to the Sailors' Union of the Pacific, a union which negotiates an agreement with the shipowners. In other words, it may be fairly stated that practically 100 percent of the longshore work on the Pacific coast is subject to collective agreements.

On nearly all Pacific coast water fronts it is the International Longshoremens and Warehousemen's Union, affiliated with the Congress of Industrial Organizations, that negotiates the collective agreements for longshore workers, for freight handlers, for talliers, checkers, and weighers, and the other trades included in the term "longshore operations" as defined at the beginning of this section.

The agreements relating to particular occupational groups call for virtually uniform wages, hours, and working rules at the various ports. With regard to longshoremen, the International Longshoremens and Warehousemen's Union negotiates a single agreement which extends to the loading and unloading of cargo along the entire Pacific coast. With regard to freight handlers as well as to checkers, talliers, and weighers the International Longshoremens and Warehousemen's Union in each case negotiates separate regional agreements for the individual shipping regions of which the major ports are San Francisco, Los Angeles, Portland, and Seattle.[31] Although

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[28] These are San Diego, Santa Barbara, Monterey, Stockton, Albion, Eureka, Crescent City, Astoria, Rainier, St. Helens, Brookings, Newport, Reedsport, Coos Bay, Bandon, Port Orford, Vancouver, Longview, Bellingham, Anacortes, Port Angeles, Everett, Port Townsend, Port Gamble, Tacoma, Olympia, Grays Harbor, Willapa Harbor. No port in Alaska or in Hawaii is covered by any of the longshore agreements filed with this Board. It cannot be said without further study whether this reflects the absence of collective bargaining or mere neglect to file agreements actually in force.

[29] There are two or three secondary ports on Puget Sound where the longshoremen retain their allegiance to the International Longshoremen's Association despite the National Labor Relations Board's certification of the International Longshoremen's and Warehousemen's Union as the agency to represent all west coast longshoremen. Some doubt exists, therefore, as to whether, technically, the employers in these two or three secondary ports should be regarded as bound by the coast-wide longshore agreement of the International Longshoremen's and Warehousemen's Union. Practically, however, they do not drop below its labor standards.

[30] Excluding, perhaps, the water-borne traffic of Alaska and Hawaii.

[31] In the Portland and Seattle districts the International Longshoremen's Association negotiates the two checkers' agreements, as well as the dock workers' agreement in Tacoma.

wages, hours, and working rules differ somewhat between the major ports under these regional agreements for freight handlers and for pier clerks, such interregional variations are slight.

The ability of the International Longshoremen's and Warehousemen's Union to negotiate agreements of coast-wide or regional scope reflects the advanced development of the instrumentalities for collective bargaining on the west coast. The employers of longshore labor who operates vessels in the so-called "offshore" trade, i. e., in the trans-Pacific or intercoastal trades, are, generally speaking, members of the Waterfront Employers Association of the Pacific Coast, or of one of its four regional constituents. This association meets with the International Longshoremen's and Warehousemen's Union and negotiates the coast-wide agreement, while each of the four regional constituents negotiates certain other agreements of regional scope. The employers of longshore labor in the so-called "steam schooner" trade, i. e., cargo vessels in coastwise trade, are members of the Shipowners' Association of the Pacific Coast, whose representatives sit in on the negotiations between the union and the Waterfront Employers Association and sign the finished agreement.

Summary.

The process of collective bargaining is apparently much further advanced among longshoremen than among seamen. Although the exact proportion of longshore workers at salt-water ports who are covered by collective bargaining cannot be directly estimated, the available data suggest that at every major port and most minor ports of the United States, all or almost all of the water-front employers adhere to collective agreements covering longshore work. This means that nearly the entire labor force of longshore workers must be covered by collective agreements on all three coasts.

Two labor unions share the nation-wide control of collective bargaining on behalf of longshore workers. These two unions are the International Longshoremen's Association (A. F. of L.), which has control of Atlantic and Gulf water-fronts, and the International Longshoremen's and Warehousemen's Union (C. I. O.), which has control of west coast water fronts. Employee representation plans are almost nonexistent.[32] The water-front employers, like the longshore workers, are highly organized. The employers' organizations consist of formal or informal groups of port-wide, regional, or coast-wide extent.

OTHER MARITIME LABOR GROUPS COVERED BY COLLECTIVE AGREEMENTS

The salt-water merchant marine, the Great Lakes fleet, and longshore operations at salt-water ports are the only segments of the maritime industry with regard to which the agreements filed with the Board are believed to be sufficiently comprehensive to justify their use in estimating the extent of collective bargaining. A brief summary, however, of certain agreements relating to the personnel of strictly local and work vessels and non-longshoring water-front

[32] Of all water-front employers at salt-water ports who subscribed to longshore agreements for 1938–39 on file with this Board, there were only three employers who subscribed to agreements with their employees under an employee representation plan.

occupations may serve to throw some light on the extent of collective bargaining among the particular groups of workers concerned.

With regard to the personnel of harbor craft,[33] it is indicated by agreements on file that collective bargaining fixed the terms and conditions of employment for various proportions of the workers at such ports as New York, Baltimore, Philadelphia, Boston, Norfolk, Galveston, and Portland (Maine), as well as on the Columbia River and on Puget Sound. Except for two or three employers who maintained contractual relations with an employee representation plan, all of the harbor craft operators covered by an agreement subscribed to an agreement with a labor union. The individual types of vessel covered by agreements included tugs and towboats everywhere except Puget Sound, barges and lighters at New York and Boston, some ferryboats at New York and on Puget Sound, some tanker barges and excursion boats at New York only.

At the ports of New York and Baltimore, the International Longshoremen's Association virtually excluded all other unions as the representative of harbor craft workers in collective bargaining. At ports where the International Longshoremen's Association was not dominant, the labor unions which negotiated collective agreements with the operators of harbor craft included the National Marine Engineers' Beneficial Association, the National Organization Masters, Mates, and Pilots of America, and the Inlandboatmen's Division of the National Maritime Union or the Inlandboatmen's Union of the Pacific.

Due to the difficulty of listing all operators of harbor craft, it is impossible to say categorically for any port that all the employees employed on every such vessel were covered by collective agreements. At the port of New York, however, agreements in effect between the International Longshoremen's Association on the one hand, and the Harbor Carriers of the Port of New York and the Canal Carriers Association on the other, served to fix the terms and conditions of employment aboard towboats, lighters, and barges. At Baltimore and Philadelphia, moreover, as well as on the Columbia River, agreements in effect between labor unions of licensed and unlicensed personnel and operators of towboats as a group apparently accounted for a significant proportion of all workers employed in operating harbor vessels.

Four groups of pier and wharf workers other than longshoremen are represented in the collective agreements for 1938–39 on file with the Board. These are: (*a*) Maintenance workers engaged in the running, the upkeep, and the repair of piers; (*b*) gearmen and lockermen, who take care of the pier's cargo-handling equipment; (*c*) ship repair workers, who clean, overhaul, and do light running repairs on the vessel while it lies at the pier between voyages; (*d*) linesmen, who handle the hawsers in the docking and undocking of vessels.

The agreements for 1938–39 which have been filed with the Board, indicate that the practice of collective bargaining extended to fishermen employed aboard fishing craft as well as to longshore workers

[33] That is, tugs and towboats; lighters and barges; passenger, automobile, and railroad-car ferries; pilot boats, scows, dredges, etc.

employed at other than salt-water ports. In the case of fishermen, there were filed with the Board collective agreements held by the Alaska Fishermen's Union covering operations in the local waters of several Alaska harbors. In the case of longshore workers, there were filed with the Board a few collective agreements held by the International Longshoremen's Association applying to certain Great Lakes ports.

Chapter VIII

ACTIVITIES OF THE NATIONAL LABOR RELATIONS BOARD AFFECTING MARITIME WORKERS

The National Labor Relations Act[1] of 1935 guarantees the right to organize and to bargain collectively to industrial workers engaged in interstate commerce, including maritime workers. The intent of the measure is to equalize bargaining power between employers and workers, thus promoting better labor standards and encouraging industrial peace.

The functions of the National Labor Relations Board, which administers the act, are three: (1) To determine the appropriate unit for collective bargaining, (2) to conduct elections to ascertain the identity of the collective bargaining agency entitled to represent the workers, (3) to hold hearings and render decisions on complaints of unfair labor practices.

The purpose of the present discussion is to examine each of these activities in the maritime industry,[2] since administration of the statute by the National Labor Relations Board has been an essential factor in recent developments in maritime labor relations.

DETERMINING THE APPROPRIATE UNIT FOR COLLECTIVE BARGAINING

The need for defining the appropriate unit for collective bargaining arises when the Board is called upon to hold an election to determine whether a given labor organization is entitled to represent the workers in collective bargaining, or when a particular employer is charged before the Board with the unfair labor practice of refusing to recognize or deal with a representative labor union.

Section 9 (b) of the act expressly empowers the Board to define the appropriate unit of collective bargaining, but it lays down no specific directions for the guidance of the Board. Instead, the Board is instructed so to define the appropriate unit as to "insure to employees the full benefit of their right to self-organization and to collective bargaining . . ." In each case the Board has the discretionary power to define the collective bargaining unit in terms of "the employer unit, craft unit, plant unit, or any subdivision thereof" as best serves the purpose of the act.

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[1] 49 Stat. 449.

[2] It should be kept in mind that the act does not apply to maritime workers employed by carriers subject to the Railway Labor Act or to maritime workers employed by governmental agencies. With regard, however, to seamen employed on Government-owned vessels operated for the account of the U. S. Maritime Commission by managing agents, the Board has held that such seamen are employees of the operating agent, not of the Federal Government, and are therefore entitled to the benefits of the act; e. g., *In the Matter of Cosmopolitan Shipping Company, Inc.*, and *National Marine Engineers' Beneficial Association;* case R–117 (2 N. L. R. B. 759).

The following analysis of how the Board exercises the power to define appropriate units of collective bargaining in the maritime industry is derived from its rulings on complaint and representation cases during the period from December 1935 through July 1939.[3]

The labor force of the individual employer.

The typical maritime unit as defined by the Board consists of all workers belonging to a particular occupation, craft, or class, in the service of an individual employer. Such units were decided upon by the Board in cases affecting seamen, longshoremen, and other groups of maritime workers. In the *American France Line* case, for example, which involved the licensed crews of practically all passenger vessels, dry-cargo freighters, and oil tankers operating out of Atlantic and Gulf ports, the unlicensed seamen in the employ of each operator separately were held to constitute an appropriate unit.[4] Similarly, in the *Aluminum Line* case, which involved almost all water-front employers of longshore labor at the port of New Orleans, the longshoremen employed by each water-front employer separately were held to comprise an appropriate unit.[5] In the *Todd Shipyards* case, where the Board ruled that a parent corporation and its subsidiaries, operating three plants in two adjoining States, constituted a single employer, the production and maintenance workers employed at all three plants were grouped together as an appropriate unit.[6]

The labor force of a group of employers.

In at least two major decisions, both affecting longshoremen, the Board defined the appropriate unit to be all workers in the employ of a large group of employers who bargained as a group on a port-wide or a coast-wide basis. In the *Mobile Steamship Association* case, the longshoremen employed by all companies that were members of the Association at the port were grouped in a single unit.[7] A much wider concept of the multiple-employer unit was used in the case of the *Shipowners' Association of the Pacific Coast.*[8] Here the Board certified the International Longshoremen's and Warehousemen's Union as the exclusive representative for a collective bargaining unit defined so as to comprise almost all of the longshoremen employed by nearly all of the water-front employers at Pacific coast ports.

The labor force at an individual plant.

Although each merchant vessel may be regarded as a separate plant, in no case did the Board rule that seamen employed aboard a particular vessel, run by a given operator, constitute a bargaining unit separate from seamen employed on other vessels of the same operator. On the other hand, the Board did apply the concept of the plant unit in sev-

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[3] In the references to the Board's decisions, an "R" case is one involving the choice of representatives for collective bargaining; a "C" case, one involving an unfair labor practice complaint against the employer.

[4] *In the Matter of American France Line et al.,* and *International Seamen's Union;* case R–157 (3 N. L. R. B. 64).

[5] *In the Matter of Aluminum Line et al.,* and *International Longshoremen's and Warehousemen's Union;* cases R–870 to R–925, inclusive (8 N. L. R. B. 325).

[6] *In the Matter of Todd Shipyards Corporation, Robins Dry Dock and Repair Company, and Tietjen and Lang Dry Dock Company,* and *Industrial Union of Marine and Shipbuilding Workers of America;* case C–239 (5 N. L. R. B. 20).

[7] *In the Matter of Mobile Steamship Association et al.,* and *International Longshoremen's and Warehousemen's Union;* case R–391 (8 N. L. R. B. 1297).

[8] *In the Matter of the Shipowners' Association of the Pacific Coast et al.,* and *International Longshoremen's and Warehousemen's Union, District No. 1;* cases R–638, R–572 (7 N. L. R. B. 1002).

eral cases affecting shore workers. Thus, in the *Bethlehem Shipbuilding* case, in which two locals belonging to the same labor union brought complaints against employee representation plans at two different plants operated by the same employer, it was held that the workers at each plant constituted an appropriate unit.[9] Again, in a case involving clerical employees of a steamship company, it was held that the clerks at the pier office might reasonably be allowed to dissociate themselves as a unit for collective bargaining from the clerks at the uptown office.[10]

The labor force engaged in the same craft.

In certain cases affecting licensed as well as unlicensed personnel of merchant vessels, the Board was called upon to decide what craft or crafts of workers should be included within a single unit. When making such determinations, the Board accepted the traditional distinction between the deck, engine, and stewards' departments, and recognized the cleavage between licensed and unlicensed members of the crew, as well as the differences in the structure of labor unions representing unlicensed personnel on the Atlantic and Pacific coasts.

In several cases, the employer or petitioning union asked that the licensed engineers be combined with the licensed deck officers in a single unit. In each such case the Board held that licensed engineers and deck officers constitute separate units of collective bargaining, because their duties and responsibilities differ and because the existence of a separate labor union for each group is an established tradition.[11]

In its rulings on cases affecting unlicensed personnel, the Board defined the collective bargaining unit in conformity with the traditional practices of individual shipping regions and with the corresponding regional variations of union structure. In Atlantic coast cases, the Board held that the entire unlicensed personnel in the employ of a given operator constitutes a single unit.[12] In Pacific coast cases, however, the Board ruled that workers in the deck, engine, and stewards' departments who were in the employ of the same operator constitute separate units.[13]

In its determinations of collective bargaining units among longshore and other water-front workers, the Board separated particular crafts in some cases while combining them in others. Thus in the

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[9] *In the Matter of Bethlehem Shipbuilding Corporation, Ltd.* and *International Union of Marine and Shipbuilding Workers of America, Locals No. 5 and No. 25;* cases C–906, R–830, C–907, R–831, decided Feb. 10, 1939.

[10] *In the Matter of Luckenbach Steamship Company, Inc.,* and *Maritime Office Employees' Association, International Longshoremen's and Warehousemen's Union, Local 1–44;* cases C–475, R–591, decided May 27, 1939.

[11] *In the Matter of International Mercantile Marine Company et al.,* and *International Union of Operating Engineers, Local No. 3;* case R–24 (1 N. L. R. B. 384). *In the Matter of Lykes Brothers Steamship Company et al.,* and *National Marine Engineers' Beneficial Association; National Organization Masters, Mates and Pilots of America; American Radio Telegraphists' Association;* cases R–36, R–37, R–38 (2 N. L. R. B. 102). *In the Matter of Black Diamond Steamship Corporation,* and *Marine Engineers' Beneficial Association, Local No. 33;* case R–107 (2 N. L. R. B. 241).

[12] E. g., *In the Matter of American France Line et al.,* and *International Seamen's Union of America;* case R–157 (3 N. L. R. B. 64).

[13] *In the Matter of Associated Oil Company et al.,* and *Sailors' Union of the Pacific;* cases R–477 to R–481, inclusive (5 N. L. R. B. 893). *In the Matter of General Petroleum Corporation of California et al.,* and *Pacific Coast Marine Firemen, Oilers, Watertenders and Wiper's Association and Marine Cooks' and Stewards' Association of the Pacific Coast;* cases R–500 to R–514, inclusive (5 N. L. R. B. 982).

Agwilines case, several groups of dock workers, including longshoremen, were combined in the same unit.[14] In the *Williams Dimond* case, pier watchmen were singled out as a unit by themselves.[15] In the *Luckenbach* and *American-Hawaiian Steamship* case, pier watchmen were included in a larger unit covering several miscellaneous groups of water-front workers.[16]

In determining the collective bargaining unit the Board draws upon several guiding principles, depending upon the particular circumstances of each case: the history and tradition of collective bargaining among the particular group of workers concerned; the existing structure of labor unions in the industry, region, or occupation affected; the varying degrees to which particular groups of workers employed by the same employer may be organized; the desire of individual groups of workers, employed by the same employer, to organize separately from other groups; local or regional practices of negotiating collective agreements on a port-wide or coast-wide basis; the extent to which different plants under common ownership draw their labor from the same source and follow the same labor policy.

ANALYSIS OF ELECTIONS IN THE MARITIME INDUSTRY

Section 9 (c) of the act provides that whenever questions arise in connection with the representation of employees, the Board may investigate such controversies and certify the individuals or labor organizations entitled to represent the workers for collective bargaining purposes. In reaching a determination the Board may take a secret ballot of the employees or may utilize any other suitable method of ascertainment. In either case majority rule governs, as is provided by section 9 (a) of the act.

In the present discussion, the term "election" is used to include not only representation cases in which the Board took a poll of the employees by a secret ballot, but also representation cases in which the Board ascertained the will of the employees by matching union membership data against employer pay roll records. The method commonly used for determining collective bargaining representatives has been a poll by secret ballot. In this type of election, certification was granted to a particular labor organization only if it received a majority of all votes cast. Where membership data were checked against emplorer pay rolls, certification was granted only if a majority of the employees in the appropriate unit were members of the labor organization claiming representative status. In all elections where a majority of the workers opposed collective bargaining, or where no one labor organization received a majority of all votes cast, certification was refused and the case dismissed.

In general it seems fair to assume that those who voted against representation by any labor organization with a place on the ballot,

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[14] *In the Matter of Agwilines, Inc.,* and *International Longshoremen's Association, Local No. 1402;* case C–103 (2 N. L. R. B. 1).

[15] *In the Matter of Williams Dimond and Company et al.,* and *Building Service Employees' International Union, Port Watchmen Local No. 137;* cases R–130 to R–141, inclusive (2 N. L. R. B. 859).

[16] *In the Matter of Luckenbach Steamship Company et al.,* and *Gatemen, Watchmen and Miscellaneous Waterfront Workers Union, Local 38–124; International Longshoremen's Association;* cases R–41 to R–60, inclusive (2 N. L. R. B. 181).

or who did not belong to a labor organization whose membership list was checked against pay roll records, expressed preference for individual bargaining. Similarly, it is fair to assume that those who voted for representation by a given labor union or an employee representation plan with a place on the ballot, or who belonged to a labor organization whose membership list was checked against pay roll records, favored collective bargaining. In certain instances it is possible that a vote against a union was a vote against that particular union or an individual in that union, rather than a vote in opposition to collective bargaining as such. In like manner, there may have been instances where a vote for a union was not so much an expression of preference for that particular union as a protest against individual bargaining. On the whole, however, such instances would be negligible.

Coverage of elections.

From January 1, 1936 to July 15, 1939, the National Labor Relations Board held 306 separate elections, in which 54,054 maritime workers expressed their choice of representatives for the purposes of collective bargaining,[17] as shown in Table 1. Licensed or unlicensed personnel of the salt-water merchant marine or the Great Lakes fleet to the number of 30,047 took part in 173 elections. Wharf, ship repair, and harbor workers, mainly longshoremen, to the number of 24,007 took part in 133 elections. By shipping regions, 30,878 workers, including 27,794 seafaring personnel, participated in Atlantic coast elections; 15,078 workers, including 13,398 longshoremen, participated in Pacific coast elections; 7,867 workers, including 6,251 longshoremen, in Gulf coast elections.

TABLE 1.—*Coverage of maritime elections held by the National Labor Relations Board, January 1, 1936, to July 15, 1939*

Occupational group	Number of elections held				Number of workers participating			
	Atlantic coast	Pacific coast	Gulf coast	All coasts	Atlantic coast	Pacific coast	Gulf coast	All coasts
All groups	162	[1] 58	85	[2] 306	30,878	[1] 15,078	7,867	[2] 54,054
Seafaring personnel	137	22	13	[2] 173	27,794	1,129	893	[2] 30,047
Licensed [3]	59	7	10	76	1,997	476	585	3,058
Unlicensed	78	15	3	[2] 97	25,797	653	308	[2] 26,989
Shore workers	25	[1] 36	72	133	3,084	[1] 13,949	6,974	24,007
Longshoremen [4]	3	[1] 5	40	48	412	[1] 13,398	6,251	20,061
Other workers [5]	22	31	32	85	[4] 2,672	551	723	3,946

[1] Includes 2 longshore elections at Honolulu.
[2] Includes an unlicensed personnel election on the Great Lakes.
[3] Includes radio operators.
[4] Includes such special groups as banana handlers and coal loaders as well as general longshoremen.
[5] Includes wharf clerks, marine warehousemen, ship repair workers, and harbor craft personnel.

[17] The election figures given here were computed from the published decisions of the National Labor Relations Board as supplemented by periodic releases on election returns. The beginning date was determined by the incomplete reporting of elections prior to that time.

It is important to mention that three sets of elections account for a large majority of all maritime workers who took part in ascertainments of the National Labor Relations Board from January 1, 1936, to July 15, 1939. There were: (1) 77 elections in which almost all unlicensed personnel employed on passenger vessels, dry-cargo freighters, and oil tankers in Atlantic shipping expressed their choice, by secret ballot, between representation by the National Maritime Union (C. I. O.), the International Seamen's Union (A. F. of L.), or neither, there being almost 26,000 votes cast; (2) an ascertainment involving close to 13,000 workers in which a check of union membership data against employer pay roll records led to the certification of the International Longshoremen's and Warehousemen's Union (C. I. O.) as the exclusive representative in collective bargaining of practically the entire labor force of longshore workers on the Pacific coast; and (3) 35 polls in which more than 5,000 longshoremen at Gulf ports cast ballots to choose between representation by the International Longshoremen's and Warehousemen's Union (C. I. O.), the International Longshoremen's Association (A. F. of L.), or neither. These three ascertainments accounted for close to 44,000 workers, or about four-fifths of the total number of men participating in all maritime elections.

Types of election.

The 306 maritime elections may be divided into three types: (1) Those involving a choice between one labor organization and no representation at all; (2) those involving a choice between two or more contending labor unions and no representation; and (3) those involving a choice between a labor union, an employee representation plan, or no representation at all.

In Table 2 the coverage of individual occupational groups is considered by type of election. By far the most important type was that in which the workers had to accept or reject collective bargaining in terms of representation by either or neither of two contending labor unions, usually referendums in which a union belonging to the American Federation of Labor opposed a union belonging to the Congress of Industrial Organizations. There were 206 elections of this kind, in which 36,620 workers took part. The 96 elections, in which 16,714 workers participated, were polls where the workers expressed a choice between representation by a specified labor union and no representation at all. In only 4 elections, in which 720 workers participated, did a labor union compete with an employee representation plan in the choice for or against collective bargaining.[18]

[18] All of these elections involved oil tankers.

TABLE 2.—*Distribution of maritime elections by type of election, January 1, 1936, to July 15, 1939*

Occupational group	All types of elections		Type 1: Elections involving a choice between 1 labor union and no representation		Type 2: Elections involving a choice between contending labor unions and no representation		Type 3: Elections involving a choice between a labor union, an employee representation plan, and no representation	
	Number of elections	Number of workers participating	Number of elections	Number of workers participating	Number of elections	Number of workers participating	Number of elections	Number of workers participating
All groups	306	54,054	96	16,714	206	36,620	4	720
Seafaring personnel	173	30,047	33	1,112	136	28,215	4	720
Licensed [1]	76	3,058	20	632	53	1,740	3	686
Unlicensed	97	26,989	13	480	83	26,475	1	34
Shore workers	133	24,007	63	15,602	70	8,405	----------	----------
Longshoremen	48	20,061	12	14,401	36	5,660	----------	----------
Other workers [2]	85	3,946	51	1,201	34	2,745	----------	----------

[1] Includes radio operators.
[2] Includes wharf clerks, marine warehousemen, ship repair workers, and harbor craft personnel.

Results of elections.

The distribution of voting in maritime elections held by the National Labor Relations Board indicates: (1) The extent to which the workers who participated in such polls favored collective as opposed to individual bargaining; and (2) the particular labor unions which the workers who participated in such polls favored as collective bargaining agencies.

Whether the count is made by the number of elections or by the number of workers who participated, the maritime employees whose choice was ascertained by the Board from January 1, 1936, to July 15, 1939, were overwhelmingly in favor of bargaining collectively, as shown in Table 3. Of a total of 306 elections, 271 resulted in the certification of some labor union or employee representation plan as a representative for the purposes of collective bargaining. In 35 elections there was no certification, either because the majority of the workers favored individual bargaining or because no labor organization polled a majority of the votes. Of 54,054 workers participating, 46,515, or 86 percent, expressly voiced a desire to bargain collectively through some labor organization, while 6,667, or approximately 12 percent, expressly voiced an opposition to being so represented.[19] By shipping regions, the proportion of workers participating in elections who indicated a preference for collective as opposed to individual bargaining reached 90 percent on the Atlantic coast, 72 percent on the Pacific coast,[20] 96 percent on the Gulf. By occupational groups polled, an express desire to bargain collectively was voiced by 91 percent of the unlicensed seamen, 79 percent of the

[19] The remaining 2 percent cast blank, spoiled, or challenged ballots.
[20] The percentages for the Pacific coast as a whole, and for Pacific longshoremen in particular, are affected by the fact that of the 13,000 workers involved in the longshore certification, 3,000 men were not members of the International Longshoremen's and Warehousemen's Union. Since the ascertainment was based on a check of union membership lists against pay rolls, they were counted as having voted against collective bargaining.

licensed officers, 80 percent of the longshoremen, and 87 percent of other wharf and harbor workers.

TABLE 3.—*Preference for collective bargaining as shown in maritime elections, January 1, 1936 to July 15, 1939*

Region and occupational group	Number of elections	Certifications issued to labor organizations	No certification issued	Votes cast in all elections	Votes cast for representation by a labor organization	Votes cast against representation by a labor organization [1]	Blank, spoiled, and challenged ballots
All coasts [2]	306	271	35	54,054	46,515	6,667	872
Licensed vessel personnel [3]	76	64	12	3,058	2,421	556	81
Unlicensed vessel personnel [2]	97	92	5	26,989	24,595	1,727	667
Longshoremen	48	43	5	20,061	16,052	3,964	45
Other workers [4]	85	72	13	3,946	3,447	420	79
Atlantic coast	162	151	11	30,878	27,910	2,254	714
Licensed vessel personnel [3]	59	53	6	1,997	1,688	258	51
Unlicensed vessel personnel	78	76	2	25,797	23,680	1,502	615
Longshoremen	3	2	1	412	193	218	1
Other workers [4]	22	20	2	2,672	2,349	276	47
Pacific coast	58	46	12	15,078	10,849	4,135	94
Licensed vessel personnel [3]	7	2	5	476	177	278	21
Unlicensed vessel personnel	15	12	3	653	395	214	44
Longshoremen	5	3	2	13,398	9,799	3,595	4
Other workers [4]	31	29	2	551	478	48	25
Gulf coast	85	73	12	7,867	7,531	278	58
Licensed vessel personnel [3]	10	9	1	585	556	20	9
Unlicensed vessel personnel	3	3		308	295	11	2
Longshoremen	40	38	2	6,251	6,060	151	40
Other workers [4]	32	23	9	723	620	96	7

[1] Where union membership data were checked against employer pay rolls, all employees not members of the union are counted as voting against representation.
[2] Includes 1 Great Lakes election in which 225 unlicensed seamen voted for a labor union and 6 cast void ballots.
[3] Includes radio operators.
[4] Includes wharf clerks, marine warehousemen, ship repair workers, and harbor craft personnel.

Table 4 shows the results of elections in which maritime workers were called upon to choose between one given labor union and no representation whatever. A labor union was certified as a representative body in 79 out of 96 polls. No certification was made in 17 elections. Of 16,714 workers participating, 12,034 voted in favor of representation by the labor union concerned, while 4,680 voted against representation or cast void ballots. Table 5 shows the results of elections in which maritime workers were called upon to choose between contending labor organizations and no representation. A labor organization was certified as a representative body in 192 out of 210 elections of this kind.[21] In 18 elections no certification resulted. Of 37,340 workers participating,[22] 34,481 voted in favor of bargaining collectively, while 2,859 voted against representation or cast void ballots.

[21] Including 206 where a labor union faced a labor union, and 4 where a labor union faced an employee representation plan.
[22] Only 720 participated in elections in which a labor union was pitted against an employee representation plan.

TABLE 4.—*Results of maritime elections involving a choice between 1 labor organization and no representation, January 1, 1936 to July 15, 1939*

	Occupational group				
	All occupational groups	Licensed vessel personnel	Unlicensed vessel personnel	Longshoremen	Other wharf, ship repair, and harbor workers
Total number of elections	96	20	13	12	51
Number of certifications issued to:					
American Federation of Labor unions	52	4	3	4	41
Congress of Industrial Organizations unions	24	10	5	4	5
Nonaffiliated unions	3		2		1
Employee representation plans					
No. certification issued	17	6	3	4	4
Total number of workers participating	16,714	632	480	14,401	1,201
Number of workers voting for:					
American Federation of Labor unions	1,444	174	71	398	801
Congress of Industrial Organizations unions	10,363	126	86	9,939	212
Nonaffiliated unions	227		84	114	29
Employee representation plans					
No representation [1] (including void ballots)	4,680	332	239	3,950	159

[1] Where union membership data were checked against employer pay rolls, all employees not members of the union are counted as voting against representation.

TABLE 5.—*Results of maritime elections involving a choice between contending labor organizations and no representation, January 1, 1936 to July 15, 1939*

	Occupational group				
	All occupational groups	Licensed vessel personnel	Unlicensed vessel personnel	Longshoremen	Other wharf, ship repair, and harbor workers
Total number of elections	210	56	84	36	34
Number of certifications issued to:					
American Federation of Labor unions	70	16	13	27	14
Congress of Industrial Organizations unions	118	32	67	8	11
Nonaffiliated unions	1		1		
Employee representation plans	3	2	1		
No certification issued	18	6	2	1	9
Total number of workers participating	37,340	2,426	26,509	5,660	2,745
Number of workers voting for:					
American Federation of Labor unions	8,848	460	3,893	3,551	944
Congress of Industrial Organizations unions	24,672	906	20,338	1,967	1,461
Nonaffiliated unions	371	187	101	83	
Employee representation plans	590	568	22		
No representation [1] (including void ballots)	2,859	305	2,155	59	340

[1] Where union membership data were checked against employer pay rolls, all employees not members of the union are counted as voting against representation.

Table 6 shows the results of all elections by individual unions and employee representation plans in terms of the number of elections in which each union or employee representation plan participated, the number of certifications issued, the total votes cast in each election, and the number of votes received by each organization. Unions affiliated with the Congress of Industrial Organizations participated in 221 elections, receiving certification in 141. Of the 49,882 votes cast in

these 221 elections, these unions received 35,015. Unions affiliated with the American Federation of Labor participated in 258 elections, receiving 123 certifications. The number of votes cast in these 258 elections was 38,374, of which the unions in question received 10,312.[23]

TABLE 6.—*Labor organizations selected as collective bargaining agencies in maritime elections, January 1, 1936 to July 15, 1939*

Labor organization	Number of elections in which each organization participated	Number of certifications received by each organization	Number of votes cast in all elections in which each organization participated	Number of votes received in all elections in which each organization participated
All labor organizations	306	271	54,054	46,515
C. I. O. unions	221	141	49,882	35,015
American Radio Telegraphists' Association [1]	14	8	192	122
National Marine Engineers' Beneficial Association	40	34	1,413	890
Marine Cooks' and Stewards' Association of the Pacific Coast	6	3	178	80
National Maritime Union	82	68	26,283	20,313
Inlandboatmen's Union [2]	8	5	1,042	443
Industrial Union of Marine and Shipbuilding Workers	8	4	1,479	1,011
International Longshoremen's and Warehousemen's Union	62	18	19,050	11,913
Other unions	1	1	245	243
A. F. of L. unions	258	123	38,374	10,312
National Organization Masters, Mates and Pilots	21	16	1,233	438
Commercial Telegraphers' Union	6	4	91	46
International Seamen's Union [3]	82	12	26,283	3,856
Sailors' Union of the Pacific [4]	4	4	171	108
International Longshoremen's Association	107	73	8,716	5,466
International Union of Operating Engineers	20	----------	532	7
Other unions	18	14	1,348	391
Nonaffiliated unions	74	4	5,280	598
United Licensed Officers	44	----------	1,657	187
Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers' Association	5	2	269	98
Other unions	25	2	3,354	313
Employee representation plans	4	3	720	590

[1] Now part of the American Communications Association.
[2] Division of the National Maritime Union.
[3] Now defunct and succeeded by the Seafarers' International Union.
[4] Was independent of the A. F. of L. for part of the period 1936-39, now holds a charter for the Seafarers' International Union.

In considering these figures, attention should be called to the fact that in terms of the occupational groups involved, some were covered more extensively in elections than others; as, for example, the unlicensed seafaring personnel as compared to the licensed personnel. It should likewise be noted that for certain occupational groups, such as longshoremen, elections were more comprehensive in certain regions than in others. On the Pacific coast, for example, practically all longshoremen were polled, while on the Atlantic coast only a very small percentage of longshoremen was involved in elections.

[23] These figures do not correspond to, nor reflect, the situation in the maritime industry as a whole with regard to the distribution of membership as between Congress of Industrial Organizations unions and American Federation of Labor unions.

COMPLAINTS OF UNFAIR LABOR PRACTICES AGAINST MARITIME EMPLOYERS

Section 10 (a) of the act empowers the Board "to prevent any person from engaging in any unfair labor practice . . . affecting commerce." Under section 8 of the act, the specific "unfair labor practices" in which the employer is forbidden to engage are the following:

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.[24]

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *[25]

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, * * *

Between December 7, 1935 and June 30, 1939 the National Labor Relations Board handed down 24 formal decisions dealing with complaints of unfair labor practices brought against maritime employers by their employees.[26] Half of these decisions relate to the licensed or unlicensed personnel of the salt-water merchant marine; the others concern longshoremen, shipping clerks, harbor craft personnel, shipyard and drydock workers.[27]

To a large extent, the specific issues considered in these 24 cases are the same as those raised in charges of unfair labor practices against nonmaritime employers. To a certain degree, however, the issues raised in the complaint cases against maritime employers, particularly against shipowners, are peculiar to the maritime industry; as, for example, the bearing of shipping articles upon the legal status of seamen as employees, the special responsibilities that bind the licensed officers of a ship, the right of a labor union to send an agent aboard the ship in connection with union activities. Both types of issue are considered here because the problems of labor relations common to the maritime and other industries are just as important as the unique aspects of collective bargaining between shipowners and seamen.

Interfering with, coercing, or restraining employees in the exercise of their rights of self-organization and collective bargaining.

The concept of "interference, coercion, or restraint" by the employer is so broad and elastic and covers such a large variety of acts, attitudes, and tactics that the issue may be said to arise in virtually all

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[24] Section 7 reads: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

[25] Except that closed-shop contracts may be lawfully made with a representative labor organization not established, maintained, or assisted by an unfair labor practice.

[26] This should not be taken to mean that during this period of three and one-half years there were only 24 causes in which maritime workers brought complaints against their employers to the attention of the National Labor Relations Board. Many complaint cases are dropped or adjusted before they reach the stage of a formal hearing. Some of the maritime decisions rendered by the Board consolidate several complaint cases for the purposes of the ruling. Finally, as of June 30, 1939, there was a considerable number of complaint cases on which formal decisions were still pending.

[27] The decisions covering shipyard and drydock workers are included here because of the difficulty of distinguishing between ship repair workers and shipbuilding workers in the individual cases. While the former may be classed as maritime employees, the status of the latter is questionable.

of the Board's decisions on complaints of unfair labor practices. It is nevertheless instructive to consider two groups of cases in which the issue of interference, coercion, or restraint was expressly posed. One group consists of cases where this issue occurred in a form peculiar to the maritime industry, while the other group comprised cases where it arose in a form common both to the maritime and to other industries.

In the first category are the Board's rulings in three cases that the right of seamen to demand collective bargaining with the employer implies the shipowner's duty to allow union representatives to come on board merchant vessels in order to confer with members of the crew. In considering these rulings, it must be appreciated that seamen who belong to a labor union are usually obliged by the nature of their work to remain out of contact with union headquarters for weeks or months on end, and that many of their grievances refer to living or working conditions that cannot be fully understood except by inspection of the vessel concerned. To provide for frequent contacts aboard the vessel between union representatives and crew is thus essential to the effective functioning of a labor union representing seafaring workers. In the *Seas Shipping* case the shipowner refused to issue passes to union representatives, although he did not refuse to negotiate with the union on the terms and conditions of a collective agreement.[28] The Board held that the refusal to issue passes constituted a violation of the rights of the employees under the act. In the *Waterman* and *South Atlantic Steamship* cases, passes were withheld from the representatives of one union but granted to those of another.[29] The Board ruled that the employer's refusal to grant passes on equal terms to delegates of both unions was discriminatory and deprived the workers of their rights under the act.

Four of the maritime decisions of the Board present an issue as to whether it was a violation of the act for employers to express a veiled or an avowed threat of disciplinary action against a worker for union membership or activity, or to make it known, by a direct or indirect statement, that he opposed labor unions among his workers. The Board has uniformly held that where maritime employers pursue such tactics they engage in the unfair labor practice of "coercion".[30]

Dominating or interfering with the formation or administration of, or contributing financial or other support to any labor organization.

The status of employee representation plans as agencies for collective bargaining was an issue in six decisions. In all of these decisions, four of which relate to shipbuilding or ship repair workers employed at shipyards or dry docks[31] and the other two cases to workers

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[28] *In the Matter of Seas Shipping Company, Inc.*, and *National Marine Engineers' Beneficial Association;* case C–223 (4 N. L. R. B. 757). In an amended order, dated April 30, 1938, this decision was subsequently vacated and set aside without prejudice to either party.

[29] *In the Matter of Waterman Steamship Corporation,* and *National Maritime Union of America;* case C–375 (7 N. L. R. B. 237). *In the Matter of South Atlantic Steamship Company,* and *National Maritime Union of America;* case C–635, decided May 31, 1939.

[30] E. g., *In the Matter of Virginia Ferry Corporation,* and *National Organization Masters, Mates and Pilots of America;* cases C–346, C–348 (8 N. L. R. B. 730). *In the Matter of Luckenbach Steamship Co., Inc., Luckenbach Gulf Steamship Co., Inc.,* and *Maritime Office Employees', International Longshoremen's and Warehousemen's Union, Local No. 1–25;* case C–505 (8 N. L. R. B. 1280).

[31] *In the Matter of Todd Shipyards Corporation, et al.,* and *Industrial Union of Marine and Shipbuilding Workers of America;* case C–239 (5 N. L. R. B. 20). *In the Matter of Bethlehem Shipbuilding Corporation,* and *Industrial Union of Marine and Shipbuilding*

employed on ferryboats,[32] the Board found that the employee representation plan was dominated or controlled by the employer in violation of an express prohibition in the act against unfair labor practices of this kind. In all six rulings the employer was thereupon ordered to disestablish the plan and to withdraw from it all recognition as an instrumentality of collective bargaining.

Encouraging or discouraging membership in any labor organization by discriminating with regard to hiring, or the tenure or terms of employment, except that closed-shop contracts may be lawfully negotiated with bona fide labor unions.

In ruling on complaints of discriminatory discharge or refusal to rehire, the Board has to ascertain from the facts of the case whether such discharge or refusal was in fact discriminatory, or whether the grounds for discharge advanced by the employer were valid and adequate. Some of the reasons put forward by maritime employers in discrimination cases, such as inefficiency of individual workers or general reduction of personnel, are similar to those usually advanced by employers in other industries. Sometimes, however, maritime employers offer reasons for discharge or refusal to rehire which are peculiar to the maritime industry; such as, allegations of professional misconduct, or contentions relating to the employment status of seamen under shipping articles. In all, complaint of discrimination was an issue in 20 of the maritime decisions rendered by the Board.

Two particularly significant decisions deal with the question of alleged misconduct by vessel personnel as a valid reason for discharge. In the *Southgate-Nelson case*, the Board ruled that licensed engineers did not violate their duties as officers when they refused to take out a vessel which they had reason to believe was inadequtely manned and that refusal to reinstate them was improper.[33] In the *Peninsular and Occidental* case, the Board held that unlicensed seamen could not be deprived of their employment on the grounds that their officers entertained an unsupported fear of another "sit-down" or of "sabotage" following settlement of a previous strike which was terminated on terms precluding the discharge of the participating workers.[34]

The legal status of seamen under shipping articles give unusual significance to the *Peninsular and Occidental*, *Waterman*, and *South Atlantic Steamship* cases, in which the shipowners contended that the seamen legally ceases to be an employee as soon as he signs off the shipping articles at the end of the voyage.[35] In all three rulings, the Board rejected the contention of shipowners on the ground that

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Workers of America; cases C–906, C–907, decided Feb. 10, 1939. *In the Matter of Norfolk Shipbuilding and Dry Dock Corporation,* and *Industrial Union of Marine and Shipbuilding Workers of America;* case C–626, decided May 12, 1939. *In the Matter of Newport News Shipbuilding and Dry Dock Company,* and *Industrial Union of Marine and Shipbuilding Workers of America;* case C–470 (8 N. L. R. B. 866).

[32] *In the Matter of Virginia Ferry Corporation,* and *National Organization Masters, Mates and Pilots of America;* case C–346 (8 N. L. R. B. 730). *In the Matter of Delaware-New Jersey Ferry Company,* and *Marine Engineers' Beneficial Association, Local No. 13;* case C–4 (1 N. L. R. B. 85), supplemental decision to case C–4 (2 N. L. R. B. 385).

[33] *In the Matter of Southgate-Nelson Corporation,* and *National Marine Engineers' Beneficial Association;* case C–182 (3 N. L. R. B. 535).

[34] *In the Matter of Peninsular and Occidental Steamship Company* and *National Maritime Union of America;* case C–342 (5 N. L. R. B. 959). The Board's ruling that the discharged workers should be reinstated with back pay was overruled by the Circuit Court of Appeals on the ground, among others, that the Board failed to give proper weight to the possibly *mutinous* implications of "sit-downs." *Peninsular and Occidental Steamship Company* v. *National Labor Relations Board,* 98 F. (2d) 411 (C. C. A. 5th, 1938), *certiorari denied* 59 S. Ct. 248 (1938).

the employment relationship does not automatically terminate when the articles expire and the seaman is paid off. The Board held that the breaking of the employment relationship requires a positive act, such as the employer's express refusal to propose reshipment or the worker's express refusal to accept it. In the Board's view, the practice of having the whole of the crew sign on and sign off the same set of shipping articles for a given voyage is thus a mere legal technicality, a formal aspect of the employer-employee relationship which must be evaluated in the light of the fact that a crew ordinarily ships and reships on the same vessel for several successive voyages. A shipowner who refuses to rehire a seamen after the signing off of articles is therefore guilty of discrimination, should that refusal be inspired by the desire to penalize the worker for union membership or activity. In short, the Board takes the stand that the safeguards of collective bargaining as guaranteed by the act would be thwarted if the doctrine were accepted that the discontinuity of shipping articles likewise makes for discontinuity in the seamen's tenure of employment.[36]

The many and extensive interunion conflicts of the maritime industry in recent years are reflected in several discrimination cases where the Board had to consider the validity of discharges allegedly made in conformity with exclusive hiring clauses in collective agreements between maritime employers and labor unions. In the *Peninsular and Occidental*, *Waterman*, and *South Atlantic Steamship* cases, all involving unlicensed seamen, the Board ruled that a preferential hiring clause in an agreement between an employer and a union did not require the mass discharge of a crew that had shifted its membership to another union.[37]

However, in the *United Fruit* and the *Tracy* cases, involving longshoremen who had a closed-shop agreement,[38] the Board ruled that the discharge of individual nonmembers of the union was not discriminatory. To sustain such discharges, it was merely necessary to prove, in conformity with section 8 (3) of the National Labor Relations Act, that the union holding the closed-shop contract had been the freely chosen representative of a majority of the employees in the appropriate unit at the time the contract was executed. In addition, it was pointed out that the discharged employees had been aware of the existence of such a contract, and that the union and the employer had made timely efforts to enforce it.

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[35] *In the Matter of Peninsular and Occidental Steamship Company*, and *National Maritime Union of America;* case C–342 (5 N. L. R. B. 959). *In the Matter of Waterman Steamship Corporation*, and *National Maritime Union of America;* case C–375 (7 N. L. R. B. 257). *In the Matter of South Atlantic Steamship Company of Delaware*, and *National Maritime Union of America;* case C–635, decided May 31, 1939.

[36] On February 12, 1940, the United States Supreme Court sustained the Board's decision in the *Waterman* case ordering the reinstatement of the discharged seamen. With regard to the issue of shipping articles, the Supreme Court expressly held that by usage and custom, the completion of the voyage for which seamen have signed on does not completely end their relationship with the employer, but that on the contrary, sound reasons not intervening, they have a right to expect to be signed again for the next trip. *National Labor Relations Board* v. *Waterman Steamship Corporation*, 309 U. S. —.

[37] In sustaining the Board's decision in the *Waterman* case, the United States Supreme Court expressly considered the issue of the preferential hiring clause. With regard to this issue, the Court held that job vacancies do not come into being in the case of discriminatory discharges which the shipowner seeks to justify on the ground of the expiration of shipping articles. *National Labor Relations Board* v. *Waterman Steamship Corporation*, 309 U. S. —.

[38] *In the Matter of United Fruit Company*, and *International Longshoremen's and Warehousemen's Union, District No. 3, Local No. 901;* case C–864, decided April 21, 1939. *In the Matter of M. and J. Tracy, Inc.*, and *Inlandboatmen's Union;* case C–594, decided May 13, 1939.

In maritime, as in other cases, contraction of the labor force is held by the Board to be a valid defense against the complaint of discrimination when the employer can show that he did not use the necessity of reducing personnel as a pretext for discharging individual workers because of their union membership or activity.[39] With regard to maritime, as well as other employers, however, the Board applies the principle that the order in which individual workers are laid off, or the posts selected for abolition, may be such as to manifest a discriminatory intent on the part of the employer. Where this intent is found, the Board orders the reinstatement of the discharged workers, or at least their inclusion on a preferential list for rehiring.[40]

That workers participating in a strike thereby forfeit all claim to their jobs is another defense frequently advanced by maritime employers charged with discriminatory refusal to reinstate workers. In ruling on the issue, and in view of the fact that the act safeguards the right to strike,[41] the Board distinguishes between strikes resulting from an unfair labor practice and strikes arising out of a dispute in which no unfair labor practice can be imputed to the employer. Where the strike was brought on by the employer's unfair labor practice, refusal to reinstate is held to be discriminatory, thereby entitling the workers to immediate rehiring, even if that should necessitate the displacement of workers hired in their stead during or after the strike.[42] Where the strike was not so caused, the employer has no obligation to dismiss newly hired workers in order to reinstate former employees who participated in the walkout. The limit of his obligation is to offer reinstatement to the striking workers if, and when, jobs become available.[43]

Discharging or otherwise discriminating against an employee because he has filed charges or given testimony under the National Labor Relations Act.[44]

Refusing to bargain collectively with the duly authorized representatives of the employees.

