Washington Law Review

Volume 18 | Number 3

7-1-1943

Freezing of Labor in Wartime

James Gay

WASHINGTON LAW REVIEW

and

STATE BAR JOURNAL

Published Quarterly, in January, April, July and November of Each Year by the Washington Law Review Association, at the Law School of the University of Washington. Founded by John T. Condon, First Dean of the Law School.

SUBSCRIPTION PRICE: $1.20 PER ANNUM. CURRENT COPIES 50c

ROBERT L. TAYLOR ..... *Editor-in-Chief and Business Manager*

R. H. NOTTELMANN ..... *Associate Editor*

CONTRIBUTORS TO THIS ISSUE

LOMEN, LUCILE, A. B. WHITMAN COLLEGE, 1941; she is now in her third year at the University of Washington Law School. Miss Lomen's article was submitted in the 1943 Frank W. Baker Competition (established in the will of the late Jennie S. Baker) and was awarded first prize.

LORIG, ARTHUR N., B. A. Wisconsin, 1922; C.P.A. 1927; M. A. Stanford, 1932; Ph. D. Chicago, 1936. Associate Professor of Accounting, University of Washington.

SCHINDLER, JAMES S., B. S. University of Illinois, 1939; M. A. University of Washington, 1942, Teaching Fellow, University of Washington, 1939-41; Teaching Fellow, University of Michigan, 1941.

CARL R. HEUSSY

Lieutenant (j. g.) Carl R. Heussy died on April 7, 1943 from injuries received when a Coast Guard patrol plane in which he was flying crashed in the area of Discovery Bay, on the Olympic Peninsula.

After completing his law course at the University of Washington Law School in 1930, Lieut. Heussy served as deputy prosecutor of King County under Robert M. Burgunder and Warren C. Magnuson. Later he entered the private practice of law and, at the time of entering the Coast Guard Reserve, had his own office in Seattle.

His outstanding integrity and his professional ability gained the respect and confidence of all who knew him.

COMMENTS

FREEZING OF LABOR IN WARTIME

Regardless of the institutional or political structure of the countries engaged in modern warfare, competition for manpower among the armed forces, agriculture and industries creates labor shortage problems which, of necessity, must be solved by similar methods as long as the total amount of human resources is limited. A cursory glance at the wartime labor legislation of Great Britain, Canada, the U.S.S.R., and Germany shows that the means of coping with the steadily increasing labor shortage are on the whole similar in all four countries. Recent developments in the field of manpower allocation[1] and wage freezing in the United States, while they have not nearly reached the extent of the European countries, presage the introduction of labor control measures the character of which can be best envisaged by reviewing the principal features of major legislative enactments designed to overcome increasing labor scarcity during the past three and one-half years in these four countries.[2]

---

[1] *E.g.*, the subordination of the Selective Service System to the War Manpower Commission. (Ex. O. No. 9279, Dec. 5, 1942, 7 Fed. Reg. 10177.)

[2] For a discussion of underlying policies and administration of such legislation, see Kiehel, *Labor Scarcity and Labor-Market Policy Under an Armament Program in Germany and Great Britain* (1942) 5 SOCIAL SECURITY BULLETIN, No. 9, 4; Schoenfeld and Whitney, *Wartime Methods of Dealing with Labor in Great Britain and the Dominions* (1942) 9 LAW AND CONTEM. PROB. 522; Newmann, *Labor Mobilization in the Nationalist Socialist New Order, ibid*, 544.

GREAT BRITAIN[3]

Aside from several preparatory mobilization measures taken during the period from September, 1939 to May, 1940, the labor supply and allocation problem of the United Kingdom during its first war year remained practically untouched. No restrictions were placed upon a worker's freedom to leave his employment at will or upon the power of an employer to dismiss a worker. The government continued to rely on indirect methods of compulsion as theretofore, such as denial of unemployment benefits to unemployed workers who refused to accept suitable employment of national importance, the application of a work-or-fight policy, production restrictions in nonessential industries and inspection of plants by government officials for the purpose of ascertaining and transferring workers whose skills were not adequately or fully used. Only rarely and as a last resort were workers "directed" to essential employment.

It was not enough merely to facilitate the transfer of labor to war industries. Some measure was needed to prevent them from drifting back to the labor exchanges for new assignments. With the issuance of the Essential Work (General Provisions) Order in March, 1941,[4] the way to organized labor transference was cleared. The Essential Work Order instituted a direct control over dismissals and voluntary departures from employment. It constituted a means of checking turnover by forbidding both workmen and employers in essential war industries to rescind employment contracts without official permission. Employers may not bid against each other for employees, and skyrocketing of wages is avoided. Application of the order to an industry is not automatic. It depends upon scheduling by the Minister of Labor of any enterprise which is engaged in "essential work" as defined in the order. Under an amendment specific classes or descriptions of persons may be scheduled instead of the entire enterprise. In a scheduled establishment employment is guaranteed under terms no less favorable than are fixed for the same kind of work by collective agreement. The management may discharge employees only for serious misconduct, and the employee's right to leave is strictly controlled and is, in general, subject to permission from a national service officer and at least one week's notice. Unexcused absence is penalized. In return the employee receives a guaranteed time-rate minimum wage.

Having thus assured that a transferred worker will remain on his new job, transference from one job to another, and whenever needed, from one locality or region to another, became a frequently used device of labor allocation and distribution. Rules and orders subsequently issued merely adjusted existing legislation to the daily changing needs of war production.

---

[3] Cooper, *Labor Mobilization Legislation in Great Britain, U.S.S.R., and Germany*, 11 GEO. WASH. L. REV. 213-226 (Feb., 1943).

[4] Essential Work (General Provisions) Order, S. R. & O. 1941, No. 1051, dated July 18, 1941, and superseded by S. R. & O. 1942, No. 371, dated March 2, 1942, and S. R. & O. 1942, No. 583, dated March 25, 1942, S. R. & O. 1942, No. 687, dated April 11, 1942, S. R. & O. 1942, No. 1413, dated July 16, 1942, and revoked by S. R. & O. 1942, No. 1594, dated Aug. 6, 1942. The Order provided also for the swift prosecution of workers failing to carry out conscientiously their assignments through absenteeism or persistent lateness for work without reasonable excuse.

On December 18, 1941, the National Service (No. 2) Act, 1941[5] was enacted. It placed on all citizens, 18 to 55 years of age, a general obligation to serve in either a military or civilian capacity. Pursuant to its provisions, all men up to the age of 51, not on active military duty, were placed in some branch of the civilian services, whereas all single women, between the ages of 20 to 30 inclusive, liable to conscription either for the armed forces, for civilian defense, or for some branch of the civilian services, not engaged as yet in essential work of the above type, were directed to vital industrial work.

Thus was legislation, necessary to effectuate labor mobilization in conformity with the need to increase war production in the face of progressively exhausted labor reserves, put into practice. At present, compulsory service includes the obligation to stay on an assigned job or be transferred to any enterprise officially designated as essential to the war effort or necessary for maintaining supplies or services essential to the life of the community. It can be imposed upon any bona fide resident of the United Kingdom, and such service includes the obligation of conscientious performance of assigned tasks. Continued absenteeism or lateness without reasonable justification renders a worker liable to standard penalties under the Defense Regulations. Penalties include imprisonment from two to three years or fines from one hundred to five hundreds pounds or both.

Effective May 8, 1943, was a new Order by the Minister of Labour entitled the *Control of Employment (Directed Persons) Order*, which Order, the British Information Services says, has two objects:

> "(1) Hitherto, only rarely have workers been "directed" into work which does not come under the Essential Work Order. It is now necessary to extend this, and therefore also to safeguard the conditions, including the wages, of the workers so directed, just as they would be under the Essential Work Order. Therefore, for the period during which a direction remains in force, the employer may not discharge the worker except for serious misconduct, and the worker may not leave the employment, though either the worker or the employer may apply to the National Service Officer for the direction to be withdrawn so that the employment may be terminated. In cases of alleged serious misconduct, an appeal is possible to a local Appeal Board which will make a recommendation to the National Service Officer. The normal period of direction will be for six months, but in cases of urgency it may be for a shorter period. There are now about 8,000,000 workers, excluding the Merchant Navy, under the Essential Work Orders, and the new Order is necessary for supplying substitutes for these workers in unscheduled work who are needed elsewhere for work of the highest importance.
>
> "(2) Hitherto, part-time work, even in a plant covered by the Essential Work Order for its full-time workers, has not been covered by that Order; nor, hitherto, has there been any power for directing people compulsorily into part-time work. At present, there are about 600,000 part-time workers, virtu-

[5] 5 and 6 GEO. VI, c. 4 (1941).

