

# THE IMPACT OF THE WAR UPON LABOR LAW

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Labor legislation is written on a continuous scroll. The laws of the past, the great laws and the petty laws, all remain on the record, and the laws of the future must be inscribed on the same scroll. There is a continuity of interest, and even new laws appearing for the first time have a relationship to the others that makes them all part of the same social structure. Consequently, if we look for the influence of the war upon only those portions of the scroll that were written during the war, we will fail to see the full significance of the war legislation.

Indeed, we must look above the writing to the hands and the minds that have written. There are always many persons, with conflicting notions, who would make law. They struggle with one another to get their precious words upon the great scroll. And whenever one succeeds, the strife continues to have the words erased or amended. The war has altered the goals of most of the persons seeking labor legislation and has set the tone and the tempo for legislative battles.

Even beyond the legislative chambers there is a field for influence on labor law. The courts construe the law and administrators apply it in ways that are just as effective as the writing of the law. In that realm of interpreting and executing the laws, too, the war has had its peculiar effect.

If we go back to the President's declaration of a national emergency on September 8, 1939, we may discern our public preparation for an imminent war. From that time on we can trace the plans and programs for labor legislation. We can follow the legislative debates and list the laws adopted. We can note the executive orders and administrative regulations. We can observe how the courts have treated the laws. From this record, if we can eliminate the continuing force of old laws, if we can subtract the pressures of traditional groups, if we can discard the irrelevant and the incidental, we shall have the story of the impact of the war upon labor law.

## I. AT THE FEDERAL LEVEL

*The Political Perspective.* Before attempting a detailed inspection of the war record, it might be well to view the Washington scene, glancing rapidly over the past two and a half years, so that the developments in labor law may be seen in

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their national perspective. The prominent political issues of the day, the Congressional hearings and debates, the press campaigns, the fireside chats of the President, and that uncertain climate called public opinion, all conditioned the form and character of our labor laws. A brief survey may suffice to reveal the environment in which the war program and labor law were gradually intertwined.

When in September, 1939, the President of the United States proclaimed a limited national emergency, it was to observe, safeguard and enforce neutrality and to strengthen our national defense within the limits of peace-time authorizations.<sup>1</sup> There was a widespread concern over neutrality and the possibilities of peace. Only slowly did the normal legislative programs of industry and labor give way to the requirements of defense and war. The outstanding labor problem in 1939 was unemployment. Industrial orders from the countries at war were regarded with an ominous hopefulness. That year also saw attacks upon the National Labor Relations Act, the Fair Labor Standards Act, and the Public Contracts Act. All of them fell just short of success. Labor began its campaign for a law to withhold government contracts from labor law violators. The LaFollette Committee launched its oppressive labor practices bill, but much more consideration was given to proposals for laws against subversive activities.

The year 1940 was an election year in which all political issues were dwarfed by months of speculation and months more of campaigning over a third term for the President. There was little preoccupation with defense during the first half of the year. The reciprocal trade agreements, an anti-lynching bill, the banning of political activity by state employees receiving federal funds, the court review of administrative decisions, and the amendment of the Fair Labor Standards Act and the National Labor Relations Act were the chief topics of Congressional consideration. The emergency situation played only an incidental role in the fundamental clashes of opinion on those subjects.

The national defense acts that followed in the latter part of 1940, contained incidental provisions affecting the application of existing labor laws. The absolute limit of the Federal Eight Hour Law was lifted to permit overtime at premium pay; and other wage and hour laws were expressly preserved. The most prominent labor law controversy of the year was a culmination of the old dispute over the National Labor Relations Act. After prolonged public debate, a lengthy Congressional investigation, bitter disagreement within the ranks of organized labor, and conciliatory overtures by new members of the National Labor Relations Board, a bill containing significant amendments to the Act was approved by the House. Because of the pending election and the diversions of the defense program no further action was taken on the bill by the Senate Committee on Education and Labor. The other major labor laws were either untouched or amended only in

<sup>1</sup> Proclamation of the President, No. 2352, Sept. 5, 1939, 4 FED. REG. 3851.

trivial detail. Thus by the end of 1940, Congress had dealt with only a few matters involving labor in the emergency.

The executive program of the President, however, had developed during the latter half of 1940 with certain significant labor aspects. In creating the first overall defense agency, the Advisory Commission to the Council of National Defense, the President assigned one of the seven positions on the Commission to labor. The President of the Amalgamated Clothing Workers of America, Sidney Hillman, was made its incumbent and he formed a committee representative of all the major labor organizations to counsel with him. The Commission early formulated a statement of national labor policy which was approved by the President and submitted to Congress and to all Government contracting agencies.<sup>2</sup> It recommended essentially the preservation of existing labor standards in the performance of Government contracts. The Advisory Commission also established functioning divisions to coordinate the efforts of the many Government agencies in the defense program. Extensive plans were devised by its labor division for the training of defense workers. Organized labor looked on suspiciously and insisted upon representation in all of the divisions of the Commission so that its interests might be adequately protected.<sup>3</sup>

In 1941, the defense program became the point of orientation for nearly all legislative matters. The opposition to labor legislation made a new approach through bills to curb strikes, to require arbitration, to regulate unions, to freeze wages, and to increase hours as separate defense measures. In February, the House Committee on the Judiciary commenced its hearings on bills to curtail strikes in defense industries. Messrs. Knudsen and Hillman, then co-directors of the Office of Production Management, disagreed in their testimony on the need for such legislation,<sup>4</sup> and the public, the press, and Congress continued the controversy for months. The appointment of the National Defense Mediation Board caused only a temporary lull in the agitation. Shortly after the middle of the year, the hearings on the price control bill<sup>5</sup> brought to the fore the dispute over the inclusion of wage controls. Only the constant insistence of the Administration on the separation of wage from price controls finally induced Congress to keep wages from the provisions of the Price Control Act. In other fields, the proposals of organized labor did not fare so well. The sedition and sabotage laws and the restrictive alien laws were

<sup>2</sup> The National Defense Advisory Commission, Statement of Labor Policy, Aug. 31, 1940, recommended the absorption of the unemployed, the payment of extra compensation for overtime, the elimination of discrimination on the basis of age, sex, race or color, the maintenance of health and safety and the observance of all labor laws.