In accordance with the provisions of the act, the Board grants affirmative relief to a labor union which complains that the employer refuses to bargain collectively only where that union is demonstrably the freely chosen representative of a majority of the workers in the appropriate unit.[45] Twelve of the decisions rendered by the Board

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[39] E. g., *In the Matter of Export Steamship Corporation*, and *National Marine Engineers' Beneficial Association;* case C–758, decided April 19, 1939.

[40] E. g., *In the Matter of Frederick R. Barrett* and *International Longshoremen's Association, Local No. 978;* case C–173 (3 N. L. R. B. 513) ; amendment to decision (4 N. L. R. B. 179). *In the Matter of Luckenbach Steamship Company, Inc., Luckenbach Gulf Steamship Company, Inc.,* and *Maritime Office Employees', International Longshoremen's and Warehousemen's Union, Local No. 1–25;* case C–505 (8 N. L. R. B. 1280). *In the Matter of Luckenbach Steamship Company, Inc.,* and *Maritime Office Employees' Association, International Longshoremen's and Warehousemen's Union, Local 1–44;* cases C–475, R–591, decided May 27, 1939.

[41] Section 13 provides that "Nothing in this ct shall be construed so as to interfere with or impede or diminish in any way the right to strike."

[42] *In the Matter of Black Diamond Steamship Corporation,* and *Marine Engineers' Beneficial Association, Local No. 33;* case C–174 (3 N. L. R. B. 84). In a ruling by the Circuit Court of Appeals on the Board's decision in the *Black Diamond* case, it was held that inasmuch as the cause of the strike was an unfair labor practice within the meaning of the National Labor Relations Act, the striking workers were entitled, as ordered by the Board, to reinstatement with back pay. *Black Diamond Steamship Company* v. *National Labor Relations Board,* 94 F. (2d) 875 (C. C. A. 2d, 1938), certiorari denied, 304 S. Ct. 579 (1938).

[43] *In the Matter of Export Steamship Corporation,* and *National Marine Engineers' Beneficial Association;* case C–738, decided April 19, 1939.

[44] No cases of this type have arisen.

[45] It is expressly provided in section 9(a) that the exclusive representatives of the employees in an appropriate unit shall be those "designated or selected * * * by a majority of the employees" in such unit.

in maritime cases had as a major issue, or as the only issue, the alleged refusal of an employer to bargain collectively with a labor union claiming a representative status.

Where the representative character of the union is established, the employer is under positive obligation to bargain collectively and to act in good faith. He must be willing to consider seriously the proposals advanced by the union and to offer counterproposals of his own; he must be of a mind to arrive at mutually satisfactory terms to be embodied in an agreement.[46] Once the union and the employer have reached an understanding as to wages, hours, and working rules, the employer must be prepared to embody that understanding in a written agreement.[47] The employer's obligation to bargain collectively does not, however, require him to embody in the collective agreement the particular wages, hours, and working rules that the union insists upon. Failure of agreement due to reasonable and genuine differences over the terms and conditions of employment does not constitute refusal to bargain.[48]

SUMMARY

National Labor Relations Board activities in the maritime industry have shown: (1) Defining the collective bargaining unit, on the basis of what would best effectuate the purposes of the act in each specific case, on the whole appears well adapted to the maritime industry; (2) an overwhelming majority of maritime workers, who participated in elections of the National Labor Relations Board, expressed a desire for collective bargaining, choosing in practically all instances a labor union; (3) the elections have resolved many interunion conflicts over representation; and (4) the Board's rulings on unfair labor practices have helped to focus attention on some of the major problems of collective bargaining in the maritime industry.

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[46] E. g., *In the Matter of Agwilines, Inc.*, and *International Longshoremen's Association, Local No. 1402;* case C–103 (2 N. L. R. B. 1).

[47] E. g., *In the Matter of Bethlehem Shipbuilding Corporation, Ltd.*, and *Industrial Union of Marine and Shipbuilding Workers of America, Locals No. 5 and No. 25;* cases C–906, C–907, decided February 10, 1939.

[48] E. g., *In the Matter of Seas Shipping Company.* and *National Marine Engineers' Beneficial Association;* case C–223 (4 N. L. R. B. 757). In an amended order, dated April 30, 1938, this decision was subsequently vacated and set aside without prejudice to either party.

Chapter IX

THE CONTROL OF HIRING AS A FACTOR IN MARITIME LABOR RELATIONS

The effectiveness of any labor union as an instrument of collective bargaining depends largely upon its ability to make sure that all or most of the workers in the employer's hire are members of the union and are thereby subject to union discipline. In practically all industries where they negotiate collective agreements, labor unions consequently strive to establish the principle of the closed shop, or at least that of preferential union hiring.

The employer who agrees to the closed shop or to preferential union hiring can no longer hire or fire at will. He shares control over calling workers into service and laying them off, with the union. By thus imposing restrictions upon the employer's control of hiring, the union builds up what may be called the property rights of its own members in a specific set of jobs. It is understandable, therefore, that employers are inclined to resist union demands for the closed shop or preferential hiring even more forcefully than they resist demands for higher wages, shorter hours, or improved working conditions.

IMPORTANCE OF THE HIRING ISSUE

Disputes over the closed shop and preferential hiring occur in all industries, especially during the early phases of collective bargaining. Such disputes are particularly likely to arise in industries where employers habitually discriminate against union members in hiring and firing personnel. Disputes of this nature tend, moreover, to be particularly acute in industries where the union can only win its claim to recognition by breaking down a system of blacklisting, organized and maintained by the employers as a body.

The equivalent of the demand for the closed shop or preferential hiring, in the maritime industry, is the demand that shipowners and stevedore contractors shall recruit seamen and longshoremen, respectively, through hiring halls which are wholly or partially controlled by the labor union. As the unions of seamen on the Atlantic and Pacific coasts and of longshoremen on the Pacific coast have developed into effective instruments of collective bargaining, the hiring question has become a major issue.

The conflict over this issue was inevitable for at least two reasons. First, it is perhaps more important to the functioning of maritime than of most other labor unions that the union should be able to limit and share the employer's control over dispensing jobs. This need is related to the employment practices of the maritime industry. Many or most seamen work on several vessels or for several shipowners during the course of the year, and practically all longshoremen are

employed by the hour. In few other industries does job hunting recur so frequently in the worker's employment experience. Second, from the failure of the maritime strikes in the immediate post-war years until the revival of the maritime labor unions in 1933–34, employers of seamen in Atlantic and Pacific coast shipping and of longshoremen on the Pacific coast, apparently used their power over hiring to block the growth and activity of the unions. As the unions developed strength, they consequently reacted with particular force against organized systems of hiring which were under the complete control of vessel operators or water-front employers.

Control of hiring has therefore been a primary issue underlying several of the major strikes of maritime workers during recent years. For example, it was the basic issue in the great west coast walkout of longshoremen and seamen in 1934. In this instance the longshoremen struck against the "shape" system of hiring and the job-dispensing functions exercised by the Longshoremen's Association of San Francisco, allegedly a company union. The seamen struck in order to transfer to union hiring halls the job-dispensing functions exercised by the Marine Service Bureau, which was an employment agency sponsored and supported by the shipowners. Again, in 1936–37 an important contributory factor to the walkout of Pacific coast seamen was the demand by the unions that the operators hire all unlicensed personnel through union halls. Likewise, in 1939 the strike of seamen employed on oil tankers in Atlantic and Gulf shipping revolved chiefly around a demand by the union that all hiring should be done through union hiring halls.

Control over hiring has also been a major issue in the continuing controversy between the seamen's unions and the United States Maritime Commission as an owner of salt-water merchant vessels operated for its account by managing agents. Both on the Atlantic and the Pacific coasts, the unions have contended that the crews and replacements for Government-owned merchant vessels under private operation should be recruited in the same way as the crews and replacements for privately owned ships; that is to say, through union hiring halls.

HIRING METHODS AMONG SEAMEN

Consideration of past and present methods of hiring maritime workers clarifies the concrete issues involved in the efforts of labor unions to limit the control of employers over hiring and to share with employers in that control.

Altogether there are seven different methods by which seamen are hired.

1. Perhaps the simplest method of selecting crews and making replacements is the now almost obsolete practice of "pierhead hiring" or "hiring off the dock." Under this system seamen in search of berths gathered in a group at the wharf upon the arrival or departure of a vessel. A "shipping master" then selected those who were to sign on for any berths that might be open aboard the ship. Because of the power to hire or reject thus vested in the hands of a single individual, this method of "shipping off the dock" lent itself to discrimination, favoritism, and various forms of petty graft.

2. Throughout the greater part of the nineteenth century seamen were customarily supplied to the vessels of the United States merchant marine by private "shipping masters" who were engaged by the operating shipping companies and were paid a stipulated fee for each seaman that was supplied. These private shipping masters almost always owned a sailors' boarding house, restaurant, saloon, or brothel; or were in close financial contact with such establishments. Frequently these establishments were operated as "crimp joints" from which sailors were "shanghaied"[1] while drunk, drugged, or overcome by force. Thus, by means of theft, fraud, or trickery, a sailor might lose the accumulated wages of many months at sea in a single night and so become dependent for another berth upon the proprietor of the establishment. In other cases seamen were led or tricked into running up large debts that could only be paid by consigning their wages to the proprietor when signing shipping articles. Fortunately, these reprehensible practices have now been abolished, largely through the growth of unions and the passage of federal legislation designed to curb the ruthless exploitation of seamen.

3. Another method of hiring, and one which represents an improvement over "hiring off the dock," is employment through an office maintained by a particular shipping company in order to recruit men for its own vessels. Such employment offices are usually located near or on the water front. A seaman seeking employment there is required to file a formal application, along with a statement of qualifications, discharge papers, and other pertinent documents. The employment office method of hiring removes the indignities and discomforts of gathering on the pier in a group and tends to eradicate graft and bribery. It is, nevertheless, possible to blacklist and discriminate against workers who belong to a labor union. Moreover, it is only the large shipping companies which can maintain special employment offices, those operating such offices at present being only certain companies which do not deal with labor unions or do not fully recognize them; for example, some of the companies operating oil tankers as industrial carriers.

4. The Sea Service Bureau, which was maintained by the United States Shipping Board from 1917 to 1933, represented a special form of the individual shipowner's employment office. This Bureau was originally set up to promote recruiting for service in the salt-water merchant marine during the World War. It was later transformed into an employment office with the specific function of supplying crews and replacements to the fleet of Government-owned vessels under the control of the United States Shipping Board. The Bureau also functioned as an employment agency ready to supply seamen to all private shipping companies caring to use these facilities. The activity of the Sea Service Bureau eventually became one of the major elements in the strained relationships between the International Seamen's Union and the United States Shipping Board, the union charging the Bureau with utilizing the employers' blacklist and acting as a union-breaking agency.

5. Another system of hiring is through an employment office (hiring hall) maintained by the employers as a body. This method results when the interests of shipowners in orderly and efficient hir-

[1] In other words, forced into involuntary service aboard some vessel just about to sail.

ing coincide with collective and organized opposition to labor unions. A typical example was the Marine Service Bureau, which operated in connection with Pacific coast shipping from 1919 to 1934. All vessel operators at the major Pacific ports bound themselves to recruit crews and replacements through the instrumentality of the Bureau. No seaman could obtain a job aboard any vessel covered by this scheme unless he was formally registered with the Bureau; unless, in other words, he carried the continuous discharge book issued by the Bureau. A statement of the seaman's experience and qualifications was entered in this book, along with an appraisal of his work, conduct, and attitude, by each previous employer. Registered workers were dispatched from the Bureau's hiring halls on a rotating basis, the shipowner being entirely free, however, to accept or reject individual applicants at will. Throughout its life the Marine Service Bureau was bitterly opposed by the seamen's unions, which charged it with maintaining a methodical blacklist against union members and with serving as a strike-breaking agency.

6. At present the practice of hiring seamen through union hiring halls is widespread throughout the salt-water merchant marine. The practice prevails in Atlantic, Gulf and Pacific coast shipping for passenger vessels and dry-cargo freighters other than those operated as industrial carriers or for the account of the United States Maritime Commission. From the viewpoint of the operator, who must utilize its facilities to obtain a crew or replacements, the hiring hall functions as a device for limiting his choice of personnel to none but workers who belong to the labor union. From the viewpoint of the union workers concerned, the hiring hall functions as a device for equalizing employment opportunities among individual workers.

The union hiring hall for seamen may be regarded as an employment agency operated by organized seamen. A register of unemployed union members in the various occupational categories is maintained. Each such register lists the workers in the order of the date of their registration. As requests for crew and replacements come in from shipowners, the seamen are dispatched from the top of the register. Employers are free to reject individual workers dispatched to them, but only for cause and only on condition that the hiring hall shall be again requested to furnish qualified workers. Seamen who stand at the top of the register are free to turn down the opportunity of being dispatched to a specific job, but if they turn down employment opportunities more than a certain number of times in a stated period, they automatically drop to the bottom of the list.

Once employed on a given vessel or by a given shipowner as a result of being dispatched from the hiring hall, the seaman is free to continue in employment on that vessel or with that shipowner as long as a job remains available. In other words, he may ship or reship for an indefinite number of voyages without ever being obliged to give up his berth in favor of some fellow seaman on the beach who stands at the top of the hiring hall register. If, however, a seaman voluntarily quits the service of the vessel or shipowner he must wait his turn on the register in order to obtain a new job.[2]

[2] In cases where vacations are provided for in the collective agreement, the necessity of registering at the bottom of the list is dispensed with. In certain other cases, such as sickness or other "legitimate leaves of absence," exceptions are also made to the general procedure of registering upon quitting a ship.

In the seamen's view, union hiring halls are an indispensable part of the apparatus of collective bargaining. Where the hiring hall functions, so the seamen assert, there the shipowner is assured of being supplied with all the qualified seamen he may need as soon as the need arises and as often as it recurs. There the new jobs forthcoming from day to day are shared equitably among unemployed seamen by a formula, "first in, first out," that automatically eliminates favoritism or pull. There the seaman in search of a berth can obtain one after waiting his proper turn, without paying graft to a shipping master, demeaning himself at an employment office, or enduring the indignity of hiring off the dock; and there the total demand for seamen at a large port may be cleared daily against the total supply of labor available for service.

In the view of shipowners who are opposed or not entirely reconciled to this method, union hiring halls violate a fundamental right held to be vested in the shipowner as an employer, the unlimited right of selecting his own employees. By the violation of this right, it is contended, the shipowner is deprived of his freedom of choice to such a degree that he can no longer count on being able to obtain efficient and disciplined crews. More specifically, it is asserted that, because the formula used at the hiring hall requires the rotary dispatching of unemployed seamen, the best qualified workers and those best trained for the particular jobs to be filled are never dispatched except by accident.

7. The system of hiring seamen through the register of seamen kept by the United States shipping commissioner at a given port is largely limited, in present practice, to the Government-owned merchant vessels operated by managing agents for the account of the United States Maritime Commission. The legislation of 1872, which requires the Secretary of Commerce to appoint a shipping commissioner for every port of entry that is also a port of ocean navigation, likewise prescribes that the shipping commissioner shall have the specific duty, among others, "to afford facilities for engaging seamen by keeping a register of their names and characters." Until 1938, however, when the Maritime Commission expressly took the view that it was bound by law to obtain crews and replacements from the register kept by United States shipping commissioners, salt-water employers rarely, if ever, made systematic use of these registers in recruiting personnel.[3]

During the post-war years the International Seamen's Union unsuccessfully advocated that the Congress transform the offices of the Shipping Commissioners into employment bureaus. In making this proposal, however, the union was inspired by its opposition to the Sea Service Bureau of the United States Shipping Board, the Marine Service Bureau of the west coast shipowners, and the hiring methods in practice on the Great Lakes among employers belonging to the Lake Carriers Association. In any event, it is clear that the legislation of 1872 in no sense aimed at preventing seamen, as an organized group,

[3] An analysis of the functions of the United States shipping commissioners made by the U. S. Bureau of Efficiency in 1932 for the purpose of determining possible overlapping of Government agencies indicated that "It is not the practice of the shipping commissioners to assist with or to participate in the recruiting of seamen prior to the time the persons selected by the shipmasters for employment appear before them to sign the ship's articles." United States Congress, House of Representatives, Subcommittee of House Committee on Appropriations, *Hearing on Independent Offices Appropriation Bill for 1933,* 72d Cong., 1st sess., p. 642.

from setting up controls over hiring in their own defense. Indeed, the exclusive purpose of this law was to protect seamen against exploitation.

In the spring of 1938, however, the United States Maritime Commission inaugurated a policy of recruiting personnel through the registers kept by the Shipping Commissioners. In support of this policy, the Commission contends that the seamen employed aboard Government-owned merchant vessels operated by managing agents are Government employees, and cannot, therefore, be employed through union hiring halls.

In opposition to this policy, the seamen hold that men employed aboard Government-owned merchant vessels operated by managing agents are not Government employees; and even if they were regarded as such, the Government divests itself of its sovereign attributes when it engages in business ventures like merchant shipping. All the seamen, they contend, are therefore entitled to the benefits of collective bargaining as guaranteed to privately employed workers by the National Labor Relations Act, and that the same hiring methods which prevail on privately owned passenger vessels and dry-cargo freighters as the outcome of collective bargaining should also prevail on Government-owned ships of the same type.

Whatever may be the merits of the controversy, it appears that the hiring policy of the United States Maritime Commission was not forced on the Commission by the unavoidable letter and spirit of the law but was formulated instead by the Commission in the exercise of its administrative discretion. Moreover, the National Labor Relations Board has held that seamen employed aboard vessels operated for the account of the United States Maritime Commission are employees of the managing agents as private employers, and are therefore entitled to all the benefits of the National Labor Relations Act.[4]

HIRING METHODS AMONG LONGSHOREMEN

Longshoremen are hired to load or unload vessels, either by the vessel operator or by a stevedore contractor to whom the work has been let out. The methods of hiring do not differ significantly between vessel operators and stevedore contractors at the same port. In ports where the longshore work has been decasualized[5], however, there is a profound difference in employment methods. Where no decasualization scheme is in effect, longshoremen are usually hired by "shaping," i. e., by gathering in a group at the pier once or several times each day. At ports where a decasualization plan is in force, longshoremen are dispatched to their daily assignments from a hiring hall operated by the union, by the employers, or by both jointly. At all ports the available volume of longshore employment varies considerably from day to day because of the irregularity of shipping movements and because of fluctuations in the amount of cargo forthcoming.

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[4] *In the Matter of Cosmopolitan Shipping Company, Inc.*, and *National Marine Engineers' Beneficial Association;* case R–117 (2 N. L. R. B. 759). *In the Matter of Southgate-Nelson Corporation*, and *National Marine Engineers' Beneficial Association;* cases C–182, C–185 (3 N. L. R. B. 535).

[5] The term "decasualized" is used frequently to describe ports where the uncertainty and irregularity of longshore work are very largely or partially controlled by means of registration schemes and central dispatching of workers to jobs throughout the port.

Whether decasualized or not, all longshoremen are paid by the hour far a job limited to the loading or unloading of a particular ship and are dismissed when the particular job is finished. Literally, therefore, the longshoreman is a worker who must find a new job every day or two, or perhaps even several jobs during the same day.

Very few longshoremen are fortunate enough to find full or even partial employment on each working day. In this sense, it may be said that no longshoremen, not even decasualized longshoremen, enjoy "steady" or "regular" work throughout the week, month, or year. Only a small proportion of the longshoremen in any major port belongs to working gangs which are more or less permanently attached to a particular vessel operator or stevedore contractor; that is, to working gangs always available for service with the same employer, and always called into service by that employer on days when work is available. In the course of the year the individual longshoreman may be employed repeatedly by the same vessel operator or stevedore contractor and in this sense might be regarded as holding the status of a regular employee. During the week or month, however, that same longshoreman may change his employer as often as he changes his job. In this sense he forms part of a labor force which seeks and finds jobs with the whole body of employers indifferently.

The "shape-up" as a hiring method.

The "shape" or the "shape-up" method of hiring longshoremen is described here as it functions in the largest shipping center in the country, the port of New York.[6] The "shape-up" system at New York is fairly typical of the methods of hiring longshoremen which prevail at ports which are not decasualized.

No authoritative count has ever been taken of the number of longshoremen available for service at New York. But it is generally agreed that several times as many men are attached to the labor force as there are full-time jobs available on an average working day.[7] Neither the labor union (International Longshoremen's Association) nor the water-front employers attempt to utilize any system of registration designed to regularize employment on the docks. Although a closed-shop agreement is operative between the water-front employers and the International Longshoremen's Association, the hiring of longshoremen at the port of New York represents hiring in a labor market where jobs are chronically "scarce" while workers are chronically "plentiful." The intense competition for employment which results from hiring by means of this "shape" system is the source of many abuses that are almost always found at unregulated ports.

As the "shape" operates at the port of New York, each pier where vessels are loaded or unloaded constitutes a labor market of its own.

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[6] The discussion of conditions in New York is mainly based on field studies, supplemented by such literature as: Mayor's Committee on Unemployment, New York City, *Report of Dock Employment in New York City and Recommendations for Its Regularization*, 1916; Russell Sage Foundation, Charles B. Barnes, *The Longshoremen*, 1915; United States Department of Labor, Bureau of Labor Statistics, Boris Stern, *Cargo Handling and Longshore Labor Conditions*, 1932; Federal Coordinator of Transportation, *Hours, Wages and Working Conditions in Domestic Water Transportation*, 2 vols., 1936; Dr. E. E. Swanstrom, *The Waterfront Labor Problem*, 1938; Greenwich House, New York City, *Longshoremen and Their Homes*, 1939. In addition to these studies, statements were made by longshoremen before the Senate Committee on Commerce and the Committee on Education and Labor, *Hearings on S. 3078*, pt. 12, and before the N. R. A., 1933 and 1934, *Code Hearings for the Shipping Industry*, vol. 1417, p. 153 et seq.

[7] In his book, *The Waterfront Labor Problem*, Dr. E. E. Swanstrom estimates that there are sometimes five times as many men as there are jobs. At the N. R. A. code hearings in 1934, the industry and labor representatives estimated that there were usually three times as many men as jobs.

All longshoremen in search of jobs at a particular pier are required to line up outside that pier in a semicircular "shape." They wait there in the "shape," rain or snow, heat or cold, until the stevedore or hiring foreman comes along to select the workers he wants by pointing to them or by calling out their names.

One "shape" is held for the morning's work at the pier, another for the afternoon's work, still a third for any overtime work that may be necessary.[8] In other words, the longshoreman selected for a job at the morning "shape" is not thereby entitled to hold that job for the whole day in the event that the loading or unloading continues into the afternoon. If he wants to continue on the job throughout the day, he must take his place once more in the afternoon "shape."[9] As for the longshoreman who fails to obtain a job at the first "shaping," he may drift away to try his luck at other piers or return to the same pier in the hope of being selected at a later "shape-up."

Nevertheless, it would be wrong to suppose that no regular ties of any sort bind longshoremen and water-front employers when hiring is done through the "shape-up." Groups of workers who are repeatedly hired by the same stevedore or hiring foreman tend to "shape" around these stevedores and hiring foremen at all piers. But the ties thus built up between given workers and employers are weak and loose except in the case of a limited number of men who belong to what might be called the "preferred gangs" of certain vessel operators or stevedore contractors.

Because of the difficulty encountered in getting jobs under the "shape" system and the uncertainty of their duration, longshoremen remain at work as long as their endurance lasts in order to maintain their places in the group and hold the favor of the hiring foreman. At the same time numerous other longshoremen are standing in "shape" who may have gone weeks without work. The result is that certain gangs of workers may frequently work as much as 36 hours or more in a single stretch, with time out only for meals. Not only does this lead to a very unequal distribution of work, but after a man has worked so long at such hard physical labor he becomes over-fatigued, loses his alertness, and becomes an easy victim of accident. This situation contributes substantially to the already high accident frequency that is found in longshore operations.[10]

As the barest outline of its operation must suggest, "shaping" is a method of hiring longshoremen which concentrates a great deal of arbitrary power over the livelihood of many workers in the hands of a single individual, the hiring foreman. There would seem to be more than a few foremen, unfortunately, who profit by their power to take or reject, to call or ignore, individual longshoremen, by extorting from them payments for the right to work, so-called "kick-backs," in a flat sum or as a certain percentage of daily earnings.

The functioning of the "shape" system lends itself both to serious abuses on the part of those who have the power to dispense jobs, and

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[8] See United States Congress, Senate Committees on Commerce and on Education and Labor, *Hearings on S. 3078*, pt. 12, 75th Cong., 3d sess., p. 1193.

[9] "One of the most peculiar things about the system is that men who have been employed during the morning must appear again in the afternoon 'shape' even though it may be understood that they are to continue to be employed." Swanstrom, *op. cit.*, p. 27.

[10] In a statement before the Senate committee, a New York longshoreman stated that "Accidents are almost routine." He attributed the high accident frequency in no small degree to unsafe, inadequate, uninspected equipment, overloaded drafts, short-handed gangs, and to the overlong schedules of work. *Ibid.*, pp. 1193, 1194.

to serious exploitation of the workers who seek these jobs.[11] The failure to decasualize at the port of New York leads to consequences similar to those existing at all other ports the world over where no scheme to regularize the employment of longshore workers is operative. Among such results are irregular employment, under-employment, and earnings below the subsistence level for a large proportion of workers. Another important aspect of unregulated port employment is the absence of an effective system through which workers can adjust grievances and participate generally in collective bargaining procedures.

When the ill effects of casual, unregulated longshore employment are considered in terms of under-employment, inadequate earnings, demoralization due to the uncertainty of employment and submission to the whim of hiring foremen, the high accident frequency and the "kick-back," it is small wonder that many recommendations looking toward decasualizing or regularizing longshore employment have been made in the largest and most important port in the country. Not only has this been done in the interests of stable labor relations, but also in order to eliminate serious social and economic evils that arise from the chaotic uncertainty resulting from lack of control.

As early as 1916, the Mayor's (New York) Committee on Unemployment recommended that a decasualization scheme should be inaugurated in New York to meet a situation that "more seriously concerns the public welfare than other casual trades" and "one upon which the prosperity of the whole city depends".[12] The report of the Committee further stated that the situation "cannot be allowed to endanger that prosperity by the continual presence of dissatisfaction and unrest among the workers or that of conditions of which the city as a whole should be ashamed." [13] In further summarizing the recommendations of the Committee, the report stated that:

> The public interest in this matter must not be overlooked. Present conditions of longshore employment in New York mean poverty, intemperance, dependency, insanitation. We cannot measure these effects; they permeate the life of the city. They make it a less efficient and a more costly traffic terminal than it might be, and reduce general prosperity.
>
> It is time this condition were ended.[14]

Later, in 1938, Dr. Swanstrom, in a survey of the port labor problem, arrived at the same conclusion, and stressed the necessity for the establishment of a system of regularization and control of longshore employment in the port of New York. The N. R. A. code for the shipping industry also provided [15] for a comprehensive survey of the longshore industry for the purpose of making recommendations for the establishment of a decasualization scheme, while the Coordinator of Transportation, as a result of a survey of the longshore industry, recommended in his report [16] that the Congress or a Government de-

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[11] For discussion with respect to blacklisting and discrimination see Russell Sage Foundation, *op. cit.*, p. 89; *Hearings on S. 3078*, pt. 12, pp. 1195–97. For information with respect to inefficiency, corruption, and the evils of the hiring system see Mayor's Committee on Unemployment, *op. cit.*, p. 33; U. S. Department of Labor, *op. cit.*, p. 72; and E. E. Swanstrom, *op. cit.*, p. 27. For detail concerning necessity for payment for jobs and methods of payment see N. R. A., *Code Hearings for the Shipping Industry*, vol. 1417, pp. 153–207. For additional reference see also Greenwich House, *op. cit.*

[12] Mayor's Committee on Unemployment, *op. cit.*, p. 4.

[13] *Ibid.*

[14] *Ibid.*, p. 28.

[15] *Draft Code of Shipping Industry*, art. V, sec. 12.

[16] Federal Coordinator of Transportation, *op. cit.*, vol I.

partment should make a study of the longshore industry for the purpose of recommending a plan for the improvement of hiring methods in the longshore industry.

The fact that the need for decasualization has been recognized and that recommendations have been repeatedly made without results indicates that the parties themselves, the operators and the union officials, are either incapable of, or not sufficiently interested in changing existing conditions. There appears to be some doubt whether the city alone, or even the State, could handle the problem of regularization effectively without the cooperation of the Federal Government.[17]

Dispatching longshoremen from hiring halls.

At all Pacific coast ports longshore work has reached a high degree of decasualization through the operation of a scheme dating back to the strike of 1934. The essential apparatus of decasualization at each port is a hiring hall, which was set up by the International Longshoremen's Association [18] and the Waterfront Employers Association of the Pacific Coast jointly, but which is under the effective control of the union with regard to the function of dispatching workers to their daily jobs. The longshoremen's hiring halls on the Pacific coast are regarded as decasualization devices, and are the outgrowth of earlier experiments at Seattle, Portland, and Los Angeles, under which the water-front employers initiated the central registration of longshore workers. These earlier experiments, however, were entirely under employer control, and, like the Longshoremen's Association of San Francisco, an alleged company union with which employers held a closed-shop agreement, they were used as instruments to break the attachment of the longshoremen to their local labor unions.[19]

The longshoremen's hiring hall as it functions in San Francisco is typical of the existing system of decasualization on the west coast. With certain local modifications the same system functions at all Pacific ports.[20] The foundations of the scheme were established by the arbitration award of the National Longshoremen's Board, appointed by the President of the United States in 1934.[21] Under this arrangement the water-front employers and the union jointly maintain and operate hiring halls through which all demands for longshore labor are cleared. The union alone is empowered to appoint the hiring hall dispatchers, upon whom falls the essential duty of assigning individual workers to their daily jobs in accordance with agreed rules. Each hiring hall is administered by a Labor Relations Committee to which the employers and the union name an equal number of members. The Labor Relations Committee is authorized to prepare and maintain registration lists which determine the eligibility of individual workers for regular employment at longshore tasks for each port.

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[17] Officials of the New York State Labor Department and the New York Port Authority have both indicated in an interview that the water-front labor problem was one for the Federal Government to handle and that they were powerless to do anything about it.

[18] Now the International Longshoremen's and Warehousemen's Union.

[19] These earlier decasualization schemes, which were first inaugurated in 1922, continued in operation until the strike of 1934, when they were replaced by the registration and dispatching procedures now in force. Both the early decasualization schemes in Seattle, Portland, and Los Angeles and the Longshoremen's Association of San Francisco succeeded in breaking the regular longshore unions on the Pacific coast in the years from 1922 to 1934.

[20] The discussion is based on a study prepared by the Works Progress Administration, National Research Project, Marvel Keller, *Decasualization of Longshore Work in San Francisco*, 1939.

[21] Somewhat modified, the hiring hall provisions of the 1934 award have since been incorporated into the collective agreement between the International Longshoremen's and Warehousemen's Union and the Waterfront Employers Association of the Pacific Coast.

The primary aims of the decasualization scheme at San Francisco as it operates at present are twofold: First, to assure a large but limited body of workers, the registered longshoremen, of enough employment to provide each worker with an adequate annual income; second, to equalize weekly employment, or at least employment opportunities, and so to equalize weekly earning power, among the whole body of registered longshoremen. In addition to these principal aims, the scheme is designed to meet ordinary day-to-day fluctuations in the demand for longshore work by setting up a labor force of enrolled permit men outside of the regular roster; to achieve equalization of employment opportunities, and thus of earning power, among the permit men as a group; and to rely on maritime workers other than longshoremen to supply the additional workers necessary to meet occasional peak loads in the demand for water-front labor.

Both registered longshoremen and permit men are regarded as part of the regular labor force. Approval by the Labor Relations Committee is required before any longshoremen may be registered on the permanent roster or receive a permit, which is renewable at 30-day intervals. Registered longshoremen are members of the union, while permit men are in the process of becoming union members. First preference in the dispatching of workers goes to the registered longshoremen. The permit men share the jobs which remain after all registered longshoremen available for work have been provided with employment for the day.

The mechanics of dispatching aim at equalizing the weekly hours of work for all registered longshoremen, whether they are attached to regular gangs or whether they serve as extra men. This aim is achieved, so far as regular gangs are concerned, by a decision of the Labor Relations Committee which is made at the end of each week with regard to the maximum hours of work which shall prevail in the week ahead. In sending out regular gangs, the dispatcher must always keep this weekly maximum in view. He must also see that no one gang accumulates a sum of working hours far above or far below the average sum of working hours for all gangs. With regard to registered longshoremen serving as extra men, it is a matter of free, individual choice whether to work as an extra man or as a member of a gang. If a longshoreman decides to work as an extra man, then the plugboard device [22] of dispatching in effect assures him of job preference over permit men and of equality of job opportunity with his registered fellows working as extra men.

Although the operation of the hiring hall system at San Francisco and at other Pacific coast ports has given rise to many disputes between the union and the employers, the system has gone far toward decasualizing longshore labor at the ports concerned. It has also led to a fuller participation of longshoremen in the processes of collective bargaining. Equally important is this fact, stated by Pacific coast arbitrator. Wayne Morse, Dean of the law school of the University of Oregon:

> * * * decasualization of labor in the industry was absolutely essential * * * if the industry was to survive on anything approaching a sound basis.

[22] The plugboard is a large board containing numbered holes. A small metal plug stamped with his registration number or permit number is given to each extra man. When ready for work he places his plug in the lowest available numbered hole in the section of the board corresponding to his occupation preference and registration status. The man is called when all of the plugs preceding his have been removed.

Equalization of earnings of longshoremen to a degree within reason and, as counsel for the union put it, equalization of work opportunities were likewise absolutely necessary if a reasonable degree of labor harmony was ever to prevail in the industry.[23]

Full decasualization of the labor force still remains to be achieved. The records indicate, however, that relatively steady employment and relatively good earnings are assured to registered longshoremen, who make up about four-fifths of the regular labor force, and on a somewhat lower level of security, to the bulk of the permit men as well.

On the whole, experience in this country has demonstrated that longshore employment can be regularized and that the evils attendant upon casual employment can be greatly minimized. Experience has likewise demonstrated that it is possible to achieve a workable decasualization plan through collective bargaining. Indeed, the record would indicate that collective bargaining without a decasualized working force loses much of its significance in longshore labor relations. The dangers to stable labor relations and to the public welfare inherent in unregulated port employment, especially at ports of great national importance, represent a problem that cannot be neglected indefinitely, and one calling for timely preventive measures to be worked out by employers, employees, and the Government, cooperating to the extent of their several interests.

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[23] *Award of Dean Morse,* Coast Arbitrator, September 15, 1939, p. 14. (Mimeo.)

Chapter X

ADJUSTMENT PROVISIONS IN MARITIME AGREEMENTS [1]

The existence of bona fide collective agreements, while representing a long step toward industrial peace, is not of itself a guarantee against labor stoppages. Most collective agreements not only define the basic conditions of employment and the rights and duties of the parties with more or less precision, but they also contain detailed sets of general and working rules. It is, nevertheless, inevitable that in the effort to apply these provisions under the manifold circumstances of day-to-day operations, misunderstandings, and controversies will occur. If these differences are not effectively adjusted, they may culminate in resorts to economic force, thus destroying the orderly relationship which the act of signing an agreement implies. The maintenance of industrial stability, therefore, requires that organized procedures shall be established for the adjustment of disputes occurring during the life of the contracts. Such procedures are particularly important in the maritime industry, in large segments of which collective bargaining is of comparatively recent development.

CLASSES OF AGREEMENTS

In recognition of the foregoing facts, many maritime agreements contain definitions of the procedure to be followed when disputes arise under their terms. The primary purpose of this chapter is to indicate the extent to which the adjustment provisions found in maritime agreements vary among the major unions, and among the agreements of the same union with different groups of employers. Although the data afford no statistical measurement, they give a rough idea as to the prevalence both of adjustment provisions in general and of certain designated types of provision. Owing to limitations inherent in the method of analysis, however, such conclusions are less justifiable with regard to the minor, than to the major variants in adjustment technique.

The material here presented is based on an analysis of 423 of the several thousand separate agreements in force and on file with the Martime Labor Board as of April 1, 1939. Each of these 423 agreements was either unique in its terms, or virtually identical with one or more other agreements to which some particular labor union was a party. As to content, then, although not necessarily as to coverage,

[1] During the past year the Maritime Labor Board has made a detailed study of the termination and renewal provisions, as well as of other features of the agreements in its files. The problem of adjusting disputes that occur under the terms of operative agreements, however, is distinct from that of arriving at mutually satisfactory renewals and modifications, and, from the point of view of day-to-day stability in the industry, is more important. This discussion is consequently confined to consideration of provisions concerning the adjustment of disputes occurring under the terms of maritime agreements.

these 423 "specimen" agreements are representative of the whole body of collective agreements in the maritime industry. Since the specimen agreements include every type of provision in use, they present a complete picture of the variations in adjustment provisions contained in agreements of the maritime industry.

A few of the specimen agreements are customarily negotiated on a broad regional or coast-wide scale, covering a large section of the trade and a great many employees.[2] On a numerical basis, however, most of the specimen agreements are local in scope, each covering a relatively small number of workers. Thus, the mere fact that a particular type of plan appears in a majority of the 423 specimen agreements is not conclusive evidence that it will be found in a majority of all the agreements or that it covers a major portion of the tonnage or working force in the industry. Nevertheless, when it can be shown both that a given type of procedure appears in a majority of the specimen agreements, and that this majority includes one or several of the broad coast-wide agreements referred to above, then the conclusion that the class of provision in question applies to a substantial portion, if not a majority of the industry, is justified. The data contained in this chapter should be interpreted with the foregoing limitations in mind.

The 423 agreements under consideration fall into 3 main classes with respect to the adjustment of disputes and grievances. A few ignore the matter entirely.[3] A second small group requires the parties to attempt to reach a settlement in bipartisan negotiations, but does not make provision for arbitration in the event of deadlock. All the remaining specimen agreements, constituting the great majority of those studied, contain definite, albeit widely divergent, provisions for the arbitration of differences concerning their interpretation and application.

All but one of the principal unions in the maritime field[4] have negotiated one or more agreements providing for some form of arbitration. Not only does the vast majority of the specimen agreements contain arbitration clauses, but practically all the labor unions recognize the importance of this type of provision to the extent of including it in at least some of their agreements. Only 7 of the 20 unions, party to agreements which have arbitration clauses, provide for arbitration in all the agreements to which they are party. The remaining 13 unions have negotiated, in addition, certain agreements in which no adjustment system at all is provided, or in which there

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[2] These include important specimen agreements between the Waterfront Employers Association of the Pacific Coast and the International Longshoremen's and Warehousemen's Union, covering cargo handling on the entire west coast; the Pacific American Shipowners' Association and the six unions of vessel personnel in the area, the National Organization Masters, Mates and Pilots, the National Marine Engineers' Beneficial Association, the Sailors' Union of the Pacific, the Marine Cooks' and Stewards' Association of the Pacific Coast, the Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers' Association; American Communications Association; the Shipowners' Association of the Pacific Coast and the same six unions; and the American Merchant Marine Institute and the National Maritime Union of America.

[3] Although making no provision for the adjustment of disputes, most of these agreements contain clauses prohibiting strikes and lock-outs during the life of the contract. With a few unimportant exceptions all of the specimen agreements include such clauses. It is scarcely necessary to point out that if adjustment machinery is provided and functions smoothly, there will be no need for this prohibition and that if, on the other hand, no adjustment machinery is provided, or if that which is provided fails to function, there is little possibility of restraining a party bent on gaining his ends by coercive tactics. For these reasons an analysis of the prohibitory clause contained in the agreements is not presented here.

[4] Excluding a number of unions whose memberships are principally nonmaritime in charter, and all employee representation plans.

is provision for joint discussion or negotiation only. It is important to note, however, that several of the unions in this latter group are signatory to one or more of the broad coast-wide contracts, mentioned above, which do provide for arbitration. Consequently, in spite of variations in the treatment of the adjustment problem in the agreements of different unions, and as between the several agreements negotiated by the same unions, it seems a fair conclusion that the maritime agreements which provide for arbitration in some form, include all the major unions as well as a substantial portion of the tonnage and personnel in the entire industry.

NEGOTIATION PROVISIONS

The small group of specimen agreements which make no provision for the settlement of disputes and grievances require no further mention, but the other two classes, consisting of agreements which provide for the bipartisan negotiation of differences but not for arbitration, and those which establish arbitrational procedures, merit some discussion. Agreements within both categories contain wide variations.

At the extreme of brevity, among the agreements in the former group, is one which merely forbids the discharge of any employee as a result of a dispute about its terms "before such dispute shall have been decided." There is no explanation of the methods to be used in reaching such a decision, but it seems clear that the agreement would have mentioned arbitration if the signatories had intended to provide such machinery for resolving deadlocked issues. At the other extreme is an agreement which goes into great detail about the character and duties of the standing negotiation machinery which it establishes. But it states specifically, "* * * there is to be no enforced arbitration."

Between these extremes fall the remaining agreements in the "negotiation" category. In minor matters there is endless variety, but in general, agreements of this class set up some bipartisan system whereby either the aggrieved worker or his representatives, or the union officials on behalf of a group of employees, are empowered to meet with management or its representatives to negotiate a settlement of the dispute. There is usually no reference to the possibility of failure in this negotiation, but it is safe to assume that, in the event of a deadlock, the clauses prohibiting strikes and lockouts, which practically all agreements contain, would be invoked. Some of the agreements of the International Longshoremen's Association, however, imply a guarantee that an agreement will be reached, since they state that such matters are to be handled "to a conclusion" by the business agent and the representative of the employer. Some of the agreements in this group recognize the desirability of prompt settlement of such questions and provide time limits of various kinds which are aimed at speeding the conclusion of negotiations.

ARBITRATION PROVISIONS

The maritime agreements providing for the arbitration of grievances and disputes reveal a bewildering variety of approaches to the subject. Some dismiss it in a single sentence, stating that "All disputes shall be settled by arbitration," while others describe the ma-

chinery and its operation in minute detail. The basic arbitration provisions contained in most agreements include a committee or board composed of from one to four representatives of both parties, which is chosen whenever a dispute arises and is not settled by less formal means. If the members of the committee are unable to agree upon a settlement of the issue before them, they choose an impartial chairman, arbitrator, or referee,[5] whose decision shall be final and binding on both parties.

Discussion or negotiation preceding arbitration.

The preceding section has described the "negotiation machinery" of a minority of agreements which specify such methods and nothing more. But another group, which likewise specifies discussion or negotiation, also provides for arbitration in cases which are not settled through bipartisan negotiations. In other words, arbitration is resorted to only when the parties have first attempted to negotiate a settlement by direct dealings with one another. The omission of such a requirement from most of the agreements containing arbitration clauses should probably be interpreted as meaning only that this step is regarded as so natural and obvious that it is unnecessary to mention it specifically.

Some agreements state this requirement in a few words and without describing the negotiation process, while others go into varying degrees of detail. The most advanced forms set up standing bipartisan grievance committees, and in some cases provide that they shall meet at stated intervals.

Arbitration boards and their chairmen.

The agreements providing for arbitration boards are divided on the important question as to whether these boards shall be temporary or permanent. Some agreements stipulate that a board shall be formed only if and when a particular dispute arises and that it shall disband once it has rendered a decision. Other agreements provide for establishment of a permanent board, which makes it possible for controversies to be dealt with when they are submitted, and without delay.

Agreements of the former kind provide that representatives shall be chosen by the two parties when a dispute arises, or when notice of a desire for arbitration is given by one party to the other, or within "24 hours" following such notice. As a rule, nothing is said about dissolving the committee once it has settled the issue causing its establishment, but the language is such as to imply that this is the intention. Most arbitration boards, including that specified in the agreement negotiated with the National Maritime Union by the American Merchant Marine Institute, are of this temporary type. But standing or permanent boards, permanent, that is, for the life of the agreement, are found in the important coast-wide agreement of the Waterfront Employers Association of the Pacific Coast with the International Longshoremen's and Warehousemen's Union and in most, if not all, of the coast-wide agreements covering vessel personnel on the Pacific.

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[5] The distinction between "impartial chairman" and "arbitrator" is discussed below. In the interest of simplicity, however, we use the word "referee" throughout as a neutral term covering both, or either, type of referee.

A good many agreements word their arbitration clauses so vaguely that it is impossible to say definitely, on the basis of the language as it stands, whether they have in view a temporary or a permanent board. But it seems fairly safe to assume, in the absence of definite language, that the former is intended. This is an example of the need to sharpen and clarify the language of many agreements.

On the hypothesis that his services may from time to time be required, it is perhaps of even greater importance to have a permanent or standing referee than it is to have a permanent bipartisan board. The appointment of the board is simple, involving no controversy, while the choice of a referee is at times almost as difficult as deciding the dispute itself. For the most part, delay in the choice of a referee means only that an impasse on the part of a bipartisan committee must stand until a referee is agreed upon. However, a good many arbitration agreements require that the referee shall be on hand from the outset of the attempt to settle a controversy. In such cases, arbitration cannot be started until the referee has been chosen. When ultimate reliance for settling disputes is placed in a referee, there appears to be a marked advantage in having immediately available at all times a man chosen in advance to serve in that capacity. None of the specimen agreements which specify temporary boards provides for a standing referee,[6] however, and even among those which establish permanent boards only a few provide for a standing referee.[7]

Agreements which provide for a temporary referee as well as those requiring selection of a permanent referee differ with regard to the time when the referee enters the case. Some agreements require the referee to attend the meetings of the joint committees [8] from the outset of the effort to settle a given case, while others call upon a referee only if and when the partisan members have found it impossible to reach a settlement. Among the temporary boards the most frequent practice is to call in a referee only in the event of disagreement. However, a considerable number of boards make the choice of a chairman the first order of business and include him in the deliberations from the outset. The permanent boards likewise follow both approaches. Some permanent boards go as far as they can with each dispute on a bipartisan basis and call in a referee only in the event of deadlock, while others are tripartite from their inception and treat the referee as indispensable for the consideration of all cases. The analysis would be needlessly complicated by an attempt to combine these classes with the factor of the permanent or temporary status of the referee, but mere mention of the problem suggests how many different combinations and variations are possible and do actually occur.

Probably a majority of the agreements having provisions on this point describe the referee as an "impartial chairman," whose addition to a bipartisan committee will either preclude the possibility of dead-

[6] This statement leaves out of account the fact that a few agreements with temporary boards designate a State board of "mediation and arbitration" as the agency to settle disputes on which the "temporary board" cannot agree.