> ally all women, and so far only persuasion has been used. Part-time work is work up to 30 hours a week and the present stage of the war and the need for ensuring the usage of all labour to the fullest advantage necessitates the taking of such compulsory powers, though it is not intended to use them wholesale but only when necessary. Wages and conditions must equal the standard required under the Essential Work Orders . . ."

While it will thus be seen that Great Britain has gone a long way toward "labor freezing," a positive national wage policy has not been adopted.[6] Concern was expressed by the Government in 1941 lest the steady upward trend of wages contribute toward inflation, now that civilian goods are restricted in quantity. It sought the adoption of a plan that would permit wage rises in meritorious cases where inequities exist but would stop general increases. In answer the Trades Union Congress held that some inflation is inevitable in wartime and that any serious attempt to solve the problem should begin by curtailing working time, thus increasing productivity and benefiting the health and well-being of labor while lowering workers' incomes by reducing the volume of work at overtime pay. At the same time further price controls, rationing, control of profits, and lending of savings to the Government were advocated. As a matter of fact, when the ill effects of overtime became pronounced, that is, in lowered productivity and increased absenteeism and illness, the Minister of Labour proposed a scheme for gradual reduction in working time under a system of rotation to a maximum of 55 or 56 hours weekly. As the hours of men, except in specially hazardous occupations, are not limited by law, working time continues to be fixed by agreement of employers and workers. Money wages are higher in Great Britain than at any previous time.

CANADA

In Canada, a wage policy was formulated by order in council of December 16, 1940, to guide the various Canadian conciliation boards in establishing cost-of-living bonuses. An order of wider scope was issued on October 24, 1941, designed to supplement the Government's anti-inflation policy without imposing undue hardship on wage earners. It provided that basic wage rates were to be frozen at the level of November 15, except that unduly low or high rates could be brought into line with prevailing rates for the same or similar occupations. At the same time all employers not specifically exempt were ordered to pay a cost-of-living bonus on basic wage rates, calculated according to changes in the official index of cost-of-living. The bonus may not raise wages above prevailing levels and is subject to the employer's ability to pay. August 1, 1939 was made the base period of 100 and for every rise or fall of one point employers were required to adjust the cost-of-living bonus.

The Order of the Canadian Privy Council promulgating "The Stabilization of Employment in Agriculture Regulations, 1942," effective March 23, 1942, in effect constitutes a freezing measure. These

---

[6] Schoenfeld and Whitney, *supra*, n. 2.

regulations seek to accomplish "freezing" indirectly by restraining workers in agriculture on the effective date of the order from obtaining employment elsewhere, and at the same time restraining prospective nonagricultural employers from hiring such a worker. The regulations do not restrict the employer's right to discharge an agricultural worker, nor the latter's right to quit a particular agricultural employer. A somewhat similar technique is followed in other orders of the Canadian Privy Council which forbid the entry into employment in specified nonessential activities (called "restricted occupation") of certain male persons (Order of March 21, 1942) and requires employers to release critical workers requested by the Minister of Labour to transfer to essential work.

The Union of Socialist Soviet Republics

As in Great Britain, stepped-up armament production accompanied by increasing labor shortages caused a considerable labor turnover in Russia which threatened to obstruct the entire preparedness program. Existing labor stabilization methods, such as work books,[7] curtailment of social wages for job shoppers,[8] etc., did not prevent job quitting and outright job freezing seemed the only remaining alternative. Hence, on June 26, 1940, workers were forbidden to leave their jobs without express permission from their employer, such permission to be granted in exceptional cases only (*e.g.*, serious illness, entrance of the employee into higher educational institutions, etc.). Workers violating the decree and employers neglecting to report unauthorized job quittings were punished severely. Discharge of workers for truancy, prescribed by previous legislation, was forbidden and severe punishment instituted instead. Simultaneously, labor piracy was declared to be a criminal offense.

When a year later the invading Germans forced the evacuation of a great many vital war industries and farms to safer zones, a decree of Dec. 26, 1941, was designed to keep labor on its job and to compel workers to transfer along with evacuated industrial or agricultural undertakings.[9] Unauthorized job quitting of such enterprise was made punishable as military desertion by court martial. Originally intended as a specific compulsory transfer measure, circumstances and interpretation by the military courts transformed this decree into a general compulsory transfer decree which gradually supplanted the decrees of June 26, 1940 and of October 19, 1940. The prohibition contained in the decree against desertion of vital war enterprises was made applicable not only to evacuated factories and farms but to all vital war industries generally, and compulsory transfer applied to any type of worker without regard to his qualifications.

---

[7] Decree of the Council of People's Commissars of the U.S.S.R. No. 1320 of Dec. 20, 1938, concerning the introduction of labor books.

[8] Decree of the Council of People's Commissars of the U.S.S.R., the Central Committee of the All-Union Communist Party (of Bolsheviks) and the All-Union Central Council of Trade Unions of Dec. 28, 1938, on measures regulating labor discipline, improving the practice of state social insurance and combatting abuses in that sphere. *See* translation of this decree in (1939) 18 Slavonic and East-European Review, No. 51, 702 *et seq.*

[9] Decree of the Presidium of the Supreme Soviet of U.S.S.R. concerning the liability of workers and employees of enterprises of war industries for arbitrarily quitting the enterprises. *See* Pravada, Dec. 27, 1941, 2.

Compulsory labor service in the U.S.S.R. includes the obligation of conscientious performance of assigned duties. Persons falling short of work schedules through wilful absenteeism or lateness are criminal offenders subject to trial and punishment by corrective labor at a place of work for a period not exceeding six months with a simultaneous reduction of not more than 25 per cent of their wages. Penalized workers persisting in truancy are remanded to prison for the remainder of their unexpired corrective labor term. As an indirect means of enforcement of labor discipline, managers of enterprises who fail to take legal action against truants are prosecuted. Similarly, managers, chief engineers, and technical personnel responsible for the quality of production are liable to prison terms ranging from five to eight years for releasing substandard products.[10]

GERMANY

Although labor control measures designed to prevent labor turnover and to keep workers on their jobs were already in force prior to the outbreak of the war,[11] additional broader legislation controlling changes of employment was unavoidable if the mobilization measures were to be effective. To this end an order of September 1, 1939, the day war broke out, issued by the Ministerial Council for the Defense of the Reich prohibited the unilateral rescission of any employment contract in any branch of the national economy without the consent of the Official Employment Office (Arbeitsamt).[12] The decree, as amended on September 6, 1939, prohibited also the hiring of workers and employees, except for agricultural and mining jobs, and domestic service in households with children under 14 years of age, without the permission of the employment authorities.[13] Workers were from then on practically frozen in their jobs, for any change of employment required, under the law, two permissions, one emanating from the employer, or, in the case of his refusal, from the Employment Office having jurisdiction over him, and the other emanating from the employment authorities having jurisdiction over the prospective new employer. These provisions were further strengthened by decrees of May 20, 1942,[14] June 13, 1942,[15] and July 20, 1942.[16]

Compulsory mobilization measures are rigidly enforced. Absenteeism, lateness on the job, disobedience toward plant managers, refusal to carry out assigned tasks, and undisciplined behavior of any kind are forbidden. Labor pirating and the offer or acceptance of higher wages or better working conditions than those established in the trade or industry for similar work by workers of the same skill and sex are also

[10] Decree of July 10, 1940, of the Presidium of the Supreme Soviet of U.S.S.R. concerning liability for output of incomplete products or products of inferior quality as well as for noncompliance with the obligation concerning standards of industrial products.

[11] Cooper, *supra*, n. 3.

[12] Order concerning restrictions on change of employment, RGB1, Pt. I, 1685; RAB1, Pt. I, 416.

[13] First administrative order to carry out the order concerning restrictions on change of employment RGB1, pt. I, 1690; RAB1, pt. I, 417.

[14] Order safeguarding workers for the war economy, RGB1, pt. I, 340.

[15] Administrative order to carry out the order safeguarding workers for the war economy, RGB1, pt. I, 393.

[16] Order against breach of employment contracts and against labor pirating as well as against demanding disproportionately high wages in private economy, RAB1, pt. I, 341.

forbidden. All violations of labor mobilization orders are punished by penalties consisting of imprisonment and/or fines.