<sup>3</sup> AFL, PROCEEDINGS OF 60TH ANN. CONVENTION, 1940, pp. 208, 588-591; CIO, PROCEEDINGS OF 3D CONST. CONVENTION, 1940, pp. 48-49.

<sup>4</sup> *Hearings before the House Committee on the Judiciary on Delays in National Defense Preparations*, 77th Cong., 1st Sess., Feb. 19, 20, 1941.

<sup>5</sup> *Hearings before the House Committee on Banking and Currency on H. R. 5479, superseded by H. R. 5990*, 77th Cong., 1st Sess., Aug. 5-Sept. 25, 1941, and *Hearings before the Senate Committee on Banking and Currency on H. R. 5990*, 77th Cong., 1st Sess., Dec. 9-17, 1941.

extended over its protest. The WPA program was cut and in the field of social security there were no appreciable gains. The legislative year of 1941 was one in which organized labor fought to maintain its previously established standards.

The most significant changes in the legal status of labor during the year 1941 came through the exercise of the executive power of the President. On the 7th of January the President created the Office of Production Management, with Hillman as co-director and chief of its labor division. The activities of that division, particularly with respect to the training of labor, the alleviation of priorities unemployment, the stabilization of shipbuilding and construction, and the employment of minority groups, affected labor standards throughout the country. The reorganization of OPM and the shift of personnel to the War Production Board altered this work very little. In the realm of labor disputes, the National Defense Mediation Board was created. It succeeded in settling crucial labor disputes for several months and was then itself disrupted by the withdrawal of the CIO representatives on the issue of a closed shop for captive mines. Amid public and Congressional clamor for restrictive legislation, the President called a conference of national representatives of industry and labor who agreed to abandon strikes and lockouts and to submit their disputes to arbitration. This laid the foundation for the National War Labor Board. Throughout the year organized labor insisted upon an opportunity to participate in the defense program. The CIO urged the appointment of tripartite industry councils<sup>6</sup> and the AFL requested effective labor advisory committees,<sup>7</sup> but, denied these, they found other ways of expressing their interests through the existing agencies. The activities of the defense administration, rather than the enactment of any new legislation, was the contribution of 1941 to our body of labor law.

In the first few months of 1942 labor legislation definitely reflected the influence of the war. The first prominent proposal was to provide federal compensation for workers displaced by the conversion of industrial plants to war work. This aroused a storm of protest from the state unemployment compensation officials and was dropped. Then followed a major, though unsuccessful, effort to repeal the overtime pay requirements of federal statutes. The bills to control wages and abandon strikes, held over from previous years, were next laid to rest by the President's anti-inflation program which requested that wage stabilization and the settlement of labor disputes be left to the National War Labor Board. The creation of the War Manpower Commission and the reorganization of the WPB labor division, brought new speculation and anticipation of Government labor control. By May, 1942, it was clear that federal labor law was definitely considered part of the war program

<sup>6</sup> Murray, *Survey of the Steel Industry* (1941); Reuther, *500 Planes a Day* (1941); Int. Union of Mine, Mill and Smelter Workers, *Research Report on Increased Production of Vital Non-ferrous Metals for the Victory Program* (1942).

<sup>7</sup> AFL, PROCEEDINGS OF THE 61ST ANN. CONVENTION, 1941, pp. 141, 204, 205, 539-541; *Declaration of American Federation of Labor Policy on War* (Jan. 1942) 49 AM. FEDERATIONIST 10.

and that, although the legislative scene was calm, important labor adjustment would continue to be made through the activities of executive agencies.

This chronological view of the legislative and administrative action in the field of labor law indicates the gradual and ultimate domination of the field by the war. The war's real influence, however, may be discerned more clearly in a consideration of the specific action taken in connection with the various phases of labor law. Under the separate standards of labor we can observe what was sought to be accomplished and what was done.

*Organization and Collective Bargaining.* The movement to amend the NLRA reached its peak in 1940, at a time when, by mere historical coincidence, the defense program was being launched. Had labor relations been in turmoil then, the weight of the defense program might have been turned to the support of the amendments. Instead, the industrial horizon was relatively serene and the pending election made it advisable to avoid such inflammatory issues, so the defense program, together with the appointment of new personnel to the Board and the modification of some of its procedures, became a diverting influence. Thereafter, further modification of Board rulings tended to stave off the Act's opponents.<sup>8</sup> Moreover, the mediatory services of the Board's staff helped preserve industrial peace in defense industries. As a result, the criticisms of union activity that arose out of defense production were directed toward other laws.

The first objective of proposed legislation on union activities in defense industries was the regulation of the relationship between unions and their members. A few strikes in defense plants in defiance of the recommendations of mediators gave rise to charges of Communist leadership and the irresponsibility of most union officials. At the same time, there arose considerable notoriety over the large initiation fees charged by certain unions on defense construction projects. These occurrences led to insistent demands for regulatory legislation. The bills introduced were of several types: (1) bills requiring the registration or incorporation of unions;<sup>9</sup> (2) bills defining the legal responsibility of unions, their officials, and their members for wrongful acts committed in connection with strikes, picketing, and boycotts;<sup>10</sup> (3) bills requiring an audit and public accounting of union resources, and limiting the use of union funds;<sup>11</sup> and (4) bills requiring democratic procedures in the election of officers, the calling of strikes, the disciplining of members, and other union activities.<sup>12</sup> These bills were widely discussed but no Congressional action was taken on them.

The next union issue on which legislation was urged was that of the closed shop

<sup>8</sup> *Recent Trends in Construction of the Wagner Act (1941)* 10 INT. JURID. ASS'N BULL. 33, 45; AFL, PROCEEDINGS, *supra* note 7, at 113-116.

<sup>9</sup> In the 77th Cong., 1st Sess. (1941): H. R. 5015, 6068, 6154 and S.2042. In the 77th Cong., 2d Sess. (1942): H. R. 6444.

<sup>10</sup> In the 77th Cong., 1st Sess. (1941): H. R. 5015, 5218 and 5259.

<sup>11</sup> In the 77th Cong., 1st Sess. (1941): H. R. 4392, 5015, 5148, 5149, 6068, 6154 and S. 2042.