[7] One of these is the coast-wide agreement of the International Longshoremen's and Warehousemen's Union, while another is the coast-wide agreement of the Marine Firemen, Oilers, Watertenders and Wipers' with the Pacific American Shipowners' Association.

[8] These committees are sometimes described in the agreements as "arbitration boards." Logically, they probably should not be so described unless or until the referee is present.

lock or break any deadlock which has already occurred. A great many agreements, however, definitely make an arbitrator of the referee, thus: "When selected the arbitrator shall * * * hear the case and render a decision." These differences in terminology may or may not reflect significant differences in the handling of disputes.

On the subject of selecting the referee, the contracts almost universally provide that he may be chosen by mutual agreement of the parties. A few agreements entirely ignore the question, however, while still others find other approaches to the problem.

Most of the agreements which specify that the referee shall be selected by the two parties apparently fail to envisage the possibility of deadlock on this important question. A considerable number, however, designate various agencies and officials who shall appoint or aid in the choice of a referee, in the event that the parties themselves cannot make a mutually satisfactory selection. Among the agencies so designated are: Various Federal administrative agencies or officers, including the Secretary of Labor of the United States, the Director of Conciliation or a District Conciliator of the United States Department of Labor, the National Labor Relations Board, the National Mediation Board, the Maritime Labor Board, the United States Maritime Commission, judges of Federal or State courts, State mediation boards, and the American Arbitration Association.

Another small group of agreements does not authorize the bipartisan committee to choose a referee. Instead the responsibility either for deciding the matter in dispute or for appointing an arbitrator is entrusted to some public official or agency. Among the officials and agencies named are the Secretary of Labor of the United States, State boards of mediation or arbitration, the various Federal judges, and the American Arbitration Association.

Some agreements which specify a permanent referee name the man upon whom the parties have already agreed. Certain coast-wide agreements on the Pacific require that disputes that become deadlocked in the bipartisan port committees of the smaller ports, shall be referred automatically to the San Francisco Port Committee, which thus functions as a referee, or as a board of review and appeal with respect to local disputes occurring elsewhere on the coast. If the San Francisco committee becomes deadlocked, a referee "shall be appointed by a board of four persons not directly connected with either Party, two of whom shall be named by the Union and the other two by the Employers." This is probably the most elaborate arrangement for the choice of a referee found in any of the agreements under consideration.

Force of the awards.

An overwhelming majority of the specimen agreements which provide for arbitration [9] state specifically that the decision of the board or of the referee shall be "final and binding," or words to that effect, while most of the remainder obviously take it for granted that this is the case. A few agreements state that there shall be no strike or lockout *until* the question at issue has been arbitrated. Here the implication is that the parties are free to reject the award and resort to direct action.

[9] Including all the coast-wide agreements.

Requirements concerning written records.

An adequate record of the facts, reasoning, and decision in each arbitration case is obviously helpful in the establishment of arbitration as a governing principle under the agreements. Yet very few of the agreements contain provisions requiring a written record of arbitration cases. How common it is in practice to make written records can be satisfactorily discovered only through field studies.[10]

Costs of arbitration.

Most agreements do not state how the costs of arbitration shall be met. When they do, the usual arrangement is for each party to bear the expenses of its own representative or representatives, and for the two parties to share the expenses of the referee and stenographic services.

Time limitations.

A sizable minority of agreements imposes time limits affecting various steps in the arbitration process, as follows:

1. Complaints must be submitted promptly following the occurrence giving rise to the dispute.
2. The bipartisan board must meet promptly after a dispute has been submitted to it.
3. Failure of the board to settle a dispute within a specified time puts a stop to its deliberations and requires that a referee be chosen to decide the issue.
4. Failure of the board to agree on a referee within a specified time suspends its deliberations on that subject and requires that his selection be entrusted to an outside agency or official designated in the agreement.
5. The board or the arbitrator, as the case may be, is in some agreements required to render its or his decision within a specified time.

Generally speaking, the agreements which set up any of these time limitations include only one or two of the five points.

SUMMARY

It is widely recognized by maritime employers and employees that the adjustment of disputes and grievances occurring under existing agreements is a serious problem. A large number of maritime agreements, covering most of the important sections of the industry, consequently establish some form of machinery for dealing with disputes and grievances. The details of the machinery vary greatly, but discussion by a permanent or a temporary bipartisan committee is usually provided for. Most agreements also provide for review by an impartial third party, who is empowered to render decisions in the event of a deadlock. However, analysis of the agreements does not of itself reveal the extent to which the procedures which they contemplate are actually put to use, or the effectiveness with which they operate in practice. The Maritime Labor Board has consequently supplemented its study of agreements by a field investigation in certain areas of the industry, the results of which are presented in the following chapters.

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[10] All agreements of the Shipowners' Association of the Pacific Coast, covering vessel personnel require a written decision. The other coast-wide agreements are silent on the question. Nevertheless, all of the approximately 100 awards under the coast-wide agreement between the Waterfront Employers Association of the Pacific Coast and the International Longshoremen's and Warehousemen's Union have been rendered in written form. Written awards have been filed with the Maritime Labor Board by the Waterfront Employers Association of the Pacific Coast and by the Pacific American Shipowners' Association. It cannot be assumed, however, that no other awards, written or oral, have been made.

Chapter XI

MACHINERY AND PROCEDURE FOR THE ADJUSTMENT OF DISPUTES AMONG LONGSHOREMEN ON THE PACIFIC COAST[1]

The methods of adjusting longshore disputes on the Pacific coast are set forth in the collective agreement between water-front employers and longshoremen. The present collective bargaining relationship was established in 1934 by the award of the National Longshoremen's Board. This award comprised a series of agreements between the coast-wide organization of longshoremen and the four regional associations of water-front employers.[2] The Board recognized that no award or agreement can cover all questions that may arise between the parties. Accordingly, the award of 1934 incorporated in the contract machinery and procedure for the adjustment of disputes arising under it. This principle has been carried over into all subsequent agreements.

The longshore adjustment system operates through joint committees in the various ports, known as Labor Relations Committees. Section 9 of the 1934 award provided:

> The parties shall immediately establish for each port affected by this award, a Labor Relations Committee to be composed of three representatives designated by the employers' association of that port and three representatives designated by the International Longshoremen's Association. By mutual consent the Labor Relations Committee in each port may change the number of representatives from the International Longshoremen's Association and the employers' association. In the event that such committee fails to agree on any matter, they may refer such matter for decision to any person or persons mutually acceptable to them, or they shall refer such matter, on request of either party, for decision to an arbitrator, who shall be designated by the Secretary of Labor of the United States or by any person authorized by the Secretary to designate such arbitrator. Such arbitrator shall be paid by the International Longshoremen's Association and by the employers' association in each port. Nothing in this section shall be construed to prevent the Labor Relations Committee from agreeing upon other means of deciding matters upon which there has been disagreement.

In summary form the duties of the Labor Relations Committees, as set forth in the 1934 award, were:[3]

1. To maintain and operate the hiring hall.
2. To prepare a registration list of longshoremen in each port.
3. To decide questions regarding rotation of gangs and extra men, including revision of existing lists of extra men and of casuals, and the addition of new men to the industry when needed.

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[1] Since it is the practice for complaints to be handled directly and informally by the union agent and employer representative and there are no formal bipartisan committees which function consistently under the east coast longshore agreements, the adjustment methods are not treated here.

[2] Waterfront Employers of Seattle, Waterfront Employers of Portland, Waterfront Employers Association of San Francisco, and Waterfront Employers Association of Southern California.

[3] Secs. 10 and 11.

4. To investigate and adjudicate all grievances and disputes relating to working conditions.
5. To decide all grievances relating to discharges.
6. To determine the organization of gangs and methods of dispatching.
7. To decide "any other question of mutual concern relating to the industry and not covered by the award."
8. To meet at any time within 24 hours upon written notice from either party stating the purpose of the meeting.

During the period 1934–38 no changes were made in the adjustment provisions of the agreements, although the duties of the Labor Relations Committee were amplified and the problems dealt with were more clearly defined by additions to the working rules. The tendency throughout the period 1934–38 was toward the achievement of coast-wide standardization of working conditions, a basic principle which had been demanded but not fully achieved by the union in 1934. By October 1938 the parties had incorporated in the agreement uniform rates for penalty cargo and a uniform schedule of maximum loads. In addition, they had agreed to undertake negotiations for standard working rules, a safety code, and dispatching practices. The 1938–39 agreement contains general provisions governing job conduct, safety, and dispatching.

In line with the tendency toward coast-wide uniformity, the 1938–39 agreement made significant changes in the adjustment procedure. These changes had developed gradually in practice during the preceding 4 years. The 1934 award provided that in case of a deadlock between the parties on the Labor Relations Committee "they may refer such matter for decision to any person or persons mutually acceptable to them or they shall refer such matter, on request of either party, for decision to an arbitrator, who shall be designated by the Secretary of Labor of the United States * * *." In the majority of instances the Committee was unable to select a mutually agreeable third party and it became customary for the Secretary of Labor to appoint the arbitrators. Instead of attempting to select a separate arbitrator for each case as it arose, the practice was adopted of appointing a standing arbitrator for each of the four major Pacific coast ports.

A related problem was presented when it was found that local disputes frequently involved fundamental interpretations of the agreement and issues of coast-wide importance. To submit questions of this character to local port arbitrators would be to invite conflicting decisions and confused precedents. Consequently at the suggestion of the parties the Secretary of Labor appointed a coast arbitrator. When this arbitrator resigned in 1936, the Secretary of Labor declined to appoint another since the parties could not agree upon the desirability of the office.[4]

From the close of the 1936–37 strike until October 1938 there was no coast arbitrator. During the negotiations for the 1938–39 agreement, however, a decision to reestablish the office was reached, and a provision to that effect was incorporated in the agreement. Section 9 of the 1934 award, which had remained unchanged for 4 years, was reworded, appearing as follows in the agreement of October 1, 1938:

The parties shall immediately establish for each port affected by this Agreement a Labor Relations Committee to be composed of three representatives desig-

[4] See *Award of Wayne L. Morse,* September 21, 1938, pp. 14–16. (Mimeo.)

nated by the employers association of that port and three representatives designated by the International Longshoremen's and Warehousemen's Union.

By mutual consent the Labor Relations Committee in each port may change the number of representatives from the Union and the Association.

The Secretary of Labor or any person authorized by the Secretary, at the request of either party shall forthwith appoint a standing Coast arbitrator and also a standing local arbitrator in each of the four regional districts who shall serve for the period of this agreement.

In the event that any Labor Relations Committee or the parties hereto fail to agree on any question involving a basic interpretation of this agreement or any other question of mutual concern not covered by this contract relating to the industry on a Coast-wide basis, such question, at the request of either party, shall be referred for decision to such Coast arbitrator.

In the event that any Labor Relations Committee or the parties hereto fail to agree upon any question of local application within twenty-four (24) hours after it has been presented, such matter, at the request of either party, thereupon shall be referred for decision to the local arbitrator for the district in which the matter in dispute arises.

The Coast arbitrator shall have the power to determine whether any question in dispute involves a basic interpretation of the agreement and if the dispute in question is one of mutual concern relating to the industry and not covered by the agreement, whether it is of Coastwide or local application.

If any Standing Arbitrator, Coast or port, shall be unable, refuse or fail to act, or resign, then the Secretary of Labor shall promptly appoint his successor or substitute.

The expenses of any arbitrator shall be borne equally by the Association and the Union.

Nothing in this section shall be construed to prevent the Labor Relations Committee from agreeing upon other means of deciding matters upon which there has been disagreement.

ADJUSTMENT EXPERIENCE UNDER THE LONGSHORE AGREEMENTS

The extent and nature of the problems handled by the Pacific coast adjustment machinery can best be indicated by a summary of the number and kinds of dispute occurring under the agreement, and the number and kinds of dispute taken to arbitration.

On the basis of employers' data,[5] a total of 275 longshore disputes occurred on the Pacific coast in the period February 5, 1937, to June 30, 1939.[6] Of this number, 109 occurred in the Puget Sound area, 41 on the Columbia River, 81 in northern California, and 44 in southern California.[7]

Of the total number of disputes, 124 occurred during the 11 months of experience with the agreement in 1937, which was an average of 11.3 per month. In 1938 there were 64 disputes, representing an average of 5.3 per month; and in the first 6 months of 1939 there were

[5] Data regarding the number and kinds of dispute compiled from tabulations prepared by the Waterfront Employers Association of the Pacific Coast, entitled *"Stoppages of Work, Violations of Agreement and other Disturbances by Longshoremen,"* supplemented by reference to minutes of the Labor Relations Committees and records supplied by the union. Committee minutes were used only for reference, since the number of separate disputes occurring in a given period cannot be accurately obtained from them. It is recognized that the employers' tabulations alone are far from satisfactory, since they are based largely on water-front incidents and thus fail to record several important controversies occurring in the Committee and since the disputes and issues are presented from the employers' viewpoint only. Had a similar record been kept by the union, a valuable comparison could have been made.

[6] The period, since the close of the 1936–37 strike, was selected because of the difficulty of obtaining comparable material covering the entire experience since the first establishment of collective bargaining in 1934.

[7] The relatively large number of disputes in the Puget Sound region is a reflection of the large number of ports located there. The northern California figure is high for two reasons: (1) The area includes San Francisco, the most active and diversified single port on the coast; and (2) since San Francisco is the headquarters of both the longshoremen's union and the coast waterfront employers' association, there seems to be a tendency to bring troublesome issues to a "show-down" in that city.

87, or an average of 14.5 per month. The data for each of the four major areas separately indicate a similar trend.

Several reasons have been suggested for the sharp increase in the number of disputes in 1939. Employers charge that district officials of the union toured the coast early in the year, encouraging the men to make greater use of job action in an effort to bolster flagging loyalty toward union leaders and to create a militant spirit in preparation for contract negotiations in September. The longshoremen offered a different interpretation. They maintain that from the outset of the collective bargaining relationship, employers, because traditionally hostile to collective bargaining, have engaged in a campaign to undermine the conditions established by the agreement. They contend that experience has proved that threatened or actual economic force is the only way conditions can be maintained at the level stipulated in the agreement. They further contend that when they endeavored to refrain from the exercise of such force, between the signing of the agreement in February 1937 and the end of 1938, they were unable successfully to resist employer "chiselling," with the result that working conditions by the end of 1938 were, in their estimation, far inferior to those existing in 1937. These circumstances, according to the longshoremen, account for the decrease in disputes during 1937 and 1938 and their increase during the first 6 months of 1939.

The foregoing discussion suggests certain general observations with respect to the functioning of the Labor Relations Committees during the period following February 1937. A small number of disturbances in a given period, or even a total absence of them, does not necessarily reflect a balanced or stable relationship. *De facto* stability may have a sound base, or it may mask underlying conditions that render it extremely tenuous and therefore temporary. It follows that the number of disputes is not, in itself, an adequate criterion of the effectiveness or ineffectiveness of an adjustment system. If either party refrains from presenting grievances, or drops them before a satisfactory settlement is reached, the system is failing to function properly. It is possible, therefore, that the longshore Labor Relations Committees may have been functioning just as badly in 1938, when recorded disputes averaged but 5 per month, as in early 1937 or in 1939, when the monthly average was approximately 15.

Types of issue involved.

As might be expected, the 275 longshore disputes occurring between February 5, 1937, and June 30, 1939, represented a wide variety of issues. An effort has been made to classify these into a few major categories for the purpose of comparative analysis. The classification is arbitrary, as the precise issues in many of the incidents are not easily ascertained. Moreover, available records indicate that in some cases two or more issues were involved and that in others the same issue was differently defined by the two parties. In view of these difficulties, any classification must be general rather than detailed, and suggestive rather than absolute. Nevertheless, information as to the relative frequency of the principal types of dispute is essential to an evaluation of the adjustment system. In spite of its limitations, the classification used here affords some illumination in this respect.

When the 275 disputes for the entire coast are arranged according to the type of issue involved, they fall into the eight major divisions shown in Table 1. The largest grouping consists of the 103 disputes pertaining to hours and working conditions. Twenty-two of these were concerned with the length of the work period, 36 with the size and composition of gangs, 15 with the size of loads, and 30 with the manner of performing the work.

TABLE 1.—*Major issues in 275 longshore disputes, February 5, 1937 to June 30, 1939*

Major issue	Number of disputes	Major issue	Number of disputes
All issues	275	Tardiness or absence from work	12
Hours and working conditions	103	Jurisdiction	40
Length of work period	22	Support of other unions	73
Size and composition of gangs	36	Refusal to pass union picket lines	60
Size of sling loads	15	Refusal to handle "hot cargo"	13
Manner of performing work	30	Support of demonstrations against foreign powers	21
Hiring and dispatching practices	11	Unclassified	5
Refusal to work with nonunion or anti-union men	10		

Source: Employers' tabulations entitled "*Stoppages of Work, Violations of Agreement, and Other Disturbances by Longshoremen.*"

Disagreements concerning length of the work period [8] have been of two general types: (a) Controversies as to whether in specific instances, men were entitled to payment for overtime, stand-by time, shifting time, travel time, or meal hours; (b) alleged refusal of men to work beyond a certain hour when requested to do so, even though overtime would be paid them for the period in question. In disputes over hours of work, the longshoremen thus appear to have been motivated by two related considerations. Firm insistence on being paid at regular or penalty rates for all time spent in connection with the job is common among trade union members generally. It represents an effort to maintain something approaching a standard day, which, in turn, has an indirect influence on the maintenance of standard wage rates. Refusal to work beyond a certain hour, even though paid at overtime rates, reflects the policy of the union to equalize employment opportunity and earnings among its members insofar as possible. Longshoremen express the fear that if they accede to an employer's request to work 12 or 14 hours continuously "in order to finish the ship" or for some other special reason, they will gradually be driven back to the old practice whereby a small group worked steadily at long hours, while the majority experienced great difficulty in finding enough work to earn a decent living.

Disputes concerning size and composition of gangs were more numerous than any other class of grievance arising out of working conditions. The "standard" gang usually consists of 16 men, as follows: 6 dock men, 6 hold men, 2 deck men, 1 jitney driver, 1 gang boss. But in handling a particular type of cargo, the employers may contend that the full gang is not needed. Naturally, employers are re-

[8] Sec. 2 of the 1938–39 agreement contains provisions dealing with this subject.

luctant to pay men for standing about idle or getting in the way of those who are working. Or the employers may wish to alter the standard distribution of the men between the dock, hold, and deck; for example, only four men may be ordered to the hold and eight to the dock. The union generally objects to these practices, charging threatened speed-up and disregard for safety. On the same grounds the union sometimes demands that extra men be added to the standard gang, contending that for the type of cargo in question, eight men are needed in the hold, or that an extra jitney driver or hatch tender is essential. Employers usually resist these demands and deny the premises on which they rest.

There were 15 disputes concerning size of sling loads. The agreement [9] now contains specific maximum load provisions for a long list of commodities. Some disputes arise in connection with commodities not specified in the list, with the union contending that the loads ordered are excessive and unsafe, and the employers answering that, on the contrary, the loads ordered are safe and customary for the cargo in question and that the union is demanding smaller loads as a slowdown tactic. The maximum load schedule in the agreement has not prevented some disputes from occurring in connection with the commodities listed there.

The agreement provides as follows: "It is agreed that the employers will not use the maximum loads herein set forth as a subterfuge to establish unreasonable speed-ups; nor will the I.L.W.U. resort to subterfuges to curtail production." The union interprets the first part of this statement to mean that the specified loads are *maximum* loads, not standard or average, though the agreement describes them as "standard maximum sling loads," and that to order loads right up to the maximum every time constitutes a "subterfuge to establish unreasonable speed-ups." The union also charges that employers often order the men to throw on a few extra cases or sacks in order to finish up a pile or tier, thus violating the maximum stipulated in the agreement.

The agreement provides [10] that: "The employees shall perform work as ordered by the employer in accordance with the provisions of this agreement." There were 30 cases, during the period under consideration, involving controversy as to the manner of performing the work.[11] Questions like the following are typical: Shall cased goods of a given kind be stacked on the dock in tiers five cases or six cases high? How close to the hatch coaming shall a certain kind of cargo be loaded? When cargo must be moved, say 50 feet, from shipside to a resting place on the dock, shall it be carried by hand or by trucks? How many men shall be assigned to each truck? How many cases or sacks of goods shall be loaded on a four-wheel truck? Is it safe to operate two winches and two gangs in one hatch? How fast shall the men be expected to work? Does the pace urged by the foremen result in "unreasonable speed-up" or are the men "loafing on the job"? Employers contend that it is their right

[9] Sec. 11–h.
[10] Sec. 11–b.
[11] This excludes cases otherwise classified in the above tabulation. It is obvious that a majority of the groups shown there could be said to involve alleged refusal to "perform work as ordered," but wherever specific, frequently recurring issues were apparent, they have been separately classified.

and responsibility, in accordance with the provisions of the agreement, to direct the work in the manner that seems to them most efficient, taking health and safety into consideration, and that the men should obey orders as given. Longshoremen maintain that the orders as given are frequently not "in accordance with the provisions of the agreement" and that they have the right to resist methods leading to speed-up or increased job hazard.

Among the 30 disputes concerning manner of performing the work, several were occasioned by the introduction and method of operation of labor-saving devices, particularly the "liftboard." The essence of this problem may be stated as follows. Employers under the agreement [12] have the right to introduce labor-saving devices and to utilize them in any manner they see fit, so long as the health and safety of the employees are not jeopardized. The union maintains that it is not opposed "in principle" to labor-saving techniques, but that the advantage accruing from their use must be shared between the employers and the men. Alleging that this condition has not been met, the union has endeavored to restrict the introduction of labor-saving devices and to exercise some influence on the method by which they are operated. Sometimes it has sought to justify such action on the ground of health and safety, but the primary objective is to insure the men a share in the benefits. Because the wording of the existing agreement apparently precludes efforts in this direction, the union has demanded amendments giving it a voice in controlling the introduction and operation of labor-saving devices.

Section 11–b of the agreement stipulates that: "In case a dispute arises, work shall be continued pending the settlement of same in accordance with the provisions of the Agreement and under the conditions that prevailed prior to the time the dispute arose, * * *." Hence, in nearly all of the 103 disputes involving hours and working conditions, controversy has developed as to precisely what conditions or practices prevailed "prior to the time the dispute arose." Each side accuses the other of seeking innovations not provided for in the agreement and contrary to established or customary port practice. Many practices, of course, have been mutually recognized and set down, in more or less detail, in the agreement or in the working rules. Questions of interpretation may arise even with respect to these. But a great many others have never been defined and codified. Each side maintains that if it fails to register an objection to every practice it considers at all irregular, no matter how small and insignificant the incident may seem, the other will mark it down as a precedent and later contend before the Labor Relations Committee or the arbitrator that the practice in question is customary and justifiable. These are questions with which the present adjustment machinery is inadequately equipped to deal.

There were 11 disputes concerning hiring and dispatching practices.[13] The following are typical: disagreement as to the issuing of work permits to nonmembers of the union during peak periods;

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[12] Sec. 11–d.

[13] Actually this may be an understatement. Because the employers' list was compiled largely from water-front incidents it does not reflect the frequent, one might almost say continuous, controversy over one or another of the many complicated aspects of this problem in the Labor Relations Committees. Since February 5, 1937, nine cases dealing with this subject have been submitted to arbitration.

disagreement concerning the maximum hours of work to be allowed by the Labor Relations Committee in a given week;[14] alleged refusal of dispatcher to replace a dispatched man rejected by the employer;[15] controversy as to the right of employers in San Francisco to maintain "preferred gangs";[16] alleged violation by employers of the union preference clause in hiring nonunion gang bosses, walking bosses, and assistant foremen;[17] alleged refusal of the union dispatchers to dispatch a gang requested by the employer when that gang had worked a long shift on the preceding day.[18]

Little need be said concerning the disputes arising out of refusal to work with nonunion and antiunion men and tardiness or absence from work. Disputes of the first type are less numerous now than before the 1936–37 strike, the preferential hiring clause adopted for the first time in February 1937[19] having removed the cause of much friction. Controversy of this kind frequently has developed over alleged refusal of the men to work in connection with a superintendent, tallyman, walking boss, or crane driver whose past activities during strikes were considered antiunion. On several occasions the men reportedly refused to work when a nonunion teamster, warehouseman, or seaman was employed in connection with the job. Tardiness and absence from work presents no special problem. Individual offenses of this kind are subject to discipline by the union unless reasonable justification can be shown. Several of the cases in this category represent the failure of gangs to report because of union meetings, the annual observance of the "Bloody Thursday"[20] anniversary, and other regular or special union functions.[21] In other instances the union claims that its men were delayed in reporting by the necessity of passing through or circumventing the picket lines of other unions.[22]

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[14] As a work equalization measure, the Labor Relations Committee in each port establishes periodically a maximum weekly hour limit beyond which no men or gangs may work until all have fulfilled the quota.

[15] According to the 1934 award and all subsequent agreements (see secs. 4 and 5 of both award and agreements), men are dispatched from jointly operated hiring halls in the several ports. The employees necessary to operate the hiring hall, with one exception, are chosen by the joint Labor Relations Committee in each port. The exception is the dispatcher, who is selected exclusively by the union. It is also provided (see sec. 11–a of both award and agreements) that "The employers shall be free to select their men within those eligible under the policies jointly determined and the men shall likewise be free to select their jobs."

[16] "Preferred gangs" are gangs that work continuously for the same employer and are not dispatched on a rotary basis. The union believes that the preferred gang system is discriminatory, that it promotes dissension in the organization, and is inimical to the work equalization program. "Preferred gangs," once used throughout the coast, were eliminated by agreement of the parties in all ports except San Francisco, following the award of the National Longshoremen's Board in 1934. At the insistence of the union and as a result of an arbitration award in August 1939, the practice was finally eliminated in San Francisco. (See *Award of Wayne L. Morse,* arbitrator for the port of San Francisco, August 14, 1939.)

[17] Some of these disputes could have been classified as refusal to work with nonunion men.

[18] It is seen that this problem is related to that already discussed under "length of the work period." Disputes of this particular kind have been largely obviated by the final elimination of the "preferred gang" system.

[19] Cf. sec. 6 of 1934 award and sec. 6 of agreement of February 4, 1937.

[20] On Thursday, July 5, 1934, two men lost their lives in San Francisco when police fired upon a group of allegedly rioting maritime strikers. In commemoration of this event and of the deaths of several other maritime workers in other ports at various times during the 1934 strike, the maritime workers of the entire coast have observed each July 5 by "downing tools" during part or all of the day and by holding meetings, parades, and demonstrations.

[21] The union has expressed resentment at the employers' listing of these incidents as "violations" of the agreement, maintaining that the employers have agreed verbally not to call for men on these occasions, unless absolutely necessary; in such cases, the union claims, men have been dispatched as ordered.

[22] These were picket lines which the longshoremen considered illegitimate and voted to ignore. For the most part they were imposed by the A. F. of L. teamsters and sailors.

Forty of the disputes listed in the tabulation are classed as jurisdictional. The majority involved disagreement as to how the work of discharging and loading steam schooners should be shared between the longshoremen and the seamen. For years it has been customary on the Pacific coast for steam schooners, engaged in the coastwise lumber trade, to use sailor gangs for all or part of the loading and unloading operations. The original reason for this practice was that much lumber had to be picked up at isolated points where sufficient longshoremen were not always available. The custom has persisted, although most lumber today is loaded and discharged at ports where longshoremen are plentiful. The craft conflict between the two groups has been intensified since about 1937 by the fact that the sailors' union is affiliated with the American Federation of Labor and the longshoremen with the Congress of Industrial Organizations.[23]

Typical disputes during the past 2 years include the following: refusal of longshoremen to work with sailors in "split gangs" (longshoremen on the dock and sailors in the hold); objection of longshoremen to a sailor winch driver or hatch tender; objection to the use of sailors in securing the lines in the process of mooring the vessel; objection to the use of sailors in laying dunnage. Longshoremen claim that their objections to these practices are not based primarily on a desire to do the work themselves, nor upon their animosity toward the sailors' union, but upon the fact that the longshore work performed by sailors is paid for at lower wages than the longshore rate. As a result of arbitration awards, something approaching an acceptable division of most steam schooner work has now been established.

Not all of the disputes classed as jurisdictional have involved a claim by longshoremen upon work being done by others. When the job in question was viewed as "belonging" to another group, either intrinsically or by agreement, longshoremen have resisted orders to perform it themselves. Occasionally, in connection with steam schooner operations, they have refused to perform "longshore" work, such as discharging a certain hatch, which, according to their understanding, had been assigned to seamen. In other instances they have refused to do work which is intrinsically "seamen's" such as the raising of booms. Since the warehousemen and ship scalers have become organized as International Longshoremen's and Warehousemen's Union affiliates, longshoremen have objected to encroaching on their respective spheres. For example, longshore gangs have refused to move goods about within a warehouse, claiming that this is warehousemen's work, and reportedly have disobeyed orders to clean the holds of vessels on the ground that such work belongs to the ship scalers.

Several of the jurisdictional controversies were occasioned by the introduction of labor-saving devices. Where processing plants are located on or close to the water front, goods may be loaded upon

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[23] The Sailors' Union of the Pacific did not affiliate with the A. F. of L. formally until October 1938, but it has been anti-C. I. O. and pro-A. F. of L. in its leanings since the spring of 1937. The Pacific coast longshoremen began taking steps to break away from the International Longshoremen's Association (A. F. of L.) and to affiliate with the C. I. O. early in 1937; their C. I. O. charter was received in August of that year. Even before these shifts in alliance began, considerable friction, owing partly to clashing ideologies and policies, had developed between the leaders of the sailors' and longshoremen's unions on the west coast.

liftboards at the plant and moved directly to the winches at shipside without the necessary intervention of longshoremen at all. With mill hands or truck drivers acting as hook-on men, the loaded boards can be lowered into the vessel's hold before any longshoremen are needed. Use of the liftboards also makes possible the movement of incoming goods across the docks to nearby factories with little or no longshore dock labor. Obviously, this practice would substantially reduce the number of men necessary in longshore gangs. Thus controversy has arisen as to the proper definition of "longshore work" in connection with the "direct" movement of cargo by means of the liftboard. The use of the liftboard in the "indirect" movement of cargo also has produced controversy as to the precise scope of longshore work. In general, longshoremen have taken the position that the placing of cargo on the docks and its movement upon and across the docks in either direction is, by definition, "longshore work." The agreement [24] contains a definition of "longshore work" but it has not been sufficiently clear to eliminate all cause for dispute. The controversy has been the subject of arbitration awards, but the union still considers the problem unsettled.

It is clear that by no means all the forty disputes classed as jurisdictional involved "imperialistic" interunion clashes. Employers have complained frequently at being involved in interunion disputes beyond their control. But many problems of jurisdiction are not beyond their control. The issue is not always one of conflicting arbitrary "claims" but often an administrative problem of sound job classification.

Of the 275 disputes listed, 73 resulted from efforts on the part of longshoremen to support other unions. Sixty of these occurred as a result of the longshoremen's refusal to pass the picket lines of other unions and 13 as a result of their refusal to handle "hot cargo."[25] Of the 60 picket lines which the longshoremen refused to break during the period covered, 16 were imposed by unions of seafaring personnel, including sailors, firemen, cooks and stewards, and licensed officers. Eleven were imposed by loggers and sawmill workers, 7 by marine clerks and checkers, and 7 by teamsters. Other groups whose picket lines were respected include inland boatmen, warehousemen, pile drivers, ship scalers, car loaders, fishermen, and cannery workers. Some of these picket lines were the result of jurisdictional disputes. For example, in the spring of 1939, Seattle longshoremen respected fishermen's and cannery workers' picket lines (Congress of Industrial Organizations) established to protest alleged attempts on the part of the Sailors' Union of the Pacific and the Seafarers' International

[24] Sec. 1.

[25] It is not always possible to distinguish clearly between "hot cargo" and picket line cases, because when "hot cargo" reaches the water front it is likely to be picketed, if not by the longshoremen, by warehousemen, lumbermen, teamsters, or others. In such cases, when the longshoremen refuse to work, it is difficult to say whether the primary issue is refusal to handle the cargo or refusal to break the picket line. The two types of dispute may be considered as one for the purpose of indicating the frequency of longshore action in support of other unions. In individual cases it is important to determine the underlying reason for the existence of a picket line because, according to arbitration awards, some picket lines are "legitimate" and may be observed by longshoremen without violation of contract, while others are "illegitimate." Refusal of longshoremen to handle "hot cargo," whether because of a picket line or otherwise, has invariably been declared a violation of contract.

Union of North America (American Federation of Labor) to invade their respective jurisdictions.

"Hot cargo" on Pacific coast water fronts has consisted principally of lumber and agricultural products prepared or handled by "scab labor" in hinterland establishments where disputes were in progress. Many of these disputes, particularly those occurring in agricultural packing and processing plants, involved inland locals of the warehousemen's union, affiliated with the International Longshoremen's and Warehousemen's Union. Others involved inland boatmen, lumber and sawmill workers, and teamsters in the three Pacific coast States and, in a few instances, seamen or longshoremen in areas outside the effective jurisdiction of the west coast maritime unions.[26] For the most part the longshoremen have not taken the initiative in holding up "hot cargo" unless it originated in a maritime dispute or involved affiliated organizations. But they usually respect "hot cargo" picket lines when imposed at the water front by other unions directly affected.

Employers have complained bitterly of all classes of picket line and "hot cargo" work stoppages. They contend that stoppages of this sort are unfair and inexcusable in that they do not involve legitimate grievances of longshoremen against their employers, but relate to extraneous issues over which water-front employers have no control.

The longshoremen answer that, by the very nature of unionism, the International Longshoremen's and Warehousemen's Union must lend its support to its affiliates and related organizations; that no self-respecting union man can be expected to "scab" on fellow unionists, nor to aid and abet strikebreaking by passing union picket lines and handling "scab" cargo. The union contends that the issues in these disputes, while technically outside the contract, are by no means beyond the interest or control of water-front employers. To ignore the financial and political interrelationships and community of interest existing among water-front employers, steamship operators, corporate farmers, food processors, lumber concerns, and other big business enterprises is, according to the union, to ignore reality. These groups, the union believes, do all in their power to support one another when any of them becomes involved in labor disputes. The union further charges that water-front employers have conspired among themselves and with these related interests to distribute "hot cargo" piecemeal on the docks, in a deliberate effort to embarrass the longshoremen and goad them into violation of contract. For all these reasons the union is currently seeking clarifications in the basic agreement pertaining to picket line and "hot cargo" cases.

Support by longshoremen of demonstrations against foreign powers accounted for 21 disputes. Most of these occurred in the early months of 1939 when longshoremen refused to pass demonstration picket lines, established at the water front by Chinese groups, church and peace organizations, against the shipment of scrap iron to Japan.

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[26] Since 1934, the principal seagoing unions, as well as the longshoremen, in the three Pacific coast States have been strong enough to prevent the employment of "scab labor" during strikes, with the result that "hot cargo" has seldom originated from maritime disputes in that area. Maritime disputes in British Columbia and Gulf ports, however, have given rise to "hot cargo" shipments which were held up on reaching American Pacific ports.

Several cases of this character have been submitted to arbitration, and the awards invariably have declared that the longshoremen violated their contract in supporting the demonstrations.

The 5 cases listed as "unclassified" are relatively unimportant. There were 2 temporary disturbances because of the alleged loss of a jacket and a pair of gloves, respectively, by individual gang members. On one occasion, the men objected to riding from San Francisco to Richmond, a distance of about 15 miles, in a company bus, which, it was claimed, was so crowded that a number of the men would have to stand during the trip. With respect to the remaining 2 cases, there was not sufficient information to permit accurate classification. All these disputes were of short duration.

Number of work stoppages.

Although the 275 disputes discussed in the foregoing pages were described by the employers as "disturbances," not all of them involved work stoppage. On the basis of employers' data,[27] operations were halted for long or short periods in 209 cases, constituting 76 percent of the total. In 16 percent of the total, no delay was experienced, and in 8 percent the amount of delay, if any, could not be ascertained.

Analysis of the 209 disputes involving stoppages of work shows that the amount of time lost ranged from a few minutes to several days or weeks. In 25 disputes (9.1 percent of the total and approximately 12 percent of those involving stoppage) there was an average delay of but a few minutes, in no instance extending beyond one-half hour. The majority of stoppages involved work delays of more than half an hour but not more than 24 hours. There were 118 cases in this category, representing approximately 43 percent of the total and 56 percent of those in which stoppage occurred. Sixty-six disputes (24 percent of the total and approximately 32 percent of stoppages) involved delays of more than 24 hours.

Fully two-thirds of the controversies resulted in work stoppages of more than one-half hour. These disputes represent the serious aspect of labor relations on the coast water front since the stoppages must be viewed as a deliberate violation of the agreement by one or another of the parties. Under the terms of the agreement, work must continue pending the settlement of disputes and grievances. The frequent violations of this principle emphasize the degree to which present adjustment methods have failed to accomplish their purpose.

Arbitration awards and principal issues involved, October 12, 1934, to September 30, 1939.

Because the number of arbitration cases is naturally much smaller than the total number of disputes, and because the record of such cases is complete, it is possible to summarize the number of arbitration awards for the entire period since the adjudication machinery was established. The following data cover the 5 years from October 12, 1934, to September 30, 1939. During this period 94 awards and

[27] The employers' record of "disturbances" contains, with some exceptions, a brief notation as to the amount of time lost in each dispute. Although the record has been criticized by the union as presenting a "padded" and unfair account, it appears to be the only readily accessible source from which to ascertain both the number and character of separate disputes in which the parties have been involved.

opinions [28] were rendered by arbitrators under the collective agreements. Three were rendered in the last months of 1934, 16 in 1935, 6 in 1936,[29] 7 in 1937,[30] 16 in 1938, and 46 in the first 9 months of 1939. It is seen that nearly half the arbitration cases during the entire 5-year period occurred in the 9 months of 1939.

Of the 94 arbitration cases on the coast as a whole, 23 dealt with issues of coast-wide significance,[31] and 71 with issues pertaining primarily to port or local areas. Of the latter group, 19 occurred in Seattle and the Puget Sound area, 10 in Portland and other Columbia River ports, 30 in San Francisco and northern California, and 12 in Los Angeles and southern California. In each of these regions the number of cases increased sharply in 1939 in comparison with the record of previous years.

One reason for the increase in arbitration cases in 1939 was the marked rise in the number of disputes beginning about the same time. But this was not the only factor. The increase in the number of arbitration cases was much sharper than that shown by the number of disputes, a fact which indicates that a larger proportion of all controversies was submitted to arbitration in 1939 than theretofore.

Table 2 presents a classification of the 94 arbitration awards in accordance with the types of issue involved. As in the classification of disputes, the arrangement is tentative and suggestive rather than absolute. Rigid demarcation of arbitration awards is especially difficult for the reason that many individual awards involved more than one issue. In such cases an effort has been made to determine the original or primary question involved and to classify the awards on that basis. In general, the same categories have been used as in classifying the disputes. Two exceptions should be noted. First, although several disputes occurred over the question of "tardiness or absence from work," there were no arbitration awards dealing with this subject. Second, the awards dealing with the general question of jurisdiction have been divided into two groups, those involving interunion disputes, and those pertaining primarily to the definition and scope of longshore work, especially in relation to the use of labor-saving devices.

During the 5-year period there were 19 awards dealing with hours and working conditions. Five of these pertained principally to the length of the work period, 6 to size and composition of gangs, 5 to the size of sling loads, and 3 to the manner of performing the work. Of the 19 awards in these 4 groups, 10 were rendered in 1939. Disputes concerning hiring and dispatching practices accounted for 15 awards during the period. Two of these pertained primarily to checkers rather than to longshoremen, but in both instances longshoremen were indirectly involved. Alleged refusal to work with nonunion or objectionable individuals occasioned but 3 awards.

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[28] The figure includes two awards pertaining to ship clerks and checkers (because of their close connection with longshore controversies), a few tentative suggestions and recommendations made by arbitrators at the request of the parties without formal hearings, and several preliminary and supplemental awards with or without formal hearings.

[29] Approximately 10 months of contract experience, because of the 1936–37 strike.

[30] Approximately 11 months of contract experience, because of the 1936–37 strike.

[31] This figure includes all awards rendered by a coast arbitrator. Some of these were concerned solely with the question as to whether a given issue was or was not coast-wide in character. There were no coast arbitrators during 1937 and most of 1938.

TABLE 2.—*Major issues in 94 longshore*[1] *arbitration awards, October 12, 1934, to September 30, 1939*

Major issue	Number of awards	Major issue	Number of awards
All issues	94	Jurisdiction	28
Hours and working conditions	19	Involving other unions	12
Length of work period	5	Involving scope of longshore work in relation to labor-saving devices	16
Size and composition of gangs	6		
Size of sling loads	5	Support of other unions	15
Manner of performing work	3	Refusal to pass union picket lines	10
Hiring and dispatching practices	15	Refusal to handle "hot cargo"	5
Refusal to work with nonunion or anti-union men	3	Support of demonstrations against foreign powers	8
Tardiness or absence from work	0	Unclassified	6

[1] Two checkers' awards are included.

Source: Copies of arbitrators' awards.

Jurisdictional disputes precipitated a total of 28 arbitration cases, 12 of them dealing with interunion conflicts, principally between sailors and longshoremen on steam schooners, and 16 with the scope of longshore work in relation to the use of the liftboard and other labor-saving devices. All of the 12 cases in the first subdivision have occurred since March 1937, indicating the effect of the growing tension between the sailor and longshore unions, which became pronounced at about that time. That problems incident to the introduction of labor-saving devices likewise have become more serious in the past 2 years is suggested by the fact that 12 of the 16 awards dealing with that subject were rendered in 1938 and 1939.

Support of other unions by longshoremen accounted for 15 arbitration cases, 10 involving refusal to pass union picket lines and 5, refusal to handle "hot cargo." Of those in the former category, 2 occurred in 1938 and 8 in 1939. Two of the "hot cargo" cases occurred in 1935, 1 in 1936, and 2 in 1939.

Eight awards concerned the refusal of longshoremen to pass demonstration picket lines imposed by peace groups in protest against the shipment of scrap iron to Japan. All of these were rendered in 1939. This group of cases possesses added significance because out of the "scrap iron" controversy grew a dispute as to the right of arbitrators to assess penalties for violation of contract. Four of the eight awards dealt principally or exclusively with this phase of the question, rather than with the original issue of refusal to pass the demonstration picket lines. However, because all of these cases originated in "scrap iron" disputes, they are listed together in that category.

It was impossible to classify six of the awards satisfactorily. This does not mean that they dealt with unimportant questions. The issues represented in these cases were as follows: the application of penalty rates to certain jobs and types of cargo not specifically designated in the agreement or working rules; interpretation of the automatic renewal and termination provisions of the agreement; legitimacy of the employers' action in discharging a certain man; whether the proposed adoption of the Pacific Coast Marine Safety Code for San Pedro harbor was a coast-wide or local issue; the right of employers to be represented on the Labor Relations Committees by persons of their own

choosing; whether a union resolution charging employers with the employment of labor spies within the union ranks was an arbitrable issue.

Interpretations established by arbitration.

The longshore employer-employee relationship on the west coast is governed by a number of factors—the collective agreement, the working, dispatching, and other rules in the several ports, and that frequently debated element known as customary or established port practice. These factors are not rigid but fluid, changing, from time to time, in response to new conditions, the needs of the industry, and the relative bargaining strength of the parties. All are subject to interpretation and modification by the process of arbitration. The 94 arbitration awards rendered during the past 5 years have built up a body of interpretations and principles constituting, in effect, a series of amendments to the collective agreements and to existing port rules and practices. Consequently, some knowledge of the substance of the awards is essential to an understanding of labor relations in this segment of the industry.

An exhaustive analysis of the awards is beyond the limitations of this report; first, because of the difficulty and complexity of the task, and, second, because the propriety of such an attempt on the part of this Board or any other outside body may be questioned. Nevertheless, certain reasonably definite principles have emerged from the arbitration process during the past 5 years. It is believed that a summary statement of these will contribute to an understanding of the types of problem encountered and of the progress made toward solving them. In presenting the list the Board has no thought of assuming the role of arbiter nor of placing the seal of finality upon still controversial issues.

1. It is a coast-wide principle that work must continue pending adjudication of disputes. For either party to exercise force in the form of a strike or lockout prior to arbitration is contrary to the agreement.[32] Neither party can justify an illegal stoppage of work on its part prior to arbitration, because, in its opinion, the other has violated the agreement.[33] Individual workmen or even entire gangs may exercise their right to quit work if conditions on the job are not to their liking, particularly if they consider these conditions inimical to health or safety, but in such cases the union is bound to furnish replacements.[34] However, it is recognized that it is possible to effectuate "joint action" by way of "individual action," and when facts show this to be the design, the plea of "individual action" must be viewed as a subterfuge. It is not necessary for the union officers to direct the men not to work to constitute illegal stoppage.[35]

2. Discussion by representatives of both parties at a meeting of the Labor Relations Committee is not a necessary prerequisite to a dead-

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[32] *Award of M. C. Sloss,* Coast Arbitrator, March 19, 1935 (Mimeo.). This award reiterates on a coast-wide basis a principle enunciated by Judge Sloss on January 4, 1935, in connection with a local dispute concerning size of load. Other decisions, since then, have stressed the necessity of continuing operations while disputes are being adjusted, but the award of March 19, 1935, is the only one devoted exclusively to that subject.

[33] *Award of Wayne L. Morse,* arbitrator for the port of Portland, May 16, 1939 (Mimeo.). *Award of Wayne L. Morse,* arbitrator for the port of San Francisco, February 27, 1939 (Mimeo.).

[34] *Award of M. C. Sloss,* Coast Arbitrator, March 19, 1935 (Mimeo.).

[35] This principle has been enunciated on various occasions. Among these are the *Award of M. C. Sloss,* Coast Arbitrator, September 27, 1935 (Mimeo.), and *Award of Wayne L. Morse,* Arbitrator for the Port of Portland, May 17, 1939 (Mimeo.).

lock requiring arbitration. A deadlock may be reached in several ways. An irreconcilable difference of opinion expressed in argument at a Labor Relations Committee meeting is the most common circumstance; however, immediate refusal of one party to discuss a proposal, or the refusal of one party, knowing an issue is to be discussed, to attend the meeting would be subject to the same interpretation.[36]

3. General issues or hypothetical questions unrelated to a specific dispute or unsupported by specific evidence are not arbitrable. The duties and powers of the arbitrator fall into two categories: (1) To arbitrate, in accordance with contract law, specific disputes involving a basic interpretation of the language of the agreement, and with this power, the duty to consider any question of mutual concern not covered by the contract which relates to the industry on a coast-wide basis and which arises out of a specific dispute; and (2) to arbitrate disputes in which allegations of specific violations of the agreement, not hypothetical violations, are filed.[37]

4. The employers and the union have the right to be represented on the Labor Relations Committee by persons of their own choosing. This award does not, however, encompass a situation where the representatives of either party could be proved to be spies. If such a charge should ever be made the case would have to be arbitrated on its own merits.[38]

5. There are legitimate picket lines and illegitimate picket lines. The right of a union to recognize the sanctity of a legitimate union picket line is a basic tenet of unionism.