Recent Developments in the United States

The development of a national wartime labor policy on the wage issue in the United States has been comparatively slow.[17] An acceptable national wartime wage policy should have at least a threefold objective: (1) as a control measure to help hold down a runaway period of inflation; (2) as a protective measure to help maintain labor's real wage and standard of living; and (3) as an emergency measure to help ease the post-war readjustment period.

The principal argument for including wages in an over-all price-control program has stressed the importance of wages as a cost of production—that if wages are uncontrolled, prices will have to advance in order to cover the higher costs of production. This advance will lead to demands for higher wages to cover increased living costs, which will against send prices upward. The principal arguments against including wages in some rather rigid price-freezing regulations have stressed the fact that higher wages do not necessarily mean higher labor costs—that increasing labor productivity may offset any tendency toward higher unit labor costs and that the proportion of labor costs to total costs is rather low in many industries. In addition, labor points to the recent large profits that many war industries have been receiving. Two recent studies tend to support the general proposition that higher wages do not necessarily cause higher labor costs and higher prices.[18]

While there are certainly elements of truth in both of these arguments, it has been stated[19] that both seem to overlook the much more vital issue in the problem of wage-and-price control, namely, the consideration of wages and profits as distributive shares influencing consumer demand rather than as primarily a cost of production. The strongest arguments for some wage-and-price control measures in the war period centers around the necessity for limiting consumer demand. Mr. McNatt concludes that it is therefore extremely doubtful how far government price-fixing will be successful as an effective device for controlling prices, wages, profits, and cost-of-living, unless it is coupled with the strongest governmental measures for limiting consumer demand.

Mr. McNatt further concludes that implications of wage-freezing clearly extend such a program to one of freezing the worker in his job and compulsory rationing of labor.

The first recent significant development toward a national wartime wage policy was the establishment of the so-called "Little Steel For-

[17] *See* E. B. McNatt, *Toward a National Wartime Labor Policy: The Wage Issue*, 51 Journal of Political Economy 1 (Feb., 1943) for an excellent discussion and analysis of the development of a national wartime labor policy on wages through the old National Defense Mediation Board, the present War Labor Board and the War Manpower Commission. The article also discusses the cost-of-living yardstick set up in the Little Steel Cases with an examination of the merits and limitations of a cost-of-living guide to the wage policy. The limitations and deficiencies of such a formula are said to be grave.

[18] Isador Lubin, *Wage Policies and Price Trends*, 31 Survey Graphic 19-23 (1942); *Labor Productivity and Labor Costs*, 1939-41, 53 Monthly Labor Review, 1388-91 (1941).

[19] McNatt, *supra*, n. 17.

mula." The 15 per cent rule had its genesis in the National War Labor Board's decision in the famous Little Steel cases.[20] Seeking to translate into a concrete policy the wage portion of the President's stabilization message of April 27, 1942, the Board determined that the period between January 1, 1941, and May 1, 1942, during which the cost of living had advanced 15 per cent, would be used as the norm to determine whether workers had maintained their peacetime standards. Workers whose hourly rates had risen by 15 per cent since the base date would be entitled to additional increases only if inequalities or substandards were shown. The Board thus established three grounds for upward adjustments in rates—(1) Cost of living increases within the 15 per cent limit; (2) inequalities; and (3) sub-standards of living.

The Economic Stabilization Order issued on October 2, 1942, authorized the Board to approve wage increases above the September 15th level only where necessary to correct maladjustments or inequalities, to eliminate substandards of living, to correct gross inequities, or to aid in the effective prosecution of the war. This was construed by the Board as providing for a continuance of the Little Steel formula. Maladjustments were interpreted as instances in which the 15 per cent adjustment had not been realized. Gross inequities were related to inequalities. Effective prosecution of the war was assimilated to adjustments to influence or direct the flow of manpower.

As a practical matter, the correction of inequalities early became the principal ground for obtaining adjustments. Most workers had already received their 15 per cent raise, while the Board announced as a policy that it would not act alone to influence the flow of manpower. The ground of substandards of living was infrequently used.

By the beginning of 1943, however, the cost of living had advanced nearly 22 per cent above the January, 1941, level and labor groups in a chorus demanded an upward revision of the 15 per cent rule. The demands reached a climax in a proposal by the labor members of the Board that the 15 per cent rule be scrapped in favor of a more "realistic" policy in line with the present cost of living. This was rejected, but the Board faced a new crisis as a head-on collision between the 15 per cent rule and the wage demands of the bituminous coal miners became imminent.

On April 8, 1943, President Roosevelt issued the sweeping Executive Order Number 9328—the "hold-the-line" order which virtually froze all wages and salaries within the confines of the 15 per cent Little Steel rule. The President's following statement explaining the Order clearly stated what he purported to do and shows that the wage freeze was part of a broad plan to reinforce the national economy against all inflationary forces:[21]

> "The Executive Order I have signed today is a hold-the-line order.
>
> "To hold the line we cannot tolerate further increases in prices affecting the cost-of-living or further increases in general wage or salary rates except where clearly necessary to substandard living conditions. The only way to hold the line

[20] N.W.L.B. case Nos. 30, 31, 34, and 35.
[21] New York Times, April 9, 1943, p. 1.

is to stop trying to find justifications for not holding it here or not holding it there.

"No one straw may break a camel's back, but there is always a last straw. We cannot afford to take further chances in relaxing the line. We already have taken too many.

* * *

"On the wage front the directions in the order are equally clear and specific.

"There are to be no further increases in wage rates or salaries' scales beyond the Little Steel formula, except where clearly necessary to correct substandards of living. Reclassifications and promotions must not be permitted to affect the general level of production costs or to justify price increases or to forestall price reductions.

"The order also makes clear the authority of the chairman of the War Manpower Commission to forbid the employment by an employer of any new employee except in accordance with regulations of the chairman, the purpose being to prevent such employment at a higher wage or salary than that received by the employee in his last employment unless the change of employment will aid in the prosecution of the war."

Under the Order, grounds for increases in both wages and salaries were narrowed to three—(1) to compensate for the 15 per cent rise in the cost of living between January 1, 1941, and May 1, 1942; (2) to correct substandards of living; and (3) to effect reasonable adjustments with respect to promotions, reclassifications, merit increases, incentive wages or the like.

Eliminated as permissible bases for increases were the familiar terms "gross inequities," "inequalities," and "to aid in the effective prosecution of the war." The War Labor Board, Commissioner of Internal Revenue, and other agencies to which power to pass on adjustments in wages and salaries had been delegated were directed to authorize no further increases except for the three purposes specified.

Immediately after the order was issued, the War Labor Board sent a telegram to all regional war labor boards directing them to approve no further increases except those which clearly come within the 15 per cent limitation. They were advised, however, that decisions made prior to 7:30 p. m., EWT, on April 8, when the order was made public, could be validly issued. Its action was obviously a stop-gap measure designed to charter a safe course of action by regional officials until the Board could revamp its stabilization policy. Particularly needed were a definition of "substandards of living," the Board's pronouncements on that point having been sketchy, and a clarification of "reasonable" adjustments for promotions, reclassifications, merit increases, and so forth.

The most far-reaching effect of the "wage freeze" was the elimination of inequalities as a basis for increases. This alone has involved considerable tightening of control, since a substantial proportion of the increases the War Labor Board had been authorizing had been to correct inequalities in rates within plants or between plants in the same labor market area or industry.

The order also, however, directed a prohibition of "job shopping" by authorizing the War Manpower Commission to forbid the employment

of a new employee or the acceptance of a job by an employee at a wage or salary higher than that received by him in his last employment unless the change would aid in the effective prosecution of the war. Employees would thus be restricted in shopping for higher wages and employers would be limited in inducing migration by promises of higher wages.[22]

While the President's Order went far toward freezing of wage rates, it did not affirmatively require the granting of increases within the confines of the Little Steel formula or to remove substandards of living. By reason of this fact, it has been said[23] that the Board may be left a measure of discretion to take into account "inequalities," the factor on the basis of which the widest deviations from the strict 15 per cent rule had previously been made. It is said that this discretion, if exercised, would be used to deny increases otherwise permissible so as to avoid creating inequalities; for example, the Board could withhold its approval of a wage increase up to 15 per cent over the base level on the ground that rates were already higher than those paid for similar work in the community and to increase them to the full extent permitted by the 15 per cent rule would be to accentuate an undesirable inequality.