<sup>12</sup> In the 77th Cong., 1st Sess. (1941): H. R. 6068 and S. 2042.

or union security. The United States Chamber of Commerce and the National Association of Manufacturers as well as numerous other employers' organizations proposed that the status of unions be frozen for the period of the emergency.<sup>13</sup> The labor organizations, on the other hand, insisted that since they had abandoned their resort to strikes they were entitled to collective agreements that would assure them the continued support of all employees.<sup>14</sup> Although they requested closed-shop contracts, they were usually willing to accept modified forms of union security agreements. A number of bills introduced in Congress sought to freeze the *status quo*,<sup>15</sup> but the opposition of organized labor prevented their adoption.

The issue of the closed shop, however, had to be met more affirmatively by the defense labor relations agencies. Wherever possible, the usual methods of mediation were employed to induce the employers and unions to reach a voluntary agreement. When these did not suffice, it was necessary for some of the Government agencies to make positive recommendations of their own. The National Defense Mediation Board, attempting to deal with each case on its individual merits, recommended the closed shop in one case and a union maintenance clause in seven cases, and refused to recommend either in five cases.<sup>16</sup> In a few other cases it recommended preferential hiring or membership encouragements; but, in a much larger number of cases, the issue was settled by agreement between the parties. When the Board refused to accede to the demand for a closed shop in the captive mines, its CIO members withdrew and brought about its dissolution. An arbitrator to whom the dispute was referred granted the closed-shop demand. The President, however, called a conference of management and labor to set the terms of an industrial truce. The representatives were willing to forego strikes and lockouts, but the employers were reluctant to submit the issue of the closed shop to arbitration and they agreed to do so only upon the insistence of the President. To implement their agreement and to maintain peace in war industries, the National War Labor Board was created.<sup>17</sup>

*Wages.* In one of his first speeches on national defense, the President of the United States declared, "There is nothing in our present emergency to justify a lowering of the standards of employment. Minimum wages should not be reduced."<sup>18</sup> This was generally understood to mean that in the opinion of the President there was no need to amend the Fair Labor Standards Act, the Walsh-Healey

<sup>13</sup> Still affirming their opposition to the closed shop, the leading employers' associations urged that the *status quo* be maintained in the interests of national defense. Nat. Ass'n of Mfrs., *Employment Relations* (Dec. 1940) 16-22; U. S. Chamber of Commerce, *Policies 1941*, pp. 3, 15.

<sup>14</sup> This attitude was expressed constantly in union negotiations and, although the National Defense Mediation Board was dissolved on the closed-shop issue, the Board accepted the reasoning of the unions in recommending union security clauses. NDMB REP. (1942) (mimeo.) 14.

<sup>15</sup> In the 77th Cong., 1st Sess. (1941): H. R. 1403, 1814, 2694, 2695, 5218, 5696, 5738 and S. J. Res. 106.

<sup>16</sup> NDMB REP. (1942) app. E.

<sup>17</sup> Exec. Order No. 9017, Jan. 12, 1942, 7 FED. REG. 237.

<sup>18</sup> 5 THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN DELANO ROOSEVELT (1940) 237.

Act, or the Davis-Bacon Act, all of which provided for minimum wage rates in defense industries. Frequently, war officials testified before Congressional committees in favor of the continuation of these acts and against other legislative wage controls. Even when urging wage stabilization, in 1942, the President advised Congress that no legislation was required. As a result, the war has produced no significant changes in federal wage legislation.

Some of the early bills for defense powers and appropriations threatened to waive the laws providing for minimum wages in the performance of Government contracts. The bills, seeking primarily to hasten the consummation of defense contracts, eliminated some of the customary restrictions on the letting of contracts, including the taking of competitive bids. Since the Davis-Bacon and the Walsh-Healey Acts inserted minimum wage rates into Government construction and supply contracts only through their inclusion in specifications for competitive bids, the bills were amended so that they expressly preserved the application of those acts.<sup>19</sup> The minimum wage rates were then determined in the usual manner and were inserted directly into the negotiated defense contracts. Later appropriation acts also expressly preserved the Davis-Bacon and Walsh-Healey Acts.<sup>20</sup> The Davis-Bacon Act itself was extended to Government construction projects in Alaska and Hawaii.<sup>21</sup>

The defense program, however, was a factor in the defeat of several efforts in 1939 and 1940 to enlarge the scope of the Walsh-Healey Act, primarily by increasing the number of contracts subject to its terms and by embracing subcontractors.<sup>22</sup> The War Department expressed its general approval of the basic act but was not disposed to approve these extensions. The Navy Department opposed the proposals on the ground that they would tend to hamper or delay its preparations for national defense.<sup>23</sup> One of the bills passed the Senate, but none was enacted.

The other minimum wage act of importance to war production, the Fair Labor Standards Act, was not disturbed by the war.<sup>24</sup> Its minimum wage requirements, limited to 40 cents an hour, became less and less objectionable to industry as the general wage levels of the country rose with war production. A serious attack made upon the hours provisions was in effect an attack only upon the payment of

<sup>19</sup> Act of June 28, 1940, 54 STAT. 676; Act of July 2, 1940, 54 STAT. 712.

<sup>20</sup> The Second Supplemental National Defense Appropriation Act of Sept. 9, 1940, 54 STAT. 872, 884, and the Appropriation Act for the Military Establishment of June 30, 1941, Pub. L. No. 139, 77th Cong., 1st Sess., provide that the Public Contracts Act shall apply to negotiated contracts by reference to such a provision in the National Defense Act of July 2, 1940, *supra* note 19. To the contrary, the First Supplemental National Defense Appropriation Act of June 26, 1940, 54 STAT. 599, and the National Defense Housing Act of Oct. 14, 1940, 54 STAT. 1125, failed to preserve the Public Contracts Act.

<sup>21</sup> Act of June 15, 1940, 54 STAT. 399, 40 U. S. C. §276a.

<sup>22</sup> S.1032 and H. R. 3331, 76th Cong., 3d Sess. (1940).