Legitimate picket lines, which may be honored without violation of the agreement, include a line maintained by an affiliated local not party to the longshore agreement, in a legitimate labor dispute with an employer party to the agreement.[39] However, refusal to pass a "ghost" picket line, after a legitimate line has been removed by court order, is in violation of the agreement.[40]

Illegitimate picket lines have been found to include demonstration picket lines,[41] picket lines growing out of jurisdictional disputes,[42] picket lines formed by another longshore local also party to the agreement.[43]

6. Under conditions where proceeding to work would entail a hazard to the safety or health of longshoremen, refusal to proceed does not constitute a violation of the contract.[44]

7. Refusal to handle "hot cargo," if there is no other reason for such refusal, is an effort to exert pressure on longshore employers for the purpose of assisting another union to obtain what it seeks

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[36] *Award of Wayne L. Morse,* Arbitrator for the Port of San Francisco, May 29, 1939 (Mimeo.).

[37] *Award of Wayne L. Morse,* Coast Arbitrator, August 17, 1939 (Mimeo.).

[38] *Award of Wayne L. Morse,* Arbitrator for the Port of San Francisco, May 29, 1939 (Mimeo.).

[39] *Award of Wayne L. Morse,* Arbitrator for the Port of San Francisco, March 2, 1939, (Mimeo.).

[40] *Award of Wayne L. Morse,* Coast Arbitrator, May 17, 1939 (Mimeo.).

[41] *Award of Samuel B. Weinstein,* Arbitrator for the Port of Astoria, Oreg., March 4, 1939. *Award of Samuel B. Weinstein,* Arbitrator for the Port of Portland, March 11, 1939. *Award of Irvin Stalmaster,* Arbitrator for Southern California, May 12, 1939. *Award of Van C. Griffin,* Arbitrator for the Port of Seattle, July 1, 1939 (Mimeo.).

[42] *Award of Wayne L. Morse,* Arbitrator for the Port of San Francisco, August 24, 1939 (Mimeo.).

[43] *Award of Wayne L. Morse,* Arbitrator for Northern California, August 21, 1939 (Mimeo.).

[44] This principle has frequently been advanced as a justification for refusal to pass a picket line. In only one award was this justification alone found sufficient. *Award of Van C. Griffin,* Arbitrator for the Port of Bellingham, December 23, 1938 (Mimeo.).

from other employers. Neither party has a right to violate the agreement for reasons foreign to the conditions upon which it has agreed contractually.[45]

8. The scope of longshore work as defined under the agreement has been the subject of a number of awards. Since longshore work is defined under the agreements as encompassing all handling of cargo in its transfer from vessel to first place of rest or vice versa, including sorting and piling on the dock, and direct transfer of cargo from vessel to railroad car or barge and vice versa, these awards have concerned primarily the questions of what is the first place of rest on the dock in unloading cargo and the last place of rest on the dock in loading, and what constitutes direct transfer.

The awards have determined with reference to a place of rest that the length of time during which cargo is at rest is immaterial.[46] It has also been decided that where cargo is unloaded from cars and placed on sling boards which are moved by a carrier to a point on the dock where the sling boards are piled, and subsequently picked up by a similar carrier and moved to the side of the vessel, the point where the sling boards are piled on the dock in the first movement is the last place of rest on the dock, and consequently the point where longshore work begins.[47]

Direct transfer means moving cargo from the vessel to its immediate destination in a single operation.[48] In direct transfers, longshore work begins with outgoing cargoes and ends with incoming cargoes at the dock of the ship in question.[49]

9. In accordance with the awards concerning the scope of longshore work, the movement of cargo from trucks or cars to liftboards in indirect movement [50] is not "longshore work" under the agreement. As stated under point 8, "longshore work" begins, in the case of outgoing cargo, only after the cargo has reached its last place of rest on the dock, and in the case of incoming cargo, ends at the first place of rest on the dock. However, if, in special circumstances, longshoremen are ordered to perform work in connection with the indirect movement of cargo which is not, technically speaking, "longshore work," it has been held that under the agreement of October 1, 1938, longshoremen are required to perform such work for the same rate of pay they received for "longshore work." [51]

10. The employer is free under section 11 (d) of the October 1, 1938 agreement, to introduce labor-saving devices without any restrictions save those of safety and health.[52] The increased use of liftboards has been the foremost issue in disputes concerning labor-saving devices. The union has urged that higher wages should be paid for these operations which reduce the amount of labor required.

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[45] *Award of M. C. Sloss,* Coast Arbitrator, September 27, 1935. *Award of Harry Hazel,* Arbitrator for the Port of Seattle, November 12, 1935. *Award of Wayne L. Morse,* Arbitrator for the Port of San Francisco, September 26, 1939 (Mimeo.).

[46] *Award of M. C. Sloss,* Coast Arbitrator, February 28, 1935 (Mimeo.).

[47] *Ibid.*

[48] *Ibid.*

[49] *Award of Paul A. Dodd,* Arbitrator for the Ports of Los Angeles and San Pedro, May 26, 1936 (Mimeo.).

[50] Indirect movement refers to loading operations in which the cargo comes to a place of rest on the dock before being loaded on the vessel, and to unloading operations in which the cargo comes to a place of rest on the dock before being moved elsewhere.

[51] *Award of Albert A. Rosenshine,* Arbitrator for Southern California, April 15, 1938. *Award of Wayne L. Morse,* Arbitrator for Southern California, September 21, 1938. *Award of Wayne L. Morse,* Coast Arbitrator, September 15, 1939 (Mimeo.).

[52] *Ibid.*

Under the agreement, however, such a demand has been found unwarranted.

The coast-wide decision of this issue took cognizance of the implications of these contractual obligations for the decasualization program, and suggested, by *obiter dictum*, the need for facing the problem of labor-saving devices in the negotiations of future agreements.[53]

11. Under the October 1, 1938 agreement, the employers' right to establish the size of sling loads, with regard to commodities for which maximum loads are not incorporated in the agreement, is limited by considerations of health, safety, and by the requirement that an additional criterion be applied; namely, the establishment of a reasonable loading and discharging rate under the working conditions applicable to the operation, including the number of men used.[54]

12. Nine awards concerning nine different ports treat with the scope of cargo work to be performed by longshoremen and by crew members on steam schooners. Four of these awards provide for a division of work on the basis of hatches. In three ports the sailors are limited to one hatch,[55] and in another to one hatch and one mixed hatch.[56] The other five awards allow mixed gangs of sailors and longshoremen to be employed in any hatch.[57]

The majority of these awards contain special provisions requiring the employment of longshore hatch tenders and winch drivers with longshore gangs, in which longshoremen constitute a majority, and, in one instance, with all mixed gangs.

13. It has been held that the union violates the agreement when it exercises coercion, duress, or threats in instances where, under the agreement, union members may make individual choices with regard to certain matters.

Two decisions exemplify this interpretation. Under the agreement and dispatching rules in San Francisco the men were free to choose to work in preferred or extra gangs. The union, in advising its members by way of resolution that, in the opinion of its officers, the best interests of the union would be served if its members elected to work in extra rather than preferred gangs (a suggestion which culminated in the elimination of preferred gangs), was not in violation of the agreement.[58]

Under the agreement between the Dock Checkers Employers Association of San Francisco and the Ship Clerks Association, International Longshoremen's and Warehousemen's Union, the men are free to accept employment on a monthly or daily basis. In advising ten union members, shortly after they accepted a change from a daily to monthly basis, to resign their monthly jobs, thus precipitating a

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[53] *Ibid.*

[54] *Award of Wayne L. Morse,* Coast Arbitrator, April 3, 1939 (Mimeo.).

[55] *Award of Paul A. Dodd,* Arbitrator for the Port of Los Angeles and San Pedro, March 13, 1937. *Award of Lloyd L. Black,* Arbitrator for the Port of Everett, August 31, 1937. *Award of Benjamin E. Mallary,* Arbitrator for the Port of Eureka, December 26, 1938 (Mimeo.).

[56] *Award of Robert D. Calkins,* Arbitrator for the Port of San Francisco, July 31, 1939 (Mimeo.).

[57] *Award of Perry D. Tull,* Arbitrator for the Port of Portland and the Columbia River District, March 26, 1937. *Award of John F. Garvin,* Arbitrator for the Port of Bellingham, July 11, 1938. *Award of William P. O'Connell,* Arbitrator for the Port of Seattle, April 19, 1937. *Award of William P. O'Connell,* Arbitrator for the Port of Port Gamble, June 5, 1937. *Award of E. D. Hodge,* Arbitrator for the Port of Tacoma, May 22, 1937 (Mimeo.).

[58] *Award of Wayne L. Morse,* Arbitrator for the Port of San Francisco, May 26, 1939. *Award of Wayne L. Morse,* Arbitrator for the Port of San Francisco, August 14, 1939 (Mimeo.).

situation which culminated in a strike, it was held that the union had violated the agreement.[59]

This does not mean that the union cannot advise its members, but the point where advice and persuasion end and interference and coercion begin is a problem, which can only be determined in the light of the surrounding facts in individual cases.

14. The giving by either party of a notice of desire to modify or terminate the agreement prevents automatic renewal of the agreement unless, following the giving of such notice and prior to the expiration date, the parties agree to continue under it, to modify it, or to extend the period for negotiations.[60]

EVALUATION OF PRESENT ADJUSTMENT METHODS

Clearly, the results of adjusting disputes between longshoremen and their employers on the Pacific coast, through the existing procedures, are far from satisfactory. It should not be inferred however, that the extensive use of adjustment techniques has caused the turbulent experience on the west coast. Indeed the existing system has probably done much to mitigate this turbulence. For that reason, it is essential to analyze existing methods with a view to exposing weaknesses and suggesting possible improvements.

Attitudes of the parties.[61]

An opinion commonly expressed on the Pacific coast, by representatives of both parties, is to the effect that: "The present machinery is all right. The trouble we have had is entirely due to the improper attitude of the other party." Objective investigation indicates that although the present machinery may not be "all right," the fact that it functions poorly is in a large measure the result of mutual suspicion and consequent stubbornness.

The present collective bargaining relationship was established after a long period of labor repression, culminating in the violent struggle of 1934 which generated bitter animosity on both sides. Hatreds so long in the brewing could not be expected to evaporate in the short space of 5 years.

The employees frankly confess an attitude of deep distrust toward their employers. The conviction is widespread among longshoremen that the employers never have accepted the principle of collective bargaining established in 1934 in good faith. The men believe that employer acquiescence in the present arrangement has been forced only by the union's bargaining strength and the sanctions of the National Labor Relations Act, and that the operators are doing all in their power to weaken and destroy both the union and the Wagner Act, with the object of abolishing collective bargaining and returning to pre-1934 conditions. The union contends, in short, that relations are strained not because of the natural desire of both sides

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[59] *Award of Wayne L. Morse,* Special Arbitrator, August 10, 1939 (Mimeo.). In the same award the arbitrator held that the employers, in closing the port, had also violated the agreement.

[60] *Award of M. C. Sloss,* Coast Arbitrator, September 30, 1936 (Mimeo.).

[61] The following remarks on this subject are based largely on numerous interviews with west coast union and employer representatives. The union's attitude is further indicated in its convention *Proceedings* for 1938 and 1939, in the mimeographed *Bulletins* issued weekly by the locals in the larger ports, and in the *Voice of the Federation.* The substance of the employers' charges can be found in Eliel, *Waterfront and General Strikes, San Francisco, 1934* (passim), and in a mimeographed letter, Waterfront Employers Association of the Pacific Coast, to Hon. J. W. Bailey, January 12, 1939.

to drive a hard bargain, but because the operators seek to destroy collective bargaining entirely.

Employers reciprocate the union's charges of bad faith. They charge that the longshoremen's union is dominated by a radical minority that maintains its dominance by unscrupulous machine politics, constant agitation, and actual and threatened violence. This minority, according to employer spokesmen, has no intention of allowing amicable relations to be established on the water front. On the contrary, employers charge, it officially advocates "job action" as a means of redressing grievances and gaining concessions, in open violation of the terms of the agreement. Moreover, this minority, according to employers, is inordinately interested in broad economic and political controversies outside the employment relation *per se* and is willing to keep the industry in turmoil over issues entirely beyond the control of the water-front employers. In view of the above, the employers contend that there is no hope for stable relations along the water front until some means can be found of compelling union observance of agreements, or until the minority militants are removed from power. Meanwhile, operators feel justified in utilizing their own economic power as the only means available to enforce the agreement upon the union.

Whether or not these attitudes are justified is not the point here at issue. The important fact is that they exist. Such attitudes are a hindrance to the smooth functioning of the adjustment system. Union and employer representatives glare at each other across the conference table. Each party suspects the other of the utmost malevolence, and neither is disposed to compromise. Each fears that to yield, even in the smallest matter, will be interpreted by the opposition as a sign of weakness and an invitation to press more drastic demands. Any orderly adjustment procedure implies willingness to compromise, willingness to accept defeat in some issues with the expectation of victory in others. To the extent that mutual distrust and imputations of bad faith pervade a relationship, such procedure is impossible, and the parties resort to tests of economic strength.

In addition to the attitude of the parties, which stands as a definite hindrance to the effective operation of the adjustment system, certain structural and functional weaknesses may exist in the machinery itself.

Composition of the Labor Relations Committee.

The agreement provides that the Labor Relations Committee in each port shall be composed of three representatives of each party.[62] Several practices, not reflected in the agreement but which affect the functioning of the system, have grown up in connection with the actual composition of the committees. These are: turnover among committee personnel; overshadowing of the committee in important disputes by officials who are not committee members; employer representation on the committees by former union members.

The turnover in committee membership, particularly among union representatives, is relatively high. Although longshore committee members are elected for definite terms by the local membership, they

[62] The parties may by mutual agreement alter the number of representatives.

are paid only for each day the committee meets. On other days these men work on the water front. It is reported that many longshoremen prefer the water front to the committee room and hesitate to accept the added work and responsibility of committee membership. The turnover is said to be lower today than previously and it appears that this tendency should be encouraged. Men of long experience with adjustment who are thoroughly familiar with established procedures, precedents, and the problems encountered, should function more effectively in the committee than those whose presence is temporary.[63]

The work of the Labor Relations Committee consists primarily of routine administration of the joint hiring halls and the adjustment of complaints. Consequently, major officials of the two parties seldom become committee members; their time is too valuable. However, when major disputes arise, these officials, often accompanied by counsel, appear at the committee meetings,[64] and the discussion is dominated by the opposing officials. If, as frequently happens, a deadlock is reached, the committee may continue to meet only for the purpose of administering the hiring hall, with all negotiations being carried on by the officials outside the committee.

This is a natural and perhaps unavoidable development. However, it reduces the effectiveness of the Labor Relations Committee. So far as the early stages of the more serious disputes are concerned, the practice is tantamount to the supposedly discarded method whereby opposing leaders attempted to settle disputes directly, without any formal adjustment machinery. Arbitration may be resorted to at a later period, but frequently this step is taken only after one or both parties have resorted to economic measures. It is not suggested that nonmembers of the committee should be barred from meetings nor that their presence necessarily retards settlement. However, the existing practice definitely restricts the prescribed role of the committees in the adjustment process. This tendency might be checked, if that seems desirable, by staffing the committee with more authoritative personnel and instituting more formal procedure.

A third problem in connection with committee composition has caused more friction than either of the others. On some committees, the employers are represented by one or more individuals who were formerly union members or officials, some of whom had been expelled for activities considered inimical to union interests. The union claims that there are, at all times, employer-paid spies in its ranks. When these disrupters are ejected, the employers, it is charged, hire them and place them where they can do the most harm, on the Labor Relations Committee.

Employers deny the union's charges of dishonest intentions, but frankly admit that men with recent longshore experience make valuable representatives. One employer explained this as follows: "We must have at least one man on the committee who knows operations in detail. An employer who has never himself worked on the

[63] The union charges that some of its representatives in the past, who were thought to be merely incompetent, were actually "company men," deliberately encouraged by the employers to seek places on the committee in order to sabotage the union's presentation of cases. Employers deny these charges. They claim that the union refuses to allow any "reasonable" man to represent it for very long on the committee, but insists on selecting those who are most stubborn and belligerent.

[64] This is true whether the dispute occurs in San Francisco, coast headquarters of both groups, or in the outports; officials of the district union and of the coast water-front employers' association promptly proceed to the scene of any dispute regarded as serious. Local officials may also attend.

front is helpless. He is maneuvered into granting all sorts of concessions because many unjustifiable union claims often look plausible to one not thoroughly familiar with actual operating techniques. In short, we take a licking in the Labor Relations Committee unless we have somebody who knows all the angles." Employers further contend that to work up from the ranks is a natural tendency and in no way reprehensible. Finally, it is pointed out that employers have a right to choose anyone they wish to represent them without interference from the union.

Whatever the merits of this controversy, there can be no doubt that the work of the Labor Relations Committee has suffered because of it. A recent arbitration award upheld the legal right of the employers, as well as of the union, to be represented in the committees by persons of their own choosing, but the arbitrator emphasized the point that "* * * the functioning of a Labor Relations Committee * * * is bound to break down whenever the representatives of the two parties on the committee reach such a state of antagonism and personal animosity that they approach disputes within the committee on a personal rather than an impersonal ground." The arbitrator "* * * noted with regret a tendency in recent months to submit more and more issues to arbitration for determination, rather than to settle them amicably through the Labor Relations Committee of the Port itself, as clearly desired by the parties when the provisions for the creation of a Labor Relations Committee were written into the agreement." [65]

Delay in committee functioning.

Failure of the Labor Relations Committee to function promptly and decisively retards the settlement of disputes. The agreement provides that "The Committee shall meet at any time within twenty-four (24) hours, upon a written notice from either party stating the purpose of the meeting." [66]

In the absence of such notice, meetings are held regularly once a week for the purpose of administering the hiring halls. Delay in handling disputes comes about in two ways: For many minor disputes special meetings are not called, and for problems which require instantaneous action, a special meeting called "at any time within twenty-four hours" may not suffice.

Many of the disputes and grievances reported to the Labor Relations Committee are not considered important or specific enough to require the calling of a special meeting. Longshoremen may complain that a foreman's language or attitude is offensive, that certain equipment or operations are unsafe, or that there has been a tendency on a certain dock to increase the size of sling loads. An employer may complain that certain men are late in reporting, that they take too much time out during operations, or that difficulty is encountered in forcing the men to perform the work in the manner ordered. Fundamental issues are represented by some of these apparently minor complaints, but any one incident is likely to be considered relatively insignificant.

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[65] See *Award of Wayne L. Morse,* Arbitrator for the Port of San Francisco, May 29, 1939 (Mimeo.).
[66] Sec. 10.

Longshoremen's complaints are usually reported by the gang steward personally, or by telephone to an officer of the union who, unless official action is believed necessary, relays the information to the union representatives on the Labor Relations Committee. Foremen and boss stevedores report to their immediate employers. These forward the complaint to an officer of the employers' association or to an employers' representative on the committee. A majority of all reports reaching the committee come indirectly, rather than directly, from the job and after a lapse of time, ranging from several hours to several days or weeks during which annoyances have been "piling up." In many cases neither party considers it necessary to call a special committee meeting to consider the reports as received.

At the next regular meeting of the committee each side presents the complaints received during the week. The procedure is something as follows: An employers' representative states that the superintendent on pier A reports loafing on the job and insubordination. He calls attention to the provisions of the agreement stating that the men must "perform work as ordered," and that they must not "resort to subterfuges in order to curtail production." A union spokesman asks for the names of the men involved and promises to investigate, indicating that if the men are guilty they will be reprimanded or disciplined, and that the findings will be reported at the next meeting. He goes on to say, however, that reports from pier B indicate a persistent tendency toward excessive loads and "speed-up." He points out that according to the agreement, if there is a question of "tonnage versus safety" the rule must be "safety first"; also that "it is agreed that employers will not use the maximum loads herein set forth as a subterfuge for the purpose of establishing unreasonable speed-ups." The chairman of the meeting (an employers' representative) promises to caution the member company against any violation of the safety or "speed-up" clauses of the agreement.

At the following meeting, the union reports that certain members of one gang did admit that they may have "acted up" a little on pier A, but that they were provoked into doing so by the boss who insisted on "driving them too hard." Furthermore, it appeared from the union's investigation, that this particular boss is given to abusive language. The men have promised not to cause any more trouble provided this boss modifies his ways. The union representatives say that the men involved have always been good workers and that they have never been the subject of complaint before. During the past week they have been working on pier C, and are having no trouble at all. The union feels that if the chairman of the committee will speak to the boss on pier A about his attitude toward the men, no further trouble will be experienced. The chairman promises to do so, but reminds the union representatives that there have been many complaints of loafing on the job and refusal to perform work as ordered, and gives it as his opinion that most of this activity is deliberate and unprovoked. The chairman then reports that he has investigated conditions on pier B and has found no evidence of "speed-up" or excessive loads. The boss there did recall that about 10 days ago there was a brief argument about size of load, but stated that the work was now progressing smoothly. The superintendent on pier B has promised, however, to use special vigilance in the future with respect to this matter. After lengthy discussion, marked by exchange of opinion rather than by

presentation of facts, it is decided that one member from each side of the committee will visit piers A and B together and "inspect conditions."

At the third meeting it is reported that conditions on both piers A and B are now satisfactory. All parties concerned have promised to exercise care in preventing any future difficulty. Meanwhile, other sections of the water front have given rise to more or less similar complaints which, for the most part, have been similarly handled. In due time, however, they begin to come in once more from piers A and B. Recurrence of disputes that supposedly have been adjusted is a marked characteristic of water-front relations. The lapse of time, between the beginning of a controversy and the committee's first consideration of it, makes accurate fact finding difficult and produces indecisive settlements.

Sooner or later, somewhere along the front, a gang is fired or strikes, and operations are halted, or such action is threatened. In either event, a special committee meeting is promptly called. As previously mentioned, officials and attorneys of both parties are likely to be in attendance; the atmosphere is tense and calm discussion impossible. Moreover, it becomes apparent that the actual, or threatened, stoppage is the result of accumulated grievances. Settlement is impeded by the necessity of considering numerous incidents and because accurate details regarding many of the alleged occurences are almost impossible to obtain. Eventually a settlement is reached, but meanwhile the industry has been disturbed and relations between the parties strained.

Inadequate committee fact finding and record keeping.

It is believed that the ability of the Labor Relations Committees to avoid deadlock and effect prompt and satisfactory settlements is impaired by their failure to ascertain and record all the pertinent facts. The inadequacy of present practices in this respect is indicated by the frequency with which similar types of dispute recur and by the apparent inability of the committees to derive mutually acceptable precedents from their past experience.

The regular weekly meetings of the committees are generally informal; only simple parliamentary rules are invoked and all members are permitted free discussion. Customarily, the functions of committee chairman and secretary are performed by two of the employers' representatives. The minutes are not word-for-word records, but synopses. They are read for correction and approval at the next meeting, whereupon they are signed by one representative of each party. Occasionally, the union representatives dispute the secretary's minutes and refuse to sign. If acceptable corrections cannot be agreed upon, the union may write its own interpretation of the meeting. The original signed minutes are in all instances retained by the employers' association while carbon copies are sent to the union for its files.

The most serious weakness in existing methods of recording disputes is the fact that no record is made at the time and place a dispute occurs. The committees have confined their activities primarily to the committee room and hiring hall. Joint subcommittees visit the docks to investigate complaints only occasionally and belatedly. On these tours no formal arrangements are made for the precise recording of facts observed or of statements made. Objection to the exact

recording of committee proceedings has been made on the ground that it might limit free discussion; that in the course of debate the parties often find it expedient to advance arguments or throw out hints which, if made part of the record, might be open to misinterpretation.

RESULTS OF ARBITRATION

The weakness of the present functioning of the Labor Relations Committees has produced two unfortunate results. First, many specific grievances are not reported because the men on the job believe from experience that the likelihood of effective settlement is remote. Second, as pointed out by Dean Morse, in his decision of May 29, 1939, an unduly large proportion of the cases reported has been submitted to arbitration for settlement.

The numerous specific objections to arbitration which have been advanced resolve themselves into three; namely, that it is slow, that it is expensive, and that its results are frequently unsatisfactory. The first and last of these criticisms merit little consideration at this point. The delay is largely inevitable since the process is judicial, and by its nature deliberate. If dispatch is desired, this can best be achieved by strengthening the work of the Labor Relations Committee, thus avoiding the necessity for frequent resort to arbitration. Dissatisfaction with arbitrators' awards is probably inherent in the system also. Compromise awards are often satisfactory to neither party, while those that uphold the contentions of one party are almost certain to be received with little enthusiasm by the losers. But both parties have voluntarily agreed to submit all questions to arbitration that can be settled in no other way.[67] Having so agreed, the necessity for accepting compromise or defeat on some of them must be recognized.

A more pertinent objection is that arbitration, as it operates at present, places a heavy and unnecessary expense upon the parties. Expenses are shared equally, but are relatively more burdensome to the union. This situation has led to mutual recriminations, especially with the increase in arbitration cases during 1939. When the employers demand arbitration the union complains, charging that the employers, aware of the burden they are imposing, are trying to break the union financially.

Employers contend that the union does not want to submit to arbitration for two reasons: First, because in their view, the union knows it is usually wrong and will be defeated before any fair-minded arbitrator; second, because job action is an official policy which the union refuses to abandon in favor of orderly procedure.

While it is important to recognize that arbitration cannot be used as a substitute for responsible management, either on the part of the employers or the union, nevertheless it is equally important that both parties feel free to resort to arbitration when other efforts fail.

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[67] It is understood that this discussion pertains not to arbitration of all disputes but only to those arising under the agreement. Each party is inclined to view certain questions as basic and nonarbitrable. Others may be considered arbitrable only by special agreement at the time new contracts are being negotiated. If difference of opinion arises as to whether a given issue is arbitrable under the terms of the existing agreement, the question may be submitted to one of the standing arbitrators for an opinion.

Chapter XII

MACHINERY AND PROCEDURE FOR THE ADJUSTMENT OF DISPUTES AMONG SEAMEN

PACIFIC COAST

Seamen on the Pacific coast are organized in six separate craft unions. Those covering the three unlicensed groups are regional organizations, limited primarily to Pacific coast ports, while the unions of radio operators and of licensed officers are national in scope. There are two organizations of shipowners whose vessels operate out of Pacific coast ports, one limited to those engaged in the coastwise trade and the other consisting of the offshore, intercoastal, and Alaska lines. Each union, whether regional or national, negotiates coast-wide collective agreements with each of the two employers' associations in the area. Thus, relations between west coast seamen and their employers are governed by 12 different collective agreements.[1] Following is a list of the organizations involved, together with a statement of the scope of their membership:

UNIONS

Licensed personnel:

- Deck department—National Organization Masters, Mates and Pilots of America (Pacific coast units) (A. F. of L.).
- Engine department—National Marine Engineers' Beneficial Association (Pacific coast units) (C. I. O.).
- Radio operators—American Communications Association (marine division, Pacific coast units) (C. I. O.).

Unlicensed personnel:

- Deck department—Sailors' Union of the Pacific (Seafarers' International Union of North America) (A. F. of L.).
- Engine department—Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers' Association (Independent).
- Stewards' department—Marine Cooks' and Stewards' Association of the Pacific Coast (C. I. O.).

EMPLOYERS' ASSOCIATIONS

- Pacific American Shipowners' Association (consists of offshore, intercoastal, and Alaska lines).
- Shipowners' Association of the Pacific Coast (consists of coastwise lines, principally those operating steam schooners in the lumber trade).

PROVISIONS FOR ADJUSTMENT OF DISPUTES AND GRIEVANCES

Each of the 12 agreements contains a stipulation to the effect that during the life of the contract there shall be no strikes, lockouts, or

[1] Although these agreements represent the bulk of the industry on the Pacific coast, several miscellaneous agreements should be mentioned. For example, some of the seagoing unions have contracts with individual tanker companies (in general, the tanker trade is incompletely organized) and with fishing and fish-packing concerns. The licensed officers' unions and the Inlandboatmen's Union maintain agreements with companies operating on the rivers, harbors, and other inland waterways of the coast. Some of these agreements provide machinery for the adjustment of disputes and some do not.

stoppages of work for any reason. Each agreement likewise provides machinery and procedure for the adjustment of disputes and grievances arising under its terms. The contracts negotiated by the several unions differ in the details of their provisions, as do those negotiated by the same union in the offshore and coastwise services.

In spite of numerous minor variations, however, the different adjustment systems set up in the agreements are essentially similar in principle. All provide that disputes not settled on the job, or directly between the officials of the two parties, shall be submitted to joint committees composed of an equal number of representatives of the two sides. Under one arrangement or another, these committees function in each of the four major coast ports—Seattle, Portland, San Francisco, and Los Angeles.[2] In all the agreements, however, it is provided that the joint committees of San Francisco shall supersede the others in authority. This arrangement is probably due to the fact that San Francisco is the coast headquarters of all the unions and of both employers' associations. In case of deadlock in the out ports, disputes must be referred to the San Francisco committees for settlement, and in most cases settlements made in the out ports must be submitted to San Francisco for approval. Thus, the system in effect, consists of a series of joint port committees[3] which are authorized to decide issues presented in the various localities, the coastwide committees sitting in San Francisco being empowered to approve all local decisions and to act as courts of appeal in the event of a local deadlock.[4]

If the San Francisco joint committees fail to agree, provisions are made for final decision by a disinterested third party. This individual is selected in a variety of ways under the different agreements,[5] but in all cases his decisions are final and binding during the life of the contract. In effect, the third party functions as an arbitrator and may hold formal hearings and render written awards in the same manner as arbitrators under the longshore agreements.

Theoretically, there are 12 joint committees for the adjustment of disputes and grievances in each of the 4 major Pacific coast ports, 6

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[2] The offshore agreements specifically provide for a joint committee only in San Francisco, with the added proviso that the parties may appoint one or more "representatives" to hear and decide controversies in the other ports. In most of the agreements these local representatives are referred to as constituting "local committees."

[3] In all the coastwise agreements and in the offshore agreements covering unlicensed men in the deck, engine, and stewards' departments these committees are called "port committees" (with the exception that the latter three agreements refer to the committees in the out ports as "representatives" or "local committees"). In the offshore agreements signed by the radio operators the central joint committee is called the "Labor Relations Board" and in the two offshore agreements covering the licensed officers, the "Licensed Personnel Board."

[4] The San Francisco committees, of course, act in the capacity of local or port committees with reference to disputes occurring or first presented in that port.

[5] In all the coastwise agreements it is provided that the referee or arbitrator shall be appointed by the Secretary of Labor. Among the offshore contracts, those covering the licensed officers and radio operators provide that the Secretary of Labor shall appoint a panel of five names, from which each party shall delete two, the remaining member of the panel to become the arbitrator. The firemen's, and marine cooks' and stewards' offshore agreements specify that the impartial third party shall be appointed by the Conciliation Service of the Department of Labor. According to the offshore agreements covering sailors, the arrangements are as follows: The San Francisco port committee shall appoint a board of four persons, two being selected by each side of the committee. None of the four board members may be "directly connected with either party." This board then selects the referee. If no three members can agree on the selection, either the senior Federal district judge or senior Federal circuit judge of San Francisco shall be added to break the deadlock. After the referee is selected by this board, each party is entitled to three challenges, and when a "referee is challenged, new appointments shall be made until challenges are waived or exhausted." (The cooks' and stewards' offshore adjustment provisions were similar to those of the sailors' union prior to October 1, 1938, when the marine cooks' and stewards' agreement was modified so as to provide for selection of the referee in the manner set forth in the firemen's agreement.)

governing relations between the 6 seagoing unions and the offshore operators, and 6 representing the same unions and the coastwise operators. This would make a total of 48 committees in all, the 12 in San Francisco functioning both as local committees, with respect to disputes in that port, and as courts of appeal, with respect to those resulting in deadlock elsewhere on the coast. Actually, however, the system is much less formal and complex than the wording of the agreements implies.

ADJUSTMENT EXPERIENCE UNDER THE OFFSHORE AGREEMENTS

The adjustment experience of the seamen's unions on the west coast has been analyzed with respect to the offshore, intercoastal, and Alaska trades only. This section of the merchant fleet is at once more diversified in activity and more important in terms of tonnage [6] than the coastwise steam schooner group, which is limited principally to the handling of lumber and allied products. Moreover, the Pacific American Shipowners' Association, comprising the former group of operators, was able to supply conveniently tabulated data with respect to disputes in which it has been involved with the several maritime unions. The relative importance and representative character of the offshore trade and the availability of data pertaining to it seem to justify limiting the analysis of adjustment experience to that portion of the industry.

Number and kinds of disputes, February 5, 1937, to May 31, 1939.

As in the analysis of longshore adjustment experience, the employers' data rather than the minutes of the joint committees have been used as a basis for ascertaining the number and kinds of disputes arising under the agreements of seamen. The minutes of the joint committees of the seagoing groups are, in fact, believed to be even less satisfactory for this purpose than those of the longshore Labor Relations Committees. The seamen's committees are more numerous. Meetings are held less regularly, and the minutes are less complete and explicit than in the case of the longshoremen. The data presented here are, therefore, taken from a series of tabulations prepared by the Pacific American Shipowners' Association, entitled *Agreement Violations by Marine Unions.* Again it must be emphasized that use of the material does not necessarily imply concurrence in the employers' position that all the incidents listed represent violations of agreement on the part of seamen. The figures are used merely because they indicate, better than any others currently available, the extent and nature of disputes.

Table 1 shows the number of disputes between the six maritime unions and members of the Pacific American Shipowners' Association for the period from February 5, 1937, to May 31, 1939, classified according to the principal issues involved. Classification of seamen's disputes is even more difficult than in the case of longshoremen, for the reason that many of the disputes involved more than one union and, consequently, a greater complexity of issues. The classification has been based on what appeared to be the primary issue in each dispute.

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[6] The gross tonnage of vessels operated by members of the Pacific American Shipowners' Association as of July 5, 1939, was 1,329,933, while that of vessels operated by members of the Shipowners' Association of the Pacific Coast was but 152,392. (Two companies are members of both groups and are represented in both figures.)

TABLE 1.—*Major issues in 192 disputes between Pacific coast seamen and the Pacific American Shipowners' Association, February 5, 1937, to May 31, 1939*

Major issue	Number of disputes	Major issue	Number of disputes
All issues	192	Hiring	37
Wages, hours, and working conditions	92	Hiring practices	4
Crew quarters and safety facilities	17	Objection of men to working with certain individuals	20
Food, water, stores	5	Objection of employers to hiring certain men	13
Overtime	21	Failure of men to report	7
Return transportation and subsistence	9	Demanded release from shipping articles	5
War zone bonus	9	Jurisdiction	10
Manning scale	13	Support of other unions	25
Manner of performing work	18	Unclassified	16

Source: Employers' tabulations entitled *Agreement Violations by Marine Unions.*

The figures represent the total number of disputes in which any of the 6 unions were involved during the period covered. It was not possible to separate the cases in which each individual union participated for the entire period. Such data are available, however, for the 8 months from October 1, 1938, to May 31, 1939. The number of disputes in which each union actively participated, either on its own account or in support of others, according to the employers' record on this point, is shown in Table 2. The figures in Table 2 may give some indication of the relative frequency with which any given organization was involved in disputes. The fact that there were actually only 89 separate disputes during this 8-month period, whereas the figures broken down by unions show a total of 141, shows, however, that more than 1 union participated in a large proportion of the disputes.

TABLE 2.—*Unions involved in 89 disputes between Pacific coast seamen and the Pacific American Shipowners' Association, October 1, 1938, to May 31, 1939*

Union	Number of disputes	Union	Number of disputes
National Organization Masters, Mates and Pilots of America	8	Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers' Association	37
National Marine Engineers' Beneficial Association	3	Marine Cooks' and Stewards' Association of the Pacific Coast	19
American Communications Association, Marine Division	7	Total	141
Sailors' Union of the Pacific	67		

From February 5, 1937, to May 31, 1939, a total of 192 disputes occurred which involved 1 or more of the marine unions and the Pacific American Shipowners' Association (Table 1). Ninety-two, or nearly 48 percent of these, were concerned principally with wages, hours, and working conditions. Of this group, 17 pertained to the question of quarters, sanitary, recreational, and safety facilities, and 5 to dissatisfaction with food, water, or other stores. The figures in Table 1 represent the number of times that "disturbances" or "viola-

tions of agreement" occurred in connection with these issues, according to the employers' view. Contact with seamen, however, suggests that the general question of food and quarters may assume a far greater importance to the men on the ships than the employers' record indicates. In fact, irritation and dissatisfaction with respect to this subject appear to be general and frequent, though disputes break out only occasionally.

Twenty-one disputes were occasioned by claims for overtime, 9 by demands for return transportation in the event of protracted stopover away from the home port, and 9 by demands for special bonuses for entering war areas. Overtime is provided for in the agreements, but controversy often arises as to the applicability of the provisions under given circumstances. Disputes concerning overtime, like those pertaining to quarters and food, probably are relatively more important than the figures indicate. Of the 16 issues submitted to arbitration under the offshore agreements, 8 dealt with the subject of overtime and related issues. The disputes concerning return transportation and war bonuses are a reflection of special circumstances on individual voyages and, where the unions have succeeded in obtaining their demands in advance, the terms are usually set forth in special "riders" to the agreements.

There were 13 disputes concerning manning scales and 18 concerning manner of performing the work. The latter group is not as important as the figures indicate, since a majority of these disputes occurred within the period of a few days in San Francisco Harbor, on account of the alleged refusal of the deck crew to handle and stow certain stores in the manner directed by the officer in charge. No delay in operations was reported in most of these cases.

Altogether 37 disputes fall in the category of hiring. Four of these involved hiring practices, 2 of which were precipitated by the alleged refusal of certain unlicensed crew members to accept the so-called "continuous discharge book," 1 by the demands of licensed officers for preferential hiring, and 1 by the objection of a radio operator to being transferred without his consent from one to another of a certain company's vessels.[7]

Alleged refusal of crew members to work with certain individuals whom they found objectionable accounted for 20 disputes. In many cases the individual in question was considered antiunion; in others his manner toward his coworkers or subordinates was objectionable. Occasionally a man's race or color was the source of the objection. Related to this group of disputes are the 13 in which employers (and in some cases a ship's officer) objected to employing certain individuals. Alleged incompetence, insubordination, and habitual drunkenness were among the reasons given.

Seven disputes were occasioned by the failure of men to report at sailing time, thus causing delay. Sometimes the employers apparently wanted to sail without the absent man or men, thus involving the question of manning scale, and were met by objection on the part of the crew. In other instances the union allegedly failed to make replacements promptly when vacancies appeared at sailing time. Demands of crew members to be released, either before the voyage was

[7] This case was arbitrated in December 1938.

completed or before it started, but after the articles were signed, produced 5 disputes.

There were 10 disputes that may be classed as jurisdictional. The unions involved included the ship scalers, who are affiliated with the International Longshoremen's and Warehousemen's Union (C. I. O.), the Inlandboatmen's Union of the Pacific (C. I. O.), and the National Maritime Union (C. I. O.). One jurisdictional dispute was not primarily an interunion conflict, but was a question of work assignment among the members of the engine department of a certain vessel.

Twenty-five cases were precipitated by the action of one or more of the six unions under discussion in giving support to other organizations.[8] Such support usually took the form of refusal to pass union picket lines, although in a few cases a "hot cargo" element seems to have been present. The groups supported included longshoremen, teamsters, and loggers and lumbermen. Nearly all the instances, in which support was thrown to longshoremen, occurred outside the Pacific coast proper, in areas such as Hawaii, Puerto Rico, and the Gulf.[9]

Sixteen disputes could not be satisfactorily classified. In the majority of cases, the issues involved could not be ascertained from the record. The others were of minor importance, including such items as objection of seamen to having their quarters searched in connection with the reported theft of merchandise in a foreign port, objection to the confiscation of liquor from the persons of crew members boarding the ships,[10] and demand of crew members for a stipulation in advance that they would be paid in American dollars in Oriental ports.[11]

Number and duration of work stoppages.

Of the 192 disputes occurring during the period covered, 48, or approximately 25 percent, involved no stoppage of work or other delay. In some of these cases stoppage of work was reported to have been threatened, but did not actually occur. The remainder of the disputes did produce a delay. There were 5 delays of not more than one-half hour, 80 lasting than one-half hour, but not more than 24 hours, and 58 extending beyond 24 hours. In view of the provisions of the agreement prohibiting stoppages of work, it is seen that nearly three-quarters of all the disputes listed[12] involved a violation of contract.

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[8] This does not include cases in which some of the six west coast seagoing unions supported one another. As stated earlier, in disputes involving any of these six organizations, it is impossible to determine from the record the number of times they supported one another, and in the event of such support, whether it was primarily sympathetic or whether each participating union presented demands of its own. It should be pointed out, also, that this group of cases includes only those in which active support to outside organizations was given. On many occasions shipping was automatically halted because of longshore or other disputes in which the seamen took no active part.

[9] In Puerto Rico and in Gulf ports where the A. F. of L. and C. I. O. longshore unions are contending for mastery, some of these disputes assumed a jurisdictional aspect, with the west coast unions affiliated with the A. F. of L. supporting the A. F. of L. longshoremen and those affiliated with the C. I. O. supporting the C. I. O. longshoremen.

[10] Curiously, the objection here apparently was not to the confiscation but to the fact that the officers in charge took possession of the liquor instead of following the former practice of pouring it over the side.

[11] Employers state that wages paid in foreign ports are always paid in American dollars.

[12] Account should be taken of the probability that the employers failed to record a large number of complaints and grievances that did not involve either actual or threatened work stoppage. The unions charge that the employers "pay no attention" to complaints not accompanied by threats of economic action.

No attempt has been made to determine the ultimate responsibility for these violations. Undoubtedly, most of the work stoppages were actually initiated by the seamen rather than by the employers. Undoubtedly, too, the seamen have often acted precipitately in pressing their grievances and demands. However, there is probably some merit, although how much is difficult to determine in view of the present inadequate records pertaining to disputes, in the contention of the unions that the men are provoked to job action by "chiseling" and other irritating tactics on the part of employers, and by the adamant attitude of employers with respect to grievances which are peaceably presented. What the record, incomplete though it may be, does indicate, is that the present methods of adjusting grievances are inadequate to the situation. They have failed seriously and repeatedly to accomplish their purpose, which is to adjust disputes to the reasonable satisfaction of the parties and without undue disturbance to the industry.

It should also be emphasized that, so far as can be ascertained from the record, all work stoppages occurred in safe harbor. Many of the disputes undoubtedly originated at sea, but there is no evidence of economic action taken at sea or of refusal on the part of crew members to obey orders outside safe harbors.

Arbitration awards and issues involved.

The sharpest point of contrast between the adjustment experience of the seagoing unions and that of the longshoremen on the west coast is the number of arbitration awards rendered. The adjustment of longshore disputes under the machinery established by the original agreement and award of October 12, 1934, produced 94 arbitration awards and decisions during the 5 years ended September 30, 1939.

Since the signing of the original formal agreements in the offshore trade,[13] there have been only 4 major awards[14] between the marine unions and the offshore, intercoastal, and Alaska lines. The unions involved were the National Marine Engineers' Beneficial Association, the Marine Cooks' and Stewards' Association of the Pacific Coast, the Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers' Association, and the American Radio Telegraphists' Association.[15] Neither the National Organization Masters, Mates and Pilots nor the Sailors' Union of the Pacific has been party to any arbitration proceedings under the offshore agreements.

No arbitration cases occurred under the 1935 agreements, and none has been held since the beginning of 1939. The Marine Engineers' Beneficial Association award was dated July 6, 1937, and that of the Marine Cooks' and Stewards' Association of the Pacific Coast July 22 (with a supplementary award on July 27, 1937). The awards pertaining to the firemen and the radio operators were rendered under the 1938–39 agreement and were dated December 16, 1938, and December 20, 1938, respectively.

Although only 4 arbitration proceedings have been held under the offshore agreements, all but 1 of them involved a number of separate

[13] Following the 1934 strike, formal agreements between the six marine unions and the employers were not consummated until the spring and summer of 1935.

[14] In addition, several verbal recommendations have been made by referees at joint committee meetings without formal hearings.

[15] Now the Marine Division of the American Communications Association.

questions, with the result that awards have been rendered on a total of 16 issues. Eight of these may be classed as involving the question of overtime. As has been pointed out, this subject is a common source of controversy between seamen and their employers. The remaining issues pertained to room allowance, quarters, manning scale, manner of performing work, and hiring practices. The number of issues in each category for the 4 unions is shown in Table 3.

TABLE 3.—*Major issues involved in 4 arbitration awards covering Pacific coast seamen's unions and the Pacific American Shipowners' Association, 1935–39*

Issue	Union				
	All unions	M. E. B. A.	M. C. S. A.	M. F. O. W.	A. R. T. A.[1]
All issues	16	6	6	3	1
Overtime	8	4	2	2	
Room allowance ashore	1	1			
Quarters	1		1		
Manning scale	2	1	1		
Manner of performing work	1		1		
Hiring practices	3		1	1	1

[1] M. E. B. A.—National Marine Engineers' Beneficial Association. M. C. S. A.—Marine Cooks' and Stewards' Association of the Pacific Coast. M. F. O. W.—Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers' Association. A. R. T. A.—American Radio Telegraphists' Association.

The decisions rendered in the offshore awards are summarized below in the chronological order in which they occurred, showing in each case the union involved, the date, the name of the arbitrator, the issues presented, and the decisions rendered.

1. *Union.*—National Marine Engineers' Beneficial Association.
Date.—July 6, 1937.
Arbitrator.—Robert D. Calkins.
Issues.—(a) *Manning scale and ratings.*—Must the engineers on every ship be rated in the sequence listed in article VII, section 2, of the 1937 agreement?

The union contended that all engineers aboard a given ship, even though all ratings were not carried, must be rated in the order in which the ratings are listed in the agreement from high to low, and that the employers were violating the wage scales by employing engineers of low rating to perform work customarily assigned to men of higher rating.

Employers maintained that the list of ratings in the agreement was not intended to determine the sequence in which engineers must be hired, in the event all ratings were not carried; and that it had long been an established practice on many vessels, both before and after the 1937 agreement was signed, to carry a complement of engineers whose ratings were not according to the sequence found in article VII, section 2, of the agreement.

Decision.—Article VII is manifestly intended to specify the minimum salaries to be paid to engineers in each of the several ratings if, and only if, such engineers are carried. Neither the language of the provision, nor the circumstances under which it was negotiated, justifies the interpretation that engineers on every ship must be rated in the sequence listed in the agreement. The employers shall be free to determine the manning scale of their vessels "subject to the limitations imposed by the requirements of the Inspection Service and to the additional restriction that where, previous to the negotiation of the Agreement, a ship customarily or normally, carried given ratings for given duties, lower ratings may not be assigned to those positions."

(*b*) *Overtime.*—Does article VIII, section 1–g, of the agreement entitle relief engineers on night shift to overtime for time on duty in excess of 8 hours? The section in question reads in part as follows: "When relief engineers are employed to remain aboard the vessel at night or on Sundays or holidays, they shall be paid at the rate of eight dollars ($8) per night or day (8 a. m. to 5 p. m.), * * *."