The first wage decision after the April 8 Order was utilized by the War Labor Board to dispel any doubt concerning its intention to adhere rigidly to the spirit, intent, and literal meaning of the Order, but the War Labor Board also made it clear that it still considered the American wage structure filled with inequalities and gross inequities, correction of which would rest entirely with the Director of Economic Stabilization.[24]

The views of the Board are set forth in an opinion by Public Member Wayne L. Morse in a case involving the Universal Atlas Cement Co., a subsidiary of the United States Steel Corp.[25] The decision was concurred in by all members of the Board, although the A. F. of L. members, in a separate concurring opinion, pointed out that their favorable vote was not based on acceptance of the principles enunciated in the Executive Order but was predicated on the realization that the strict language of the Order deprived the Board of the power to apply the principle of inequalities under which a different result would have been reached.

---

[22] *Wage Freeze Within 15 Per Cent Rule*, 6 WHR 353; *Job Changes and Wages Under New Regime*, 12 LRR 201.

[23] 6 WHR 358.

[24] *First Decision Under New Wage "Freeze,"* 6 WHR 369.

[25] *Universal Atlas Cement Co. (Universal, Pa.) and International Union of Mine, and Smelter Workers*, Case No. 2931-D, April 13, 1943, 12 LRR 266, 6 WHR 369. The case involved a request by a local of the International Union of Mine, Mill and Smelter Workers (C.I.O.) for a 5½-cent hourly wage increase on the ground that a similar increase had been granted to employees in two other units of the company. A Board referee, in a report filed prior to April 8, recommended that the Board grant the increase to correct an existing inequality, although, under the 15 per cent rule, the employees would be entitled to an increase of only 1.8 cents an hour. Pointing out that under the new order it may grant increases only within the limits of the 15 per cent rule, except where substandards are shown, the Board pared the increase down to 2 cents an hour, granting the additional two-tenths of a cent as a bookkeeping expedient.

In his opinion, Dean Morse explained the Board's action in confining the wage adjustment within the 15 per cent rule by saying that many inequalities and gross inequities still exist in the American wage structure, but under the new Executive Order they cannot be corrected by the War Labor Board. "The Director of Economic Stabilization," Dean Morse continued, "has authority to issue policy directives to correct any manifest wage injustices which in fact interfere with the war effort. It is to be understood that the Board will make available to the Economic Stabilization Director its advice and suggestions whenever it can be of assistance to him on general policy directives. The Board proposes to do all in its power to carry out the aims and objectives of the President's 'hold-the-line' order. It does not propose to be a party to any attempt to give to the order an interpretation inconsistent with the clear meaning of the language of the order . . ."

The C.I.O. members likewise assailed the injustice of the Order, but suggested a positive approach to the problem through the powers vested in the Stabilization Director to deal with inequalities.

In criticizing the policy under which it was necessary to deny the full increase, the A. F. of L. members centered their attack on the inequities of an order freezing existing injustices. "It is most unfair and contrary to the war effort," they stated, "to issue an order which effectively discriminates against the equities accruing to workers in cases pending before the Board. This order 'freezes' gross inequities and manifest injustices; this principle is foreign to all concepts of American justice."

Any hopes that the War Labor Board would give special treatment to wage cases pending at the time Executive Order 9328 was announced, under the "time equities" theory advanced in the Little Steel decision, were dispelled by supplemental instructions sent to members of regional boards on April 13. Issuing its first instructions to the regional boards since the Executive Order, the Board stated that its General Orders No. 4 and 5 would not be affected by the Order. General Order No. 5 exempts employers of less than eight employees from obtaining approval for wage increases, while General Order No. 4 permits individual adjustments without approval if the adjustments are incident to the terms of an established wage rate schedule or wage agreement and are made as a result of individual promotions, reclassifications, or merit increases.[26]

In accordance with the April 8 Order, the War Manpower Commission issued regulations on April 16 to restrict the transfer of workers.[27] The effect of the regulations is to make it more difficult to hire employees away from employers engaged in essential activities than it is to hire employees away from employers engaged in nonessential activities. This effect is operative in any area. It is accentuated, however, in areas where employment stabilization plans are in force.[28]

The regulations also remind both employers and employees of the penalties which may be applied if employers hire in violation of regulations or workers accept jobs contrary to the regulations. The maximum penalty consists of a fine of $1,000 and one year's imprisonment.

---

[26] *Time Equities Under April 8 Wage Order*, 6 WHR 371.
[27] 12 LRR 251.
[28] *See* 10 LRR 826.

Employers may also be penalized through taxation, wages or salaries paid to employees hired in violation of the regulations being considered non-deductible as expenses in income tax returns.

In all areas employees engaged in nonessential occupations may be hired without restrictions imposed by the regulations. In those areas where no employment stabilization plan is in effect, employees who, within the previous 30 days, have been engaged in essential occupations may be hired only at rates which are not in excess of what the employees most recently received.

In areas, however, where employment stabilization plans are in effect, an employer engaged in an essential activity may hire new employees without restriction on the amount offered, provided such hiring is permitted under the stabilization program by the War Manpower Commission. Permission is ordinarily given in the form of a statement of availability. Conditions surrounding the issuance of such statements or certificates were set forth as follows in the regulations:

> "A statement of availability shall be issued to any worker by his last employer or by the War Manpower Commission as may be provided in such employment stabilization programs and whenever the worker:
>
> "(1) Is discharged by his last employer;
>
> "(2) Is laid off for an indefinite period or for a period of seven or more days; or
>
> "(3) Can establish that his present employment does not utilize him at his highest skill or that he is not being employed at full time.
>
> "No statement of availability shall be issued solely on the ground that an individual's wage or salary rate is subsequently less than that prevailing in the locality for the same or substantially similar work.
>
> "Any such statement shall contain the worker's name, his social security account number, if any, the name and address of the issuing employer or War Manpower Commission officer and office, the date of issuance, and a statement to the effect that the worker may be hired elsewhere in essential activity. The inclusion by an employer on such notice of any information other than that required by this regulation shall be deemed to be a violation of this regulation."

The regulations apply to the hiring of "new employees," a term which is defined to mean persons who have not worked for the prospective employer within the prior period of 30 days.[29]

It will be seen that the radical distinction made between job transfers permissible in stabilized and non-stabilized areas has resulted in employees doing essential work in unstabilized areas being practically frozen in their jobs, while workers similarly engaged in essential jobs in areas administered by stabilization plans were allowed to shift to a higher-paying job if they could procure a certificate of availability.

Subsequently, the Manpower Director announced that certificates of availability might be obtained at the United States Employment Service offices in non-stabilized areas.[30] This had the prospective effect

[29] *Restrictions on Right to Hire*, 12 LRR 251.

[30] *Manpower Rules Under Test of Experience*, 12 LRR 301.

of bridging the gulf separating rigidities in job transfers prevailing in non-stabilized areas from the greater adaptability possible in areas where an employment stabilization plan is in effect.

Meanwhile the situation existing in non-stabilized areas as to new employees and transfer of jobs is substantially as follows, as outlined in statements made by the Manpower Director, Paul V. McNutt, and his assistant, Fowler Harper: An employee engaged in an essential occupation and who does not obtain a special certificate of availability may not improve his situation by transferring to a new job except in one of two ways. He may leave his job and after thirty days apply for the better job or he may accept a new job at the same or lower pay and later be upgraded. Employers are warned, however, that up-grading in such circumstances in an abnormally short time will be regarded as a subterfuge, rendering both employer and employee liable to penalties. An employee working in a non-essential industry may take a higher paid job in an essential industry.[31]

The president of the A. F. of L. and C. I. O. both expressed opposition to the new regulations and announced their intention of seeking modifications.[32]

Very recently a new condition was added to the procedure under the above regulations. On May 17, it was announced by Col. Walter J. DeLong, Washington State Director of Selective Service, following a

[31] For a more complete exposition, *see* 12 LRR 301. Subsequent to the War Manpower Regulations' issuance new regional manpower plans were evolved, and there began an enlarged use of War Manpower Commission Certificates. Of the new moves, one was taken in Region Eight (Minn., N. D., S. D., Ia., Neb.) where the manpower director laid down criteria for the issuance of certificates of availability even though no stabilization plan was in effect. The other was taken in Region Five (Ohio, Mich., Ky.) where a new master stabilization plan was announced to which all local plans in the region must conform and which sets up minimum standards to which new plans must conform. The plan includes regulation of hiring practices and migration as well as rules for issuance of certificates of availability. For a further discussion of these two plans *see, Enlarging Use of WMC Certificates,* 12 LRR 343. Still later two new regional employment stabilization plans covering a total of nine states were announced by the War Manpower Commission. The new plans, covering Region VII (Ala., Fla., Ga., Miss., S. C., and Tenn.) and Region III (Penn., Del., and N. J.) like plans previously adopted above for Regions V and VIII forbids transfers solely on the ground that the individual's wage rate is below the prevailing standard. These new plans are discussed in *New Regional Manpower Plans,* 12 LRR 380.