<sup>23</sup> *Hearings before Subcommittee No. 1 of the House Committee of the Judiciary on S.1032, H. R. 3331 and H. R. 6395, 76th Cong., 3d Sess. (Feb., March, 1940).*

<sup>24</sup> Act of June 25, 1938, 52 STAT. 1060, 29 U. S. C. §§201-219. This was amended to facilitate the exemption of workers covered by special union agreements, Act of Oct. 29, 1941, 55 STAT. 756, 29 U. S. C. (Supp. I) §207b(2), and to allow lower minimum wages in Puerto Rico and the Virgin Isles, Act of June 26, 1940, 54 STAT. 611, 615-616, 29 U. S. C. §§205, 206, 208n. Neither amendment was prompted by the war.

extra compensation for overtime, but the basic wage provisions of the Act remained unassailed.

In 1941, an effort to impose wage restrictions in the price control bill was strongly championed in Congress.<sup>25</sup> The Administration insisted, however, that wage and price controls were too different in nature to be administered successfully by the same agency, and the Price Control Act was adopted without wage restrictions.<sup>26</sup> However, the inflationary trend continued and wage adjustments were made under the direction of the Executive Branch of the Government. In his seven-point program against inflation, the President assured Congress and the country that wage stabilization would be undertaken by the National War Labor Board.<sup>27</sup> While the Board pondered this responsibility, wage limitations were effected in the shipbuilding and construction industries. In the former, the President requested the workers to forego an automatic increase under a cost-of-living clause in their earlier agreements, and, after some discussion, the unions accepted an increase smaller than that called for by their contracts.<sup>28</sup> Shortly thereafter the construction unions also signed a stabilization agreement with various war agencies which froze their wage rates for the duration of the war as of July 1, 1942.<sup>29</sup> This agreement set the prevailing wage basis for minimum wages under the Davis-Bacon Act. Determinations of new minimum wage rates under the Walsh-Healey Act and the Fair Labor Standards Act were then held in abeyance pending the settlement of a national wage policy.<sup>30</sup>

The War Labor Board, in the first few cases to come before it after the President's anti-inflation address, applied its stabilization policy with great caution. Wage increases necessary to prevent the pirating of workers from one war plant by another were given. Other wage issues were handled with a deliberate effort to avoid setting national policies. In the Board's "little steel" decision of July 16, 1942, however, it established three general criteria for wage adjustments, 1—the maintenance of a peace-time standard of living, allowing only a 15% increase from January, 1941, to May, 1942; 2—the raising of substandard wages, and 3—the elimination of inequalities in comparable wage rates. Further limitations upon all

<sup>25</sup> See note 5, *supra*.

<sup>26</sup> Pub. L. No. 421, 77th Cong., 2d Sess. (Jan. 30, 1942).

<sup>27</sup> Message of the President of the United States to Congress, April 27, 1942, 88 Cong. Rec., April 27, 1942, at 3805-3807.

<sup>28</sup> The Shipbuilding Stabilization Committee of the War Production Board had induced the shipbuilding industry to execute regional agreements stabilizing wages, hours and grievance procedures in 1941. On May 16, 1942, at a conference called by that Committee to consider wage adjustments under those agreements, the anti-inflationary adjustment was made.

<sup>29</sup> Agreement between the AFL Building Trades Department and the contracting agencies of the U. S. Government, including the War and Navy Departments, of May 22, 1942, 10 LAB. REL. REP. 442. This amplified a former stabilization agreement executed in 1941, 8 *id.* 764, covering all construction financed by the Federal Government.

<sup>30</sup> The provisions of these acts against wage deductions were interpreted to permit deductions for war bonds and stamps. U. S. Dep't of Labor, Wage and Hour Div., Release No. 1676, Dec. 15, 1941, and Release No. 1679, Dec. 17, 1941; U. S. Dep't of Labor, Regulations under the Copeland Act, April 30, 1942.



wages, as soon as farm prices are controlled, were forecast by the President in his Labor Day message to Congress and the nation.

*Hours.* Since the maximum production of war goods required great freedom in scheduling hours of work, the war brought considerable pressure for the amendment or relaxation of restrictive laws. First attacked was the Federal Eight Hour Law which made no allowance for overtime in the normal construction of public works.<sup>31</sup> The law itself, as amended in 1917, provided that in periods of national emergency it might be suspended by the President, and this power was exercised by the President several times in 1940 and 1941,<sup>32</sup> primarily for the construction of island naval bases. Eventually<sup>33</sup> a definitive provision was enacted to permit work in excess of eight hours upon compensation at not less than one and one-half times the basic rate of pay.<sup>34</sup> Similar provisions for the payment of time-and-a-half pay for overtime after 8 hours a day and 40 hours a week were enacted for employees of the Panama Canal, the field services of the War Department,<sup>35</sup> certain employees of the Navy Department,<sup>36</sup> shipbuilding employees of the Maritime Commission,<sup>37</sup> and the employees of a Government-owned railroad.<sup>38</sup>

Opposition to such overtime payments, however, arose in Congress and in the press of the country, and reached a climax in February of 1942. Many bills were introduced, ranging from those which would permit unlimited hours at straight pay to bills that would require a specified workweek in excess of 40 hours in all war plants.<sup>39</sup> Considerable notoriety was received by a bill that sought to repeal the overtime provisions of seventeen existing hours laws, all of which required extra pay for overtime in excess of 8 hours a day or 40 hours a week.<sup>40</sup> Hearings were held on a similar bill before the House Committee on Naval Affairs. Representatives of war agencies testified that most war plants were operating on an average 48-hour week and that the schedule of war production did not require the

<sup>31</sup> Act of March 4, 1917, 39 STAT. 1192, 40 U. S. C. §326.

<sup>32</sup> Exec. Order No. 8623, Dec. 31, 1940, 6 FED. REG. 13; No. 8719, March 22, 1941, *id.* 1622; No. 8797, June 18, 1941, *id.* 3019; No. 8812, June 30, 1941, *id.* 3223; No. 8816, July 5, 1941, *id.* 3265; No. 8837, July 30, 1941, *id.* 3824; No. 8848, Aug. 8, 1941, *id.* 4069; No. 8859, Aug. 10, 1941, *id.* 4289; No. 8860, Aug. 20, 1941, *id.* 4289; No. 8876, Aug. 29, 1941, *id.* 4503; No. 8931, Nov. 1, 1941, *id.* 5614; No. 9001, Dec. 27, 1941, *id.* 6787; No. 9023, Jan. 14, 1942, 7 *id.* 302.