The union contended that although the term "night" was not specifically defined, the provision implicity fixed the night shift for all relief engineers at 8 hours, and that time worked in excess of 8 hours must be paid for at the overtime rate.

Employers contended that the provision entitled relief engineers to a salary of $8 "per night or day," "day" being explicity defined as 8 a. m. to 5 p. m. and "night," implicitly, as 5 p. m. to 8 a. m. The provisions elsewhere in the agreement for 8-hour shifts for regular employees did not, in the employers' opinion, establish such shifts for night relief engineers.

Decision.—The wording of the provision, the prevailing practice prior to the negotiation of the agreement, and the circumstances under which the provision was negotiated, all reasonably contradict the contention that an 8-hour night shift for relief engineers was intended. Therefore, article VIII, section 1–g, means that relief engineers shall be paid $8 per night of 15 hours, from 5 p. m. to 8 a. m., or per day of 8 hours, from 8 a. m. to 5 p. m.

(*c*) *Overtime.*—Was the clause "when sea watches are broken" properly included in article VIII, section 1–e, which provides: "When sea watches are broken, all work in all ports on Sundays and holidays shall constitute overtime"?

The union asserted that this clause appeared, through either error or subterfuge on the part of the employers, in the final draft of the agreement signed near midnight on February 4, 1937; that the clause did not appear in any of the tentative drafts of the agreement and was at no time the subject of negotiation; that its presence in the final draft had been overlooked by the union in the tension accompanying the last few hours of the maritime strike; and that, consequently, it should be stricken from the agreement. The union further charged that the clause enabled employers to avoid the payment of overtime by ordering sea watches maintained during stay in port.

Employers stated that in submitting the final draft of the agreement for the signature of union officials, they had specifically invited last-minute criticism and correction and that, in any event, the contract must stand as signed.

Decision.—The clause "when sea watches are broken" was not erroneously included in section 1–e of article VIII. It was negotiated by a method which gave due notice to the union and offered ample opportunity for dissent. The section as it stands, therefore, is binding on the parties.

(*d*) *Overtime.*—Interpretation of article VIII, section 1–f, which reads: "When liquid cargo is being worked between the hours of 5 p. m. and 8 a. m., engineers on watch shall be paid overtime."

The union contended that the section provides overtime for *all* engineers on watch in the circumstances mentioned, whether or not they are actually engaged in the working of the cargo.

Employers interpreted the section as applying only to engineers actually participating in the working of the cargo.

Decision.—"Section 1–f of Article VIII shall mean that when liquid cargo is being worked between the hours of 5 p. m. and 8 a. m. *all* engineers on watch shall be paid overtime."

(*e*) *Room allowance when in port.*—Interpretation of article VIII, section 5–l, which reads: "When in port and meals and living quarters are not furnished, subsistence shall be allowed amounting to three dollars ($3) per day and room allowance of two dollars ($2)." Two men had been injured on a voyage to the Orient, were returned to San Francisco, and because of their injuries were forced to miss the next sailing of their vessel and to wait in San Francisco 48 days until the return of the ship on which they had signed. They were given "maintenance and cure as customary," which included the $3 per day subsistence, but not the $2 per day room allowance.

The union insisted that the men were entitled to the room allowance in addition to the subsistence and cure for the time spent in port.

Employers held that, strictly speaking, section 5–l applies only when the *vessel* is in port, and that the men received all they were entitled to.

Decision.—"Section 5–l of Article VIII means when *the vessel is* in port and meals and living quarters are not furnished, subsistence shall be allowed amounting to three dollars ($3) per day and room allowance of two dollars ($2) per day. Accordingly the two men in question are not entitled under this section to two dollars ($2) per day additional allowance for subsistence and quarters."

(*f*) *Time of "arrival" of a vessel at San Francisco—Indirectly the question of overtime.*—What is the meaning of the term "arrival" in article VIII, section 5–d, which provides that "In all ports, watches shall be broken as soon as practicable after arrival if vessel is to remain more than twenty-four (24) hours"?

The union maintained that the time of arrival in San Francisco Bay should be fixed uniformly as of the time the ships reach quarantine in San Francisco or pass Buoy No. 2. Two companies were said to observe this practice. Certain other companies were said to be avoiding the payment of overtime by allowing vessels to remain at anchor within the bay, but outside the docks, for protracted periods during which sea watches were maintained.

Employers stated that the two companies following the practice referred to, did so for statistical purposes only, and that the customary duties of engineers at sea are not fully performed until the ship is moored at the wharf or point of destination at which cargo and passengers are to be discharged.

Decision.—"For purposes of Section 5–d of Article VIII, 'arrival' in San Francisco Bay is to be regarded as the time at which the vessel is anchored at its anchorage of final destination or moored at its wharf of destination for discharging and/or loading cargo or passengers, except that when a ship anchors temporarily in a *safe anchorage* within the bay to remain eight hours or more before proceeding to its wharf or anchorage of destination, arrival shall be regarded as of the time at which the vessel is so temporarily anchored. By 'safe anchorage' shall be meant one on which, under the weather conditions and other circumstances, watches may be broken without endangering the safety of the ship, its passengers or its cargo."

2. *Union.*—Marine Cooks' and Stewards' Association of the Pacific Coast.

Date.—July 22 and 27, 1937.

Arbitrator.—Robert D. Calkins.

Issues.—(*a*) *Hiring practices* as provided in section 4 of division A of the agreement, which provides that, although union members shall be given preference of employment, the employers shall have the right to obtain men for positions requiring certain special qualifications from other sources, in the event the union cannot supply them, provided: (1) That such men shall not be unsatisfactory to the union; (2) that employers do not interfere with proper efforts of the union to persuade such men to join the union; (3) that if such men do not join the union, the employer is obligated to employ a union member for the job at the completion of any voyage, if a satisfactory union member is then available.

Decision.—The following hiring procedure was outlined with respect to the section in question. (1) The union shall promptly instruct the employer as to the special classifications for which it is able to furnish men and those for which it is not. The employers shall then be free to hire nonunion men in those classifications for which the union admittedly cannot supply men, without giving special notice to the union, but in classifications in which union men are "normally available" the employer must notify the union and request union members before proceeding to hire from other sources. (2) Employers must promptly grant the union an opportunity to express its approval or disapproval of nonunion persons hired, and the union must promptly (and in good faith) notify the employer whether or not such workers are satisfactory to it. (3) Before rehiring (for a second voyage) nonunion employees in classifications for which union members are normally available, employers must inquire of the union whether it now has men available, and if such men are available they must be given preference of employment.

(*b*) *Overtime.*—Section 2, division B, of the agreement provides: "When a ship is in port without passengers aboard, members of the Stewards' Department required for service to crew, shall perform their regular duties between the hours of 6 a. m. and 6 p. m., but the day's work for all others in the department shall consist of eight (8) hours between the hours of 8 a. m. and 12 noon and 1 p. m. and 5 p. m., and all other work required to be performed on any day and all work on Saturday afternoons, Sundays, or holidays, shall be paid for at overtime rate for the actual time worked. On sailing day and while passengers are on board the hours shall be the same as at sea."

The question arose: Are members of the stewards' department entitled to overtime pay on Saturday afternoons, Sundays, and holidays for serving passengers and others not members of the crew when the vessel is in port with passengers on board?

Decision.—Members of the stewards' department are not entitled to overtime pay under the circumstances mentioned. The overtime provisions for Saturday afternoons, Sundays, and holidays are limited to occasions on which the "ship is in port, *without* passengers aboard."

(c) *Overtime.*—Does section 4, division B, of the agreement allow overtime to stewards serving meals other than "banquet dinners or luncheons" to persons other than passengers or their guests while in port?

Decision.—"The agreement does not provide for overtime to members of the Stewards' Department actually engaged in serving meals, other than banquet dinners and luncheons, to newspaper reporters, customs officials, and others who are neither members of the crew nor guests of passengers."

(d) *Manning scale.*—Interpretation of section 1–C, division D, providing for ratio of members of the stewards' department to size of crew and passenger list on freighters. The section specifies a definite scale to be followed in determining the number of stewards in relation to the size of crew (exclusive of stewards), but it provides only that "members of the Stewards' Department shall be added in accordance with the number of passengers" in the event that passengers are carried.

The union contended that after calculating the number of stewards required for the crew, according to the scale provided, the additional number for passengers should be calculated separately, in accordance with the same scale.

Employers held that passengers and crew, exclusive of stewards, should be added and the ratios mentioned in the agreement applied to the total number in order to determine the number of stewards to be carried.

Decision.—The arbitrator ruled that the number of stewards to be carried should be calculated in accordance with the employers' interpretation of the section in question.

(e) *Quarters.*—(Section 7, division E of agreement) Application of *Working Rules Applicable on Ships Generally* to ships engaged in the Alaska trade.

The union maintained that the general coast working rules applied also to the Alaska trade, except as specifically modified, supplemented, or superseded by the special working rules covering ships in the Alaska trade only.

Employers contended that the special Alaska working rules were in lieu of all other rules, and that section 7, division E of the general coast working rules, covering the question of quarters, did not apply to the Alaska trade.

Decision.[16]—The arbitrator upheld the employers' contention.

(f) *Manner of performing work.*—Interpretation of section 10, division E, providing that "No member of the Stewards' Department shall be required to serve coffee or meals on the bridge or in the engine room, nor shall they be required to enter same at any time except for the safety of the vessel."

The union apparently contended that its members were being forced to serve meals on the bridge or in the engine room while navigating bays, harbors, and rivers under ordinary conditions not endangering the safety of the vessel.

Employers maintained that the navigation of restricted bodies of water often necessitates officers remaining at their posts, and that under such conditions coffee or meals must be served to them at their posts.

Decision.—"The Stewards' Department shall not be required to serve coffee or meals on the bridge or in the engine room except to officers on watch who may not leave their positions without endangering the safety of the vessel. This shall mean that while vessels are navigating rivers, bays, harbors, and other restricted bodies of water, such service may be required only for officers on watch who may not leave their positions without violating the navigation laws or rules of the Steamboat Inspection Service or for officers on watch who, in the discretion of the master, must maintain their watches continuously for the safety of the vessel and may not leave their positions."

3. *Union.*—Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers' Association.

Date.—December 16, 1938.

Arbitrator.—Robert D. Calkins.

Issues.—(a) *Hiring practices.*—Section 17 of the general agreement provides: "This agreement is binding with respects to ships operating in the particular service appearing after the signature of the steamship companies parties to the agreement respectively, and if no particular service is specified, to all ships operated by them."

The question presented to the arbitrator was: When vessels are chartered by the shipping companies under the terms of a time charter, whereby the owner, not the charterer, hires the crew and operates the ship, are the vessels subject

[16] Rendered on July 27, 1937, after the submission of delayed evidence by the union.

to the collective agreement, and must such vessels employ unlicensed engine-room personnel from the union?

The union evidently did not insist that vessels chartered on the above basis for single or occasional voyages carry union crews, but it insisted that vessels *could* be so chartered for regular or continuous service and that by this means the shipping companies could evade their responsibilities under the agreement and undermine the union by employing other than union members. The union apparently did not charge that such practices were actually being carried out.

Decision.—The arbitrator ruled that vessels engaged on a time charter basis, so that the shipping companies are not the operators, are not subject to the terms of the agreement. The mere *possibility* that the shipping companies could evade their responsibilities under the agreement and undermine the union by using this device was not held sufficient justification for the interpretation sought by the union.

(*b*) *Overtime.*—(Section 12 of general rules). Are the firemen on *all* vessels entitled to overtime between 5 p. m. and 8 a. m. when the vessel is working liquid cargo? (The agreement specifically provides for such overtime in the case of one ship only—the S. S. *Makaweli.*)

The union contended that although the agreement did not specifically so stipulate, the implication was that firemen on all vessels were entitled to overtime under the circumstances mentioned.

Employers held that overtime was required under the circumstances mentioned only on the S. S. *Makaweli* and need not be paid on any other vessels.

Decision.—"The agreement does not require the payment of overtime to firemen on vessels other than the *Makaweli* when they are loading or discharging liquid cargo between 5 p. m. and 8 a. m." The arbitrator held that the practice urged by the union had not been uniformly followed in the past and that it had not been established by negotiation of the parties as expressed in the language of the contract. Sections 12–b and 12–c, providing overtime for certain types of duties, "when cargo is being worked between the hours of 5 p. m. and 8 a. m." were interpreted as not applying to the working of liquid cargo.

(*c*) *Overtime.*—Are employers obliged to turn an oiler to for the purpose of caring for the pumps and auxiliary machinery when liquid cargo is being discharged? Sections 12–b and 12–c of the general rules specify in some detail the circumstances in which engine-room personnel of the different ratings must be turned to, and the circumstances in which overtime must be paid for various types of work. The sections do not specifically state, however, whether oilers must be turned to for the caring of pumps and auxiliary machinery when liquid cargo is being discharged.

Decision.—The agreement does not require the employer to direct an oiler to perform this work when liquid cargo is being discharged.

4. *Union.*—American Radio Telegraphists' Association (now the marine division of the American Communications Association).

Date.—December 20, 1938.

Arbitrator.—Edwin D. Dickinson.

Issue.—Hiring practices.—Do the shipowners under the agreement have the right to transfer radio operators, continuously employed, from one ship to another ship of the same employer, without the approval of the union?

The union contended that a radio officer is employed *on a given ship* rather than *by a given shipowner* and that the filling of vacancies, whether by transfer or by the employment of unemployed persons, is an *act of employment* and must be approved by the union. The practice of making transfers without the approval of the union evidently had been the source of much previous complaint on the ground that it facilitated favoritism and discrimination.

Decision.—The arbitrator ruled that "employment" as contemplated in the agreement is *by the shipowner* rather than *on a ship* and that men may be transferred from one to another of a given employer's vessels without the approval of the union.

EVALUATION OF PRESENT ADJUSTMENT METHODS

The inadequacy of the adjustment systems provided in the offshore agreements to prevent disturbances in the industry has been pointed out in a preceding section. Possible reasons for this weakness can best be indicated by a brief analysis of the manner in which the systems

operate in actual practice. Some of the points of weakness are inherent in the nature of the industry, while others are the result of faulty structure or procedure. The principal factors which operate against the prompt and satisfactory adjustment of disputes under present methods are summarized in the following pages. For the sake of clearness each point is discussed separately, but it will be observed that there is considerable interrelation among them.

Limited utilization of joint committees.

The agreements provide for a series of joint adjustment committees in the four major coast ports. The 12 offshore and coastwise agreements combined make provision for a total of 48 port committees, 12 operating in each port, with those in San Francisco serving as both local and regional adjustment bodies. One might infer from the agreements that these committees, meeting at frequent and regular intervals along the entire coast, constitute an elaborate and somewhat formal system; and that they are engaged in a continuous process of adjustment, appeal, adjudication, and final settlement of the disputes that occur in the course of Pacific coast shipping. Actually, the process is much less complex and formal than the provisions of the agreements imply.

The committees are composed principally of the local or port officials (in San Francisco, the coast officials) of the two parties. The representatives meet infrequently and irregularly, in joint session as committees. By telephone or informal contact, efforts to adjust disputes are conducted personally by one or two of the officials on both sides much as if the committee system did not exist. This tendency is particularly marked in the out ports, but both parties have stated that even in San Francisco personal negotiation between officials is a more common adjustment procedure than the calling of joint committee meetings. In this connection it should be noted that seamen are hired not through jointly operated hiring and dispatching halls as longshoremen are, but through the offices of the several unions. Thus, because the seamen's joint adjustment committees have no part in administration of the hiring halls, they are not required to meet regularly.

It should be emphasized that the joint committees among the seagoing groups do not and cannot occupy as prominent a role in the adjustment process as the Labor Relations Committees among the longshoremen. The port committees cannot begin to function, obviously, in connection with disputes occurring at sea, until the vessel has returned to port. Moreover, the first domestic port at which the ship arrives after a dispute has arisen may be one in which no joint committee is maintained. Of the disputes originating while vessels are in port rather than at sea, many occur elsewhere than in the four Pacific coast ports where committees are available.[17] Even when a dispute is brought to a port where a port committee exists, some other means of settlement usually is tried before the committee is called into action. In the industry it is said that quicker action can usually be obtained by informal negotiation between officials than

[17] Of the 192 disputes reported by the employers during the period February 5, 1937, to May 31, 1939, all of which were reported as occurring in harbors, approximately 30 percent took place in ports other than the 4 in which joint committees existed. The great majority of these occurred on the Atlantic and Gulf coasts or in other areas not a part of the Pacific coast.

by the more cumbersome joint committee process. The comparatively short "turn-around" of most vessels today gives but little time for extended consideration of controversies involving vessel personnel.

For these reasons, the prompt adjustment of disputes as they occur on the job, or upon their first presentation in port, cannot always be effected by action of the port committees. Because of this, other means have been provided. The unions maintain delegates aboard ship who present grievances to the officers in charge and eventually to the master while at sea. If settlement is not reached, the master's orders prevail until the vessel returns to port. Here the dispute may be handled by the union port delegate and the shore representatives of the company concerned. If the deadlock persists, the matter may be submitted to the major officials of the union and of the company, or of the union and the employers' association, before recourse is had to the port committee procedure.

Thus, the port committees are designed to function only after several other steps have been taken. The wide disperson and physical mobility of the working force in this phase of the industry probably make formal consideration of disputes by a joint committee impractical in their first stages. Even the longshore Labor Relations Committees are not at present designed to handle disputes as they occur on the job. In the case of the seamen, however, the factors mentioned in the foregoing paragraphs place certain limitations upon any attempts to enlarge the role of the port committees.

These inherent factors do not entirely account for the comparatively limited use now being made of the port committee system, however. Both parties admit a preference for the direct method of adjustment and, apparently by tacit agreement, have developed the practice of convening the committees only when all other efforts have failed.

Composition of committees.

The port committees are composed principally of the local or coast officials of the two parties. In the case of the seamen, this is almost a necessity because the amount of committee work is not sufficient to justify the election of full-time committee representatives on a full-salary basis. Moreover, it is impossible for seamen to function as committee members while continuing in their regular employment.

The practice of staffing the joint committees with union and employer officials, natural though it may be, produces two results that tend to reduce the significance and efficiency of the committee system. It has been shown that one of the adjustment steps intended to precede consideration of a dispute by the committees is personal negotiation between the officials of the two parties. At times, when such negotiations are in progress, it is not clear whether the negotiators are acting *as officials*, preceding committee action, or as *committee members*. The difference may not be important in practice, but the dual position of the individuals concerned does have the effect of obscuring the precise role and significance of the port committees. When the union representatives sit at the union hall and contact the employers' representatives in their offices by telephone, is the "port committee" functioning? Even when the two parties "meet" to discuss the problem, is the meeting to be described as a port committee meeting, or as an informal discussion or conference between

union and employer officials? It seems certain that in many such cases the contact between the partes is highly informal, no minutes or other detailed records being kept. Memoranda may be exchanged from time to time if negotiations of this sort are protracted, and, if agreement is reached, a written statement of the points agreed upon may be drawn up. But the whole procedure appears definitely less regular and systematic than was originally intended, judging from the wording of the agreements.

Though the present informal practice may result in obscuring the significance of the port committees, both parties consider that it succeeds in adjusting disputes more promptly and satisfactorily than more systematic methods.

However, there appears to be a more serious result of the fact that the committees are composed of union and employer officials. A number of union representatives complained that their duties as officials of their organizations demanded their full energy and time, with the result that they were not always able to devote sufficient attention to the adjudication of disputes. At times, it is said, unsettled grievances have "piled up" pending a time and opportunity for arranging a meeting with the employers' representatives. The extent of this trouble could not be ascertained, but it seems safe to assume that to the degree in which it exists, adjustment is retarded, unrest magnified, and final settlement made more difficult.

Delay in consideration of disputes.

All of the factors mentioned above, the obstacles imposed by the nature of the industry, the practice of submitting disputes to port and district officials before convening port committee meetings, and the difficulty sometimes found in arranging committee meetings, combine to produce a considerable lapse of time between the occurrence of a dispute and its first consideration by the joint committees. It may be neither practicable nor desirable to arrange for the committees to begin functioning at an earlier stage of the adjustment process, but undue delays may have several adverse effects. The parties may become discouraged and refrain from reporting grievances because of the remoteness and uncertainty of settlement. The facts pertaining to a dispute become more and more difficult to ascertain as time goes on. Men's attitudes change and a grievance may not be thought worth pressing several weeks after it was first presented. Yet to drop real grievances short of final adjustment, even though the aggrieved party is willing, may be but to invite recurrence of the problem. On the other hand, the original "facts" may be exaggerated, when a dispute is drawn out, with the result that a minor grievance assumes the proportions of a major issue. Factors of this sort complicate and impede the later stages of a prolonged adjustment routine, making satisfactory settlement difficult or impossible to achieve, and predispose the parties to resort to the "short cut" of economic action.

Inadequate fact finding and record keeping.

Present adjustment methods among the seamen exhibit a marked deficiency with respect to the determination and recording of the facts and circumstances pertaining to individual disputes. When the joint committees undertake consideration of a dispute, the mate-

rial they are forced to work with is likely to consist largely of sketchy and conflicting stories representing the positions taken by the parties. Disputes occurring at sea are not uniformly or completely recorded. Because of the informality of the early adjustment procedure, as conducted by port delegates and company officials or by the local and district officials of the union and the employers' association, the exact steps taken and the results, if any, achieved, freqently are inadequately recorded and hence difficult to ascertain. Thus there is no record giving complete information on such points as: The total number and kinds of grievances presented; the number dropped without definite settlement; the number and character of issues settled; and the stage of the adjustment process at which settlement was reached.

The joint committees, both in the out ports and in San Francisco (when they meet in actual joint session as committees), keep minutes, in synopsis form, of their proceedings. In addition, some of them possess a series of memoranda pertaining to disputes dealt with by officials outside the formal committee machinery. A considerable proportion of these minutes and memoranda appear to be unsigned, representing unilateral versions of committee meetings, informal conferences, or other adjustment efforts.

If the earlier adjustment steps yielded a clear record of the facts, testimony, and other circumstances pertaining to disputes handled, the joint committees would be able to function more intelligently and with greater dispatch when called upon to act.

Objections to arbitration.

The fact that there have been but four arbitration awards under the offshore agreements suggests that the parties are reluctant to utilize this part of the adjustment procedure. Contact with union and employer officials confirms this impression. One employer spokesman, whose reaction is representative, said:

> Oh, arbitration is too cumbersome and takes too long. We find it better to try to thrash those things out directly with the men and so far we've usually managed to come to some sort of agreement sooner or later without all the bother of arbitration. It's really quicker that way and more satisfactory in the long run.

Union representatives also stressed the inconvenience and delay of arbitration, but voiced other objections as well. The seagoing groups, even more noticeably than the longshoremen, exhibited a marked distrust of arbitrators and arbitration generally. It was pointed out that of the 16 issues thus far presented to arbitration, the seamen have received adverse verdicts on nearly all. One union official expressed his views in these words:

> You ask why we don't resort to arbitration if, as we claim, the employers are chiselling and violating the agreement right under our noses? I'll tell you why. Once we submitted six issues to arbitration. We were overruled on five of them just like that! The decision on the sixth was in our favor but the employers have continuously and openly refused to abide by it from that day to this and we can't do a thing about it. We've lost all faith in arbitration. Our only hope is in a strong union that the employers know can exert plenty of economic pressure.

Another common union objection is to the financial burden imposed by arbitration. These costs naturally are more oppressive to the unions than to the employers. Moreover, the memberships of

the seagoing unions, individually, are small compared to that of the longshoremen's union, with the result that the former are even more anxious than the longshoremen to avoid unnecessary expense.

The foregoing analysis indicates that the functioning of the offshore adjustment systems on the Pacific coast could be improved. Yet there is some question as to precisely what changes should be undertaken and the extent to which any given change actually would facilitate the settlement of disputes.

ATLANTIC COAST

BARGAINING PROCEDURES

In their relations with labor, major American shipping interests on the east coast operate through the American Merchant Marine Institute. Members of the association are divided into trade groups according to the class or type of trade in which they engage, such as offshore (deep-water), coastal, collier, intercoastal, and tanker. The offshore group is the dominant group in the association. Within none of the principal trade groups does the Institute membership represent all of the operators in the field, but almost without exception the Institute members dominate the affairs of the entire group. In other words, labor policy formulated by the Institute group is in most instances followed by the operators outside of the Institute.

Collective agreements for the offshore group with unlicensed men, represented by the National Maritime Union, are drawn up on behalf of the Institute by a negotiating committee under the direction and supervision of the president or other designated official. The negotiating committee, which is selected by the members of the Institute, may include representatives of operators not members of the Institute.

Negotiations which resulted in the 1938 offshore agreement were started in March of that year and continued almost without interruption until October, when the agreement was finally reached. After the agreement was negotiated, individual members of the Institute were required to sign with the union, because no authority is given Institute officials to sign for the companies. As operating companies sign the agreement, allowance is made for special conditions or circumstances peculiar to individual companies, which results frequently in slight departures from or modifications of the standard agreement as negotiated by the Institute committee. So far as is known, companies in the offshore trade which are not members of the Institute follow the lead of the Institute in negotiating their agreements with the unions. In fact even operators who have agreements with unions other than the National Maritime Union tend to follow the provisions of the agreement negotiated by the Institute.

As regards the negotiations of the other trade groups within the Institute, there is no regular procedure followed. Each group either conducts separate negotiations through a committee, or the individual members of the group conduct their own negotiations with the union. In the case of the coastwise, intercoastal, and collier groups, negotiations are usually conducted separately by the companies with the union, there being no formal or permanant organization for collective bargaining purposes among employers. In some cases, however, as

in the negotiation of the National Maritime Union "collier agreement" in November 1939, groups of operators agree to unite in conducting negotiations with the union, but the relationship of the operators, as well as the negotiations, is entirely informal. The agreement negotiated between the union and the principal operators usually becomes the standard agreement which is followed by companies not belonging to the Institute.

ADJUSTMENT MACHINERY PROVIDED IN THE OFFSHORE AGREEMENT

Article II, section 1 of the National Maritime Union—American Merchant Marine Institute agreement outlines a definite procedure that must be followed by unlicensed seamen in making grievances known while at sea. This includes designation by the unlicensed personnel, in each department of the ship, of a spokesman to hear complaints from the men, who first presents the complaint to his immediate superior for adjustment. If the grievance is not adjusted at this juncture, appeal is made by the spokesman to the head of the department in which the aggrieved worker is employed. If no settlement follows from this conference, appeal is made directly to the master of the ship. If the grievance is still unsettled, the agreement provides that the decision of the master shall be supreme at sea and in foreign ports, and until the vessel arrives at the port where shipping articles are closed. Upon arrival of the vessel at port the unsettled complaint must be settled through the grievance machinery provided in the agreement.

Article XII, section 1 of the agreement provides that disputes arising over the interpretation of any provision of the agreement, whether originating on board ship or ashore, must be taken up by the union with the company, both parties making every effort to adjust such disputes. If the question remains unsettled, either party may present the question to the port committee for arbitration. Section 2, of article XII provides that port committees shall be set up by the union and the employers within 24 hours after receiving the notice of arbitration. The committees are composed of seven persons, three of whom are appointed by the company and three by the union. The six members thus named shall meet within 24 hours and select a seventh member of the committee. If the members cannot agree on the seventh, such member shall be designated by the United States Conciliation Service, Department of Labor. The port committee is required to render a decision within 72 hours, if possible, after appointment of the seventh member. The company and union shall each bear the expenses of their respective appointees and shall share equally the expenses of the seventh member of the committee.

ADJUSTMENT EXPERIENCE UNDER THE OFFSHORE AGREEMENT

In practice, the procedure followed in settling grievances and complaints arising under the agreement is quite different from that prescribed in the contract. The procedure followed has been adopted by the approval of the parties as being the most satisfactory means of disposing of disputes. Although not provided for specifically in the agreement, the Institute has become the official agency for the settlement of all disputes arising between the parties and is thus a major factor in the adjustment process.

Disputes arising between the men and a company may be settled on the spot, either permanently or temporarily. If temporary settlement is made or, if it is not adjusted in conference, a report is made to the Institute on a standard form, either by the union or by the company. This formal complaint is then referred by the Institute to the negotiating committee for comment. After due consideration by negotiating committee, the Institute, on the basis of the recommendations of the negotiating committee, writes an interpretation or ruling with respect to the dispute, which is forwarded to the company involved and the union. If either party fails to accept the Institute's interpretation, a joint meeting or conference is called between the negotiating committee and union officials (those usually designated as "the Port Committee").

Unadjusted disputes and grievances are thrashed out in joint conference and settlements are reached. Once a settlement or adjustment has been reached between the parties, a formal statement is made, designated as an official interpretation of the agreement, and is signed by the company and the union. Such interpretation is then circulated by the Institute to other members, and it becomes part of the agreement between the parties. If the parties are unable to agree in joint session, then the dispute should, according to the agreement, be submitted to arbitration. According to a statement from the Institute, although there has been no arbitration of disputes during the period of the 1938 agreement, the Institute has on two occasions sought to arbitrate differences, but the union has refused to join in the arbitration.

In such cases, the dispute remains unsettled and is a source of irritation. Between October 1938, when the agreement was made effective, and July 1939, 85 disputes had been formally reported to the Institute by companies or the union, and for the same period, interpretations had been made on 51 of them. Of these 51 interpretations, 4 had not been signed by the union up to June 30, 1939. The remaining cases either failed of settlement in joint session, or the negotiations were so extended as to cause a considerable time lag between the time the disputes were reported to the Institute and the time they were finally interpreted by the joint committee. In many of the unsettled cases, a deadlock has undoubtedly resulted and no final action has been taken.

In reporting disputes and maintaining records, the practice of operating companies varies considerably. Some companies fail to report or make any record of disputes to the Institute, whereas others report even minor disputes. For this reason, the disputes that are reported may not represent an accurate picture of the nature of the disputes occurring in the trade. Likewise, the attitude of the officials of operating companies towards arbitration may be in part responsible for the absence of formal arbitration proceedings between the parties. The statement by an official of a large operating company, to the effect that his company does not insist on arbitration of disputes, even though it believes it could win, is significant. The reason given for this attitude is that the officials of the company are much concerned lest the men lose faith in the principle of arbitration, which they feel would surely follow if the union were to suffer a series of adverse decisions or awards. In view of the relative in-

experience of the parties working under agreements, the operators, in their own interest, desire to guard against the development of union antagonism toward the principle of arbitration.

So far as is known, except for the limitations inherent in a situation where, because of the impossibility of immediate consideration of disputes due to normal delays caused by long absence from ports where adjustment facilities are available, the union reports all the grievances and disputes to the Institute that it considers significant or important.

Although there are no data available, Institute officials indicate that the disputes formally reported to the Institute represent only a small part of the disputes that are constantly arising between the operators and the union, most of which are settled directly and informally by the parties, with no records being kept of settlements.

MAJOR ISSUES INVOLVED IN THE INTERPRETATION OF THE AGREEMENT

Table 4 indicates the principal issues involved in the 51 interpretations of the agreement between the National Maritime Union and the American Merchant Marine Institute, which have been jointly determined between the negotiating committee of the Institute and the port committee of the union, from October 1938 to July 1939. Approximately four-fifths of the disputes involved wages, hours, and working conditions. Remaining issues involved such questions as meal hours, port time, meal allowance, manning scale, and illegal stoppage of work. Almost half of all the disputes involved the working rules of the agreement, while the next highest groups involved the questions of hours of work and overtime.

TABLE 4.—*Major issues involved in 51 interpretations of the agreement made by joint action of the National Maritime Union and the American Merchant Marine Institute, October 1938 to July 1939*

Major issue	Number of disputes	Major issue	Number of disputes
All issues	51	Other issues	10
Wages, hours, and working conditions	41	Hiring	3
		Discrimination	1
Working rules	23	Manning scale	1
Hours of work	12	Meal allowance	3
Overtime	6	Stoppage of work	2

Chapter XIII

RAILWAY LABOR LEGISLATION IN THE UNITED STATES WITH SPECIAL REFERENCE TO THE DEVELOPMENT OF ADJUSTMENT MACHINERY

The development of railway labor legislation represents an evolutionary process extending over a period of 50 years. In this evolution, the establishment of effective machinery for the adjustment of disputes arising out of the application and interpretation of agreements has played a significant part. Through long experience an adjustment system has finally been developed in the railroad industry which has brought about a high degree of stability in labor relations. In considering how to stabilize maritime labor relations it is therefore pertinent to analyze the principal features of the system which has proved effective in the railway industry, as well as the manner in which it evolved. This chapter deals with the development and the present status of railroad labor legislation in the United States. Since disputes arising under the terms of agreements constitute important sources of friction in the railroad, as in other industries where collective bargaining is in effect, special emphasis is placed upon methods of settling disputes of that type.

PRE-WAR LEGISLATION

The Act of 1888.

The first law dealing with railway labor disputes was passed in 1888 after prolonged consideration of various proposals [1] by the Congress. This law provided for voluntary arbitration of disputes threatening to interfere with interstate commerce, at the request of either party, with the consent of the other. But no provision was made for the enforcement of the awards. Arbitration was to be effected by tripartite boards, consisting of the representative from each side and a third member selected by these two. In addition to voluntary arbitration, the law also provided that the causes of disputes could be investigated by a committee appointed by the President, the services of which could be invoked either by the President, by either of the parties to the dispute, or by the chief executive of a State in which a dispute occurred. The committee thus appointed could also serve in a mediatory capacity when requested. Under the law the Federal Government paid all expenses incident to arbitration and investigation of disputes.

During the 10 years in which the law of 1888 was in effect, arbitration was never resorted to, and in only one case, the Pullman strike of 1894, was the investigative provision of the law invoked.[2]

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[1] Starting in 1882, many bills and resolutions were submitted to the Congress on the subject of railway labor disputes. From 1882 to the time the law was passed in 1888, a large number of bills had been considered and considerable discussion had ensued relative to the subject. See U. S. Department of Labor, Bureau of Labor Statistics, Bul. No. 303, *Use of Federal Power in Settlement of Railway Labor Disputes.*

[2] *Ibid.*, pp. 13, 14.

Soon after it was passed in 1888, it became apparent that this legislation was inadequate. The Congress, therefore, began consideration of new proposals to make it more effective. During the period from 1889 to 1897 a number of bills and resolutions [3] were introduced in both houses of the Congress, in each case extended discussions being held. The Erdman Act was the outcome. This law was passed in June 1898, with the approval of railroad labor.

The Erdman Act, 1898.

The Erdman Act differed from the law of 1888 in several respects. Voluntary mediation was introduced for the first time as a basic principle of labor adjustment. The awards of arbitration boards were made binding upon the parties and were enforceable in equity. While arbitration was pending, it was unlawful for either party to change the *status quo* from that existing prior to the dispute. Carriers were not to discharge employees nor were employees to engage in strikes for a period of 3 months after awards were made. No provision was made in the Erdman Act for investigation of the causes of disputes by a statutory body in the event either party refused to accept the service of the mediators or submit the issue to arbitration, as was provided in the act of 1888.

Mediation under this initial venture was greatly restricted in its scope. Upon the request of either party, but with the consent of the other, the Chairman of the Interstate Commerce Commission and the Commissioner of Labor could be called upon to act in a mediatory capacity, but only for disputes which seriously interrupted or threatened to interrupt interstate commerce.

A significant feature of the Erdman Act was the provision making it illegal for an employer to require an employee, as a condition of employment, to sign an agreement not to join or remain a member of a labor organization, or to threaten to discriminate against an employee because of affiliation with a labor organization. This provision was, however, declared unconstitutional by the Supreme Court in 1908.[4]

For a period of about 8 years after its passage, the Erdman Act was not used. In the entire course of its life, 61 cases were handled under the act.[5] Owing to the ineffectiveness of this act during the first years of its existence, the Congress again directed its attention to devising means for more effectively dealing with railway disputes. Between 1899 and 1913, numerous proposals were made. Finally, in 1913, the Newlands Act was passed.

The Newlands Act, 1913.

The Newlands Act was merely an extension of the Erdman Act, amplifying it in certain respects but advancing no new principle for the adjustment of disputes. It provided for a permanent Board of Mediation and Conciliation, consisting of a Commissioner of Mediation and Conciliation, to be appointed by the President, and two Government officials designated by the President to serve on the Board. Disputes could be referred to the Board by either party, and the Board could proffer its services when disputes threatened to interrupt

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[3] Several bills and resolutions were introduced in the years from 1889 to 1893. In 1894, seven bills, and in 1895, three more bills, were introduced in the House and Senate on the subject of railway labor disputes. In 1896 and 1897 more bills were submitted, out of which came the Erdman law of 1898. All of this indicates that the subject of railway labor disputes was a much discussed issue.

[4] *Adair* v. *United States*, 208 U. S. 161.

[5] National Mediation Board, *First Annual Report*, June 30, 1935, p. 60.

commerce or where serious detriment to public interest was threatened. If the parties preferred, voluntary arbitration could be conducted by a board of six, rather than by a board of three. The awards were to be binding and could be made the judgment of a court. A new feature provided that in the event of disputes arising out of an agreement reached through the mediatory efforts of the Board, either party could request an expression of opinion or interpretation of the agreement thus arrived at, and the Board was compelled to give its opinion as soon as practicable. This is significant, chiefly because it is apparently the first time that an attempt was made to meet the problem of the adjustment of disputes arising out of the application and interpretation of agreements. Although such interpretation was not binding upon the parties, it nevertheless opened a way for the adjustment of disputes arising under agreements.

FEDERAL CONTROL, 1917–20

Although Federal control of the railroads during the World War officially suspended the operation of the Newlands Act of 1913, that law had already failed to provide a satisfactory means for the settlement of disputes. The 8-hour day controversy in 1916, which required a special act of the Congress for its adjustment,[6] is evidence of the failure of the law in this respect.

Under Federal control, a temporary wage commission with power to investigate the matter of wages was established by the Director General of the Railroad Administration. This commission made recommendations to the Director General with respect to the claims made by workers for increases in wage rates. To cope with the many disputes arising out of the application of a general order increasing wages early in 1918, a board of railroad wages and working conditions was created. This body was vested with broad powers to hear and investigate matters presented by railroad employees or their representatives. The principal matters coming to the attention of this board were: (*a*) inequalities of wages and working conditions; (*b*) conditions arising from competition with employees in other industries; and (c) rules and working conditions of the several classes of employees, either on a national, regional, or local basis.[7]

Section 5 of General Order 8[8] of the Railroad Administration declared that there should be no discrimination against a worker because of his affiliation or nonaffiliation with a labor organization. In effect this amounted to recognition of the unions by the Government. From the time the Supreme Court declared that section of the Erdman Act which made it unlawful for carriers to require the signing of an agreement not to join a labor organization as a condition of employment, unconstitutional in 1908,[9] it is reported that the carriers had discriminated against employees joining unions. Following this order, however, there was a very substantial growth in national unions, which continued throughout the period of Federal control. Not only was there a marked growth in the unions as a result of the Government's policy of recognition, but the Director General entered

[6] The Adamson Act, Public No. 252, 64th Cong.
[7] U. S. Railroad Administration, *Bulletin No. 4*, Revised, p. 372.
[8] February 21, 1918. *Ibid.*, p. 168.
[9] *Adair* v. *United States*, 208 U. S. 161.

into national agreements with most of the railway unions. This was of real significance because it extended the scope of collective bargaining to all railroads under Federal control and to practically all classes of labor in the railroad industry.

One of the most significant developments under Federal control was the establishment of special national boards to deal with certain types of dispute. By various orders of the Director General,[10] three national bipartisan adjustment boards were appointed to settle all disputes arising out of the application or interpretation of the agreements and out of the rules set up by the Director General covering working conditions and rates of pay which had not been adjusted in conference between the representatives of the carriers and the employees. The bipartisan national adjustment boards thus set up were the first boards of this kind ever created [11] in the railway industry, although a plan calling for the establishments of such boards was submitted to the Congress early in 1917.[12]

Each of the boards dealt with a particular class of employee [13] and was made up of eight persons, four of whom were selected and paid by the carriers, the other four representing the workers and being paid by the unions. Disputants could not refer their differences to an adjustment board until they had exhausted all reasonable means of settlement through conference. If disputes could not be settled in conference, it became obligatory upon the disputants to refer their disputes to an adjustment board, through the labor division of the Railroad Administration. A majority of the board could render a final decision, but in cases of deadlock, matters were referred to the Director General for final settlement. In commenting upon the success of these adjustment boards, Mr. Hines, the Director General, stated that the work of the boards was "eminently satisfactory." He recommended that following the period of Federal control, the plan of bipartisan adjustment boards be continued.[14]

The establishment of these adjustment boards at this time marked the beginning of a long period of development in which machinery for the adjustment of disputes arising out of the application and interpretation of agreements was perfected. Prior to the time when these three adjustment boards were established, no satisfactory means had been developed for settling this kind of dispute.

TITLE III OF THE TRANSPORTATION ACT OF 1920 (ESCH-CUMMINS ACT)

With the failure of the Newlands Act to function in the "8-hour day" controversy of 1916, and with the serious threat of a national tie-up of the railroads that followed, legislators again became con-

[10] Order No. 13, March 22, 1918, created Railway Board of Adjustment No. 1; Order No. 29, May 31, 1918, Board No. 2; and Order No. 53, Nov. 13, 1918, Board No. 3. In each of these cases the Director General approved and gave official sanction to plans that had been previously agreed upon by railroad management and labor union officials. See U. S. Railroad Administration, *Bulletin No. 4*, Revised.

[11] Under the Adamson Eight-Hour Act, a bipartisan board was established by the parties to adjust disputes arising out of the interpretation of agreements which embodied the provisions of the law with regard to the 8-hour day, but its scope was limited. On March 22, 1918, the authority of this Board was transferred to Adjustment Board No. 1. *Ibid.*, p. 179.

[12] U. S. Congress, House of Representatives, Committee on Interstate and Foreign Commerce, *Hearings on H. R. 19730*, 64th Cong., 2d sess., p. 54.

[13] Board No. 1 for train service employees, No. 2 for shop crafts, and No. 3 for telegraphers, switchmen, clerks, etc.

[14] W. D. Hines, Director General of Railroads, *Report to the President*, for 14 months ending March 1, 1920, p. 15.

cerned with the whole problem of railway labor disputes. Measures that would provide a more effective means of settling disputes than had so far been devised appeared imperative. Not long after the passage of the Adamson Eight-Hour Act, proposals were submitted by interested parties to amend both the Newlands and the Adamson Acts. In the main, these proposals sought to strengthen the arbitration provisions of the Newlands Act, to establish the principle of compulsory investigation of disputes, and to prohibit strikes until there had been a full and comprehensive investigation of the facts. While railroad labor voiced objections to all of these proposals, they agreed with the representatives of the industry and of the public that the Newlands Act was ineffective, and advocated its repeal. With the entry of the United States into the War of 1917, however, these proposals were dropped.

In facing the problem of turning the railroads back to their private owners after the war, the Congress was again compelled to consider these problems, which had never been settled. It was generally conceded that legislative action would be necessary to safeguard the public against the strikes and traffic tie-ups which would result from the adjustments accompanying the return of the railroads to private operation. Early in 1919 seven bills were introduced in the Congress for the purpose of turning carriers back to private owners,[15] and all of these measures contained recommendations for dealing with labor matters. Of these various proposals two [16] were adopted by the Congress eventually becoming the Esch-Cummins Act.

The Esch Bill [17] was passed by the House after public hearings at which almost every conceivable means of settling labor disputes was considered. The bill, in brief, provided for the establishment of a railroad adjustment board and a railroad labor board of appeals. The Senate bill,[18] proposed by Senator Cummins, provided for three regional boards of adjustment and for a commission to deal with working conditions. It also included antistrike and compulsory arbitration provisions. These two bills were considered in a conference and the Esch-Cummins Bill was adopted as a compromise measure. That the resulting measure was unsatisfactory is indicated by the following statement:

> We passed this law in a hurry, and nobody who represented or understood the problem of railway labor had anything to do with the writing of Title III of the transportation act. I have already shown it was not considered by a committee of this House. It was not considered by the House itself. It was not recommended by anybody from any source who can remotely claim that he spoke for the employees or the employers on the transportation systems of our country. I am frank to say I do not know where Title III came from. * * * It was an effort on the part of inexperienced men in Congress, who did not understand the psychology of labor to superimpose their will upon a great body of men * * *.[19]

The employees' organizations were opposed to the act and asked the President to veto it.[20]

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[15] H. D. Wolf, *The Railroad Labor Board*, p. 76.
[16] H. R. 10453 and S. 2906.
[17] Bureau of Labor Statistics, *op. cit.*, pp. 78, 79.
[18] Bureau of Labor Statistics, *op. cit.*, pp. 80, 81.
[19] Statement made by Representative Barkley before the House Committee on Interstate and Foreign Commerce at the hearings on the Railroad Labor Act of 1926. See *Congressional Record*, vol. 67, pp. 4516, 4517.
[20] Social Science Research Council, Division of Industry and Trade, *Railway Labor Survey*, Sept. 1933, p. 63.

Provisions of the act.

Title III of the Transportation Act of 1920,[21] otherwise known as the Esch-Cummins Act, was unique in that it included within its scope all classes of workers engaged in interstate commerce. The law provided that disputes should be settled in conference by representatives of both parties. If the parties failed to agree, the dispute was to be referred to a local or regional board for adjustment. Such boards were to be established by voluntary agreement.

The Railroad Labor Board consisted of 9 members appointed by the President, 3 of whom represented the workers, 3 the carriers, and 3 the public. This Board was required to assume direct jurisdiction of disputes with respect to wages or salaries, either upon application of a carrier or organization of employees, or upon a written petition of not less than 100 unorganized workers, or upon the Board's own initiative. Moreover, the Board was required to hear and decide disputes involving grievances, rules, or working conditions when any adjustment board certified that it had failed to reach a settlement. The law further provided that the Railway Labor Board might, within 10 days after a decision had been rendered, suspend the operation of a wage agreement, provided the wage increases were such as to cause a readjustment of the rate structure of the carrier. A decision of the Railway Labor Board required the concurrence of at least 5 members of the Board. On questions involving wages, at least 1 of the concurring members had to be a representative of the public. The law provided no means of enforcing the decisions, however, except by the force of public opinion. Therefore, the parties to a dispute were under no legal compulsion to accept the Board's decisions or to refrain from lockout or strike before, during, or after the investigation and decision.

Inadequacies of the act.

Since the Labor Board was required by law to render decisions in disputes arising between carriers and workers, there was no provision in this law for adjustment of disputes through mediation or conciliation. And since the Board had no power to enforce compliance, its decisions were frequently ignored.