[32] William Green, president of the A.F.L., in a formal statement characterized the regulations as "uncalled for and unnecessary at the moment" and "an assault upon the exercise of freedom by working men and women and of their right to sell their labor under the most advantageous conditions and to exercise their rights under our free enterprise system."

Phillip Murray, president of the C.I.O., asked Mr. McNutt to rescind his regulations and establish instead joint management-labor stabilization agreements wherever needed. He declared:

"The impact on the morale and efficiency of the employees who are thus compelled to remain at work at a sweated or substandard wage which can only benefit the employer in terms of inflated profits, will necessarily be devastating."

Mr. Murray declared that the agreements should provide for adequate health, safety, wage and working conditions; for transfer to jobs where a higher skill may be utilized or weekly hours are sufficiently high; and for a guaranteed minimum weekly wage based on forty hours of work.

conference with A. F. Hardy, area director of the War Manpower Commission, that Selective Service Boards and the United States Employment Office will cooperate in handling transfers of draft age men from one essential industry to another.[33] Now certificates of availability will not be issued until approval by draft boards as well as the federal employment service. This, says Col. DeLong, applies to all workers who come under the selective service law.

Here is what happens when a registrant wants to change jobs: First —he must obtain from his present employer permission to move to another essential industry; then present this clearance to the U. S. Employment Service. Second—If employment service finds the transfer will benefit the war effort, it will forward the clearance and certificate of availability to the registrant's local draft board. Third—The draft board will then determine whether the registrant is needed in his present job, or whether he should be inducted into the armed forces.

After the wage "freeze" order was reinforced by Economic Stabilizer Byrnes in a case where he took occasion virtually to close and lock the door on future adjustments to correct interplant inequalities and inequities,[34] the opposition to the rigidity of the Order became more manifest than ever before. Public Member Wayne L. Morse of the Board voiced his objections to an inflexible control of wages and defended the wage policies of the War Labor Board prior to the April 8 Order. "It is very important," he said, "that we do not overlook the fact that our economy is dynamic and cannot be successfully controlled by economic strait-jackets." Dean Morse's plea for a more flexible policy permitting cost of living adjustments and gross inequity corrections is particularly interesting in view of the fact that he was equally forceful in the *Universal Atlas Cement Co.* case in declaring that it was the intention of the Board to adhere strictly to the letter of the Order.

In the meantime, organized labor continued its protests against the job and wage freeze aspects of Executive Order 9328. The first such protest from a union official came from William Green, who, in a public statement, served notice on the Administration that the A. F. of L. would seek a modification of both the President's and Chairman McNutt's orders. He declared that "the right of an individual to seek employment, to fight for and secure for himself decent wages, to render service under the most advantageous and satisfactory conditions is inherent and fundamental in the American way of life."

Concurrently, C. I. O.'s Cost of Living Committee termed the President's "hold-the-line" order a "hold-one-side-of-the-line order," which was freezing wages and freezing workers into their jobs, but was doing nothing about prices and the mounting cost of living.

As a result of these attacks, the War Labor Board then requested the return of a part of its former power to grant wage increases for the correction of inequalities, despite its previous declaration that it would adhere rigidly to the spirit, intent, and literal meaning of the April 8 Order.[35] In a statement sent to Economic Stabilization Director

[33] Seattle Star, May 18, 1943; Seattle Times, May 18, 1943.

[34] *Reinforcement of Wage "Freeze" Order,* 6 WHR 389.

[35] *See* opinion of Wayne Morse in Universal Atlas Cement Co. case, *supra,* p. 146.

Byrnes who, under the new order, has sole authority to approve increases for the removal of inequalities, the Board outlined a new approach to the wage problem which would permit stabilization and equalization of wages, but on a regional basis. Under this proposal, if it were found that the prevailing rate range for tool makers in a given area were from $1.20 to $1.45 per hour for example, the Board would have the power to raise to the $1.20 minimum any toolmaker now employed at a lower rate. It was not long before the Board's request and proposal were heeded. On May 12, a new policy directive was issued to supplement the April 8 order. The text of Director Byrnes' directive, as released by Lloyd K. Garrison, executive director of the National War Labor Board, is as follows:

> "One. In order to provide clear-cut guides and definite limits as a basis for correcting "substandards of living," and as a basis for permitting the Board to make within the existing price structure and within existing levels of production costs, minimum and non-inflationary adjustments which are deemed necessary to 'aid in the effective prosecution of the war or to correct gross inequities' within the meaning of section 1 of the Act of October 2, 1942, the Board is authorized to establish as rapidly as possible, by occupational groups and labor market areas, the wage-rate brackets embracing all those various rates found to be sound and tested going rates. All the rates within these brackets are to be regarded as stabilized rates, not subject to change save as permitted by the Little Steel formula. Except in rare and unusual cases in which the critical needs of war production require the setting of a wage at some point above the minimum of the going wage bracket, the minimum of the going rates within the brackets will be the point beyond which the adjustments mentioned above may not be made. The careful application of these wage-rate brackets to concrete cases within the informed judgment of the War Labor Board will strengthen and reinforce the stabilization line to be held. Maladjustments between wages and the cost of living will be considered by the board only for the purpose of correcting substandard conditions of living, or determining adjustments within the 15 per cent limit of the Little Steel formula. In connection with the approval of wage adjustments necessary to eliminate substandards of living or to give effect to the Little Steel Formula or in connection with the adoption of a longer work week, the Board may approve wage or salary adjustments for workers in immediately interrelated job classifications to the extent required to keep the minimum differentials between immediately interrelated job classifications necessary for the maintenance of productive efficiency.
>
> Two. All wage adjustments made by the Board which may furnish the basis either to increase price ceilings or to resist otherwise justifiable reductions in price ceilings, or if no price ceilings are involved which may increase the production costs above the level prevailing in comparable plants or establishments, shall become effective only if also approved by the Economic Stabilization Director. The Board shall cooperate

> with the Office of Price Administration or such other agency as the Economic Stabilization Director may designate with a view to supplying the Economic Stabilization Director with the data necessary to judge the effect of any proposed wage adjustment on price ceilings and the levels of production costs."

The clarifying directive grants to the Board the authority it sought in almost the identical language used in its request. The new directive has been hailed as having put the War Labor Board back on a judicial basis, permitting it to function again as a judicial body with flexible authority.[36]

As a result of the new directive, the Board again has authority to approve wage adjustments for six purposes—(1) to correct maladjustments within the limits of the 15 per cent rule; (2) to correct substandards of living; (3) to effect reasonable adjustments with respect to promotions, reclassifications, merit increases, incentive wages or the like; (4) to grant wage increases to correct gross inequities or to aid in the prosecution of the war to the extent of raising wage rates up to the "minimum of the going rate" for comparable work in comparable plants or establishments in the same labor market; (5) in "rare and unusual" cases, to set wage rates above the minimum going rate if the Board determines that the critical needs of war production so require; and (6) to grant increases necessary to remove intra-plant inequalities which are created by either institution of a longer workweek or by the Board's approval of wage increases to eliminate substandards or to fulfill the requirements of the 15 per cent rule. In other words, where earnings of some employees are increased, either by added overtime or correcting substandards or applying the Little Steel formula, the rates of other workers in the plant may be raised to the extent necessary to restore the "minimum differentials between immediately interrelated job classifications necessary for the maintenance of productive efficiency."[37]

The restored authority under the directive, Director Byrnes was careful to point out, does not give the Board its former power to correct "inequalities." Apart from the rare and unusual case, he added, adjustments up to the minimum going rate are to be made, not to increase existing wage schedules, "but only to bring obvious and sporadic stragglers into line."

As required under previous orders, wage adjustments which furnish a basis either for increasing price ceilings or for resisting otherwise justifiable reductions in price ceilings become effective only on approval of the Stabilization Director. To this restriction the requirement is added, however, that, even though no rise in the price ceiling is involved, the Director's approval must be obtained if the wage increase would increase production costs above the level of comparable plants.