<sup>33</sup> In the Act of June 28, 1940, 54 STAT. 676, 679, §5(b), applicable to Government employees on Army, Navy and Coast Guard contracts, language was used which seemed to repeal the Eight Hour Law.

<sup>34</sup> Act of Sept. 9, 1940, §303, 54 STAT. 872, 884. This statute saved the provisions of the Eight Hour Law of June 19, 1912, 37 STAT. 1381, 40 U. S. C. §§324, 325 (1940). It apparently did not save the provisions of the Eight Hour Law of 1892, 27 STAT. 340, 40 U. S. C. §§321-323 (1940) from the broad repeal, for Army, Navy and Coast Guard contracts. See note 33, *supra*.

<sup>35</sup> Act of Oct. 21, 1940, 54 STAT. 1205, and Act of July 2, 1940, 54 STAT. 712.

<sup>36</sup> Act of June 28, 1940, 54 STAT. 676, 678, §5(a). The President vetoed an extension of this act, Cong. Rec., July 6, 1942, at 6180, but permitted a temporary 3 months' extension pending more comprehensive legislation. Pub. L. No. 652, 77th Cong., 2d Sess. (July 3, 1942).

<sup>37</sup> Act of Oct. 10, 1940, 54 STAT. 1092, and Pub. L. No. 46, 77th Cong., 1st Sess. (May 2, 1941).

<sup>38</sup> Act of June 12, 1940, 54 STAT. 348.

<sup>39</sup> The following bills to eliminate overtime payments were introduced in the 77th Cong., 2d Sess. (1942): H. R. 6616, 6790, 6791, 6795, 6796, 6814, 6823, 6826, 6835 and S. 2232, 2373. S. 2400 proposed the payment of overtime compensation in non-negotiable defense stamps or bonds.

<sup>40</sup> H. R. 6616, 77th Cong., 2d Sess., introduced Feb. 17, 1942.

abolition of overtime payment.<sup>41</sup> Furthermore, union agreements independently of the federal laws generally required extra compensation for overtime. Under the weight of such testimony the bill was decisively defeated and the movement was obliged to recede.

The President took advantage of the debate over the hours laws to request the unions to abandon their demands and their contract provisions for double pay for work on Sundays and holidays. Such double pay, he explained, had a retarding influence upon the introduction of continuous operations in war plants. Promptly, both the CIO and the AFL agreed to withdraw their claims when Sundays or holidays did not constitute a seventh working day in a week.<sup>42</sup> In the shipbuilding industry, existing stabilization agreements were changed to incorporate this agreement and many other collective bargaining agreements were revised on that basis.<sup>43</sup>

Some relaxation of the federal hours laws has occurred through administrative adjustments. At the request of war agencies, special exemptions from the Walsh-Healey Act were granted for contracts to supply certain canned fruits and vegetables,<sup>44</sup> contracts for emergency plant facilities, and contracts negotiated with states or territories for war purposes.<sup>45</sup> Under the Fair Labor Standards Act, the Administrator interpreted the term "hours worked" to facilitate activities essential for civilian defense.<sup>46</sup> Although the influence of the war was not patent, both the Acts were amended with Administration approval to permit certain exemptions from the hours requirements by bona fide collective bargaining agreements.<sup>47</sup> The Administrator of these acts has indicated clearly his eagerness to make whatever adjustments are needed to assure success in the war.

*Employment.* The defense program was begun at a time when there were from seven to eight million unemployed in the country.<sup>48</sup> Many extravagant estimates were made of the rapidity with which these workers would be absorbed by defense plants. Many were reemployed but the process was slow, and a new type of unemployment—priorities unemployment—appeared. The Labor Division of OPM called conferences of employers, unions, and Government officials who devised plans to distribute Government contracts to stricken plants and localities and to retrain and place the displaced workers. For a time the reemployment of these workers failed to keep pace with their displacement.

Paradoxically, while there remained a few million of unemployed and groups

<sup>41</sup> *Hearings before the House Committee on Naval Affairs, on H. R. 6790, 77th Cong., 2d Sess.* (March, 1942).

<sup>42</sup> *C.I.O. Waives Double Time to Aid U. S. War Effort*, 5 C.I.O. News, March 30, 1942, p. 1; testimony of Wm. Green, *Hearings before the House Committee on Naval Affairs, on H. R. 6790, 77th Cong., 2d Sess.* (March, 1942) 2803.

<sup>43</sup> *Penalty Wage for Weekend Work* (1942) 10 LAB. REL. REP. 150.

<sup>44</sup> Exception of the Sec'y of Labor under Walsh-Healey Act, May 14, 1942.

<sup>45</sup> Regulation of the Sec'y of Labor pursuant to Walsh-Healey Act, May 26, 1942.

<sup>46</sup> U. S. Dep't of Labor, Wage and Hour Div., Release No. 1794, April 27, 1942.

<sup>47</sup> Pub. L. No. 283, 77th Cong., 1st Sess. (Oct. 29, 1941). A similar amendment to the Walsh-Healey Act was approved in May, 1942.

<sup>48</sup> Federal Works Agency, W.P.A., Release, Sept. 4, 1941 (mimeo. 4-2266).

of displaced workers sprang up in centers of curtailed or converted production, there also developed a shortage of skilled labor in certain war plants and a shortage of certain skills throughout the land. The situation called for a dual program—the training of new workers and the placement of the unemployed.