Failure of the parties to establish adequate adjustment machinery was perhaps the most important factor contributing to the ultimate failure of title III of the Transportation Act of 1920. The act contemplated the establishment of adjustment boards by agreement between the carriers, or groups of carriers, and the employees, or groups of employees, but the parties usually were not able to agree on the kind of board that should be created. Having become aware of the desirability and effectiveness of national boards of adjustment, the employees favored the creation of national, or regional, boards of adjustment. But the carriers refused to cooperate with them in this respect, with the result that only three regional boards and a few local or system boards were established. With insufficient adjustment boards to handle minor disputes and grievances arising out of agreements, recourse had to be made, in case of dispute, to the National Railroad Labor Board for settlement. A constant flood of such

[21] Public No. 152, 66th Cong.

disputes consequently overcrowded its docket. The delay caused keen dissatisfaction among the parties. Cognizant of their failure to comply with the law by establishing adjustment boards, both parties joined forces in seeking the repeal of the law.

THE RAILWAY LABOR ACT OF 1926

Although it became apparent almost from the beginning that title III of the Transportation Act of 1920 would not prove satisfactory, it was not until March 1925 that representatives of railway labor and railway management succeeded in uniting their efforts to work out a substitute. The resulting agreement led to the passage of the Railway Labor Act of 1926. That management and labor agreed is apparent from the testimony offered by various officials during the public hearings held in connection with consideration of this measure. Mr. Donald R. Richberg, counsel of the 20 standard railroad labor organizations, stated that management and employees together came before the congressional committees—

> * * * presenting what is an agreement upon what they believe legislation for the benefit of the industry, and for the general public benefit in peaceful industrial relations, * * *[22]

He further asked them to keep in mind—

> * * * that when you read this bill and when you consider it you do carry in mind the idea that it is the agreement of the parties. As I say, not that that should coerce your judgment as to desirable legislation, but in order that you may feel throughout this law the spirit of agreement and cooperation, * * *[23]

In presenting the case for the Association of Railroad Executives before the House Committee on Interstate and Foreign Commerce, Mr. A. P. Thom, General Counsel of the Association, indicated the magnitude of the task confronting the committee members in reaching an agreement, when he said:

> Mr. Chairman, you will readily appreciate that in reaching an agreement on so controversial a matter as the varying inteersts between the carriers and their employees naturally present, it was necessary for both parties to make concessions as to what might be inserted in the agreement. Both parties did make concessions. This bill as presented here is not just such a bill as labor would have written if it could write its own bill—it is not such a bill as the carriers would have written if they could write their own bill. But it is the view on which they are able finally to agree to present to the Congress of the United States as a method that would work in preventing interruptions of commerce and in preventing any sacrifice of public's interest.[24]

The only opposition to the bill came from the National Manufacturers Association, the New England Manufacturers Association, and certain farm groups, who opposed not the specific provisions of the bill, but its failure to provide some specific means for giving the Interstate Commerce Commission the right to review wage agreements arrived at between the parties and the right to suspend them if such increases would necessitate increased freight rates.[25] After

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[22] U. S. Congress, House of Representatives, Committee on Interstate and Foreign Commerce. *Hearings on H. R. 7180,* 69th Cong., 1st sess., p. 10 (Richberg).
[23] *Ibid.,* p. 11 (Richberg).
[24] *Ibid.,* p. 115 (Thom).
[25] For details of arguments see testimony of J. A. Emery, National Manufacturers Association, and Edgar J. Rich, the New England Manufacturers Association, in *Hearings on H. R. 7180,* pp. 207–243, 245–290, 308–309, and 335–353.

extended hearings the bill was adopted by a large majority under the title, the Railway Labor Act of 1926.

Major provisions of the act of 1926.

Under the law of 1926,[26] it became the duty of the parties to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes in conference between representatives of both parties. For the purpose of the act representatives were to be designated by the parties themselves, without any interference, influence, or coercion by either party in connection with the self-organization or designation of representatives by the other.

The law required that boards of adjustment should be created by agreement of the parties for the purpose of settling disputes arising out of the interpretation or application of agreements. The decisions of the adjustment boards were to be final and binding upon the parties. Cases that could not be settled by the adjustment boards because of deadlock, could be referred to the board of mediation created under the act. There was no provision in the law with respect to the selection of referees or neutral members for adjustment boards to make the awards in the event of deadlock.

A Board of Mediation, consisting of five members to be appointed by the President, was created by the law for the purpose of settling, through mediation, all disputes arising out of changes in rates of pay, rules, or working conditions, as well as unsettled disputes involving grievances in the application or interpretation of agreements. Either party could invoke the services of the Board, or the Board could proffer its services. In the event that the efforts of the Board failed to bring about a settlement by mediation, it was to make every effort to induce the parties to submit their controversy to voluntary arbitration. Upon request of either party, the Board of Mediation was also required to interpret the meaning or application of any agreement reached through mediation, after a hearing from both sides.

Arbitration under the law was by means of a Board of three or six members, each party choosing one or two arbitrators, and the members thus selected choosing the remaining member or members. In the event that the arbitrators selected by the parties could not agree upon the neutral member within 15 days, the Board of Mediation named the neutral member or members. The Board of Arbitration had the power to require attendance of witnesses and the production of such records as were necessary to a just determination of the case. It could also request the clerk of a court to issue subpoenas. Unless a petition to impeach the award of the arbitration board was filed within 10 days, the award was final and binding and could be made the judgment of a court.

In the event a dispute failed of adjustment through conference or mediation, and arbitration was refused, and the dispute was of sufficient importance to cause or threaten interruption of interstate commerce, the Board of Mediation was to notify the President, who could thereupon create an emergency board to investigate and make a report of such dispute. During the life of this Board, and for 30

[26] Public No. 257, 69th Cong.

days after it had made its report to the President, no change, except by agreement, could be made by either party to the controversy in the conditions out of which the dispute arose.

The act provided that the Federal Government should pay the salary and expenses of the Board of Mediation. Through the Mediation Board, the Federal Government also compensated the neutral arbitrators and met the necessary expenses of clerical assistance and incidentals connected with arbitration, as well as the expenses of the emergency boards created under the act.

With regard to maintenance of the *status quo* when disputes arose, the act provided that 30 days' written notice of intended changes in rates of pay, rules, or working conditions should be given by either party. In cases where notices of intended change had been given, or a conference with respect thereto was being held, or if the services of the Board of Mediation had been requested or proffered, rates of pay, rules, or working conditions could not be altered by the carrier until the controversy had been finally acted upon, or for a period of 10 days after the termination of conferences without a request for, or a proffer of, the services of the Board of Mediation. In cases which had been referred to an emergency board created under the act, there could be no change in the conditions out of which the dispute arose for a period of 30 days after the Board had made its report, except by agreement.

Defects of the act of 1926.

In spite of the decision of the Supreme Court in 1930,[27] upholding the right of employees to select representatives of their own choosing for collective bargaining without influence, coercion, or intimidation from the management, many carriers persisted in their policy of fostering company unions and refusing to grant employees their freedom of choice. According to the testimony of G. M. Harrison, President of the Brotherhood of Railway Clerks, before the House Committee on Interstate and Foreign Commerce in 1934, a substantial number of railway employees had been denied the right to exercise their free choice in the selection of their representatives or to have their choice finally or definitely disclosed.[28]

The Congress reiterated the right of employees to choose their own representatives for bargaining purposes when it incorporated into additional laws [29] the same rights conferred in the Railway Labor Act of 1926. In the Bankruptcy and the Emergency Railroad Transportation Acts, however, the Congress went even farther in defining the rights of employees with respect to self-organization, and the limitations upon employers, by outlawing "company unions" and "yellow dog" contracts. Since the Emergency Railroad Transportation Act of 1933 was only a temporary measure, expiring in 1935, railway employees were desirous of having these rights written into the basic law covering labor relations in the railway industry. That company unions were flourishing and obstructing the workers in their right to organize and select their own representatives was evident from the study made by Coordinator Eastman under the Emergency

[27] *Texas and New Orleans Railroad Company* v. *Brotherhood of Railway and Steamship Clerks*, et al., 281 U. S. 548.

[28] U. S. Congress. House of Representatives. Committee on Interstate and Foreign Commerce. *Hearings on H. R. 7650*, p. 78 (G. M. Harrison).

[29] The Bankruptcy Act of 1933 and the Emergency Railroad Transportation Act of 1933.

Railroad Transportation Act.[30] This study and the recommendations made by Mr. Eastman to the Congress aided materially in the passage of the 1934 amendment to the 1926 act. In his testimony before the House Committee on Interstate and Foreign Commerce, Mr. Eastman stated that:

> It is a fact, also, that the railroads have in the past played a large part in both the initial organization and the subsequent operation of company unions. Proof of this fact can be supplied, if necessary, * * *[31]

Mr. Eastman made this statement to show definitely that the carriers had organized company unions because they could more readily influence their policies and management than they could those of standard national organizations.

Adjustment boards.

The need for some suitable means of adjusting disputes and grievances arising out of the application or interpretation of agreements had long been recognized by both parties. Experience under Federal control had so well demonstrated the effectiveness of adjustment board procedures for this purpose that the Director General of Railroads recommended a continuation of such boards after the return of the roads to private management.[32] The Transportation Act of 1920 contained a provision permitting the establishment of adjustment boards by agreement between the parties. Since the parties failed to agree, adjustment boards were not established under that act. In the 1926 act it was stated that adjustment boards *shall be created by agreement between the parties*, but it was not specified whether such boards were to be national, regional, or local in scope, nor did it provide for the selection of neutral members to make awards in the event of deadlock. Thus, although the act of 1926 contemplated the creation of adjustment boards, an effective adjustment board mechanism was not established during the life of the act. The principal reason for this was the failure of the parties to agree on the kind of board that should be created.

Chiefly as a result of their experience with national boards under Federal control, the workers favored national or regional boards of adjustment rather than system boards. Railroad employees wanted national or regional boards because they would remove disputes from the purview of the parties directly interested, and because such boards involved recognition of unions by carriers reluctant to do so. They also held that local boards would tend to give conflicting interpretations of rules which were generally standardized throughout the country, with the result that employees on one road would get worse treatment because of such interpretation than workers on another road under the same rules. On the other hand, the carriers were insistent upon the establishment of system boards, because, prior to Federal control, it had always been the accepted practice to handle grievances and minor disputes on a system basis and the carriers were reluctant to give the prominence to the unions which national or regional boards would require. Under the 1926 law, only one national adjustment board was created. This was exclusively for

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[30] Office of Federal Coordinator of Transportation, first report, *Regulation of Railroads*, 1934. See discussion of company unions, pp. 59–61.
[31] *Hearings on H. R. 7650*, p. 24 (Eastman).
[32] Bureau of Labor Statistics, *op. cit.*, p. 74.

employees of the Railway Express Agency, Inc.[33] In addition to this national board, many system or local boards were established, and four regional boards were in operation, all but one of which was already in existence prior to the Railway Labor Act of 1926. The jurisdiction of these regional boards was confined almost entirely to the transportation brotherhoods.[34]

In the report of the United States Board of Mediation for the year ending June 30, 1928, the statement was made that adjustment boards contemplated by the act were not generally created.[35] From this time on only occasional reference is made in the reports of the Board of Mediation to adjustment boards. From analysis of the cases coming before the Mediation Board, however, it is evident that minor disputes and grievances that should have been settled by adjustment boards were hindering the regular business of the Mediation Board. For example, in 1931, there were approximately 272 system boards of adjustment functioning, but up to the end of June 1931, 596 grievance cases had been referred to the Mediation Board from system boards because of deadlock. For the year 1931 alone, 247 cases not settled by the adjustment boards were referred to the Mediation Board for settlement, as compared with only 58 cases involving changes in rates of pay, rules, or working conditions. In years subsequent to 1931, the ratio of the number of cases referred to the Mediation Board from adjustment boards, to the number of cases properly referable to the Board, was approximately the same as in 1931. This indicates that even such adjustment boards as were created proved ineffective in settling disputes and grievances, chiefly because there was no provision for neutral members to render the awards in deadlocked cases.

Because of the large number of grievance cases coming to the Mediation Board for settlement, that Board was compelled to limit its services to cases that had already been referred to an adjustment board. When appropriate adjustment boards had not been created, as was the case in numerous instances, the employees were therefore deprived of any means of redress, except economic action. The increasing number of unsettled disputes arising out of the application or interpretation of agreements caused much dissatisfaction among the workers and, as a protest against this condition, strike ballots were, in many instances, placed in the hands of workers.[36]

In retrospect it is clear that because of the fundamental differences between the parties on questions of organization, representation, administration, and procedure, they would never have come to an agreement on the question of the nature of adjustment boards, if left entirely to themselves as the law required. This subject was a continuing source of controversy, though the parties were agreed that some adjustment mechanism was essential before peaceful relations could be realized.

Of importance in reviewing developments under various railway labor acts, is the fact that adjustment of grievances arising under

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[33] Social Science Research Council, *op. cit.*, p. 28.
[34] *Hearings on H. R. 7650*, p. 45 (Eastman).
[35] U. S. Board of Mediation, *Report for Year Ending June 30, 1928*, p. 11.
[36] "* * * on some roads as many as 1,000 unadjusted disputes were in existence; and the condition got so unbearable that several of these organizations went to the extent of putting a strike ballot in the hands of their employees to leave the service of the carrier unless those controversies should be settled." *Hearings on H. R. 7650*, p. 81 (Harrison).

agreements proved unsatisfactory under the 1920 and the 1926 laws, for the simple reason that the parties could not agree on the kind of adjustment machinery required. When, however, the parties were able to agree on this question, as in the case of the adjustment boards sanctioned by the orders of the Director General, the work of the adjustment boards proved singularly successful.

THE RAILWAY LABOR ACT AS AMENDED IN 1934

Although the 1926 act was successful in many respects, there were certain features that were not satisfactory. Opinion was unanimous among the parties that the law was in need of improvement and amendment. G. M. Harrison, President of the Brotherhood of Railway Clerks, stated in a hearing of the Senate Committee on Interstate Commerce that:

> * * * Our experiences, however, after 8 years of operation under that bill [1926 act] have brought us to the definite conclusion that, while its principles are sound, there is need of some amendments to clarify the language and to prevent certain unfair practices that have developed * * * [37]

Mr. M. W. Clement, the chairman of the Railroad Executives Committee, who was delegated to deal with the matter of amending the act, stated before the same committee that:

> * * * It [the Railway Labor Act of 1926] has functioned effectively for 8 years. During that time, however, men and management have come to recognize that there are two defects in the law from the standpoint of the men:
> 1. That, on certain railroads, men and management have not observed the spirit of the law.
> 2. Failure of the law to provide machinery for the prompt disposal of matters in controversy referred to the boards, that became deadlocked.[38]

As further evidence of the universal feeling that the law should be amended, Mr. Eastman, Coordinator of Transportation, stated before the Senate Committee on Interstate Commerce that:

> This Railway Labor Act has now been tried for a period of 8 years. It has served a very useful purpose and has brought about many good results, but experience has shown that it is in need of improvement.[39]

With respect to the amendments that were proposed by the parties covering the matter of representation, "company unions," "yellow dog" contracts, and adjustment boards, Coordinator Eastman was called in to report before the House Committee on Interstate and Foreign Commerce. In a revision of the bill which he made and which was later adopted by the Congress [40] were included provisions to take care of the apparent weaknesses of the law. Mr. Eastman was convinced that the amendment as proposed was in no way contrary to the intent of the original provisions of the Railway Labor Act of 1926. In fact he stated that:

> The bill before you, S. 3266, proposed such improvements. It does not depart from the general principles of the present Railway Labor Act, but, instead, is designed to reinforce those principles and provide for their more effective application. It seeks not to overturn but to perfect what has been done.[41]

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[37] U. S. Congress, Senate Committee on Interstate Commerce, *Hearing on S. 3266,* 63d Cong., 2d sess., p. 58 (Harrison).
[38] *Ibid.,* p. 55 (Clement).
[39] *Ibid.,* p. 10 (Eastman).
[40] U. S. Office of Federal Coordinator of Transportation, *Summary of the Work of the Federal Coordinator of Transportation,* June 1933 to June 1935, p. 30.
[41] *Hearings on S. 3266,* p. 10 (Eastman).

Before the amendment was passed by the Congress, public hearings were held by committees of both Houses. At these hearings the standard railway labor organizations endorsed the measure, although they offered certain amendments, e. g., definitions of company unions. The carriers were opposed to the measure. It developed during the debate in the Congress that the reason the railroads opposed the amendment was that there had been no agreement of the parties; the carriers therefore felt that passage of the bill should be delayed until such time as agreement could be reached. As a result of his extensive investigation, Mr. Eastman stated on this point, however:

> In our opinion such complete agreement will never be forthcoming and the enactment of the proposed amendments should not be delayed awaiting such agreement.[42]

In spite of the opposition of the railroads, the measure was passed by the Congress and became a law on June 21, 1934.

Major provisions of the act as amended in 1934.

The Railway Labor Act of 1926 was amended in 1934 [43] and the general duties of the parties with respect to making and maintaining agreements and settling disputes in conference were carried forward in the amended law. As amended, the law provides that representatives of the respective parties shall be designated without interference, influence, or coercion of either party upon the action of the other, and that such representatives need not be employed by the carrier. The right of employees to organize and bargain collectively through representatives of their own choosing being a part of this law, carriers are prohibited from denying or questioning the right of employees to join organizations or assist in organizing a labor organization of their choice. The law also makes it unlawful for any carrier to sponsor company unions. Finally, as regards the rights of employees to organize and bargain collectively, "yellow dog" contracts are prohibited. The willful failure or refusal of any carrier or its officials to comply with the terms of the foregoing provisions with respect to selection of representatives, company unions, etc., is subject to a fine of from $1,000 to $20,000 or imprisonment for not more than 6 months, or both, for each offense.

Another feature of the amendment is the creation of a National Railway Adjustment Board to handle all the disputes arising out of the application or interpretation of agreements. This Adjustment Board consists of 36 members, 18 of whom are selected by carriers, according to rules prescribed by themselves, and 18 are selected by national labor organizations in the manner prescribed by such national labor organizations. For administrative reasons, this Board, which has its headquarters in Chicago, is divided into four separate divisions or bipartisan boards, each to cover certain classes or crafts of employees.[44]

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[42] *Congressional Record,* vol. 78, p. 12375. (A letter from the Coordinator and the Secretary of Labor to the President, June 14, 1934).

[43] Public No. 442, 73d Cong.

[44] Division No. 1 for train and yard service employees, No. 2 for shopcraft workers, No. 3 for station, tower, and telegraph employees, etc.; No. 4 for marine employees and miscellaneous. Divisions 1, 2, and 3 each consist of 10 bipartisan members, and No. 4 is made up of 6 members.

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Disputes or grievances arising out of the application or interpretation of agreements that cannot be settled in conference by the parties themselves, may be referred to the appropriate adjustment board upon the petition of the parties, or either party, along with a full statement of facts. In the event of a deadlock among the members of the board, the members shall select a referee to make the award. If the members of the board fail to select a referee within 10 days, such referee shall be selected by the National Mediation Board. The awards of the adjustment boards are final and binding upon the parties and may become the judgment of the court. Moreover, under the 1934 amendment there is no appeal to the Mediation Board from the adjustment boards, as there was under the 1926 act, in cases arising out of the application or interpretation of agreements.

It is the duty of the National Mediation Board under the 1934 amendment, however, in the event of a dispute among employees as to who are the proper representatives of the employees, to investigate, to determine (by secret ballot), and to certify to both parties within 30 days the names of the authorized representatives selected by the workers for purposes of collective bargaining.

Carriers and representatives of the employees are required to give at least 30 days' written notice of intended changes in agreements affecting rates of pay, rules, or working conditions. In cases where notice of changes has been given, or conferences are being held, or the services of the Mediation Board have been requested, or said Board has proffered its services, there shall be no change in rates of pay, rules, or working conditions by the carrier until the controversy has been finally acted upon in accordance with the provisions of the act.

If a dispute remains unsettled and arbitration is refused by one or both parties, and railway transportation is seriously threatened, the National Mediation Board immediately notifies the disputants in writing that its mediatory efforts have failed, and reports its findings to the President of the United States who may then, at his discretion, appoint an emergency board to investigate and report respecting such dispute.

The emergency board is required to investigate promptly, the facts as to the dispute, and to report its findings to the President within 30 days from the date of its creation. After the creation of the emergency board and for 30 days after such board has made its report to the President, no change, except by agreement, can be made by the parties to the controversy in the conditions out of which the dispute arose.

The plan embraced by the Railway Labor Act is predicated upon the premise that representatives of employers and employees can, and do, find a workable solution of their problems when the subject is approached by them in a calm and equitable manner, with full recognition of the rights of all concerned. The time periods intervening in the various steps of the adjustment process are designed to insure to the public uninterrupted service from the inception of the dispute to the expiration date following the emergency board's decision.

Much of the difficulty between employers and employees arises from the application and interpretation of agreements. Effective

machinery for resolving these difficulties is, therefore, essential to stable labor relations. With the setting up of the National Adjustment Board in 1934, the most advanced machinery that has yet been devised for handling this class of disputes in the railroad industry has been reached. In commenting on the importance of adjustment board machinery to peaceful labor relations, the National Mediation Board makes the following reference to the National Railroad Adjustment Board in its fourth annual report:

> Without an agency or agencies such as the National Railroad Adjustment Board to which resort may be had to adjudicate claims involving interpretation or application of the terms of negotiated labor agreements, or to settle disputes growing out of the grievances of individual employees covered by such agreements, the general plan for the maintenance of labor peace and harmony underlying the Railway Labor Act would be incomplete.[45]

The National Adjustment Board represents, in fact, more than 2 decades of trial and error in devising ways and means of settling the disputes that arise in making collective bargaining effective in the railroad industry.

THE 1936 AMENDMENT TO THE RAILWAY LABOR ACT

Title II, of the 1936 amendment to the Railway Labor Act, brought the air transport industry under the scope of the act. This was done at the request of the Air Line Pilots Association, an American Federation of Labor affiliate, and was endorsed by several other labor organizations and by several governmental agencies. Title II applies all the provisions of the Railway Labor Act, except section 3, which established the National Board of Adjustment for the railroad industry, to common carriers by air and their employees. Instead, title II provides that temporary adjustment boards may be set up by agreement between air carriers and their employees, and authorizes the National Mediation Board to establish a permanent National Air Transport Adjustment Board, when it deems it necessary.

As regards the selection of neutral referees for the Air Transport Adjustment Board, the same procedure followed in selecting referees for the National Railroad Adjustment Board is followed in the air transport industry.

SUMMARY

The history of labor legislation and experience under the various acts designed to encourage industrial peace in the railroad industry has established a fundamental distinction between disputes arising in connection with the making of agreements, on the one hand, and those that grow out of the interpretation of existing agreements, on the other. It has also been recognized that these two types of dispute require different machinery and methods of handling. Legislative history shows that in the railroad industry disputes over interpretation of agreements generally required a greater degree of detailed legislative regulation than disputes arising in connection with the making of agreements.

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[45] National Mediation Board, *Fourth Annual Report,* June 30, 1938, p. 6.

The development of effective adjustment machinery to handle disputes arising out of interpretation and application of collective agreements has failed to function effectively when it has not had the support of both parties. On the other hand, whenever it has been possible to devise an adjustment machinery through the agreement of the parties with the assistance of the Government, satisfactory results have been attained.

It is also important to note that the realization of stable, workable adjustment machinery was predicated upon the achievement of strong union organization, fortified by the unqualified recognition of the right of labor to organize and bargain collectively.

Chapter XIV

FOREIGN MACHINERY FOR COLLECTIVE BARGAINING AND ADJUSTMENT OF DISPUTES[1]

In the year 1889 there occurred the great dock strike in London. This was the first large-scale industrial upheaval in England, and it altered the previous course of British labor policy. Following this strike, two important things happened: Unskilled laborers were for the first time organized in large numbers, and the first national disputes legislation was passed.

In the following year an extensive strike started among the seamen of Victoria, Australia, and, spreading to other groups of workers both in Australia and New Zealand, ended in a general strike which affected nearly every industry and tied up all their ports. The primary issue was the general acceptance by employers of the right of workers to join a trade union. The workers suffered a crushing defeat and in their weakened economic position turned to political action. The result was adoption of conciliation and arbitration machinery by the various States of Australia and by New Zealand.

These strikes were part of a world-wide wave of stoppages which took place in the last half of the nineteenth century. In all of the major industrial countries of the world, except Germany, it resulted in the inauguration of national legislation designed to encourage the peaceful settlement of industrial disputes. Legislation of this general type assumed different forms to suit the varying conditions and traditions of each nation. During the subsequent 40 years it has from time to time been altered to meet the requirements of changed economic and political conditions.

The machinery now existing in five important maritime countries, Great Britain, New Zealand, Australia, France, and Sweden, is described here. It falls into two main categories: (1) preventive and (2) remedial; that is to say, machinery intended to create satisfactory labor relations so that disputes will not occur, and machinery designed to terminate industrial conflict after it has reached the breaking point. Irrespective of its general type, however, the disputes machinery in all of these countries is predicated upon the organization of both employers and workers in unions of their own choosing, as basic to establishment of a permanent working equation. The object of preventive legislation has therefore been to strengthen the position of collective bargaining, while the remedial legislation institutes machinery for investigation, conciliation, and/or arbitration. Some countries emphasize one type of remedial machinery, some another, and some utilize all three methods of resolving industrial discord.

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[1] This chapter deals with the machinery in operation prior to September 1, 1939.

Among the nations there is also a difference with regard to enforcement of conciliation and arbitration machinery. In Great Britain, for example, its use is entirely voluntary. In Australia, New Zealand, and Sweden conciliation is voluntary, while arbitration is compulsory when a certain stage is reached. In France both conciliation and arbitration are compulsory in all industries. In Great Britain compulsory arbitration was tried during the World War, but was abandoned immediately afterward as unsatisfactory for a peacetime regime. But in New Zealand the act providing for compulsory arbitration was repealed during the recent depression, only to be reenacted when prosperity returned.

Again, there exists a difference with regard to the treatment of maritime disputes. In Great Britain the maritime industry, like others which are well organized, has its own specialized voluntary machinery for negotiation of agreements as well as for the settlement of disputes. When its resources have been exhausted without a successful settlement of differences, there is recourse to an industrial court which hears cases referred to it from any industry by the Minister of Labour with the consent of *both parties*. In France and Sweden there is also specialized machinery. But in Australia and New Zealand maritime disputes are dealt with in the same manner as those occurring in other industries.

GREAT BRITAIN[2]

GENERAL PREVENTIVE MACHINERY

Since the right to organize and bargain collectively is voluntarily accepted by practically every employer, the question of union recognition is not an issue in Great Britain. Nevertheless, different degrees of employer and worker organization obtain in different industries. To meet these varying requirements, three general types of preventive machinery have been devised. These may be classified as: (1) Voluntary, (2) quasi-voluntary, and (3) compulsory. The voluntary machinery consists of that set up by the terms of collective agreements between employers and workers in different industries without Government interference of any sort. The quasi-voluntary machinery is partly voluntary and partly compulsory, as in the cotton manufacturing industry, for example, where the Government by act of Parliament[3] has established machinery by which the terms of voluntary agreements may, under specified circumstances, be extended and given legal force. The compulsory machinery applies minimum wage provisions to certain trades or industries, for which purpose representative wage boards are established on a basis resembling collective bargaining.[4]

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[2] Major sources: The Acts; Frank E. Gannett and B. F. Catherwood (editors), *Industrial and Labour Relations in Great Britain—A Symposium*, 1939; J. Henry Richardson, *Industrial Relations in Great Britain*, International Labour Office, Studies and Reports, Series A, No. 36, 1938; Dorothy Sells, *British Wages Boards*, 1938; Dorothy Sells, "The Settlement of Industrial Disputes in Great Britain," in *Law and Contemporary Problems*, Spring 1938, pp. 321–330; United States Department of Labor, *Report of the Commission on Industrial Relations in Great Britain*, 1938; unpublished memoranda, letters, and other data.

[3] *The Cotton Manufacturing Industry (Temporary Provisions) Act, 1934*, 24 and 25, Geo. 5, ch. 30.

[4] *The Trade Board Acts 1909 and 1918*, 9 Edw 7 ch. 22 and 8 and 9 Geo. 5 ch. 32; the *Agricultura lWages (Regulation) Acts 1924 and 1937*, 14 and 15 Geo. 5, ch. 37 and 1 Edw. 8, and 1 Geo. 6, ch. 53; the *Road Haulage Wages Act, 1938*, 1 and 2 Geo. 6, ch. 44; and the *Coal Mines (Minimum Wage) Act 1912*, 2 Geo. 5, ch. 2.

Roughly, 8,000,000 out of a total 15,000,000 industrial and agricultural workers, or more than 53 percent, are directly covered by voluntary collective agreements. Included among these are some 200,000 maritime workers and those belonging to the iron and steel, boot and shoe, engineering, and the other most highly organized industries. About 3,000,000 of the total 8,000,000 are employed in some 50 industries which are governed by Joint Industrial Councils known as Whitley Councils. These councils are voluntary tripartite bodies set up immediately following the World War to facilitate collective bargaining in certain moderately organized industries which previously had no permanent machinery for joint negotiations. Such industries as pottery, flour milling, electricity supply, and a number of public service undertakings have Whitley Councils.

The wages and conditions of work of more than 2,500,000 workers employed in another 50 or so industries, including many which employ a large number of women and homeworkers like tailoring, paper-box making, tobacco manufacture, as well as others like coal mining, agriculture, and road haulage, are covered by some form of compulsory wage-fixing machinery.[5]

Beside provisions regarding wages, hours, and conditions of work, machinery for the settlement of disputes and grievances is often established by these different types of labor contract. There is, however, a wide diversity in the form prescribed by various industries. An excellent example of the diversity in machinery occasioned by fundamental structural and functional differences in the industries is to be found in the transportation group, including shipping, stevedoring, road haulage (trucking), railway, tramway and motor bus (passenger) service. Though all are engaged in the same general business of moving passengers and goods, each is subject to a different type of negotiation and disputes machinery within the broad classification of collective bargaining.

SPECIAL MACHINERY FOR THE MARITIME INDUSTRY

Dockers and stevedores.

According to British usage, dockers work on the wharf, while stevedores are employed on the ships in connection with loading and unloading vessels. Most of the waterside workers belong to the Transport and General Workers' Union. Beside this national union, two local unions participate in negotiations. The chief negotiating body is a National Joint Industrial Council which was established in 1920 as the result of a Court of Enquiry report in connection with a strike which occurred just after the World War. In May 1920, a national agreement was signed by the National Council of Port Labour Employees on the one hand and the Transport and General Workers' Union on the other. This agreement, with periodic modifications, the last of which was made in August 1937, has been in force since 1920. It includes provisions concerning wages, working conditions, and local and national joint conciliation committees. By this agreement hiring halls are placed under the jurisdiction of employers, workers, and the Government, jointly. The National Council also has representatives on a joint committee, which works with the

[5] Dorothy Sells, *British Wages Boards*, pp. 49–50.

Government toward decasualization of dock labor. Except for the general strike of 1926 and one occurring in 1924 as a result of the breakdown of negotiations, there have been few disputes among dock workers since adoption of the agreement. These have been local and have not been sanctioned by the national organization.

In addition to the National Council there are 20 port committees acting in a local advisory capacity and dealing with registration of dock labor. A National Port Committee supervises the registration. Most important of the port arrangements is, of course, that operating in the port of London, which is managed by several private companies owning docks and by the Port of London Authority, a public service corporation constituted by an act of Parliament. Each of the seven employers' organizations, of which the Port of London Authority is one, treats with the appropriate labor organization on matters of particular concern to that organization, but a body known as the Port Employers in London speaks for employers of the port as a whole in negotiations with the trade unions.

Seamen.

British seamen are organized in the National Union of Seamen. Officers belong to another union, which is likewise a member of the Trades Union Congress, and to several other unions not affiliated with the Trades Union Congress. The seagoing engineers also belong to a separate organization. Approximately 90 percent of the seamen are organized. Two employers' organizations, the Shipping Federation and the Employers' Association of the Port of Liverpool, together represent approximately 95 percent of all British tonnage.

Before the World War there was no national organization of employers and no negotiating machinery in the maritime industry. A protracted strike in 1911 made it possible for the National Union of Seamen to secure agreements with most of the shipowners separately. But not until 1914 did the employers become sufficiently well organized to treat with the unions on a national basis. A National Maritime Board was then formed with representatives of employers, workers, and the Government participating. By agreement between the employer and worker representatives, the Board was reconstituted in 1919 along Whitley Council lines and on a purely voluntary basis. This body continues to function as the joint negotiating body for the merchant marine.

The National Maritime Board consists of five panels representing the chief categories of workers employed: Masters, navigating officers, engineer officers, sailors and firemen, and catering personnel. Each panel consists of 12 representatives for each side. The employer representatives are selected by the Shipping Federation and the Employers' Association of the Port of Liverpool jointly. The worker representatives are generally chosen by the appropriate union i. e., the Mercantile Marine Service Association, the Marine Engineers' Union, the Amalgamated Engineering Union, the National Union of Seamen, and the Ship Constructors and Shipwrights' Association. The masters panel does not function, however, and so the working Board actually consists of four panels with 24 members each, making a total of 96 members.

Each of the national panels appoints a number of district panels and each district panel appoints several representatives of each side

to act as consultants in each of the important ports within the district. All expenses are met jointly by the two sides.

The full Board ordinarily meets every 6 months, but when, in the opinion of either side of any panel, a matter arises upon which the action of the Board is required, an extra meeting is called. There are two chairmen of the Board, one elected by each side, who preside alternately. The panels operate in a similar manner. A majority vote on either side binds all the members of that side. An agreement between the two sides is regarded as final. In case of disagreement, the matter either drops or it may be dealt with by the Minister of Labour under some of his statutory powers.

The functions of the Board as set out in its constitution are:

(*a*) The prevention and adjustment of differences between Shipowners and Masters, Seamen and Apprentices [the catering department employees are now included];

(*b*) The establishment, revision, and maintenance of a National Standard rate (or rates) of wages and approved conditions of employment in the Mercantile Marine;

(*c*) The establishment of a single source of supply of sailors and firemen jointly controlled by employers and employed in accordance with the following general principles:

(1) The shipowner shall have the right to select his own crew at any time through a jointly controlled supply office, already established or to be established on a basis to be mutually agreed. Special arrangements to be made by the National Maritime Board to meet special cases, such as coasting trade and shipping of substitutes;

(2) Equal rights of registration and employment must be secured for all seamen. Raw recruits to be registered as such;

(3) The seamen shall have the right to select their ship.

The national agreements concluded for the different categories of seamen prescribe the wages and other conditions of employment and provide for joint "supply offices" (hiring halls) as authorized in the constitution. Regulations concerning accommodations and food have also been made, usually on joint recommendation of the two sides. Except for the catering staff, there is in effect a closed shop for the unlicensed personnel; that is to say, seamen selected by the responsible ship officer are not formally employed until approved by both the union and employer representatives. There is also a modified form of check-off, union dues being deducted at the end of the voyage from the wages of those who have authorized it.

There are no ship committees or union representatives on board ship. All grievances are settled in port. This is regarded by the union officers as essential to maintaining the necessary discipline aboard ship. Neither do union men who give orders belong to the same unit of the Seamen's Union as the men who take their orders. It is the duty of the port consultants to secure prompt manning of vessels, and in the first instance to settle any differences arising in this connection. They have no power to alter or amend the regulations or scales laid down by the Board, however. When a dispute cannot be settled by the port consultants, written statements from each of the parties concerned together with the joint or separate observations of the consultants are referred to the appropriate district panel.

It is the function of the national panels to adjust differences and disputes not settled by the district panels, to prepare rules for securing observance of the Board's decisions, and to draw up resolutions

regarding any action they consider desirable on the part of the various Government departments. When the two sides of a panel disagree, the matter may be referred by joint consent, either to the full Board or to a barrister nominated by the president of the Bar Council. The barrister has power to call witnesses, but neither side may be represented by counsel before him. Nor are his recommendations or opinions legally binding upon either side. In practice, reference to a barrister is seldom resorted to, such instances usually relating to questions of interpretation.

The constitution of the National Maritime Board provides that no stoppage of work or lockout shall take place until a difference has passed through the entire procedure prescribed by the Board. No strike pay or assistance, direct or indirect, shall be afforded by either organization concerned or by any official or member of such organizations to any persons failing to observe the agreed procedure for dealing with disputes. If a dispute has gone through the prescribed procedure but still failed of solution, there is then recourse to the remedial machinery available to all industries.

During the period of 20 years since this machinery was set up, there have been no official strikes. There have been two unofficial stoppages, one among the caterers, who then belonged to a separate union, and which was not successful, and another, a local strike of rank and file seamen growing out of opposition to wage reductions agreed to by the Seamen's Union. In the latter case, substitutes were supplied by the union to man the ships.

Enforcement of the Board's agreements is a matter for the various organizations represented upon the Board to deal with. Except in one case, compliance has so far been entirely voluntary. The Tramp Shipping Subsidy Committee, however, has in several instances threatened to refuse a subsidy to a company paying its employees less than the agreed rate. Though a withdrawal has never actually taken place, shipowners have several times been required to make the appropriate payments before a subsidy was recommended.

That the operation of the National Maritime Board has proved eminently successful is attested to by representatives of employers, workers, and the Government, who regard it as one of the best examples of a civilized way of dealing with industrial differences, though not in all respects perfect.

Speaking before the House of Commons in December 1934, the Right Honourable Walter Runciman (now Lord Runciman), then President of the Board of Trade, said of the National Maritime Board:

> There is not one industry in this country which has been so free from labor disputes as the shipping industry in the last 20 years. I put that down entirely to the working of the National Maritime Board, and I am sure I may express our great gratitude to those who are on both sides of the Board table and who have done so much to make it possible for us to face the extremely difficult and troublous time, and to secure justice to the men.

And in 1937, the Right Honourable Ernest Brown, Minister of Labour, referred to the Board before the same body as:

> One of the most successful joint industrial councils in this country.

Various reasons are given by maritime leaders for the outstanding success of the National Maritime Board. General acceptance of col-

lective agreements as the foundation of industrial stability and long experience with collective bargaining as the method of negotiation are most important. Between the two sides of the Board there also exists a mutual respect and good faith in the observance of agreements which renders joint action advantageous to all concerned. The fact that the Board is a purely voluntary body and that there is no appeal from its decisions other than through governmental channels in case of serious dispute, confers a sense of dignity and responsibility making for considered and responsible decisions. Concentration of organized seamen in one union and a cooperative attitude on the part of that union with respect to other organizations in the same general field have also contributed toward amicable negotiation and effective agreement. And finally, Great Britian's limited coast line facilitates national arrangements even though a large number of workers is involved.

GENERAL REMEDIAL MACHINERY

The Industrial Conciliation Act, 1896.[6]

The Industrial Conciliation Act of 1896 sets up a framework for voluntary conciliation and arbitration of disputes. Though it is infrequently applied, this act still remains in operation. By its terms the Ministry of Labour is authorized to inquire into the causes of any industrial difference, including those occurring in the maritime industry, and to take such steps as appear expedient toward bringing the parties together under an impartial chairman with a view to amicable settlement. Upon the request of *either* party, the Minister may appoint a conciliator to assist in securing agreement or, with the consent of *both parties* to the dispute, he may appoint an arbitrator to settle the difference. In 1908 the arbitration clause of the act was strengthened by a new provision allowing appointment of temporary courts of arbitration, upon the consent of both parties to a dispute. These courts are composed of three to five members selected from standing panels of worker and of employer representatives, and of chairmen.

The Industrial Courts Act, 1919.[7]

Experience with the standing Committee on Production during the War contrasted with previous experience of temporary boards under the Conciliation Act of 1896, convinced the Ministry of Labour that a permanent industrial tribunal was necessary in the interests of permanent industrial peace. It had been found that a permanent body gave continuity to decisions and built up a body of law defining the relation of an individual to his job in much the same way that the relation of an individual to his real and personal property had been defined by the decisions of the ordinary courts. As a means of coordinating wage rates throughout the country, it was also considered advisable that those disputes which had not yielded to the special machinery in specific industries and those involving extenuating circumstances should all be brought before a single body for settlement. The Industrial Courts Act, 1919, was the result of this experience.

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[6] 59 and 60 Vict., ch. 30.
[7] 9 and 10 Geo. 5, ch. 69.

This act has five main provisions. In the first place the Minister of Labour is empowered, at his discretion and with the consent of *both parties*, to refer a dispute, existing or apprehended, to a special arbitrator or to a representative temporary board, to be appointed by himself. In effect, this section of the act confers powers upon the Minister which are similar to those already existing under the Conciliation Act of 1896. The provisions of this section of the act are carried out by a special department of the Ministry of Labour through the conciliation officers who are stationed in each of the important industrial areas. Though its work is intentionally unobtrusive and often informal, the Ministry thus brings disagreeing parties to agreement and is frequently responsible both for preventing and for settling industrial friction without recourse to more formal procedure.

A second and a new feature of this act is the establishment of a permanent Industrial Court composed of employer representatives, worker representatives, and independent persons, including one or more women, appointed by the Minister of Labour. The Minister selects one of the independent members to act as chairman. Cases are usually heard by a Division Court consisting of a chairman chosen from among the independent members, and two other members representing employers and workers respectively, chosen by the president. The services of assessors may be utilized, if it is considered advisable. Representative members are selected in equal numbers from a standing panel of "expert" arbitrators supplied by employers and workers. The assessors are selected by the two sides to answer questions and to speak for their respective sides, but they have no vote. The president gives full time to the work of the Court, as does also the secretary; other members may or may not give full time.

Disputes occurring in any industry, and those between persons employed by the Crown, except those in the military, naval, or air service, come within the purview of the Court. Manual, clerical, and other workers, as well as those under personal contract, are included within its scope. Cases are referred to the Court by the Minister of Labour under the following conditions: (1) When the existence of a strike or lockout has been reported to the Minister by either party concerned; (2) when the Minister is satisfied that no agreement exists by which the dispute can or may be settled by conciliation or arbitration, or that such means have been tried without success; (3) when the consent of *both parties* has been obtained.

Hearings are private and informal, the general form of procedure being left to the decision of the Court. With the permission of the Court, the parties to a dispute may employ counsel, but the Court has no power to take evidence on oath or to subpoena witnesses. The case for each side is usually presented by an official of the employers' association or trade union concerned, or by one of the interested parties. When the Court sits in sections, it is customary for the chairman to consult with the president on all important matters in order to coordinate the work of the Court. Cases are usually heard in London, though hearings are occasionally held in the industrial centers of the provinces.

Unless otherwise agreed, the awards of the Court are not binding. They are generally accepted, however. Contrary to the original inten-

tion, these awards are given as decisions rather than as opinions, expressly to avoid development of a body of industrial case law which would involve application of precedents to other disputes. This is done to comply with the wishes of both sides in some industries. However, the decisions are accompanied by a complete statement of the arguments presented by both parties. The permanence of the Court, nevertheless, insures both the accumulation of experience and the development of certain principles of procedure and settlement which a large number of cases has proved useful for satisfactory settlement.

During 1938 the Court issued 26 awards, making a total of 1,717 since its establishment in 1919.[8] There is a general tendency for the number of cases to decline. The largest number of awards are now made in public service industries like electricity supply and road traffic which by statute come within the scope of this act. More than to any other factors, this decline is probably due to a deep-seated distrust of arbitration, in contradistinction to conciliation, on the part of the British people, and to the growing importance of preventive machinery providing for collective bargaining.

A third provision of the Industrial Courts Act authorizes the Minister of Labour to inquire into the causes and circumstances of a dispute, and, if he thinks fit, to set up a Court of Enquiry without the necessary consent of either party. Such a court consists of a chairman and as many other persons as the Minister chooses to appoint. It has very limited compulsory powers, in that it may require attendance of witnesses and the production of documents. The report of a Court of Enquiry is laid before both houses of Parliament. But it makes no award and is in no sense a court of arbitration. Nor does the appointment of this type of court stop or postpone a dispute. Its purpose is rather to bring the facts to light and public opinion to bear upon the merits of a dispute. The Minister has consequently used this power sparingly and only as a last resort in cases seriously involving the public interest. Between 1920 and 1937, this section of the act was invoked only 20 times.

Still another section of this act gives the Minister of Labour authority to refer any matter, relating to or arising out of a dispute, to the Court for advice. In addition, the Road Haulage Wages Act, 1938, and several other acts passed since 1919 make the Industrial Court responsible for decision in matters arising out of applying the "fair wages clause."

Maritime disputes, like those occurring in other industries, come within the purview of the Industrial Court. Due to the effectiveness of the collective bargaining machinery, however, few maritime disputes have been dealt with through the general remedial machinery.

NEW ZEALAND[9]

National legislation designed to encourage peaceful settlement of industrial disputes was first adopted by New Zealand in 1894. Though this action was precipitated by a strike of waterside workers,

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[8] Great Britain, *Ministry of Labour Report for the Year 1938*, Cmd. 6016, p. 71.

[9] Major sources: The Acts: New Zealand, Official Year-Books; J. B. Condliffe, *New Zealand in the Making;* and "Experiments in State Control in New Zealand," *International Labor Review*, vol. IV, pp. 334–360; W. H. Cocker, "Industrial Arbitration in New Zealand," *Economic Record*, vol. IV; p. 227; Sir John Findley "Industrial Peace in

there has never been separate machinery for settlement of disputes in this industry. There is special shipping legislation which has chiefly to do with the inspection of vessels and regulations for the safety of passengers and crew, as well as the conditions of work for seamen aboard ships. But wages and disputes in the industry are dealt with under the Industrial Conciliation and Arbitration Act. This act combines preventive and remedial measures.

The Industrial Conciliation and Arbitration Act.[10]

The original act has undergone drastic change since its inauguration in 1894. During the depression its main compulsory features were repealed. But in 1936 a new amendment restored these measures and considerably extended its scope. As consolidated in 1925 and amended in 1936 and 1937, the existing Conciliation and Arbitration Act makes the following main provisions:

Registration of unions.—Any society that is lawfully associated for the purpose of protecting or furthering the interests of employers or workers may be voluntarily registered as an *industrial union.* But no industrial union may be registered under the act of 1936, except with the concurrence of the Minister of Labour, if there was already a registered union for the same industry in the same district before passage of the amending act. With the consent of the Minister of Labour, any union having branches with not less than a specified membership (3 employers or 15 employees) in at least 4 of the 8 industrial districts, may register as a "New Zealand Union" covering the whole of any industry or group of related industries. But no New Zealand union may be registered when registered local unions already exist in that industry, unless all of the existing unions or a majority of their members favor such registration.

Upon the registration of a New Zealand union, the registration of every other union is cancelled, unless the Minister of Labour determines otherwise after satisfying himself that a majority of the members of any union desire that its registration be continued. When a New Zealand union has been registered, no new union may be registered for the same industry, except as many as two-thirds of all employers or workers in the area are members of the society applying for registration. Similar provisions apply to the registration of unions covering any two or more industrial districts.

All workers subject to any award or agreement must be members of a registered union. Every award or agreement made after the act was passed must contain a provision making it unlawful to employ in that industry any adult who is not a member of an industrial union under the act. No union can refuse to accept any person who is obliged to become a member, however, unless the quota of members fixed by its constitution is full. If no union members are "available, ready and willing" for work, other persons may be employed.