Since the only ground added as a basis for granting wage increases is the bringing of rates up to the "minimum going rate" for comparable occupational groups in the labor market, the awarding of industry-wide wage adjustments or adjustments between industries is omitted

[36] Seattle Times, May 13, 1943; Seattle Star, May 13, 1943.

[37] *Partial Restoration of WLB's Wage Powers*, 12 LRR 417; *Area Yardsticks for Equalizing Wages*, 6 WHR 441.

from the Board's powers except as they may be permissible under the 15 per cent rule or to eliminate substandards.

There is under the new directive an obvious loophole—the authority to adjust rates above the minimum of the "going wage bracket" in rare and unusual cases in which the critical needs of war production require it. How the Board construes this grant will determine just how broad its new powers actually are. A limitation on any runaway exercise of the authority exists in the requirement above mentioned that adjustments affecting a price ceiling or raising the level of production costs above that of comparable plants in the area require the approval of the Stabilization Director.

Significant also is the impetus granted by the directive to the stabilization of rates on a labor market basis. Already the criterion of substandards of living is being defined by regional boards on a labor market basis. With the provision for stabilization of all rates within particular labor markets, the center of wage control is shifted almost completely to the regional boards. The National Board may soon in actuality be playing the role, frequently predicted, of a supreme court in wage cases appealed to it from the regional boards.

Since the principal task of applying both the "substandards of living" and "gross inequities" criteria for wage adjustments under the new directive is thus centered in the regional boards, it is significant to note that even before the May 12 directive the perplexing problem of what constituted "substandards" had been tackled by several regional War Labor Boards. The actions of the regional boards stemmed from instructions first issued by the National Board at the time it announced its "shortened" procedure for handling wage cases and repeated and amplified after the April 8th Order was issued. In issuing its "shortened" procedure, the National Board authorized the regional officials to make determinations of substandards, with its approval, and until such determinations were made to approve adjustments to eliminate substandards up to fifty cents an hour for wages and twenty dollars a week for salaries.[38] In deciding wage disputes brought before it, the Board had at that time refused to define substandards in terms of dollars or cents or to lay down any general rules, it being its policy to decide each case on its individual merits. In carrying out the National Board's instructions, several of the regional boards have indicated that instead of establishing a single measure of substandards for the entire region they will determine what rates are substandard within each area within the region. For example, reports from the Atlanta, Detroit, and Denver Regional Boards evidence progress toward the definition of substandards on a regional or area basis in a series of cases.[39] Meanwhile,[40a] the regional board at Philadelphia had asked employers and labor organizations to submit written data on substandard wages, and the regional boards at New York and Kansas City had issued three decisions involving this question.[40b]

[38] *See* 5 WHR 275.

[39] *See* for a discussion of this progress, *Regional WLB Moves to Fix Substandards*, 6 WHR 410.

[40a] *WLB Decisions Under Executive Order 9328*, 6 WHR 425.

[40b] For further developments since the date of the writing of this paper the reader is referred to *Industry-Wide Effect for 15 Per Cent Rule*, 6 WHR 481; WLB *Instructions on 9338 Wage Increases*, 6 WHR 483; *Substandard*

THE CRISIS—THE BITUMINOUS COAL STRIKE

An interesting, although lamentable, development along with the Government's wage freeze and manpower allocation program has been the unfortunate bituminous coal miners' strike—the country's greatest wartime strike crisis.[41]

The bituminous coal operators and the United Mine Workers began negotiations for a new contract to replace a contract expiring on March 31, 1943. On March 22, no progress having been made in the negotiations, the President requested the parties to continue the production of coal under the terms and conditions of the old contract until the dispute was settled. The President's request resulted in an agreement by the parties to extend the old contract until April 30. When the negotiations were still deadlocked on April 22, however, the dispute was certified to the War Labor Board.[42]

On April 24, the Board ordered the parties to "continue the uninterrupted production of coal under the contract terms and conditions that existed on and prior to March 31 until the differences that now separate the parties are peacefully and finally resolved, with the understanding that if the new agreement includes any wage adjustments such adjustments shall be retroactive to March 31." When the United Mine Workers refused to appear before the Board, the matter was submitted to President Roosevelt. In its submission to the President, the Board declared that the Mine Workers had refused to accept a procedure for handling the dispute which they accepted in 1941, namely, continuing production under terms of an expired contract, with any wage adjustments to be retroactive to the expiration date of the old contract. The Board also pointed out that it was following its usual procedure in refusing to consider the merits of a dispute while workers involved are on strike.

"Under these circumstances," the Board declared, "the only possible course for the Board to follow is the course which it consistently follows in cases where either the employees or the employer defies an order of the Board, that is, refer the controversy to the President in accordance with its established practice."

The demands of the miners, all of which had been rejected by the operators, included demands for a general wage increase of $2.00 per day, portal to portal pay, that it, pay from the time the miners report at the entrance of the mine until they arrive back at that point, vacation pay of $50.00 per year, furnishing by the operators of certain tools paid for by the miners in the past, and extension of the bargaining units to include certain supervisory employees.

The proposal advanced during negotiations by Secretary of Labor Frances Perkins which may provide a basis for settlement of the wage part of the dispute was that the operators "guarantee to the miners a

Ruling by WLB Under 9328, 6 WHR 484; *Travel Time Issue in Coal Case*, 6 WHR 489; *Individual Raises Within Rate Schedules*, 6 WHR 525; *Equal Pay for Women Under Order of WLB*, 6 WHR 526; *WLB, No Pay for Non-Working Time*, 6 WHR 549; *Regional Yardsticks for Substandards*, 6 WHR 551; *How WLB Will Operate Under 9328*, 6 WHR 555; *Area Yardstick for Substandard Wages*, 6 WHR 577; *New Labels for Wage Raises Under 9328*, 6 WHR 602; *Outline of WLB Wage Policies*, 6 WHR 606, (good summary and review); *Authority of WLB to Correct Inequities*, 6 WHR 624; and *WLB's Role in Stabilizing Living*, 6 WHR 627.

[41] *Meeting Greatest Wartime Strike Crisis*, 12 LRR 341.

[42] *See* 12 LRR 339.

minimum of six days work per week." Extension of the customary workweek in the coal-mining industry from a five-day week of thirty-five hours to a six-day week was provided by a recent agreement of the parties, the Secretary pointed out, provision being made for time and one-half pay for the sixth day's work. As a result of this action, the Secretary had stated, the price ceiling on coal had been raised to compensate the operators for the increased labor cost. Reports from the mines indicated, however, that, although some mines were operating six days per week, others were not. The Secretary's proposal had been accepted by the union as a basis for further negotiation but was rejected by the operators.

On April 29, President Roosevelt sent a telegram to John L. Lewis, president of the union, and Thomas Kennedy, secretary-treasurer, making an appeal to the miners to resume work immediately and submit their case to the National War Labor Board for final determination.

[43] The text of the President's telegram of April 29th to John L. Lewis and Thomas Kennedy follows:

"The controversy between the United Mine Workers of America and the operators of the coal mines has been certified to the National War Labor Board for settlement.

"The officials of the United Mine Workers were invited by the Board to recommend a person for appointment to the panel charged with investigating the facts. They ignored the invitation. The Board then appointed Mr. David B. Robertson of the Brotherhood of Locomotive Firemen and Enginemen to represent the employees, Mr. Walter White to represent the operators, and Mr. Morris L. Cooke to represent the public.

"The personnel of this panel assures an impartial investigation of the facts to be used by the Board in its determination of the controversy in accordance with the law.

"The officials of the United Mine Workers of America have ignored the request of the Board that they present their case to the National War Labor Board panel and likewise have ignored the request of the Board that the strikers be urged to return to their work. I am advised that many thousands of miners are out on strike and strikes are threatened at many other mines which now are in operation.

"The procedure that has been followed in this case by the Board is, I am assured, in exact accord with that followed in all other controversies of this character.

"In view of the statements made in telegrams to me from some members of the United Mine Workers that OPA price regulations have been disregarded and that the cost of living has gone up disproportionately in mining areas, I have directed OPA to make an immediate investigation of the facts and, wherever a violation of the law is disclosed by that investigation, to see that the violators of the law are prosecuted.

"The strikes and stoppages in the coal industry that have occured and are threatened are in clear violation of the 'no strike' pledge.