Toward the training of the needed workers, several Government agencies bent their efforts.<sup>49</sup> The United States Office of Education increased the vocational training program in schools. The Department of Labor developed an apprenticeship training program. The Maritime Commission, the Civil Aeronautics Authority, the Navy, and other agencies established special training schools. OPM attempted not only to coordinate these efforts but also to develop a program to train and up-grade unskilled workers to perform semiskilled tasks, and semiskilled workers to perform special skilled tasks separated from the many duties of the thoroughly skilled worker.<sup>50</sup> Most of this was attempted through training within the plant. The program, requiring no legislation other than appropriation acts, was conducted as part of the war administration. Its most recent phase has been the joining of the vocational education, apprenticeship training, and in-plant training staffs under the Federal Security Agency and the chairman of the War Manpower Commission.<sup>51</sup> In this program organized labor insisted upon direct representation in executive positions, but so far it has been confined to advisory posts.<sup>52</sup>

The placement of workers in war jobs has been directed by the labor supply and training committees of WPB. They sought to coordinate the efforts of all interested Government agencies, but they relied upon the Civil Service Commission to place personnel with the Government and upon the state employment agencies to place workers with private industry. In time it became apparent that the state employment agencies were not sufficiently responsive to the needs of the National Government and, since these agencies were supported almost entirely by federal grants, the President and the Social Security Board in several lightning strokes consolidated all of them under federal control. On December 19, 1941, the President wired all the state governors that it was "essential that all of these separate employment services become a uniformly and . . . nationally operated employment service."<sup>53</sup> The few recalcitrants were soon given to understand that the Federal Government would either take over their employment agencies or withdraw its support and open its own agencies; and by the beginning of the next month all the state services became part of a federal system.

<sup>49</sup> U. S. Office of Education, *Defense Job Training* (1941); U. S. Office of Gov't Reports, *Defense Employment and Training for Employment* (1941).

<sup>50</sup> *The Training Within Industry Program*, OPM, LABOR DIV., TRAINING WITHIN INDUSTRY BRANCH, BULL. No. 1; *Upgrading*, *id.* No. 2; *Training Production Workers*, *id.* No. 2a.

<sup>51</sup> Exec. Order No. 9139, April 18, 1942, 7 FED. REG. 2919.

<sup>52</sup> Organized labor, early in the defense period, outlined programs for the training of new workers and demanded an opportunity to participate in their execution. AFL, PROCEEDINGS OF ANN. CONVENTION, 1940, pp. 208, 588-591; CIO, PROCEEDINGS OF 3D CONST. CONVENTION, 1940, pp. 57-60.

<sup>53</sup> Telegram from the President of the United States to the Governors of the States, Dec. 19, 1941.

In stark contrast to this marshalling of public employment agencies was the effort to regulate private employment agencies. The House Committee to Investigate the Interstate Migration of Destitute Citizens disclosed abuses in their operation that contributed to the confusion, instability, and exploitation of migratory and casual workers.<sup>54</sup> To correct this situation the Committee recommended<sup>55</sup> federal licensing of employment agencies engaged in interstate operations and the regulation of their advertising, their fees, and their methods of referral. The need for such legislation was further developed at public hearings, but no legislative action has resulted.

Forward strides were made by OPM and WPB toward an adequate enlistment of labor for war needs through the training and employment of women, Negroes, and other minority groups. The loss of skills and potential labor power because of the arbitrary exclusion of certain groups from industry was patently indefensible. Also, the inconsistency of struggling against the forces of race hatred abroad while we practiced discrimination in our industries at home became apparent to many. The National Defense Advisory Commission incorporated in its statement of labor policy a tenet against discrimination on the basis of age, sex, race, or color. The President submitted this to Congress,<sup>56</sup> and in the appropriation for defense training, Congress provided for equal treatment regardless of sex, race, or color.<sup>57</sup>

To implement this principle further, OPM established a Negro Employment and Training Branch and a Minority Groups Branch. Later the President appointed a Committee on Fair Employment Practice. These agencies received complaints, conducted investigations, held public hearings, and negotiated with private employers to remove discriminatory practices. In support of their work, the President required by Executive Order that every Government contract contain a stipulation against discrimination.<sup>58</sup>

In the training and employment of women, the Government's program proceeded very slowly. There was not only a traditional prejudice against the competence of women but also considerable confusion concerning the time when women were needed. The Administration anticipated extensive war needs and sought to start the schooling of women workers and their employment in munitions and aircraft plants at once.<sup>59</sup> The reluctance of schools and employers to change their habits and the disappointment of many women who found no openings were problems which were overcome only slightly. On the other hand, despite the President's

<sup>54</sup> *Hearings of the House Select Committee to Investigate the Interstate Migration of Destitute Citizens, pursuant to H. Res. 63, 491, 629 (76th Cong.) and H. Res. 16 (77th Cong.)*.

<sup>55</sup> On Feb. 17, 1941, Congressman Tolan introduced H. R. 3372. He revised and reintroduced it on May 7, 1941, as H. R. 4675 and on Aug. 7, 1941, as H. R. 5510.

<sup>56</sup> Communication from the President of the United States to Congress, Sept. 13, 1940, H. Doc. No. 950, 76th Cong., 3d Sess.

<sup>57</sup> Act of Oct. 9, 1940, 54 STAT. 1035.

<sup>58</sup> Exec. Order No. 8802, June 25, 1941, 6 FED. REG. 1532.

<sup>59</sup> *Effective Industrial Use of Women in Defense*, U. S. DEP'T OF LABOR WOMEN'S BUREAU, SPEC. BULL. No. 1 (1940); *Processes on Which Women Are Now at Work in Defense Industries*, *id.* (Oct 1940).

statement that there was no immediate need for the military mobilization of women, Congress hurriedly passed a law creating a Women's Army Auxiliary Corps.<sup>60</sup>

The War Manpower Commission approached the problems of labor training and supply with a broad authorization to "formulate plans and programs and establish basic national policies to assure the most effective mobilization and maximum utilization of the Nation's manpower in the prosecution of the war."<sup>61</sup> It announced early that it would establish deferments from military service for persons essential to war production,<sup>62</sup> and that it would make the use of the United States Employment Service mandatory for the recruitment of workers in war plants.<sup>63</sup> But the magnitude and complexity of its tasks have been reflected in the very gradual advance it has made in coordinating the existing agencies in its field and in developing its own administrative organization.