Industrial agreements.—The parties to all industrial agreements under the act must be trade unions, or industrial unions of workers,

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New Zealand," *International Labor Review*, vol. IV, pp. 32–46; E. J. Riches, "The Depression and Industrial Arbitration in New Zealand," *International Labor Review*, vol. 28, p. 617; and "Restoration of Compulsory Arbitration in New Zealand," *International Labor Review*, vol. 34, p. 733; "New Zealand in the Depression," *The Round Table*, vol. 23, p. 698; F. W. Rowley, *The Industrial Situation in New Zealand;* Dorothy Sells, "Development of State Wage Regulation in Australia and New Zealand," *International Labor Review*, vol. X, pp. 607–629; 775–799; 963–1004; International Labor Office, Studies and Reports, Series A, No. 34, *Conciliation and Arbitration in Industrial Disputes.*

[10] 16 Geo. 5, No. 24; 1 Edw. 8, No. 6, and 1 Geo. 6, Nos. 3, 10, and 12.

or industrial associations of employers. Any industrial matter may be the subject of an agreement including the prevention and settlement of disputes. Such instruments are made for a definite term, not exceeding 3 years, but continue in force until superseded by another agreement or by an award of the Court of Arbitration. When an agreement is binding upon employers who employ a majority of the workers in an industry in the district, the Court may, upon application of either party, extend the operation of that agreement to all employers in that industry in the specific area. Under similar circumstances the agreement may be declared to be an award of the Court unless such action is considered contrary to the public good.

Conciliation.—The Governor-General is empowered to appoint not exceeding four conciliation commissioners for a term of 3 years. These commissioners act as the chairmen of temporary conciliation councils which may be established upon application of any party to an industrial dispute. Conciliation councils are composed of an equal number of assessors representing each side, who serve with the commissioner-chairman. The workers may compel any of their employers to come under the act by citing them in case of a dispute. But the employers cannot in the same way compel their workers to come under the act unless they have chosen to be registered as an industrial union.

In the first instance all disputes are referred to a conciliation council. The council has power to inquire into a dispute and to make recommendations for its settlement, provided they are unanimously agreed to by the assessors. The commissioners have no vote. If no agreement is reached, it becomes the duty of the council to attempt to induce the disputants to accept some temporary arrangement pending settlement by the Court. When a settlement is reached by a council, it becomes binding as an industrial agreement and may be extended to the entire industry.

Arbitration.—The Arbitration Court is appointed by the Governor-General. It is composed of a judge with Supreme Court qualifications and two other members, one of whom is appointed on the recommendation of the registered industrial unions of employers and the other on the recommendation of the registered industrial unions of workers. Provision is also made for appointment of an additional judge and two other members who are nominated in the same manner. These judges have the same powers as the original Court.

The Arbitration Court is required to fix basic wages for adult male workers determined by the needs of a man, wife, and three children, and also for adult female workers. These rates represent minima and apply to all workers irrespective of awards or agreements, except when a special permit or exemption has been issued by the Court. Such declarations may be amended at not less than 6-month intervals. The Court is also directed, when it is considered practical, to fix the regular maximum hours of work per week at 40. The Court hears all disputes which remain unsettled by the Conciliation Councils, and makes binding awards.

Awards.—An award or an industrial agreement becomes binding when it is filed. A strike or lockout is then illegal during the currency of the award. Inspectors under the Factories Act enforce the

awards. Every worker who is a party to a strike and who is bound by an award or agreement is liable to a penalty not exceeding £10 in case of violation. Every employer who is a party to a lockout and bound by an award or agreement is liable to a penalty not exceeding £500 in case of violation. Any employer who dismisses a worker because he is affiliated with an industrial union or has participated in conciliation or arbitration proceedings or because he is entitled to the benefit of an award or agreement, is liable to a fine not exceeding £25. The Conciliation and Arbitration Act is administered by the Ministry of Labour.

The Labour Disputes Investigation Act, 1913.

This act applies to all disputes which the Industrial Conciliation and Arbitration Act does not cover; that is to say, disputes involving nonregistered unions. In several important respects the Labour Disputes Act resembles the Canadian Industrial Disputes Investigation Act, as originally passed in 1907. The New Zealand act specifies that before any strike occurs between a society of workers that is not bound by an award or agreement, whether or not it is registered, and its employers, formal notice of the dispute together with the names of the parties concerned and the claims of the society must be filed with the Minister of Labour. The Minister then refers the dispute either to one of the conciliation commissioners, who sets up a Council and calls a conference, or to a special "Labor Disputes Committee" for investigation and recommendation. These latter committees consist of one to three members chosen from each side, plus an independent chairman. If no settlement is thus reached, the Registrar of Industrial Unions is authorized to take a secret ballot of the members as to whether the recommendations should be adopted, or, if no recommendations are made, whether there shall be a strike. If a strike is decided upon, 7 days' notice must be given to the employers concerned. If an agreement is reached it may be filed in the usual way, whereupon it becomes enforceable as if an award of the Court.

AUSTRALIA [11]

Each of the six States of Australia has its own legislation intended to encourage industrial peace. In addition there is Federal legislation applying to interstate commerce. Industrial disputes machinery now operative in the various Australian States is of three different types. It either follows the general New Zealand pattern in which the Arbitration Court constitutes the controlling factor, or the Victorian system in which representative wages boards are dominant, or what is most common, it comprises a combination of the two. Except in the States of Victoria and Tasmania, where simple wages boards systems obtain, the tendency is, therefore, to incorporate both preventive and remedial, voluntary and compulsory machinery within the one industrial disputes law. Though its jurisdiction is confined by the Common-

[11] Major sources: The Acts: Official Year Books of the Commonwealth of Australia; G. Anderson, *Fixation of Wages in Australia;* D. B. Copland, *Australia in the World Crisis;* O. deR. Foenander, *Towards Industrial Peace in Australia;* "The New Conciliation and Arbitration Act in Australia," *International Labour Review,* vol. 19, p. 151; and "The New Commonwealth of Australia Conciliation and Arbitration Act." *International Labour Review,* vol. 24, p. 699; Great Britain, *Report of the British Economic Mission to Australia,* 1929, Dominion No. 2; E. R. Walker, *Australia in the World Depression;* International Labour Office, *Conciliation and Arbitration in Industrial Disputes;* and *Legislative Series.*

wealth Constitution to interstate disputes, Federal legislation has during a period of 35 years increasingly superseded the State laws. And, since the Australian, like the American Constitution, confers the regulation of interstate commerce exclusively upon the central government, all maritime disputes fall directly within the purview of the Commonwealth Conciliation and Arbitration Act originally enacted in 1904, and the Industrial Peace Act passed in 1920.

The Commonwealth Conciliation and Arbitration Act.[12]

As it stands, the Australian Conciliation and Arbitration Act closely resembles the law with a similar name in New Zealand. It has, however, undergone frequent amendment and reamendment since its initiation in 1904. A substitute for this act was even proposed, as a result of the depression, in 1929. The bill which was then introduced into the Commonwealth Parliament was called the Maritime Industries Bill because it limited the scope of the Commonwealth Court to the maritime industry only. Since this industry clearly falls within the province of the Federal Government under the trade and commerce clause of the Constitution, it was intended to avoid constitutional questions. But the issue was placed before the country in a general election, and the Government sponsoring the bill was defeated. The Conciliation and Arbitration Act was consequently amended along other lines in 1930. This represents the last major alteration to date.

Union registration.—Under the act as amended in 1930, registration as an industrial union is entirely voluntary but is prerequisite to submitting a dispute to the Commonwealth Court or to representation in proceedings relating to a dispute. This applies both to employer and worker organizations, which may be registered upon compliance with certain prescribed regulations.

Industrial agreements.—Both the Court and the conciliation commissioners endeavor to induce the settlement of disputes by agreement. When certified by a judge of the Court or by a conciliation commissioner and filed with the Registrar, agreements are binding on the parties thereto. Agreements may be made for a period not to exceed 5 years, at the expiration of which they continue until rescinded or terminated by notice.

Conciliation.—To facilitate conciliation and agreement between employers and workers, the act provides for the appointment of not more than three conciliation commissioners by the Governor-General for a term of 5 years. These commissioners have the arbitral powers of a judge, including authority to intervene in industrial disputes, and to summon conferences, but they are not authorized to exercise the judicial powers of imposing penalties or interpreting awards.

Conciliation committees may also be appointed upon application of any party to a dispute. Such committees are composed of an equal number of persons representing each side and a chairman who is one of the conciliation commissioners. It is the duty of the chairman to call the first meeting of a committee, but he is not permitted to take any part in the negotiation until or unless he is convinced that agreement will not otherwise take place. If the two sides do not succeed in agreement, the chairman has power to make an award.

[12] Amendment of 1930, I. L. O. Legislative Series 1930 Australia, 11.

The Arbitration Court may, however, appoint Boards of Reference, consisting of one or more persons, whose function is to adjust any matters under an award requiring interpretation. The Court may also refer any industrial dispute to a local industrial board for investigation and report and may delegate to it any powers considered advisable. Any State industrial authority or any other local body, consisting of representatives of the two sides plus a chairman appointed by the Court, may be designated as a local board.

Arbitration.—The chief industrial tribunal under the act is the Commonwealth Court of Conciliation and Arbitration. This Court consists of a chief judge and other judges appointed for life by the Governor-General. Each judge must be a barrister or a solicitor of the Commonwealth High Court or of the Supreme Court of a State and of not less than 5 years' standing. Every judge is charged with the duty of endeavoring to reconcile the parties in industrial disputes. For this purpose compulsory conferences of the disputants may be called. One judge may hear a case alone except when the case is an appeal or when variation of the standard work week or the basic wage is involved. In these circumstances the matter must be dealt with by the chief judge and not less than two other judges. The Attorney-General may then authorize any person or organization interested in the matter to apply to the Court for a hearing and for liberty to examine and cross-question witnesses.

The jurisdiction of the Commonwealth Court includes all industrial disputes of an interstate nature. If it appears that any State industrial authority is dealing with a matter already provided for in a Commonwealth Court award, or a matter which is the subject of proceedings before that Court, an order may be made restraining the State industrial authority from proceeding with the matter. Any award by a State authority which is contrary to such an order then becomes void. When a State law or an award of a State industrial authority is inconsistent with or deals with any matter upon which the Commonwealth Court has issued an award, the Federal award prevails. But without the approval of a judge, no dispute may be submitted to the Court, unless the organization involved states in writing that a majority of its members approve.

It is the duty of the Court to inquire into and to investigate every industrial dispute within its purview in the most fitting way. In the course of a hearing and investigation, the Court is to make all suggestions and do all things which will assist conciliation and agreement between the parties to a dispute. No one may be represented by counsel, solicitor, or a paid agent. An agreement becomes a binding award upon registration. If no agreement is reached, the Court makes an award covering those points concerning which agreement has failed.

Awards.—In making awards the Court is directed insofar as possible to provide for uniformity throughout an industry. At one time the Court had broad powers relative to granting union preference. Subsequent acts have limited this power so that the Court may now direct that "as between members or organizations of employers or employees and other persons * * * offering or desiring services or employment at the same time, preference shall be given to such members, other things being equal." The Court may also prescribe

minimum rates of wages and can fix maximum penalties for breach of an award, not to exceed £100. Strikes, lockouts, and picketing are no longer offenses punishable by a fine, but a union may be fined for attempting to prevent or prejudice members from working under an award. An award is binding upon all parties to the dispute at the time of, or after, the award. Appeal is to the Court itself.

The Industrial Peace Act, 1920.

Establishment of special tribunals to deal with special cases is authorized by this act. The special tribunals are composed of equal numbers of representatives of employers and of workers, plus a chairman chosen by joint agreement. These tribunals are entirely independent of the Commonwealth Arbitration Court. They are vested with all powers belonging to the Commonwealth Court and have jurisdiction over all disputes referred to them by organizations of employers or of employees. In cases where such tribunals fail to effect an agreement, the matter in dispute is referred to a special board whose awards have standing equivalent to those of the Arbitration Court. In effect this act sets up rival bodies to which disputants may apply when they do not like the policy, personnel, or awards of the Court. Though the Industrial Peace Act remains upon the statute books, recourse has seldom in recent years been had to the tribunals which may be set up by its terms.

FRANCE[13]

National legislation providing for voluntary conciliation of industrial disputes was first adopted in France in 1892. But this was not supported by collective agreement on any large scale. With the advent of the Popular Front Government, however, new legislation was enacted in both these fields. An act passed in June 1936, established collective agreement as the customary instrument of industrial relations for the first time. This act defined the procedure for consummation of agreements, outlined their scope and stipulated certain provisions which they must contain. It was followed in March 1938, by a law providing for compulsory concilation and arbitration which closely relates the general preventive and remedial machinery.

Special machinery for settlement of disputes between employers and employees in shipping and sea fishing was first instituted by an act of 1909 which established a Permanent Arbitration Board to deal with industrial disputes involving the merchant marine. The Board never functioned before the World War, however. And during 1917–19 it was superseded by a system of superior arbitration boards (commissions superieures d'arbitrages) which were composed of representatives of the shipowners and the ship crews in equal number. By a decree dated September 24, 1925, the Permanent Arbitration Board was revived and it continues to operate, though its procedure has been altered by subsequent decrees, the last of which was issued

[13] Major sources: International Labour Office, Studies and Reports, Series A, No. 34, *Conciliation and Arbitration in Industrial Disputes;* H. A. Marquand and others, *Organized Labour in Four Continents;* Fernand Maurette, "A Year of Experiment in France," I, II, *International Labour Review,* vol. 36, pp. 1 and 149; "French Legislation on Industrial Arbitration," *Monthly Labour Review,* vol. 44, No. 4, April 1937; "Amendment of French Arbitration Law." *Monthly Labor Review,* vol 45, No. 6, December 1937: "New Conciliation and Arbitration Law of France," *Monthly Labor Review,* vol. 46, No. 6, June 1938.

on October 31, 1938, as prescribed in section 7 of the new Conciliation and Arbitration Act of that year.[14] With adoption of the Collective Agreement Act, 1936, and the Conciliation and Arbitration Act, 1938, maritime workers are brought under the general law pertaining to these fields.

GENERAL PREVENTIVE MACHINERY

Collective Agreements Act, June 24, 1936.[15]

By the terms of this act any industrial organization of employers or workers which is directly concerned in a dispute may request the Minister of Labor or his representative to convene a joint committee of delegates representing the two parties involved for the purpose of concluding a collective agreement for that branch of the industry covering either that particular district or the whole of France. If a committee thus convened fails to agree on any points, the Minister of Labor, upon the request of either party and after consulting the National Economic Council, is required to take steps to assist in concluding such an agreement.

In addition to a statement of the period of validity, all collective agreements must include provisions covering freedom of association and freedom of opinion for the employees, and in undertakings employing more than 10 persons they must also provide for the appointment of workers' delegates to submit to the management individual complaints regarding the application of wage rates, or health and safety regulations, minimum wages, notice of dismissal, the organization of apprenticeship, or the procedure for settlement of disputes arising out of the agreement. Machinery for revision or amendment of the agreement must also be set up. The act provides further that while collective agreements may specify more favorable conditions of employment they shall not contain any provisions less favorable than, or contrary to, legislation already in force.

After consultation with the organizations concerned and with the occupational sections of the National Economic Council, the Minister of Labor may issue an order making an agreement binding upon all employers in the industries and districts covered by the agreement.

GENERAL REMEDIAL MACHINERY

Conciliation and Arbitration Acts, December 31, 1936,[16] and March 4, 1938.[17]

As a result of the necessity for maintaining output following reduction of the work week and of the industrial unrest incident to sudden social and economic changes, an act prescribing compulsory conciliation and arbitration of industrial disputes was also passed in

[14] Section 7 provides that public administrative regulations shall be issued pursuant to the act after consultation with the most representative organizations of employers, employees, and handicraft workers and with the National Economic Council, to prescribe the rules for the conciliation and arbitration proceedings in the following cases: (1) commercial and industrial undertakings where it has been found impossible to reach an agreement respecting the rules for such proceedings; (2) where the procedure has not been prescribed by a collective agreement; (3) disputes affecting two or more concerns not covered by the same collective agreements; (4) various collective agreements applicable to different categories of employees in the same undertaking which have separate interests; (5) disputes affecting employees of public services working under a concession, subject to the approval of the authority granting the concession.

[15] I. L. O. Legislative Series, 1936, Fr. 7.

[16] I. L. O. Legislative Series, 1936, Fr. 17.

[17] I. L. O. Legislative Series, 1938, Fr. 1.

December 1936. This was a temporary measure and provided that before a strike or lockout should occur, disputes must go through three stages of conciliation proceedings. If no solution was thus reached, arbitration constituted the next step.

In the first instance the issues had to be submitted to a departmental or interdepartmental committee of representatives from the local organizations of employers and of employees. Failing settlement by this means, the matter went to a joint mixed conciliation committee composed of representatives of the national employers' and workers' organizations from the industry concerned. If no settlement was then reached, a national interoccupational committee consisting of representatives from the two principal national confederations of employers and of workers considered the points remaining at issue. And if all these conciliation methods failed, the dispute was consigned to arbitration by two persons, one to be chosen by each of the disputants. Decision by an umpire represented the final stage of the proceedings, the umpire to be selected by the two arbitrators, or in case of their inability to agree, by the Premier. The decision of the umpire was final and binding.

In many instances, however, experience proved this procedure too slow. To speed up the process a later decree was issued, providing that under certain circumstances disputes could go immediately to arbitration. And in March 1938 the procedure was again amended by a new conciliation and arbitration law. This act altered the act of 1936 by simplifying the processes of conciliation and arbitration, introducing the cost of living principle in wage adjustment, and creating a high court of arbitration.

The maximum time limits for the settlement of each dispute are thus reduced to 1 month and to 8 days, respectively, for the two phases of the procedure. The conciliation procedure described by the agreements must provide for the establishment of a joint concilation board, to which all collective disputes not settled within the time limit stated in the agreement shall be referred, either by the parties concerned or by the Prefect, who acts as chairman of the Board. This act also requires that all agreements shall make provision for the nomination of an arbitrator and substitutes by each party, these arbitrators to act throughout the period during which the agreement is effective. Disputes not settled by conciliation are automatically referred to these arbitrators. Again, collective agreements must provide for establishment of a list of at least five umpires to be named by mutual consent of the parties. Should the parties to the agreement be unable to agree upon this list within 1 month of the conclusion of the agreement, the first president of the court of appeal in the jurisdiction in which the conciliation commission has been assembled is empowered to take action. If the two arbitrators fail to settle a dispute within the allotted time, it becomes their duty to select an umpire. Should an agreement include more than one department, or cover more than 1,000 wage earners, and the arbitrators find themselves unable to agree upon an umpire, the selection devolves upon the Prefect or the appropriate Minister.

The arbitrators and the umpire may deal only with the points stated in the minutes of the conciliation commission or points arising directly out of the dispute after the hearing. Awards must be in

conformity with the common law regarding collective disputes of a legal nature.

Conciliation and arbitration proceedings apply in particular to disputes resulting from demands for wage revision due to marked changes in the cost of living. Such demands are considered legitimate when the official cost of living index varies at least 5 percent from the index on the date nearest to that on which wages were fixed. The law stipulates that in such cases wages and family allowances shall be adjusted in accordance with the cost of living index, unless it is proved that such revision is incompatible with economic conditions. Wage revisions of this nature cannot be made oftener than every 6 months, unless the increase in the index reaches 10 percent. Decisions are binding and there is no appeal before the ordinary courts. Appeal may be made to the Superior Arbitration Board within 3 days of the date of the decision, however, on the grounds of incompetency, violation of the law, or that the decision is *ultra vires*. An appeal may also be made within 8 days to the Minister of Labor, who may on occasion refer the decision to the Superior Arbitration Board.

The Superior Arbitration Board is a new body constituted by the act of 1938. Its members are appointed by decree for a term of 2 years. The Board consists of the Vice-president of the Council of State or the President of a section of the Council of State, who also acts as chairman of the Board, two Councillors of State, two senior magistrates of the judicial courts, and two senior civil servants on the active or retired list. When a decision is to be given on the main question in a case, the court is augmented by two representatives appointed by the employer and two representatives appointed by the employee members on the standing committee of the National Economic Council. The Superior Arbitration Board is sovereign and on a par with the Supreme Court and the High Court of Appeals.

The chief purpose in establishing the Superior Arbitration Court was to create a body of social and labor law. It also provides a rapid and economical method of settling labor disputes. It is exclusively a court of appeals and is available to all labor unions, syndicates of employers, or individual employers who are affected by an award. When the Court reverses an award, a new arbiter is appointed to hand down a new award. The arbiter alone is empowered to weigh the facts and circumstances of a case. The Court is therefore not competent to accept an appeal on the entire issue of a dispute except when the Minister of Labor, on the advice of the National Economic Council, has referred an award which appears contrary to equity and dangerous to social peace.

SPECIAL MACHINERY FOR THE MARITINE INDUSTRY

Pursuant to provisions of the Conciliation and Arbitration Act of 1938 [18] a decree was issued on October 31, 1938, laying down the rules for proceedings in collective disputes arising between shipping and sea fishing undertakings and the crews employed by them. This decree provides that immediately a collective dispute arises in any French port, the superintendent of shipping registration,[19] either on

[18] I. L. O. Legislative Series 1938, Fr. 12.

[19] The Director of Shipping Registration acts in this capacity when a dispute occurs in the chief town of a district.

his own initiative or as the result of a statement of the differences made by one or other of the parties, shall invite representatives of both sides to meet before him within 48 hours. It is the duty of the superintendent to act as conciliator between the disputants. If a settlement is effected, the superintendent is required to forward a statement of the terms to the Minister responsible for the mercantile marine, otherwise the minutes must contain the points on which a difference of opinion continues to exist. This statement must be signed by the representatives of both parties as well as by the conciliator.

If a dispute extends to ports belonging to two or more districts, the Minister responsible for the mercantile marine either designates which Director of Shipping Registration shall act as conciliator or appoints the Director responsible for the Maritime Labor Office in the central administrative Department for the Mercantile Marine to act in this capacity. Should the commercial ports in general be affected, it is provided that the latter shall act as conciliator and the meeting of the conciliation board is held at the headquarters of the Mercantile Marine Department in Paris.

As soon as the Minister is notified that conciliation has failed, he must convene the Permanent Arbitration Board, and the parties to the dispute are required to appear. This Board is composed of two arbitrators selected from among the members on the active or retired list of the principal State Authorities, one of whom is named by the national organization of shipowners and the other by the national organization of seamen (including fishermen). The act stipulates that such nominations, together with the names of substitutes, must be supplied within 8 days from the publication of the decree establishing the procedure under the act. The appointments are actually made by decree issued upon the recommendation of the Minister responsible for the mercantile marine.

The meeting of the Permanent Arbitration Board may be held in any seaport where a dispute arises. The representatives of both sides must be heard, and any other persons who can throw light on the question may also appear before the Board at its discretion.

If the two arbitrators of the Board are unable to agree upon an award, they are required to choose an umpire from among the persons specified in the act of December 31, 1936. Should agreement on an umpire prove impossible, the selection falls to the Minister of the Mercantile Marine.

The costs of arbitration are met from public funds upon approval by the Minister of Finance and the Minister responsible for the mercantile marine.

SWEDEN [20]

Collective agreements with their accompanying voluntary machinery for settlement of differences are regarded as the foundation of industrial peace in Sweden. To supplement this voluntary, preventive machinery, there is both voluntary and compulsory remedial

[20] Major sources: Roy E. B. Bower, "Industrial Relations in Sweden," *Monthly Labor Review*, vol. 45, No. 1, July 1937; International Labour Office, Studies and Reports, Series A, No. 34, *Conciliation and Arbitration in Industrial Disputes;* United States Department of Labor, *Report of the Commission on Industrial Relations in Sweden;* private memoranda and letters.

legislation applying to disputes in general and also specific legislation covering seamen. The method of dealing with industrial disputes depends to a large extent upon the nature of the issue involved. Disputes arising out of the substance of new collective agreements, called "disputes on interests," are mainly dealt with by conciliation machinery, while disputes involving the meaning and application of agreements already in operation, called "disputes on rights," fall within the scope of the arbitration machinery.

PREVENTIVE MACHINERY

One of the best organized groups is the seamen, who have negotiated collective agreements with the shipowners for a considerable period. Labor relations in the shipping industry are for the most part controlled accordingly. The most important agreement, that between the Association of Swedish Shipowners on the one hand, and the four major unions of workers on the other, besides dealing with wages, makes a number of provisions relating to working conditions. No member of the unions bound by this agreement, except deck officers or the female staff, may sign on a ship not affiliated with the Association of Shipowners at wages lower, or under other conditions than those fixed by the agreement. In case of infringement of this regulation without rectification within a reasonable time, the same lower wages and conditions are to be applied to vessels of the same tonnage group belonging to the association. During the currency of the agreement, promotion of or assistance to strikes, lockouts, boycotts, and blockades is prohibited. Should an agreement be denounced, negotiations for a new agreement must be started within one week. Should the parties be unable to agree upon an impartial chairman, such negotiations may be held before a chairman appointed by the President of the Social Board. In any event, if the parties fail to agree within 2 weeks, it is required that the negotiations be continued before such a chairman.[21] In Sweden all collective agreements are legally enforceable in the Labor Court.

A "basic agreement" recently concluded between the Swedish Employers' Federation and the Confederation of Trade Unions as a result of the Saltsjöbad negotiations applies to all industries including shipping, and is aimed specifically at promoting industrial peace without the aid of State intervention. By its terms a joint central organ, "The Labor Market Board," is set up to deal with questions of importance to the labor market. The agreement also contains provisions relating to the procedure of negotiations, discharge or temporary dismissal of workers, limitation of direct action and the handling of conflicts of particular social importance. These provisions are not binding, but the central organization is pledged to recommend their acceptance in collective agreements between their respective trade federations. The potentialities of the agreement in promoting industrial peace appear to be considerable.

An *act concerning the right of association and collective bargaining*,[22] passed in 1936, represents the chief effort of the Government to prevent disputes in contradistinction to remedial efforts. This act applies to the relations between employers and employees in general, except employees in the government or municipal service who occupy

[21] Private memorandum from Sweden.
[22] I. L. O. Legislative Series, 1936, Swe. 8.

positions of official responsibility. The act does apply, however, to those employees in the higher brackets whose organizations are not strong enough for direct action or do not consider such action suitable.

The object of this act is to encourage industrial peace by means of "peace obligations." Such an obligation is undertaken when a central organization, usually representing a union of several associations, notifies the Social Board of its intention. This action automatically binds the opposing side to keep the peace under certain conditions. Should the parties fail to reach agreement on any question under negotiation, it becomes the duty of the Social Board, on the request of either party, to appoint an impartial chairman to conduct the continued negotiations. If the matter in dispute is particularly important or intricate in nature, a commission of three persons may be appointed instead of a chairman.

When summoned by the chairman or commission, both parties are required to attend the negotiations. Upon request, each party must also submit proposals for a settlement of the question at issue. If agreement becomes impossible, the chairman may counsel the parties to refer the matter to arbitrators with power to make a binding decision. In the event that this course is refused, the chairman is required, at the instance of either party, to request the Social Board to appoint a board of arbitration which shall recommend the basis for settlement of the issue, at the same time specifying a date by which the parties shall submit their answers to such recommendations. If either party then announces its intention to resort to direct action, the undertaking to keep the peace then lapses, but the provision of the act of 1928 providing for 7 days' notice holds.

Though this act applies theoretically to seamen as well as officers, it is in practice of no great importance, since all groups of seamen are well organized in Sweden. To date no central organization of seamen has undertaken a "peace obligation" in the sense of this act.

By an *act concerning collective contracts*,[23] passed in 1928, it is specified that employers and workers may not resort to direct action as the result of a dispute relating to: (1) The validity, existence, or correct interpretation of a written collective agreement; (2) a question of whether a certain procedure conflicts with the terms of an agreement or with the provisions of the act concerning collective agreements; (3) the alteration of the terms of an agreement or the enforcement of a provision intended to come into operation at the expiration of the agreement; and (4) assistance to others by sympathetic action, when the strike or lockout is illegal.

An association, whether bound by a collective agreement or not, may not organize or promote direct action which is illegal for its members, nor may it give financial or other support to any illegal direct action taken by a member. If a dispute is not settled by the machinery provided under the agreement, and only then, the matter may be dealt with by the Labor Court.

REMEDIAL MACHINERY

In general the seamen come within the jurisdiction of labor legislation applying to other industrial workers. There are, however, three laws affecting the working conditions of seamen exclusively.

[23] I. L. O. Legislative Series, 1928, Swe. 2.

An act passed in 1919 regulates the hours of work for seamen. Another act providing for holidays with pay, adopted in June 1938, guarantees to seamen, along with other workers who are "somewhat permanently employed," a yearly leave of 2 weeks. The *Seamen's Act, 1922*, makes certain special provisions regarding conciliation.

The basic provisions of the *Seamen's Act, 1922*, are common to all of the Scandinavian countries. The main points of the act concern the control of service of seamen. But it also contains special provisions allowing the settlement of certain labor disputes outside the Labor Court, to which other disputes go for adjudication. Under this act a seaman is entitled to request an investigation of his wages by the official attending the paying-off, if he is not satisfied that the amount he receives is correct. Any dispute relating to conditions of service arising between the master and any member of the crew while outside the country may be referred to the decision of a Swedish Consul. In both cases it is the duty of that officer to conciliate the difference. Failing that, he may make a decision which becomes immediately valid, but which may be appealed to a Swedish court of law.

By the terms of the *Mediation Act, 1920*,[24] the country is divided into seven districts with a State conciliator in each district. It is the duty of the conciliators to acquaint themselves with conditions of work in their districts; on request to assist employers and employees in bringing about agreements which are likely to promote good relations between the parties and to prevent interruptions in work, and to endeavor to settle labor disputes. The main function of conciliators, though not their exclusive function, is to assist in the making of voluntary collective agreements; in other words, to deal with disputes "on interests." Failing this they may urge arbitration between the parties upon the understanding that the award will be observed. Arbitration is not compulsory, however, nor may a conciliator act as the arbitrator.

In case of a dispute or upon the demand of one of the parties, the conciliator summons the parties to negotiate and they are bound to meet together, but not to refrain from strike or lockout. If the dispute is serious, the Government customarily exercises its rights to appoint a conciliation commission or a special conciliator to deal with the situation.

Before a stoppage of work occurs, 7 days' notice must be given both to the other party concerned and to the conciliator. This notice must contain a statement of the reasons for such action. Should the opposite party include nonorganized workers, the notice to such persons must be posted conspicuously in the place of work. But this act does not restrict the right to strike or to lockout with regard to matters not already covered by written agreement. Failure to comply with this regulation is punishable by a fine.

The Labor Court was established in 1928.[25] In 1937 the act establishing the Court was amended. At present the Court is composed of a president and six assessors who are appointed by the Crown. The chairman and two assessors are selected from among persons not directly representing the interests of either employers or employees. It is required that the president and vice president have

[24] I. L. O. Legislative Series, 1920, Swe. 6–8.
[25] I. L. O. Legislative Series, 1928, Swe. 3.

legal knowledge and judicial experience. The third of these persons must have special knowledge and experience in the field of labor relations. For each of these two assessors, two substitutes are appointed. The substitutes must have the same qualifications as the assessor for whom they are appointed. In the event that both the president and the vice president are prevented from being present, the two substitutes for the vice president take their places in the Court, and the chair is taken by the one who was first appointed a substitute. Half of the remaining four assessors is appointed on the recommendation of the council of the Swedish Employers' Associations and the other two on the recommendation of the Swedish National Federation of Trade Unions. Substitutes are appointed for each.

The Labor Court deals with disputes on rights. As stated in the act, its scope includes all cases connected with:

1. The validity, contents, or interpretation of a collective contract.
2. Whether a particular act is contrary to the collective contract or the provisions of the act respecting collective contracts.[26]
3. The consequences of an action which is deemed to be contrary to the collective contract or the aforesaid act.[27]

By agreement between the disputants, cases which would otherwise come within the scope of the Labor Court may be referred to arbitrators for decision, unless they fall within that section of the act which enables the Court to declare a collective contract inoperative when one of the parties is guilty of breach of contract, or when the contract does not apply to the other party. The procedure is designed to expedite decision and reports are to be as brief as possible.

Between 1929 and 1935, inclusive, 1,272 cases were settled by the Court.[28] There are no appeals from the decisions of the Labor Court. The only recourse lies in lodging a complaint against the chairman or a member of the Court with the parliamentary law officer, alleging an obvious error or negligence in the performance of duty. The matter may then be brought before the appeal court in Stockholm, if necessary.

COMPARATIVE RESULTS

An appraisal of the value of collective bargaining and disputes machinery in any country must be made largely in terms of four basic factors: (1) Its effect upon organization among employers and workers, including the consummation of collective agreements; (2) its success in dealing with strikes and lockouts; (3) the relative stability of the form of the machinery; and (4) the degree of good will between employers and workers that has accompanied its operation.

There is no doubt that organization among both employers and workers has been stimulated in all of the countries treated here, as a result especially of the preventive measures which were designed to achieve this end. In all these countries, too, collective agreements have been encouraged. This is particularly true in France, where, prior to the legislation of 1936, collective bargaining had not yet gained a secure foothold, and in New Zealand, where the legislation

[26] I. L. O. Legislative Series, 1928, Swe. 2.
[27] I. L. O. Studies and Reports, Series A (Industrial Relations), No. 40, *Labour Courts*, 1938, p. 177.
[28] *Ibid.*, p. 179.

of 1936 making union membership compulsory naturally resulted in active recruitment of new members. In the early years of voluntary union registration both in Australia and New Zealand, unionism on both sides also made great strides, as it did in Great Britain during the period while agencies for collective bargaining and settlement of disputes were being set up under the aegis of the Government, during and immediately following the War of 1914–18. In each of these countries the maritime industry shared in the fillip experienced by organizations generally. But in Australia and New Zealand, where the chief activity of the unions increasingly came to be presentation of cases before a Court, the negotiating capacity of the unions appears to have been considerably weakened over a period of years.[29]

This lack of bargaining skill on the part of the unions has not tended toward industrial peace, however. Instead, it has tended to intensify the antagonism between the two parties to industry and has to a considerable extent transferred it from the economic to the political field.[30] If anything, the Australian labor organizations incline toward more militant tactics than those of any of the other countries mentioned,[31] with the possible exception of the French, whose legal and collective bargaining status was, until 1936, considerably less favorable than in any of the other countries. As a striking contrast to the experience of Australia, New Zealand, and France, stands that of Sweden and particularly of Great Britain, where a marked tendency toward cooperative relations between employers and workers has developed parallel with the growth of industrial democracy since the last War.[32]

During the existence of the compulsory arbitration system in Australia and New Zealand, a strong tendency toward establishment of a national wage level has developed. The arbitration courts, also, seem to have exerted a stabilizing influence upon wages during periods of depression, though labor stoppages have continued. Bearing in mind the different types of industrial disputes machinery operative in these different countries, and the relative degree of their industrialization, a comparison of their disputes records is significant. In 1938, 1 working day was lost as a result of industrial disputes for approximately every 16 of the gainfully occupied population of Great Britain. No figures are available for Sweden in the same year; but in 1937 the ratio was 1 working day lost for every 3 of the working population. The highly agricultural country of New Zealand had 1 working day lost for every 18 of the fully occupied population in 1938, which was even better than the record of Great Britain. Its more industrialized neighbor, Australia, however, had 1 working day lost for every 2 of the working population in 1938, which was the highest ratio in any of the countries studied.[33] Though there are no recent strike figures for France, it is well known that open industrial conflict increased greatly following adoption of the new labor policy in 1936. This is probably to be attributed more to a release from former suppression, however, than to inauguration of a more liberal attitude toward collective bargaining or of compul-

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[29] J. B. Condliffe, *New Zealand in the Making*, p. 362.
[30] Great Britain, *Report of the British Economic Mission to Australia*, 1929, pp. 25–6.
[31] Annals of the American Academy of Political and Social Science, *An Economic Survey of Australia*, Nov. 1931, passim.
[32] Dorothy Sells, *British Wages Boards*, pp. 320–21.
[33] The basic figures appear in the I. L. O. *Year Book of Labour Statistics*, 1939, pp. 3, 208–210.

sory arbitration. No more can this experience be taken as indicative of the trend over a period of years than could that of New Zealand in the first decade of compulsory arbitration, when literally no strikes occurred. Indeed, both New Zealand and Australia have become increasingly subject to industrial conflict during the subsequent 30 years, in spite of compulsory legislation involving heavy penalties. In Great Britain, with a voluntary system, however, the loss of time due to disputes has been less in most of the years since 1933 than in almost any of the years during the entire 40 for which records have been kept.[34]

Whereas the flexible British disputes legislation has remained intact and has been extended during the past 25 years, that of New Zealand and Australia has been constantly amended and reamended with almost every new national Government.[35] Not only have workers and employers several times reversed their attitudes toward the principle of compulsion, but the principle and method embodied in the act have been several times changed. This situation has made the conciliation and arbitration acts of both countries a national political issue and has created a condition of industrial instability and bitterness. Based upon the experience of five important foreign nations extending over a long period of years, the implications are strongly favorable to the voluntary as opposed to the compulsory method of settling disputes.

Another factor which has operated in the interests of industrial peace in Great Britain and Sweden is the principle of industrial self-government.[36] The basic assumption upon which industrial legislation in both of these countries rests is that every individual, whether employer or employee, is entitled to a voice in the determination of his own working conditions. In practice this means collective bargaining. It is also customary, especially in Great Britain, insofar as practicable, to suit industrial legislation to the specific traditions and conditions of the particular industry to which it applies. Recognizing these basic principles of democracy as more effective than repressive measures, preventive disputes machinery has been emphasized rather than remedial; voluntary action has been chosen in preference to compulsory; conciliation takes precedence over arbitration; development of a spontaneously responsible unionism has been been found preferable to compulsory registration or suppression of workers' organizations; and a flexible network of committees, boards, tribunals, and laws suited to the special conditions existing in individual industries; a more satisfactory path to industrial goodwill than blanket legislation applying to all people and industries without discrimination. Though price movements and economic change have doubtless had their temporary effect, the chief factor in establishing what promises to be relatively permanent industrial peace in Great Britain and Sweden has been the habit of cooperation between employers and workers resulting from the persistent practice of collective bargaining.[37]

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[34] Great Britain, Ministry of Labour, *Annual Report*, 1933, p. 83.
[35] William R. Maclaurin, *Economic Planning in Australia, 1929–36*, p. 9.
[36] U. S. Department of Labor, *Report of the Commission on Industrial Relations in Sweden*, pp. 1–12; and *Report of the Commission on Industrial Relations in Great Britain*, pp. 1–25.
[37] U. S. Department of Labor, *Report of the Commission on Industrial Relations in Sweden*, p. 1–12.

CONCLUSION

The chief problems of maritime labor relations have been those incident to establishing the principles and techniques of collective bargaining. This process has been peculiarly difficult in the maritime field, owing to a complex of economic, legal, and psychological factors intimately bound up with the nature and history of the industry. Yet, it is essential that these difficulties should be overcome, because of the strategic position of shipping, both as a cheap and reliable means of peacetime transportation and as an important factor in the national defense. There has been a growing realization in recent years that efforts to bring about financial stability and sound growth in the industry are futile unless stable labor relations are assured by free collective bargaining, eventuating in regularly negotiated written agreements and in orderly procedures for the adjustment of disputes.

But the development of collective bargaining in the maritime industry has been and is, to a large extent, dependent upon the attitude of the Federal Government. In June 1938, the Congress enacted title X as an amendment to the Merchant Marine Act of 1936, which implemented the public policy embodied in the National Labor Relations Act with voluntary mediation. That voluntary mediation is well adapted to the development of orderly labor relations in the maritime industry, has been fully confirmed by the experiences of the Maritime Labor Board, created to administer title X.

Despite the many obstacles inherent in the nature of the industry, collective bargaining during recent years has made considerable progress in the maritime industry. With several significant exceptions, recognized labor organizations, most of them negotiating collective agreements with employers, are general throughout the industry. The great majority of east coast operators of merchant vessels other than tankers are organized for coast-wide collective bargaining with the unlicensed seamen. Practically all of the west coast operators of merchant vessels, again with the exception of tankers, are organized for coast-wide collective bargaining with both the licensed and unlicensed personnel. The waterfront employers of longshore labor at virtually all the east coast ports are organized for collective bargaining on a port-wide basis, while the water-front employers of longshore labor on the west coast bargain collectively on a coast-wide basis.

Collective agreements between the longshoremen and their employers are almost universal in all the salt-water ports. Much progress has also been made by seafaring personnel in extending the area of collective bargaining aboard merchant vessels. Thus, 30 percent of all salt-water tonnage is at present under collective agreements with all classes of personnel, i. e., completely unionized; 40 percent is under collective agreements usually held by the unlicensed, but not by the licensed personnel, i. e., is partially unionized; while 30 percent of the salt-water tonnage is under no collective agreement with any labor organizations. Shipowners operating about one-fifth of all salt-water tonnage, largely oil tankers, enter into collective agreements with their workers through employee representation plans. Such agreements, however, are largely limited to all or part of the licensed personnel, the unlicensed personnel, with minor exceptions, having no agreements at all.

Remaining outside the coverage of collective agreements are also the licensed and unlicensed personnel of the Great Lakes bulk carriers, operated by members of the Lake Carriers Association, who represent 85 to 90 percent of the total Great Lakes tonnage, and of the fleet of merchant vessels operated by managing agents for the account of the United States Maritime Commission.

To a considerable degree, the present state of collective bargaining in the maritime industry is a development of the recent past. Much of this development may be attributed to the growth of labor unions among seamen and longshoremen, and to the enactment of Federal legislation favoring collective bargaining. The desire of maritime employees to bargain collectively through representatives of their own choice is strikingly illustrated by the results of the National Labor Relations Board elections. Of the 54,054 maritime workers who participated in 306 representation elections held by the National Labor Relations Board between January 1, 1936, and July 15, 1939, 85 percent voted in favor of representation by labor organizations.

Due to the extension of collective bargaining in the maritime industry, what was the most important cause of maritime strikes in the recent past—the demand for union recognition—has been largely eliminated. This fact is confirmed by the quantitative analysis of maritime strikes from 1936 through the first 6 months of 1939, and by the mediatory experience of the Maritime Labor Board. Union recognition, for example, was a major issue in only 6 of the 51 formal cases handled by the Maritime Labor Board. The causes of maritime labor disputes have thus been reduced to wages, hours, and working conditions, and to questions of interpretation and application of collective agreements.

A large majority of maritime agreements recognize the need of providing for systematic procedures in the adjustment or arbitration of disputes. Where the process of collective bargaining is still relatively new, as, for example, among Atlantic and Pacific coast seamen and Pacific coast longshoremen, a good start has been made toward regularizing the bipartisan apparatus for adjusting grievances and complaints arising out of the interpretation and application of agreements. The machinery is far from perfect, both in its form and in its functioning; it nevertheless represents a long step in the right direction, in that it tends to eliminate strikes and lockouts during the life of an agreement.

The issue of whether the unions or the employers should control the recruiting of unlicensed members of the crew, long a subject of bitter strife, is today settled, and promises to remain settled as long as collective bargaining prevails aboard merchant vessels. On the Atlantic, Gulf, and Pacific coasts alike, the unlicensed crews of privately owned merchant vessels are generally recruited through union hiring halls on a rotating basis. On the Pacific coast, at least, longshore labor has been substantially decasualized under a hiring hall system operated jointly by employers and employees. The relative success of this experiment in regularizing the employment of longshoremen has eliminated one of the most fertile causes of labor unrest along the west coast water fronts.

As among other industrial workers, so among maritime workers, economic insecurity breeds a state of mind which fosters labor disputes and obstructs their orderly settlement. Under the newly enacted

social security legislation of the United States, however, a beginning has been made toward protecting maritime workers against the risks of destitution in their old age and of unemployment in their working years. Longshoremen, for example, enjoy both the benefits of old-age pensions and of unemployment compensation under the Social Security Act. Seamen, unfortunately, are still outside the coverage of unemployment compensation, although they have recently been brought under the coverage of old-age pensions.

While conditions for labor stability in the maritime industry are now more favorable than they have been in many years, and progress in orderly labor relations has recently been made, several pressing problems remain. Longshore employment on the east coast, particularly in New York, is not yet decasualized, and the "shape" system of hiring, now in use, is a cause of much discontent among longshoremen. The employers concerned in certain important agreements are not yet fully reconciled to sharing with labor the power to fix the terms and conditions of employment, while some of the unions concerned are not yet fully reconciled to using the strike only as a weapon of last resort when a deadlock is reached on fundamental issues. Some of these collective agreements are only a few years old. Under the circumstances, a good deal of friction has arisen in their operation. These frictions are likely to continue until both parties come, through experience, to appreciate the wisdom of scrupulously observing their responsibilities thereunder.

The experience of the railroad industry shows that a satisfactory system of adjusting disputes is one of the most important prerequisites to stable labor relations, and that the development of a satisfactory adjustment system requires not only time but also a meeting of minds between the parties themselves upon its essential elements. In the maritime industry, however, there is no present indication of such a meeting of minds. Moreover, there are still agreements where provisions for adjusting disputes are entirely lacking, and where agreements do provide adjustment facilities, they are either inadequate or do not function effectively, because of insufficient experience of the parties or because of mutual distrust, or both.

The very limited scope of collective bargaining on the Great Lakes and on the oil tankers continues to be a potential source of industrial conflict. The refusal of the United States Maritime Commission to recognize collective bargaining on merchant vessels operated for its account by managing agents, and the unsettled problem of the legal status of seamen are other factors impeding the development of collective bargaining in the maritime industry.

Long experience with compulsory arbitration in New Zealand and Australia proves that industrial conflict cannot be abolished by restrictive measures. But irrespective of this fact, belief in restrictive measures prevails among a significant proportion of maritime employers and represents a serious obstacle to that friendly cooperation between both parties which is prerequisite to "amicable adjustment" of disputes and "stabilization" of labor relations.

The history of labor relations in the United States amply demonstrates that the degree of success in stabilizing labor relations depends upon the degree to which both employers and employees are sincere in recognizing their several rights and mutual responsibilities through the process of voluntary collective bargaining.

APPENDIXES

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APPENDIX A

STRIKES IN THE MARITIME INDUSTRY, 1932–39

The purpose of this discussion is to consider maritime strikes between 1932 and 1939 quantitatively. In accordance with accepted usage, the term "strike" is used here as the equivalent of labor stoppage, with no attempt to distinguish between stoppages due to the collective quitting of their jobs by the workers (strikes in the narrow sense), and stoppages due to the employers collectively depriving the workers of their jobs (lockouts).

Like other strikes, maritime strikes may be measured by three separate yardsticks: the number of strikes, number of workers involved, number of man-days idle. So far as available figures permit, the present discussion aims to apply each of these yardsticks to strike activity among workers on the water front and among seafaring personnel.