"These are not mere strikes against employers of this industry to enforce collective bargaining demands. They are strikes against the United States Government itself.

"These strikes are a direct interference with the prosecution of the war. They challenge the governmental machinery that has been set up for the orderly and peaceful settlement of all labor disputes. They challenge the government to carry on the war.

"The continuance and spread of these strikes would have the same effect on the course of the war as a crippling defeat in the field.

"The production of coal must continue. Without coal our war industries cannot produce tanks, guns, and ammunition for our armed forces. Without these weapons our sailors on the high seas and our armies in the field will be helpless against our enemies.

"I am sure that the men who work in the coal mines whose sons and brothers are in the armed forces do not want to retard the war effort to which they have contributed so loyally and in which they with all other Americans have so much at stake.

The President characterizes the strike as "against the United States Government itself."[43]

The President's appeal was unavailing and on the further refusal by John L. Lewis to appear before the Board or to change his position that the miners would not work without a contract, President Roosevelt ordered the mines taken over by Harold Ickes, Solid Fuel Administrator.[44] This action was taken on May 1, at which time over 50,000 miners were on strike.

"Not as President—not as Commander-in-Chief—but as the friend of the men who work in the coal mines, I appeal to them to resume work immediately and submit their case to the National War Labor Board for final determination."

[44] Executive Order 9340, May 1, 1943—Federal Operation of Mines—is as follows:

"Whereas widespread stoppages have occurred in the coal industry and strikes are threatened which will obstruct the effective prosecution of the war by curtailing vitally needed production in the coal mines directly affecting the countless war industries and transportation systems dependent upon such mines; and

"Whereas the officers of the United Mine Workers of America have refused to submit to the machinery established for the peaceful settlement of labor disputes in violation of the agreement on the part of labor and industry that there shall be no strikes or lockouts for the duration of the war; and

"Whereas it has become necessary for the effective prosecution of the war that the coal mines in which stoppages or strikes have occurred, or are threatened, be taken over by the Government of the United States in order to protect the interests of the nation at war and the rights of workers to continue to work;

"Now, therefore, by virtue of the authority vested in me by the Constitution and laws of the United States, as President of the United States and Commander in Chief of the Army and Navy, it is hereby ordered as follows:

"The Secretary of the Interior is authorized and directed to take immediate possession, so far as may be necessary or desirable, of any and all mines producing coal in which the strike or stoppage has occurred or is threatened, together with any and all real and personal property, franchises, rights, facilities, funds and other assets used in connection with the operation of such mines, and to operate or arrange for the operation of such mines in such manner as he deems necessary for the successful prosecution of the war, and to do all things necessary for or incidental to the production, sale and distribution of coal.

"In carrying out this order, the Secretary of the Interior shall act through or with the aid of such public or private instrumentalities or persons as he may designate. He shall permit the management to continue its managerial functions to the maximum degree possible consistent with the aims of this order.

"The Secretary of the Interior shall make employment available and provide protection to all employees resuming work at such mines and to all persons seeking employment so far as they may be needed; and upon the request of the Secretary of the Interior, the Secretary of War shall take such action, if any, as he may deem necessary or desirable to provide protection to all such persons and mines.

"The Secretary of the Interior is authorized and directed to maintain customary working conditions in the mines and customary procedure for the adjustment of workers' grievances. He shall recognize the right of the workers to continue their membership in any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining and other mutual aid or protection, provided that such concerted activities do nothing to interfere with the operation of the mines.

"Possession and operation of any mine or mines hereunder shall be terminated by the Secretary of the Interior as soon as he determines that possession and operation hereunder are no longer required for the furtherance of the war program."

The President, on May 2nd, appealed to the miners by radio to return to work the next day, when, he said, they would find the Stars and Stripes floating over the mines. A few minutes before the broadcast, Mr. Ickes had been notified by Mr. Lewis that the union's executive board had declared a fifteen-day "truce," calling on the miners to return to work on May 4th. Mr. Lewis reiterated his position that the union was ready to meet the employer, who now was the Federal Government, and negotiate an agreement.

Mr. Ickes, on May 3rd, acting as Solid Fuel Administrator, issued an order requiring employers in absence of good cause, to operate the mines six days a week. He pointed out that this was not a guaranteed six-day work week, such as Mr. Lewis had said would satisfy the miners' demands, since the employers were not required to pay for the time if it was not worked. Pursuant to the contract between the operators and the union, which had been extended from April 1st, work on the sixth day would be paid for at time and one-half, although the first five days of work represented only thirty-five hours. In this respect the overtime arrangement was more favorable for the employees than is required under the Fair Labor Standards Act. The Board had previously given notice that its approval was not required for this move.

Mr. Ickes made it clear also that he was not negotiating with the union in settlement of the dispute, which remained with the War Labor Board. The Board opened hearings on May 6th.

Meanwhile, the miners returned to work. A minority resumed work on May 3rd, as requested by the President. The great majority returned on May 4th, the date set by Mr. Lewis.

Hearings before a panel of the War Labor Board opened on May 6th, but the union sent no representative in consonance with its position that the matter should not be handled by the Board but should be subject to direct negotiation.

The bituminous coal strike appears to be the showdown, since it must be remembered that the War Labor Board's predecessor, the National Defense Mediation Board, was destroyed by similar defiance by the same union.[45] And here, also, the chief point at issue in the dispute, apart from the merits of the miners' demands, was the question whether the controversy should be settled by the War Labor Board. The Board is determined to force any resumptions of negotiations to be arranged through it, and in this position both Byrnes and Ickes agree. Mr. Lewis is equally adamant in his determination to by-pass the Board and seems to be holding out for negotiations with Mr. Ickes alone or with the mine operators acting as Ickes' agents.[46a]

The final outcome of this action by the United Mine Workers has not been settled at the writing of this paper,[46b] but the fifteen-day "truce" has been extended until May 31st. Let us hope that no further action which would retard the war effort will be threatened.[46c]

---

[45] *See* LRR *Analysis*, Dec. 15, 1941.

[46a] Seattle Star, May 17, 1943; Seattle Times, May 17, 1943.

[46b] May 26, 1943.

[46c] Since the writing of this paper, on June 22, 1943, the "truce" was extended to October 31st by the executive council of the union.

Between the dates of the writing of this paper and its publication, several interesting current articles appeared in the Labor Relations Reporter, namely, *Coal Dispute Back to Parties*, 12 LRR 490; *President's Command to Coal Strikers*, 12 LRR 522; *Fines for Strikers in the Coal Dispute*, 12 LRR 553; and *WLB Gives Verdict on Coal Dispute*, 12 LRR 598.

Various possible sanctions have been suggested to combat strikes during the duration of the war, and in particular the mine workers' strike. Since no element of *employer* defiance of the War Labor Board enters the present picture, the relevant sanctions must be those which can be used against strikers, striking unions, and union officials. Obvious possibilities in this category, listed in inverse order of their stringency, are:[47]

(1) Use of troops to break up mass picketing and to protect strikers desiring to return to work. This was used with immediate success in a defense strike in the North American Aviation and General Cable Company plants.

(2) Removal of draft deferments of strikers ("work or fight").

(3) Plant seizure, to make it literally true that the strike is against the Government of the United States.

(4) Invocation—against strike leaders—of federal criminal code provisions dealing with conspiracy and with attempting to defeat "measure of the Government."

More potent than the obvious sanctions, however, are the possibilities of new sanctions which may be developed out of the war powers of the Government—which are so broad as to defy fixed limitation. Highly suggestive along these lines are the words spoken not long ago by the United States Supreme Court that the power "to declare war" necessarily connotes "the plenary power to wage war with all the force necessary to make it effective."[48] Any necessary elements of such "force" would clearly be available for the purpose stated by the President—"to prevent further interference with the successful prosecution of the war."

Other possible alternative enforcement actions suggested as available to the President under his present powers in the event of continued refusal of striking employees to return to work after the taking over of production facilities by the government would include the following:[49]

(1) The President might order local draft boards immediately to reclassify striking workers thus reverting to the "work or fight" technique invoked by President Wilson in World War I. This action, however, would appear to require a revision of present draft regulations, at least insofar as the regulations make dependency rather than occupation a basis for deferment, and would also appear to be limited to the extent that recalcitrant workers are outside the draft age limits.

(2) As a further step, the President might, after induction of striking workers in the armed forces, order them as members of the armed forces to work at their former jobs.