*Strikes.* Despite almost unanimous agreement upon the desirability of industrial peace in war industries, there has been an extreme divergence of opinion on the measures to obtain it. At the outset of the defense program, management and labor were urged to declare a truce, but neither was much inclined to forego any of its privileges. Gradually, with the increase of the emergency, particularly with each new aggression of Germany, the prevailing attitudes against strikes became more firm. Employers recommended their total curtailment. Labor insisted upon preserving its right to strike but agreed more and more to refrain from its exercise. Both opposed suggestions for compulsory arbitration. The forces in Congress and in the press hostile to the position of organized labor, became increasingly insistent in their demands for anti-strike legislation. The Administration, however, was committed to a policy of voluntary restraints and provided facilities for the voluntary settlement of disputes. Our declaration of war added force to the proposals against strikes, but it also brought a voluntary abandonment of the strike weapon; so the need for new legislation became less apparent and the basic law remained unchanged.<sup>64</sup>

There was filed in Congress a wide variety of anti-strike bills.<sup>65</sup> The outstanding features of most of them were gathered into an omnibus measure and adopted by the House of Representatives.<sup>66</sup> This measure united essentially two bills—the Smith bill containing a code of objectionable union practices, and a House Labor Committee bill establishing a Defense Mediation Board. The former sought (a) to

<sup>60</sup> Pub. L. No. 554, 77th Cong., 2d Sess. (May 14, 1942).

<sup>61</sup> Exec. Order No. 9139, April 18, 1942, 7 FED. REG. 2919.

<sup>62</sup> War Manpower Comm'n Release PM-3387, May 21, 1942.

<sup>63</sup> *Id.* PM-3481, May 28, 1942.

<sup>64</sup> The man-days of idleness because of strikes declined from 1,396,585 in Nov. 1941 to 476,471 in December and slightly less thereafter through March, 1942. (May, 1942) 54 MONTHLY LAB. REV., 1111, 1130.

<sup>65</sup> In the 77th Cong., 1st Sess. (1941): H. R. 1407, 4040, 4139, 4223, 5929, 6039, 6040, 6057, 6058, 6066, 6068, 6070, 6074, 6075, 6088, 6101, 6137, 6149, 6172, and S. 683, 1811. H. R. 4223 (Leland M. Ford), 5929 (Russell) and 6057 (Welchel) sought to make strikes in defense industries treason punishable by death.

<sup>66</sup> H. R. 4139, 77th Cong., 1st Sess., passed the House Dec. 3, 1941.

penalize unions whose officers were or had been Communists, Nazis, or felons, (b) to require a 30-day notice before a strike or lockout in defense employment, (c) to require a secret ballot for strikes in defense plants, (d) to prohibit new closed-shop agreements by defense contractors, (e) to prohibit interference with the acceptance or continuation of work for a defense contractor by violence, intimidation or the picketing of a worker's home, (f) to prohibit all picketing by non-employees in labor disputes over defense employment, (g) to prohibit the employment by defense contractors of persons to use force or threats against peaceful picketing, self-organization, or collective bargaining, (h) to prohibit jurisdictional strikes, boycotts, and sympathetic strikes in defense plants, and (i) to require the registration of labor organizations and the disclosure of finances, membership, officers, and such other information as might be required by the NLRB. Violators of these provisions were to be punished by a loss of rights under the NLRA, the Norris-LaGuardia Act, the Social Security Act, and the federal relief acts. The second set of provisions merely provided for a National Defense Mediation Board with powers and procedures for mediation and voluntary arbitration and with power to maintain the *status quo* for 60 days after the issuance of its order.

This bill was sent to the Senate and referred to the Committee on Education and Labor which deferred action pending the consideration by the Senate of two other bills that had been reported out favorably. One of those bills sought in cases of strikes or lockouts to extend the President's power to seize national defense plants, to preserve the *status quo* as to union recognition, and to adjust wages through the recommendations of Defense Wage Boards.<sup>67</sup> The other bill called for a 30-day notice prior to changes in conditions of work and routed unsettled disputes to the United States Conciliation Service, then to the National Defense Mediation Board, and then to a Labor Disputes Commission.<sup>68</sup> The Commission was empowered only to investigate, publish recommendations, and mediate or, upon the voluntary submission of the parties, to arbitrate the dispute. The bill also made it unlawful for an employer to agree to a closed shop under pressure of a strike. Because of industrial developments and executive action, no vote was taken by the Senate on either of these bills, and strike legislation has been allowed to rest.

The action taken by the executive branch of the Government reflected more vitally the effect of the war upon the law of strikes. The great bulk of disputes was left to the attention of the Conciliation Service of the United States Department of Labor which had long functioned on the basis of voluntary mediation. The War and Navy Departments, the Maritime Commission, and OPM established labor relations divisions to follow the labor situation very closely and to assist the Conciliation Service wherever necessary. To exert the full persuasive force of the war

<sup>67</sup> S. 2054, 77th Cong., 1st Sess., introduced Nov. 17, 1941, reported favorably by Senate Committee on the Judiciary on Dec. 1, 1941. SEN. REP. No. 846.

<sup>68</sup> S. 683, 77th Cong., 1st Sess., introduced Jan. 31, 1941, reported favorably by Senate Committee on Education and Labor on Dec. 3, 1941. SEN. REP. No. 847.

program upon those labor disputes which the Service and the active war agencies were unable to settle, the President created the National Defense Mediation Board<sup>69</sup> and later the National War Labor Board.<sup>70</sup>

These defense labor relations agencies utilized several special techniques of mediation. In some cases they employed a panel, ordinarily composed of six representatives of industry, labor, and the public, who acted separately or together in mediating disputes. The agencies also brought the disputants to Washington where prominent war administrators and military officials could be called on to impress them with the urgency of the war production program. In arbitration they used Government or impartial investigators to make field surveys of the relevant facts for the guidance of the arbitrators.

The principle of voluntary action by employers and employees was considered basic in the work of these Government labor relations agencies. The compulsory war powers of the President were brought forth only after these agencies attempted to obtain voluntary agreements and failed. The National Defense Mediation Board successfully settled all of its cases but three.<sup>71</sup> In these the President used troops—once to supplant workers<sup>72</sup> and twice to take the place of management.<sup>73</sup> When the CIO members of the Board withdrew, voluntary action was still requested. The President convened the national representatives of employers and employees and induced them to agree upon a continuation of facilities for the voluntary settlement of disputes without strikes or lockouts.<sup>74</sup> Upon that basis the National War Labor Board was created, and the Government has been obliged to enforce its decisions through plant seizure in only three instances.<sup>74\*</sup> The no-strike agreement was followed by an increase in the number of disputes referred to mediation and arbitration, but the policy of seeking voluntary settlements has succeeded in all but an insignificant few.