THE GENERAL PATTERN OF STRIKE MOVEMENT, 1932–39

According to figures compiled by the Bureau of Labor Statistics of the United States Department of Labor, the general pattern of maritime strike activity from 1932 to 1939 is shown in Table 1.[1]

TABLE 1.—*Strikes in water transportation, January 1932 through June 1939*

Year	Number of strikes beginning in year	Number of workers involved in strikes beginning in year	Number of man-days idle because of strikes in progress
1932	7	3,018	57,198
1933	14	3,071	32,752
1934	76	28,590	1,068,867
1935	122	29,490	749,534
1936	79	68,761	1,961,267
1937	147	36,447	1,181,413
1938	65	18,227	125,784
1939	51	28,198	232,633

Source: U. S. Department of Labor, Bureau of Labor Statistics, *Strikes in the United States, 1880–1936* p. 153, supplemented by figures published periodically in the *Monthly Labor Review*.

As indicated by Table 1, strike activity since 1932 has passed through three major phases: First, there was a quiescent phase during 1932 and 1933, in which a handful of labor stoppages, affecting a limited number of workers, resulted in a relatively small number of man-days

[1] The figures published by the Bureau of Labor Statistics relate to the water transportation industry as a whole, without distinguishing between vessel personnel and longshoremen. In all Bureau of Labor Statistics strike figures, the strike is defined as any labor stoppage (including a lockout) which lasts at least 1 day and involves at least six workers.

idle; second, there occurred an extremely active phase from 1934 through 1937, during which the annual number of strikes, the number of workers involved, and the number of man-days idle all showed a marked increase over 1932 and 1933; third, there appeared a falling off of strike activity in 1938, followed by some tendency to revival of activity in the first half of 1939.

Although more strikes began in 1937 than in any other one year from 1932 to 1938, inclusive, the strikes beginning in 1936 involved a much greater number of workers and of man-days idle than those commencing in any other year. The marked frequency of maritime strikes in 1937 reflects an outcropping of small and short-lived "sit-downs" during that year. Both the number of workers involved and the number of man-days idle reached a peak in 1936, due to prolonged strikes involving seamen along the Atlantic coast, and longshoremen and seamen along the Pacific coast.

Compared with the previous year, the number of strikes in 1934 increased more than fivefold, the number of workers involved almost tenfold, while the number of man-days idle was nearly 30 times as large. These increases were largely the result of the west coast walk-out of longshoremen and seamen in 1934, which tied up practically all Pacific coast shipping for several months. In 1938, however, the number of strikes and the number of workers involved, when compared with 1937, declined to about half, while the number of man-days idle was reduced by almost nine-tenths.

MAJOR ISSUES

Although no code of fair competition was applied to merchant shipping or to water-front operations, the organized labor movement among seamen and longshoremen responded as strongly to the psychological stimulus of section 7 (a) as it did in the "codified" industries. In the maritime, as in most other industries, moreover, the resulting organizational drives of the labor unions met resistance on the part of antiunion employers. This organizational movement thus intensified the natural tendency, in most industries, toward strikes during years of improving business. As in other industries, also, the struggle over union recognition was a major cause of maritime strikes during the 1933–36 period.[2]

Figures published by the Bureau of Labor Statistics make it possible to examine the rising tide of maritime strike activity from 1932 to 1935 in terms of the major issues underlying particular strikes. Although these figures do not record strikes concerning union recognition separately, they do distinguish three groups of strikes: (*a*) Those in which the major issue was some question of wages, hours, or both; (*b*) those in which the major issue was some question of union organization, including the closed shop and discriminatory discharge, as well as recognition; (*c*) those involving miscellaneous or indeterminable

[2] This was true, for example, of the west coast strike from May 9 to July 31, 1934, in which licensed officers and seamen as well as longshoremen took part; of the strike from March 9 to June 17, 1935, of personnel employed aboard Pacific coast oil tankers; of the longshoremen's strike at Gulf coast ports from October 1 to November 23, 1935. It was by the threat of a coast-wide walk-out, moreover, that the labor union of unlicensed personnel obtained recognition from the Atlantic coast shipowners on December 21, 1934, the first time such recognition had been granted since its withdrawal by the operators in the immediate post-war years.

issues, including sympathetic strikes, jurisdictional strikes, and strikes due to a controversy between rival unions or union factions.

Table 2–A shows that all or almost all of the maritime strikes occurring in 1932 and 1933 arose from disputes over wages and hours, while few were caused by disputes over union recognition, the closed shop, or discriminatory discharge, and few took the form of sympathetic strikes, jurisdictional strikes, or strikes growing out of a controversy between rival unions or factions. In 1934 and 1935, however, maritime labor stoppages in which the major issue was some question of union organization (recognition, closed shop, discrimination) predominated in terms of workers involved and man-days idle. Sympathetic strikes, jurisdictional strikes, and strikes due to a controversy between rival unions also came to the fore in maritime labor stoppages in 1934 and 1935. In terms of percentage, maritime strikes concerning particular issues varied from 1932 to 1935 as shown in Table 2–B.

TABLE 2–A.—*Major issues in strikes in the water transportation industry, 1932–35*

Year	Number of strikes [1]				Number of workers involved [1]				Number of man-days idle [1]			
	All issues	Major issues			All issues	Major issues			All issues	Major issues		
		Wages and hours	Union organization	Miscellaneous		Wages and hours	Union organization	Miscellaneous		Wages and hours	Union organization	Miscellaneous
1932	7	6	-------	1	3,018	2,818	---------	200	57,198	56,998	---------	200
1933	14	10	2	2	3,071	2,561	325	185	32,752	29,867	2,375	510
1934	76	28	25	23	28,590	5,846	12,844	9,900	1,068,867	134,260	501,193	433,414
1935	122	23	41	58	29,490	7,188	14,571	7,731	749,534	202,283	462,525	84,726

[1] Strikes beginning in year.
[2] Because of strikes in progress during year.

Source: U. S. Department of Labor, Bureau of Labor Statistics, *Strikes in the United States, 1880–1936*, p. 153.

TABLE 2–B.—*Percent distribution of number of workers involved in, and number of man-days idle because of maritime strikes, by major issues, 1932–35* [1]

Year	Number of workers involved				Number of man-days idle			
	All issues	Major issues			All issues	Major issues		
		Wages and hours	Union organization	Miscellaneous		Wages and hours	Union organization	Miscellaneous
1932	100.0	93.4	---------	6.6	100.0	99.7	---------	0.3
1933	100.0	83.4	10.6	6.0	100.0	91.2	7.3	1.5
1934	100.0	20.4	44.9	34.7	100.0	12.6	46.9	40.5
1935	100.0	24.4	49.4	26.2	100.0	27.0	61.7	11.3

[1] Computed from Table 2–A.

An influence which was even more important to maritime labor relations than section 7 (a), came into play when the National Labor Relations Act became operative in October 1935. Nor has the profound impetus which that law gave to the development of collective bargaining in the maritime industry yet come to an end. In this

connection, it is instructive to examine detailed figures regarding maritime strike activity from 1936 to the present.

In response to a request for such data by the Maritime Labor Board, the Division of Research of the United States Maritime Commission prepared detailed figures, covering the period from January 1, 1936, to June 30, 1939, which distinquish strikes of vessel personnel from those of longshore workers.[3] The information supplied by the Maritime Commission is summarized in Tables 3 to 10.

Before considering these tables, however, account should be taken of some of the basic factors underlying the labor stoppages of seamen and longshoremen that occurred during the years 1936–39. Each important strike was the product of several factors, such as the renewed organizational drive following the enactment of the National Labor Relations Act, the internal split in the organized labor movement between the American Federation of Labor and the Congress of Industrial Organizations, the emergence of a "rank and file" movement within various unions, the outburst of "sit-downs" in 1937, and the negotiation of many new collective agreements by workers and employers inexperienced in collective bargaining.

In causing particular strikes, however, certain factors weighed more heavily than others. Thus the continuous series of "unofficial" strikes[4] among east-coast seamen in the spring of 1936 expressed the development of a "rank and file" revolt against the "old line" leadership of the former International Seamen's Union. The coast-wide strike of Pacific coast longshoremen and seamen during the winter of 1936–37, as well as the many local stoppages among these workers occurring since that time, appear to have arisen primarily out of the difficulties of applying newly consummated agreements in an atmosphere of mutual suspicion and distrust. The major issue that underlay the strike of unlicensed personnel employed in the Atlantic oil tanker fleet during the spring of 1939 was a demand that a group of employers who had been only recently won over to the principle of union recognition should carry the specific application of that principle still farther by agreeing to the preferential hiring of union members through union hiring halls.

STATISTICS OF MARITIME STRIKES, JANUARY 1936 TO JUNE 1939

Tables 3 to 10, inclusive, add considerably to the previously published statistical information regarding maritime strikes, because they make it possible to examine many aspects of maritime labor stoppages which would otherwise escape analysis, such as the distribution of strikes by size, by duration, and by shipping region.

Table 3 presents annual figures showing the number of maritime strikes beginning in each of the 4 years, 1936, 1937, 1938, and 1939 (first 6 months). It also shows the number of workers involved and the man-days idle in such strikes. The fact that the figures for longshoremen are less comprehensive than those covering vessel personnel limits their usefulness for purposes of direct comparison.

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[3] The statistics prepared by the United States Maritime Commission are mainly based on the strike records of the Bureau of Labor Statistics, amplified, however, by data obtained from the Commission's field representatives, from trade union and shipowners' publications, and from the daily press.

[4] Unofficial in that these walk-outs were not authorized by the union officials.

The table nevertheless indicates the general trend of strike activity among the two main classes of maritime workers. For the period as a whole, Table 3 shows that 115 longshore strikes involved 84,173 workers, while the 331 seamen's strikes involved a total of 81,146 men, thus indicating that the average longshore strike was considerably larger in terms of the number of workers involved than the average seamen's strike. The total number of man-days idle, however, would seem to show that the average longshore strike had a shorter duration than the average strike of vessel personnel.

TABLE 3.—*Maritime strikes,*[1] *January 1936 through June 1939*

Year	Vessel personnel			Longshoremen [2]		
	Number of strikes beginning in year	Number of workers involved in strikes beginning in year	Number of man-days idle because of strikes in progress	Number of strikes beginning in year	Number of workers involved in strikes beginning in year	Number of man-days idle because of strikes in progress
All years	331	81,146	2,260,061	115	84,173	1,347,426
1936	98	49,215	1,361,021	28	21,855	611,839
1937	148	14,841	732,153	31	32,750	550,616
1938	51	8,471	54,551	25	9,049	59,943
1939	34	8,619	112,336	31	20,519	125,028

[1] Limited to stoppages lasting at least 1 day.
[2] Coverage of longshore strikes is believed to be less complete than of strikes of vessel personnel.

Source: Provisional figures, supplied by U. S. Maritime Commission, Division of Research, November 1939.

Table 4 shows the distribution of maritime strikes by shipping regions. It will be observed that although for vessel personnel the number of strikes was not always greater on the Pacific coast as compared to other coasts, the number of workers involved and the man-days idle were much larger on the Pacific coast, except for the first 6 months of 1939. In 1939 two large strikes affecting both Atlantic and Gulf ports involved more men and man-days idle than those in other areas.

For longshoremen the number of strikes in each of these years was greatest on the Pacific coast, except for 1937, when there occurred as many strikes of longshoremen on the Atlantic as on the Pacific coast. The number of workers involved and of man-days idle were also greater on the Pacific coast during the entire period, except for 1937, when three strikes of longshoremen involving both the Gulf and Atlantic coasts brought out more than three times as many men as did the 12 strikes beginning on the Pacific coast.

TABLE 4.—*Distribution of maritime strikes*[1] *by shipping regions, January 1936 through June 1939*

A. VESSEL PERSONNEL

Shipping region	Number of strikes beginning in				Number of workers involved in strikes beginning in				Number of man-days idle because of strikes in progress during			
	1936	1937	1938	1939	1936	1937	1938	1939	1936	1937	1938	1939
All shipping regions	98	148	51	34	49,215	14,841	8,471	8,619	1,361,021	732,153	54,551	112,336
Salt-water ports on the:												
Atlantic coast	11	69	19	9	3,161	8,338	4,883	1,733	22,175	43,541	18,762	17,640
Gulf coast	12	25	15	11	1,297	1,416	1,085	659	10,912	11,594	9,553	4,747
Pacific coast	73	45	15	10	29,686	3,186	2,450	1,822	1,203,232	642,040	25,572	12,599
Atlantic and Gulf coasts	1	4	----	2	15,000	1,189	------	3,373	121,933	26,482	--------	59,318
Great Lakes ports	1	5	2	1	71	712	53	32	2,769	8,496	664	32
Inland river ports	----	----	----	1	------	------	------	1,000	----------	--------	--------	18,000

B. LONGSHOREMEN[2]

All shipping regions	28	31	25	31	21,855	32,750	9,049	20,519	611,839	550,616	59,943	125,028
Salt-water ports on the:												
Atlantic coast	2	12	5	6	190	5,571	2,623	1,346	550	27,610	19,715	5,284
Gulf coast	6	----	3	2	659	------	605	69	2,463	--------	865	329
Pacific coast	15	12	10	21	15,335	6,559	4,778	16,464	560,702	343,431	34,963	73,995
Atlantic and Gulf coasts	1	3	----	----	5,000	20,000	------	------	40,643	175,020	--------	--------
Great Lakes ports	2	1	3	----	336	50	550	------	2,616	200	1,230	--------
Inland river ports	2	3	4	2	335	570	493	2,640	4,865	4,355	3,170	45,420

[1] Limited to stoppages lasting at least 1 day.
[2] Coverage of longshore strikes is believed to be less complete than of strikes of vessel personnel.

Source: Provisonal figures, supplied by U. S. Maritime Commission, Division of Research, November 1939.

Table 5 gives a detailed analysis of maritime strikes according to different size categories, as measured by the number of workers involved. Most of the strikes, both among vessel personnel and among longshoremen, involved between 20 and 100 men, the next largest number of strikes involving between 100 and 500 men in most of the years covered. Strikes involving more than 500 men were very rare in both maritime occupations.

In Table 6 maritime strikes are considered in terms of their duration. For both groups of workers and in every year, over half the strikes lasted less than 1 week, while more than two-thirds of the strikes lasted not more than 2 weeks. Only three strikes beginning in 1936 and one strike beginning in 1937 lasted as long as 3 months. The three strikes commencing in 1936 which continued as long as 3 months, however, involved at least 10,000 workers each.

Table 7 relates to the major issues causing strikes among vessel personnel and longshoremen. In considering this table, it should be kept in mind that few, if any, strikes arise out of controversy over a single issue; that among maritime, as among industrial workers, practically all strikes are the outcome of controversy over a complex of interrelated issues. As a rule, therefore, any decision as to what was the major underlying issue in a particular strike is to some extent arbitrary.

TABLE 5.—*Distribution of maritime strikes*[1] *by number of workers involved, January 1936 through June 1939*

A. VESSEL PERSONNEL

Size categories	Number of strikes beginning in				Number of workers involved in strikes beginning in				Number of man-days idle because of strikes in progress during			
	1936	1937	1938	1939	1936	1937	1938	1939	1936	1937	1938	1939
All sizes	98	148	51	34	49, 215	14, 841	8, 471	8, 619	1, 361, 021	732, 153	54, 551	112, 336
Less than 20 workers	13	22	9	5	142	238	103	80	771	2, 190	679	315
20 to 100	58	89	36	17	2, 366	3, 943	1, 669	704	31, 854	22, 166	12, 388	4, 102
100 to 500	22	35	2	8	4, 833	9, 029	949	1, 566	46, 316	82, 644	15, 234	16, 623
500 to 1,000	2	1	1	1	1, 251	555	850	964	7, 735	3, 802	5, 950	8, 676
1,000 to 5,000	1	1	3	3	1, 000	1, 076	4, 900	5, 305	69, 000	6, 339	20, 300	82, 620
5,000 to 10,000	----	----	----	----	-------	-------	-------	-------	-------	-------	-------	-------
10,000 and over	2	----	----	----	39, 623	-------	-------	-------	1, 205, 345	615, 012	-------	-------

B. LONGSHOREMEN[2]

All sizes	28	31	25	31	21, 855	32, 750	9, 049	20, 519	611, 839	550, 616	59, 943	125, 028
Less than 20 workers	1	3	2	2	18	37	33	19	90	124	285	124
20 to 100	15	10	11	17	930	455	510	788	4, 434	4, 617	2, 360	3, 726
100 to 500	9	10	8	5	1, 875	2, 899	1, 856	1, 390	10, 499	26, 409	17, 498	14, 820
500 to 1,000	----	----	1	2	-------	-------	600	1, 100	-------	-------	6, 000	2, 600
1,000 to 5,000	1	6	3	3	1, 655	13, 359	6, 050	7, 072	11, 585	75, 398	33, 800	57, 708
5,000 to 10,000	1	2	----	2	5, 000	16, 000	-------	10, 150	40, 643	147, 020	-------	46, 050
10,000 and over	1	----	----	----	12, 377	-------	-------	-------	544, 588	297, 048	-------	-------

[1] Limited to stoppages lasting at least 1 day.
[2] Coverage of longshore strikes is believed to be less complete than of strikes of vessel personnel.

Source: Provisional figures, supplied by U. S. Maritime Commission, Division of Research, November 1939.

TABLE 6.—*Distribution of maritime strikes*[1] *by duration, January 1936 through June 1939*

A. VESSEL PERSONNEL

Duration of strikes (days)	Number of strikes beginning in				Number of workers involved in strikes beginning in				Number of man-days idle because of strikes in progress during			
	1936	1937	1938	1939	1936	1937	1938	1939	1936	1937	1938	1939
Total	98	148	51	34	49, 215	14, 841	8, 471	8, 619	1, 361, 021	732, 153	54, 551	112, 336
1–6	78	110	33	21	6, 469	9, 182	5, 099	2, 041	15, 892	18, 480	12, 254	8, 533
7–14	8	20	12	5	675	3, 058	2, 703	1, 360	4, 805	20, 416	20, 405	11, 988
15–29	2	9	3	5	651	1, 316	567	1, 684	8, 151	26, 482	9, 377	25, 098
30–59	4	5	2	3	240	739	53	3, 534	62, 525	17, 151	8, 962	66, 717
60–89	4	4	1	----	16, 137	546	49	-------	144, 689	43, 132	3, 553	-------
90 or over	2	----	----	----	25, 043	-------	-------	-------	1, 124, 959	606, 492	-------	-------

B. LONGSHOREMEN[2]

Total	28	31	25	31	21, 855	32, 750	9, 049	20, 519	611, 839	550, 616	59, 943	125, 028
1–6	17	21	16	18	1, 840	7, 570	3, 830	9, 927	4, 048	17, 619	9, 830	20, 739
7–14	5	5	7	10	2, 131	8, 670	4, 919	6, 448	15, 693	93, 919	36, 688	43, 693
15–29	4	2	1	2	507	12, 000	25	3, 744	6, 867	79, 000	500	50, 396
30–59	----	----	1	1	-------	-------	275	400	-------	-------	12, 925	10, 200
60–89	1	2	----	----	5, 000	4, 480	-------	-------	40, 643	59, 820	-------	-------
90 or over	1	1	----	----	12, 377	30	-------	-------	544, 588	300, 258	-------	-------

[1] Limited to stoppages lasting at least 1 day.
[2] Coverage of longshore strikes is believed to be less complete than of strikes of vessel personnel.

Source: Provisional figures, supplied [by] U. S. Maritime Commission, Division of Research, November 1939.

TABLE 7.—*Distribution of maritime strikes[1] by major issues, January 1936 through June 1939*

A. VESSEL PERSONNEL

Major issue underlying strike	Number of strikes beginning in				Number of workers involved in strikes beginning in				Number of man-days idle because of strikes in progress during			
	1936	1937	1938	1939	1936	1937	1938	1939	1936	1937	1938	1939
All issues	98	148	51	34	49,215	14,841	8,471	8,619	1,361,021	732,153	54,551	112,336
Wages and hours	33	36	17	4	4,967	3,113	3,862	420	135,417	57,867	27,901	4,434
Union recognition	9	24	7	5	25,260	3,119	221	1,166	1,088,306	611,770	1,613	11,153
Closed shop	10	7	3	3	408	452	92	4,327	2,392	974	766	77,400
Discrimination	4	3	1	2	445	112	22	413	1,634	379	66	2,162
Agreement violation			2	3			58	297			768	1,964
Sympathetic strikes	3	14	2	6	255	1,233	1,469	496	435	9,010	10,869	7,956
Rival union disputes[2]	1	26	11	2	15,000	5,151	2,409	79	121,933	41,601	4,478	344
Jurisdictional disputes[3]	1	10	1		690	675	35		1,564	7,045	7,500	
Other or unknown	37	28	7	9	2,190	986	303	1,421	9,340	3,507	590	6,923

B. LONGSHOREMEN[4]

All issues	28	31	25	31	21,855	32,750	9,049	20,519	611,839	550,616	59,943	125,028
Wages and hours	6	6	3	2	1,060	20,550	2,650	3,356	9,540	185,400	19,350	7,340
Union recognition	3	7	3	1	12,433	1,022	595	500	545,024	301,910	1,365	1,000
Closed shop	3		2	2	318		289	2,640	569		2,348	45,420
Discrimination			1	1			65	1,244			585	5,396
Agreement violation	1	1	1	1	1,655	30	1,350	30	11,585	120	9,450	180
Sympathetic strikes	4	5	5	7	244	5,278	170	5,951	741	38,752	875	24,265
Rival union disputes[2]	1	2	3		5,000	2,319	830		40,643	12,658	6,260	
Jurisdictional disputes[3]	1	2		1	22	204		65	352	416		325
Other or unknown	9	8	7	16	1,123	3,347	3,100	6,733	3,385	11,360	19,710	41,102

[1] Limited to stoppages lasting at least 1 day.
[2] A dispute between unions, or union factions, each of which exercises jurisdiction over the same craft or class of workers.
[3] A dispute between unions each of which exercises jurisdiction over a different craft or class of workers.
[4] Coverage of longshore strikes is believed to be less complete than of strikes of vessel personnel.

Source: Provisional figures, supplied by the U. S. Maritime Commission, Division of Research, November 1939.

As with strikes in other industries, so with those in the maritime industry, the major issue is most often wages and hours. Table 7 shows, however, that the issue of union recognition and disputes between rival unions involved the largest number of vessel personnel and the largest number of man-days idle in 1936 and 1937. In 1938 wages and hours were the source of the largest number of man-days idle, while the closed-shop issue caused the greatest loss of time in 1939.

Strikes among longshoremen were chiefly due to issues arising out of wages and hours, union recognition, and sympathetic strikes, according to the figures of the Maritime Commission. The greatest number of workers was involved in strikes concerning union recognition, wages and hours, and sympathetic strikes. And the greatest number of man-days idle was on account of strikes over union recognition, wages and hours, and the closed shop.

Tables 8, 9, and 10 are concerned with certain special aspects of the strikes of vessel personnel occurring between 1936 and the end of June 1939. From Table 8, dealing with "sit-downs," it appears that these stoppages began to occur in 1936, greatly increased in 1937,

subsided in 1938, and ceased in 1939. "Sit-downs" constituted more than one-half of all strikes among the vessel personnel in 1937, while the number of workers involved in "sit-downs" was 17,800 out of a total of 54,545 involved in all strikes. But the number of man-days idle from "sit-downs" lasting at least one day represented only 5.8 percent of the total.

TABLE 8.—*Sit-down strikes compared with all strikes of vessel personnel, January 1936 through June 1939*

	1936			1937			1938			1939		
	All strikes	Sit-downs	Sit-downs as a percent of all strikes	All strikes	Sit-downs	Sit-downs as a percent of all strikes	All strikes	Sit-downs	Sit-downs as a percent of all strikes	All strikes	Sit-downs	Sit-downs as a percent of all strikes
Number of strikes beginning in year:												
Lasting less than 1 day	32	4	(1)	167	113	(1)	45	28	(1)	8	----	------
Lasting 1 day or more	98	5	(1)	148	72	(1)	51	17	(1)	34	1	(1)
Total	130	9	6.9	315	185	58.7	96	45	(1)	42	1	(1)
Number of workers involved in strikes beginning in year:												
Lasting less than 1 day	1,751	269	15.4	39,704	9,150	23.0	2,095	1,476	70.5	2,447	----	------
Lasting 1 day or more	49,215	746	1.5	14,841	8,650	58.3	8,471	2,196	25.9	8,619	127	1.5
Total	50,966	1,015	2.0	54,545	17,800	32.6	10,566	3,672	34.8	11,066	127	1.1
Man-days idle because of strikes in progress: [2]												
Lasting 1 day or more	1,361,021	2,875	0.2	732,153	42,289	5.8	54,551	3,418	6.3	112,336	381	0.3

[1] Percentages not computed where number of strikes is less than 100.
[2] No count was made of man-days idle because of strikes lasting less than 1 day.

SOURCE: Provisional figures, supplied by the U. S. Maritime Commission, Division of Research, November 1939.

Table 9 relates to strikes of vessel personnel in terms of the type of vessel affected. Table 10 deals with them in terms of the ownership of the vessels affected. The usefulness of both tables is limited by the necessity for presenting part of the data in terms of strikes which affected vessels of more than one type or more than one ownership group. Table 9 indicates that, except for the first half of 1939, strikes affecting tankers alone involved only a small proportion of workers who participated in labor stoppages, as compared with strikes that affected passenger vessels or dry cargo freighters. Table 10 shows that strikes affecting nonsubsidized vessels, owned by private operators, accounted for the largest number of workers involved in any 1 year.

TABLE 9.—*Distribution of strikes [1] of vessel personnel by type of vessel affected, January 1936 through June 1939*

Type of vessel	Number of strikes beginning in				Number of vessels affected by strikes beginning in				Number of workers involved in strikes beginning in			
	1936	1937	1938	1939	1936	1937	1938	1939	1936	1937	1938	1939
All types	98	148	51	34	782	498	235	282	49,215	14,841	8,471	8,619
Only 1 type of vessel affected	88	134	47	29	487	419	193	232	30,978	11,228	6,832	5,132
Passenger vessels [2]	15	23	2	5	15	70	2	5	3,030	3,671	56	382
Dry-cargo freighters	63	80	33	19	385	163	114	52	26,885	5,158	4,289	1,323
Tankers	5	12	5	4	14	15	9	173	446	451	172	3,382
Harbor craft [3]	5	19	7	1	73	171	68	2	617	1,948	2,315	45
Two or more types of vessel affected [4]	10	14	4	5	295	79	42	50	18,237	3,613	1,639	3,487

[1] Limited to stoppages lasting at least 1 day.
[2] Includes "combination" vessels, i. e., vessels that are essentially dry-cargo freighters but also carry a certain number of passengers.
[3] Includes tugs, ferries, and dredges.
[4] Predominately strikes that affected passenger vessels and dry-cargo freighters.

Source: Provisional figures, supplied by the U. S. Maritime Commission, Division of Research, November 1939.

TABLE 10.—*Distribution of strikes [1] of vessel personnel by ownership of vessels affected, January 1936 through June 1939*

Ownership of vessels	Number of strikes beginning in				Number of vessels affected by strikes beginning in				Number of workers involved in strikes beginning in			
	1936	1937	1938	1939	1936	1937	1938	1939	1936	1937	1938	1939
All classes of ownership	98	148	51	34	782	498	235	282	49,215	14,841	8,471	8,619
Only vessels of one class of ownership affected	96	145	50	32	626	484	202	277	33,215	13,998	6,971	7,498
U. S. Maritime Commission [2]	-----	7	1	-----	-----	7	1	-----	-----	255	25	-----
Federal Barge Lines [2]	-----	-----	2	1	-----	-----	18	24	-----	-----	566	1,000
Private operators (subsidized vessels)	-----	13	4	5	-----	22	4	5	-----	1,193	131	213
Private operators (nonsubsidized vessels)	96	125	43	26	626	455	179	248	33,215	12,550	6,249	6,285
Vessels of more than 1 class of ownership affected [3]	2	3	1	2	156	14	33	5	16,000	843	1,500	1,121

[1] Limited to stoppages lasting at least 1 day.
[2] An agency of the Government of the United States.
[3] Predominately privately owned subsidized and nonsubsidized vessels together with some vessels owned by the U. S. Maritime Commission.

Source: Provisional figures, supplied by the U. S. Maritime Commission, Division of Research, November 1939.

Appendix B

SUMMARY OF SEAMEN'S LAWS

The laws now on the statute books relating directly to seamen comprise a voluminous mass of material. These laws have been enacted by the United States Congress under its constitutional power to regulate commerce [1] and "to define and punish piracies and felonies committed on the high seas." [2] They are enforced by the Federal courts under the jurisdiction granted them over "all cases of admiralty and maritime jurisdiction." [3]

The following paragraphs summarize the more important legal qualifications, restrictions, and protections which define the status of seamen under the navigation laws.[4] Many provisions relating to administration, safety (including inspection of vessels, life-saving equipment, etc.), enforcement, penalty clauses, and qualifying limitations have of necessity been eliminated.

QUALIFICATIONS OF SEAMEN

All licensed officers and pilots of United States vessels and 75 percent of the crew, excluding officers, must be citizens of the United States.[5]

On subsidized vessels all licensed officers shall be citizens of the United States, and on each departure from the United States of a cargo vessel on which a construction or operating subsidy has been granted, all of the crew shall be citizens; and on subsidized passenger vessels, 90 percent of the entire crew, including all licensed officers, shall be citizens of the United States. Any member of the crew not required to be a citizen may be an alien only if he is in possession of a valid declaration of his intention to become a citizen, or other evidence of legal admission to the United States for permanent residence.[6]

Seventy-five percent of the crew in each department, on all vessels of over 100 gross tons except those navigating exclusively in inland rivers and small lakes, must be able to understand orders given by officers.

Sixty-five percent of the crew of the deck department, exclusive of licensed officers and apprentices, must have a rating of not less than able seaman, and all members of the engine department with a rating above coal passer or wiper must have a rating as a qualified member of the engine department. To be rated an able seaman, a person must be 19 years of age or over, and must have had 3 years' service on deck at sea or on the Great Lakes; or, for service on the Great Lakes or smaller lakes, 18 months' service on deck at sea or on the Great Lakes or smaller lakes. To be rated a qualified member of the engine department, a person must have had 6 months' service at sea in a

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[1] *U. S. Constitution,* art. I, sec. 8, clause 3.
[2] *U. S. Constitution,* art. I, sec. 8, clause 10.
[3] *U. S. Constitution,* art. III, sec. 2.
[4] This summary points out only the general contour of the law; for more detailed information see the references in the U. S. Code.
[5] 46 U. S. C. A., sec. 672a.
[6] 46 U. S. C. A., sec. 1132.

rating equal to coal passer or wiper. Graduates of ship schools may be rated able seamen or qualified members of the engine department upon graduation. In a limited number of cases a person found competent may be rated an able seaman after 12 months' service on deck.

No person rating below a licensed officer may be employed on a United States merchant vessel without a certificate of service issued by a local board of inspectors. An examination as to competence is required in order to obtain a certificate of service as able seaman or qualified member of the engine department. Certificates for other ratings may be issued without examination.

Provision is made for a muster of the crew by the collector of customs, upon his own motion or upon sworn information from a reputable citizen that any of these provisions are being violated. Penalties are provided for giving such information falsely, and for violation of legal provisions by the owner.[7]

SHIPMENT OF SEAMEN

The provisions of the law relating to shipment of seamen are largely a part of the Shipping Commissioners Act of 1872, enacted to protect seamen from hiring evils prevalent at that time.

The master of every vessel bound from a port in the United States to any foreign port (other than United States and British North American possessions, or the West Indies, or Mexico), and of vessels of 75 tons and over in trade between Atlantic and Pacific ports, must make a written agreement with every member of the crew before a Shipping Commissioner. The Commissioner may ship crews in the excluded group if requested. Seamen shipped on a United States vessel in a foreign port must sign articles before a consular officer, and reshipment in the United States is not required. Seamen shipped to replace crew members lost through desertion or casualty must be of the same or higher rating, and such shipment must be reported to the United States Consul at the first port.

The form of the agreement is provided by law and includes statements as to the nature and duration of the engagement and the terminal port, the number and description of the crew, the time each seaman is to be aboard to begin work, the capacity in which a seaman is to serve, the amount of his wages, the scale of provisions, any regulations as to his conduct, including fines or punishments, and stipulations in reference to advances and allotment of his wages.

Seamen in the foreign trade may be shipped to serve for one or more round trips, or for a definite period of time.

The master of any vessel of 50 tons or upward in the coastwise trade (excluding vessels of the burden of 75 tons and upward bound from an Atlantic to a Pacific port and vice versa) must make a written agreement with every seaman declaring the length of the voyage or the term of service. Articles of this type are not signed in the presence of a Commissioner. Seamen in coastwise trade shipped in violation of this provision are entitled to the highest wage paid during the preceding 3 months for a similar voyage at the port where the seaman

[7] 46 U. S. C. A., sec. 672.

was shipped. A seaman who has not signed articles is not bound by regulations or penalties. Articles used in the coastwise trade include a statement of the time when the seaman shall report for work. If the seaman neglects to appear, without 24 hours' notice, he forfeits one-half day's wages for every hour that he is late.

Shipments made contrary to any legal provision are void, and the seaman may leave his ship at any time. In this case he is entitled to the highest rate of wage at the port of shipment, or to the sum agreed upon. Penalties are provided for violation of the provisions requiring the signing of articles.

The Commissioner is instructed to assist in arranging apprenticeships upon request. Before taking an apprentice to sea the master of a foreign-going vessel must appear before a Commissioner and produce an indenture.[8]

DISCHARGE OF SEAMEN

All seamen shipped in the presence of a Shipping Commissioner must also be discharged and paid off before him. Within 48 hours of paying off the crew, the master is required to deliver a full and final account of wages and deductions, either to each seaman or to the Commissioner, if the discharge is made in his presence.

All seamen on merchant vessels of the United States of 100 tons or upward, except vessels exclusively in trade on navigable rivers, shal be furnished either a continuous discharge book or a certificate of identification. No one shall be employed unless he is able to produce such a book or certificate. The book or certificate shall contain the signature of the seaman, a statement as to his nationality, age, and home address, also a personal description and photograph.

When a seaman is discharged, the Commissioner or the master of the ship must enter in the continuous discharge book the name and number of the vessel, a statement as to the class to which the vessel belongs, the nature of the voyage, the date and place of shipment and discharge, and the capacity in which the seaman was employed. To a seaman preferring a certificate of identification, a certificate of discharge may be issued. This contains the same information as the continuous discharge book and furnishes evidence of service. Any discrimination because a seaman prefers to carry a book rather than a certificate of identification, or vice versa, is punishable by a fine or imprisonment.[9]

WAGES

Right to wages.

A seaman's right to wages commences at the time he begins work or the time specified in the agreement, whichever is first. The right to wages is in no case dependent upon "freight earned." When service terminates before the period stipulated in the agreement, by loss or wreck of the vessel, seamen are entitled to wages for the period of service prior to termination. A seaman discharged improperly

[8] 46 U. S. C. A., secs. 561–579. The law includes a stringent provision against "shanghaiing." A fine of not more than $1,000, or 1 year's imprisonment, is provided for procuring or inducing a seaman by force, threats, or misrepresentations, or while he is intoxicated or drugged, to go aboard a vessel to perform service. This applies to any vessel of the United States on the high seas and to all navigable waters of the United States (18 U. S. C. A., sec. 144).

[9] 46 U. S. C. A., secs. 641–646.

through no fault of his own before the voyage begins or before one month's wages are earned, is entitled to receive a sum equal to 1 month's wages in addition to wages earned.[10]

Time of payment.

Seamen making coasting voyages shall be paid within 2 days after the termination of the voyage or at the time of discharge, whichever occurs first. In case of foreign vessels, seamen shall be paid within 24 hours after the cargo is discharged or 4 days after his own discharge, whichever is first. The seaman is entitled at the time of his discharge to one-third of the wages due him. Violation of these requirements without sufficient cause entitles a seaman to 2 days' pay for each day that payment is delayed.

Seamen on United States vessels are entitled to receive one-half of their wages earned and unpaid at every port where the vessel loads or delivers cargo, provided such demand shall not be made before the expiration of 5 days, nor oftener than once in 5 days, nor more than once in the same harbor. Violation of the provisions releases a seaman from his contract and entitles him to full payment of the wages earned.[11]

Advances and allotments.

It is unlawful to make advance payments of wages to seamen, or to pay wages, or to give any evidence of indebtedness to any other person, or to pay any person for the shipment of seamen when the amount is deducted or to be deducted from wages. A penalty is provided for violation, and provision is made that such payments shall not absolve the vessel from the regular payment of wages earned. Anyone demanding or receiving payment for providing seamen with employment is guilty of a misdemeanor. A seaman may, however, allot a portion of his wages to near relatives. These provisions apply to foreign vessels in waters of the United States. No wages due or accruing to a seamen are subject to attachment, except for the support of his wife and minor children.

Whenever wages are not paid within 10 days of the time when they are legally due, or a dispute arises in this connection, the district judge may summon the master of the ship to show why an order should not be issued against the vessel. If the master fails to appear, does not show that the wages were paid or that the deductions were just and the dispute is not forthwith settled, the court may issue an order against the vessel.

No seaman shall by agreement forfeit his lien upon the ship or be deprived of any remedy for recovery of wages due him.[12]

Minimum wage scales.

The United States Maritime Commission is directed, among other things, to investigate wage conditions in oceangoing shipping, and, after investigation and hearings, to incorporate minimum wage scales in the contracts of all officers and crews employed on all vessels receiving operating differential subsidies from the United States Government.[13]

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[10] 46 U. S. C. A., secs. 591–594.
[11] 46 U. S. C. A., secs. 596–597.
[12] 46 U. S. C. A., secs. 599–604.
[13] 46 U. S. C. A., sec. 1131.

PROTECTIONS AND WORKING CONDITIONS

Unseaworthy vessel.

If the first and second officers, or the majority of the crew, on a vessel bound on any voyage, discover that the vessel is unseaworthy before it leaves the harbor, the master shall, on their application, apply to the court, or in a foreign country to the Consul, for appointment of surveyors. There is a penalty if the master refuses. Provision is made for payment of the inspection cost by the master if the vessel is found unseaworthy; if the complaint is made without foundation, the cost is deducted from the wages of complaining seamen. If a seaman refuses to proceed after the vessel is judged fit to sail or after alterations are made, the wages due him shall be forfeited.

A penalty is provided for anyone knowingly sending a ship flying the United States flag to sea in such an unseaworthy state as to endanger the life of any person. If inspectors determine that an unseaworthy vessel was sent to sea by neglect or design, the crew is entitled to be discharged and to payment of 1 month's wages over the amount due, or the money necessary to return them to the nearest United States port, or employment on another vessel. If the unseaworthiness is due to a mistake or to an accident and is remedied in a reasonable time, the crew must remain and discharge its duty.[14]

Crew quarters.

On all of the United States merchant vessels weighing over 100 tons and constructed after 1915, quarters appropriated to the crew shall have space of not less than 120 cubic feet, and not less than 16 square feet for each seaman or apprentice lodged therein. Each seaman shall have a separate berth, and not more than one berth shall be placed above another. Such lodging shall be securely constructed, lighted, drained, heated, and ventilated, and kept free from goods or stores. Such vessels having more than 10 men on deck shall have at least one light, clean, properly ventilated washing place, and at least one washing outfit for every two men of the watch.

Merchant vessels ordinarily making voyages of more than 3 days, and which carry a crew of 12 or more persons, shall construct a separate compartment for hospital purposes. Provision is included for extension of these requirements to United States steamboats on the Mississippi or its tributaries, insofar as they apply.[15]

Local inspectors of the Bureau of Marine Inspection and Navigation shall inspect crew quarters of every American vessel once a month to see that the quarters comply with the law. If quarters are unsatisfactory, the certificate of inspection may be withdrawn and the vessel refused release until the situation is corrected.[16]

Provisions, water, medicines, slop chest.

The law lists a scale of provisions which must be provided for each member of the crew.[17] A master or owner neglecting to provide sufficient stores is liable to a penalty. If, during the voyage, provisions are reduced except for neglect of duty, or if provisions

[14] 46 U. S. C. A., secs. 653–660.
[15] 46 U. S. C. A., sec. 80.
[16] 46 U. S. C. A., sec. 660a.
[17] 46 U. S. C. A., sec. 713.

are bad in quality, seamen may receive additional compensation at the discretion of the court.

Three or more of the crew on vessels bound for a foreign port, or vessels of 75 tons and upward en route from Atlantic to Pacific ports, or vice versa, may complain that the provisions or water are of bad quality or deficient in quantity. If a seaman states to the master that he wishes to go ashore to make a complaint, the master must, under penalty of fine, permit him to go. If the complaint is unfounded, the parties complaining shall share the expense of the inspection.

The law requires that United States vessels bound for a foreign port, or vessels weighing 75 tons or upwards in the intercoastal trade, shall be provided with a chest of medicines. The master must keep on board weights and measures and allow them to be used in serving provisions. Vessels bound on a foreign voyage exceeding 14 days in length must provide at least one suit of woolen clothing for each seaman. Vessels in the foreign and intercoastal trade must be provided with a slop chest containing clothing for each seaman, tobacco, and blankets, the contents of which must be sold to any seaman applying, at a profit not to exceed 10 percent of the reasonable value at the port of commencement. Penalties are provided for violation of any of these provisions.[18]

Hours.

On merchant vessels of the United States of more than 100 tons, excepting those navigating rivers, harbors, and lakes (excepting the Great Lakes) exclusively, licensed officers, sailors, coal passers, firemen, oilers, and watertenders shall, while at sea, be divided into at least three watches. Seamen shall not be employed to work alternately in the fireroom and on deck, nor shall any licensed officer or seaman in the deck or engine department be required to work more than 8 hours in any 1 day. These provisions do not limit the authority of the master or the necessity for obedience when the whole or part of the crew is needed for maneuvering the vessel, for work necessary for safety, or for participating in drills.

While in a safe harbor no seaman shall be required to work on Sundays or designated holidays. This provision shall not prevent the dispatch of a vessel on regular schedule. If the master fails to comply with these requirements a penalty is provided, and the seamen are entitled to discharge and wages earned.[19]

Recovery for injury or death.

Seamen injured in the course of employment may maintain an action for damages at law. In such an action, all of the statutes of the United States modifying or extending the common law of remedy in cases of personal injuries to railway employees shall apply. In case of death, a representative of the seaman may maintain an action and the same statutes shall apply.[20]

Subsidized vessels.

The United States Maritime Commission is authorized to investigate employment and wage conditions on ocean-going vessels and, after suitable investigations and hearings, to incorporate minimum

[18] 46 U. S. C. A., secs. 661–670.
[19] 46 U. S. C. A., sec. 673.
[20] 46 U. S. C. A., sec. 688.

manning scales and minimum wage scales in their contracts, and also minimum working conditions for all officers and crews employed on all types of vessel receiving operating differential subsidies.[21]

OFFENSES AND PUNISHMENTS

Offenses by seamen.

The offenses by seamen and the punishments prescribed by law include:

1. For desertion—forfeiture of all or any part of the clothes and effects left on board and any or all of the wages earned.
2. For neglecting or refusing without reasonable cause to join his vessel or to proceed to sea in his vessel, or for absence without leave at any time within 24 hours of the time of sailing, or absence at any time without leave—forfeiture of 2 days' pay or a sufficient amount to defray expenses incurred in hiring a substitute.
3. For quitting a vessel without leave after arrival at the port of delivery and before she is placed in security—forfeiture of not more than 1 month's pay.
4. For willful disobedience to lawful command at sea—at the option of the master the offender may be placed in irons until disobedience shall stop; and upon arrival at a port, forfeiture of not more than 4 days' pay or imprisonment for not more than 1 month may be required.
5. For continued willful disobedience or continued willful neglect of duty—at the option of the master, the offender may be placed in irons and fed on bread and water, with full rations every fifth day, until disobedience shall cease; and upon arrival in port the offender may be punished by forfeiture of not more than 12 days' pay for every 24 hours' continued disobedience or neglect, or imprisonment for not more than 3 months.
6. For assaulting any master or mate—imprisonment for not more than 2 years.
7. For willfully damaging the vessel or embezzling or willfully damaging any of the stores or cargo—forfeiture of wages to the amount of a sum equal to the loss, and also, at the discretion of the court, imprisonment for not more than 12 months.
8. For any act of smuggling for which a seaman is convicted and which occasions loss or damage to the owner or master—liability for a sum to compensate for the loss or damage, for which the whole or a part of the wages may be retained, and imprisonment for not more than 12 months.
9. For drunkenness or neglect of duty on the part of a master, seaman, or apprentice, who by willful breach of duty or by drunkenness does an act tending to the loss, destruction, or serious damage of the vessel, or which endangers the life of a person belonging to or on board the vessel, or who refuses or omits to do any lawful act for preserving the vessel from loss, or life from danger—imprisonment for not more than 12 months.[22]

An important question arises as to where the provisions of the Merchant Marine Act relating to investigation of marine casualties should be logically classified. In view of the provision for investigation of misconduct they are classified here under offenses and punishments. The law makes elaborate provision for investigation of casualties involving loss of life by a marine casualty inspection board, appointed by the Secretary of Commerce. It further authorizes the Secretary of Commerce to establish rules for investigating casualties not involving loss of life, and all cases involving acts of incompetency or misconduct committed by any licensed officer or holder of a certificate of service, whether or not such acts are connected with any marine casualty. After investigation, as provided by law, whereby the person is given an opportunity to appear in his own defense, a

[21] 46 U. S. C. A., sec. 1131.
[22] 46 U. S. C. A., secs. 701–707.

record of the testimony is forwarded to the director of the Bureau of Marine Inspection and Navigation who may, if he finds the person guilty, suspend or revoke his license or certificate of service. The defendant may appeal to the Secretary of Commerce within 1 month.[23]

The offenses by seamen and the punishments prescribed under the United States Criminal Code include:

1. For inciting revolt or mutiny on shipboard, a member of the crew of a United States vessel on the high seas or waters within the admiralty or maritime jurisdiction of the United States who endeavors to create a revolt or mutiny, or who combines, conspires, or confederates with other persons on board to make such a revolt or mutiny, or who incites others of the crew to resist orders or neglect duty, or who assembles with others in a mutinous manner, or who makes a riot on board, or unlawfully confines the master—a fine of not more than $1,000, or imprisonment for not more than 5 years, or both.

2. For revolt or mutiny on shipboard, a member of the crew who unlawfully usurps command of a vessel or transfers authority to another person not lawfully entitled thereto—a fine of not more than $2,000, and imprisonment for not more than 10 years.[24]

Offenses against seamen.

Certain punishments are prohibited by law. Flogging and all forms of corporal punishment are prohibited on board any vessel. A master or officer who violates this provision, or a master who through lack of diligence permits a guilty officer to escape, is legally liable.[25]

Every person not in the United States service, or duly authorized, who goes aboard any vessel before she has been completely moored, without permission of the master, is liable to a fine.

If, within 24 hours after a vessel arrives in port, any person then on board the vessel solicits a seaman to become a lodger at the house of any person letting lodgings, or takes the effects of a seaman out of the vessel, except under his personal direction and with permission of the master, he shall be liable to a fine.[26]

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[23] 46 U. S. C. A., sec. 239.
[24] 18 U. S. C. A., secs. 483–484.
[25] 46 U. S. C. A., sec. 712.
[26] 46 U. S. C. A., secs. 708–709.

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