(3) A third possibility is enactment of legislation such as the Austin-Wadsworth War Service Act, which would provide criminal penalties for the refusal of employees to perform assigned work.

The Austin-Wadsworth War Service Act was in reality a proposed labor draft but was not premised on an over-all program for control and allocation of production. The proposed act would require the registration of all men between the ages of eighteen and sixty-five and all women between the ages of eighteen and fifty, and would authorize the

[47] *Steps Available for Use in Showdown Over Forbidden Strike*, 12 LRR Analysis, May 3, 1943.

[48] U. S. v. MacIntosh, 283 U. S. 605.

[49] 12 LRR 341.

President, acting through the Selective Service System, to assign persons to war work. According to a statement of its sponsors, the bill would provide for the mobilization and designed direction of willing workers, provide punishment for refusal to perform assigned duty only after conviction in court, and would preserve reemployment, seniority rights, and rates of pay to the same extent as men in the armed services have such rights preserved.[50]

The labor members of the Management Labor Policy Committee of the War Manpower Commission voiced their opposition to the bill in a statement which came as an answer to the endorsement given the bill by the Secretary of War, Henry L. Stimson. They pointed out that the question is not compulsion versus a voluntary program but rather whether the production and manpower problems are to be approached on the basis of planned organization or by the exercise of power without planning and understanding. The labor policy committee in stating its objections, endorsed instead the Tolan-Kilgore-Pepper Bill, which would set up a central civilian control of manpower, production, civilian economy and technological mobilization agencies.

"Meeting our manpower difficulties," the Committee declared, "means the kind of planning which allocates contracts to the areas where the labor supply problem can be met, the kind of planning which makes sure that meeting the labor supply problem will not raise housing and transportation difficulties, the kind of planning which makes sure that workers on the jobs in which they are now employed are employed under conditions which utilize their highest possible skills, the kind of planning which arranges for training programs to produce the kinds of skills needed at the places where they are needed."[51]

---

[50] *Planning or Draft in Use of Manpower*, 12 LRR 67.

[51] In speaking of manpower difficulties, it is startling to find that estimates on manpower requirements, prepared jointly by the Department of Labor's Bureau of Labor Statistics and the War Manpower Commission's Estimates and Statistical Coordination Division, reveal that despite increasing labor shortage, the number of unemployed is not likely to fall below a million by December, 1943. Increases in labor requirements are largely concentrated in industrial centers where labor shortages already exist, but most of the unemployed are in areas where there is no shortage of labor or no shortage in their particular skills.

To meet shortages in critical occupations, it is estimated, 3.2 million workers will have to be transferred from employment in less essential activities. To overcome these shortages, the study points out, it will be necessary to take the following steps:

(1) Utilize fully all workers now employed and eliminate labor hoarding.

(2) Anticipate workers needed for employment increases and for replacements.

(3) Replace with youths, older men, or women, all men eighteen to thirty-seven engaged in activities that can be performed by such workers.

(4) Eliminate the racial, and sex discrimination, that still exists.

(5) Transfer from labor shortage areas as much civilian and war production as possible.

(6) Curtail, in labor shortage areas, all employment in activities other than munitions industries to the bare minimum necessary to maintain productive efficiency and civilian morale.

(7) Produce housing and community facilities in overcrowded shortage areas for workers who can migrate from other areas.

THE CONNALLY BILL[52]

Legislation which grew out of the coal miners' strike is evidenced by the Connally Plant Seizure Bill (S. B. 796) which passed the Senate by a vote of sixty-three to sixteen and is still under consideration in the House of Representatives at the time of the writing of this paper. A great deal of influence is being exerted to prevent the passage of the bill in the House.[53]

The Connally Bill was passed in the Senate with the obvious purpose of meeting the situation which might have arisen if the coal miners' strike had been resumed on May 16 and which might still arise after May 31st. As passed by the Senate and sent to the House, it provides the following:

(1) Presidential seizure of any plant where there is an interruption of operations as a result of a strike or other labor disturbance.

(2) Government operation under the same terms and conditions in effect either at the time the government took possession or immediately prior to the work stoppage which led to expropriation. However, either the Government or the plant's employees or their representatives may apply to the War Labor Board for a change in wages or other working conditions in the plant, and the Board may handle the case under its regular machinery.

(3) Prohibition against any attempt to interfere with production in a plant taken over by the Government, either by (a) coercing, instigation, or inducing any person to engage in a strike, slowdown, lockout, or other interruption; or (b) aiding in a strike, slowdown, or other interruption by giving direction or guidance or by paying strike benefits to the persons involved. Willful violation is subject to a fine up to five thousand dollars, imprisonment up to a year, or both.

(4) Authority to the War Labor Board to issue subpoenas requiring the attendance of witnesses and the production of such evidence as may be deemed material by the Board to its investigation of facts in any labor dispute.

(5) Court review of decisions of the War Labor Board in relation to matters of law.

(6) Provision for public hearings with the requirement that parties be given full notice and opportunity to be heard. Failure of either party to appear, however, would not deprive the Board of jurisdiction to proceed to a hearing and order.

(7) War Labor Board would be given final authority to make administrative interpretation of those provisions of the Emergency Price Control Act of 1942 (on such questions as wage increases) which relate to cases before the Board.

(8) Statutory authority and functions would be conferred upon the War Labor Board—generally the same, however, as those it is presently performing under Executive Orders; and

(9) Specific statutory authority would be conferred upon the Board, not only to decide disputes before it, but to "provide by order the wages and hours and all other terms and conditions" of employment.

Dropped from the bill in its final form was a provision allowing federal district courts power to enjoin violations or threatened violations of the measure, the effect of which would have been virtually to

[52] *Government Musters Forces in Coal Dispute*, 12 LRR 377.

[53] *See* below for recent developments, n. 54.

nullify the Norris-LaGuardia Anti-Injunction Act. The Senate also rejected the Taft amendment which would have set the War Labor Board up as a statutory agency and provided a cooling-off period during the time a dispute was in the Board's hands. Two of the Taft Bill's chief provisions, however, were written into the Connally Bill at the suggestion of Senator Wagner. These provisions give the Board power to step into a dispute on its own motion and to issue subpoenas to compel production of records and attendance of witnesses.

Two other proposed amendments were turned down. One, by Senator Langer, would have prohibited discrimination against any person on the basis of race, color, or creed in plants taken over by the Government. The other, by Senator Tydings, would have formally ratified the President's seizure of the coal properties.

The Bill as passed would, as applied to the coal dispute, have the effect, first, of making it a punishable offense to renew the strike and, second, make it possible for the War Labor Board to compel the attendance of representatives of the union.

This is the first time in contemporary history that the Senate of the United States has passed an anti-strike bill. Born of the coal strike, the Bill is, however, a war measure in its entirety, and the authority it creates would expire six months after termination of hostilities. Furthermore, although it provides for criminal penalties, these could be invoked only against strike leaders and only after the Government had taken over operation of a war plant.

Some form of anti-strike legislation seems almost certain by reason of the Senate's passage of the Connally Bill by such a large majority. During the past several Congresses, the Senate or its committees have blocked all general labor control legislation—from the Smith amendments to the Wagner Act to the most recent measures to prevent strike interruption in production for defense. But what will happen to the Connally Bill in the House is yet to be seen.[54]

JAMES GAY.

---

[54] After this paper was written the House of Representatives approved a substitute for the Connally Plant Seizure bill, and the substitute was sent to the Senate. Adopted by a vote of 231 to 141, it contained most of the features of the Connally bill but added a number of clauses aimed generally at regulations of unions. 12 LRR 524.

Among the chief points in the measure as adopted by the House in addition to those previously enumerated were the forbidding of strikes in war plants except on 30 days' notice and a favorable secret ballot, and labor unions were to be required to register with the Labor Relations Board and to file financial data. They are also forbidden to make political contributions. *See, Compromise in the Anti-Strike Measure,* 12 LRR 554.

The Senate-House conferees eliminated from the bill the provisions requiring unions to register and file financial data with the Labor Relations Board. Eliminated also was the clause which would have made decisions of the War Labor Board subject to court review.

Of special importance to those concerned with labor relations is the provision of the bill which requires WLB decisions to conform to the Wagner Act. Already recognized widely as a possible "sleeper," it is doubtful if the full potentialities of this provision have yet been appreciated. *See* LRR *Analysis,* June 14, 1943.

For a statement of the protests of labor against the bill and for the