*Subversive Influences.* Organized labor has so often been accused of subversive activities by its opponents that most legislation against subversive influences has been regarded with distrust by labor leaders. When the extension and strengthening of the federal sedition and sabotage laws and the creation of a federal criminal syndicalism law were proposed there was considerable protest from organized labor. Even those union leaders who were desirous of having more restraint upon the militant left-wing unionists wanted assurance that the new laws would not be used against all union activity.

Congress, nevertheless, proceeded to extend and reinforce existing laws against subversive activities. It was made a crime to advise, counsel, or urge insubordina-

<sup>69</sup> Exec. Order No. 8716, March 19, 1941, 6 FED. REG. 1532.

<sup>70</sup> Exec. Order No. 9017, Jan. 12, 1942, 7 FED. REG. 237.

<sup>71</sup> NDMB REP. (1942) (mimeo.) 7.

<sup>72</sup> North American Aviation Inc. case.

<sup>73</sup> Federal Shipbuilding Corp. and Air Associates Inc. cases.

<sup>74</sup> Industry-Labor Conference, Dec. 17-23, 1941, 9 LAB. REL. REP. 461.

<sup>74\*</sup> Toledo, Peoria and Western R. R., March, 1942; General Cable Co., Aug. 1942; S. A. Woods Machine Co., Aug. 1942.

tion, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces.<sup>76</sup> Criminal syndicalism was more carefully defined and applied to the acts of individuals as well as conspiracies.<sup>76</sup> The sabotage statute was amended to cover all forms of national defense materials, premises, and utilities.<sup>77</sup> A new form of control was introduced in the Act requiring the registration of organizations engaged in civilian military activity when such organizations also engaged in political activity or were subject to foreign control.<sup>78</sup> That Act relied upon the power of publicity and sought merely to obtain information on the officers, membership, sources of funds, aims, activities, publications, and other property of such organizations.

Special legislation against subversive activities was designed for the maritime industry. Among numerous proposals the outstanding measure was an inclusive bill which sought to eliminate union hiring halls and strikes as well as to prohibit subversive propaganda at sea and to provide for the revocation of the license of subversive radio operators.<sup>79</sup> This was bitterly opposed by all the maritime unions and most of its proposals were also opposed by employers' associations. Out of the hearings on that bill, however, there developed a more specialized bill dealing solely with subversive activities of radio operators.<sup>80</sup> This was passed by the House and while it was pending in the Senate our country went to war. The Navy Department then asked for complete control of the situation and Congress adopted an amended bill which authorized the Secretary of the Navy to withhold the license of any radio operator whose presence on a ship was deemed inimical to the interests of national defense.<sup>81</sup>

The treatment of aliens has also been of concern to labor because of the actual and possible effects of anti-alien legislation upon the standards of American labor. The defense and war programs revived proposals to limit the employment of aliens and to deport all aliens guilty or suspected of subversive activities. Several appropriation acts prohibited the use of federal funds for the employment of aliens<sup>82</sup> and the special permission of the head of a Government agency was required for the employment of aliens on defense contracts.<sup>83</sup> After much debate and over the opposition of organized labor, Congress also passed the Alien Registration Act of 1940.<sup>84</sup> This law required the registration and fingerprinting of all aliens and

<sup>76</sup> Act of June 28, 1940, tit. 1, §1, 54 STAT. 670, 18 U. S. C. §9.

<sup>76</sup> *Id.* §2.

<sup>77</sup> Act of Nov. 29, 1940, 54 STAT. 1220, 50 U. S. C. §§101, 104.

<sup>78</sup> Act of Oct. 17, 1940, 54 STAT. 1201, 18 U. S. C. §§14 *et seq.*

<sup>79</sup> H. R. 2662, 77th Cong., 1st Sess., introduced Jan. 24, 1941.

<sup>80</sup> H. R. 5074, introduced June 17, 1941, passed the House, July 22, 1941.

<sup>81</sup> Act of Dec. 17, 1941, 55 STAT. 808, 47 U. S. C. (Supp. I) §353 note.

<sup>82</sup> Treasury and Post Office, 54 STAT. 55; Independent Offices, *id.* 111; State, Commerce, and Justice, *id.* 181; Dist. of Columbia, *id.* 307; Interior, *id.* 406; Labor and Federal Security, *id.* 574; Emergency Relief Appropriation Act, *id.* 611.

<sup>83</sup> Act of June 28, 1940, §11, 54 STAT. 676.

<sup>84</sup> *Id.* c. 439, 54 STAT. 670, 8 U. S. C. §§137, 155, 156a, 451-460 (1940); 18 *id.* §§9-13. The Supreme Court held a state alien registration act unconstitutional as an invasion of federal authority, *Hines v. Davidowitz*, 312 U. S. 52 (1941).



tightened the exclusion and deportation laws, particularly with respect to subversive activities.

Other alien controls were narrowly averted. A bill to provide for the prompt deportation of aliens engaging in espionage or sabotage and other criminal aliens was approved by both houses of Congress and vetoed by the President.<sup>85</sup> The veto was directed primarily at provisions in the bill which made it mandatory to deport drug addicts even though cured; but the President expressed the view that subversive aliens were deportable under existing laws, hence new legislation on that score was superfluous. Despite this view, the House passed a similar law (omitting the provision against users of narcotics) to deport alien spies, saboteurs, and felons.<sup>86</sup> No action was taken on this in the Senate. The Senate also passed over a bill which had been adopted by the House to exclude and deport aliens advocating any change in the American form of government.<sup>87</sup>

Related to these measures in spirit but much more directly affecting labor were the efforts to deport Harry Bridges, an alien, of Australian birth who was president of the International Longshoremen and Warehousemen's Union and Pacific Coast representative of the CIO. Investigations of his alleged Communist affiliations begun when he led a water-front strike in 1934, were followed by a persistent effort to have him deported. In 1939 there was an unsuccessful attempt to impeach the Secretary of Labor for not having instituted deportation proceedings.<sup>88</sup> Within a few months a deportation hearing was held before Dean Landis of the Harvard Law School, acting as special examiner, and Bridges was released for lack of evidence of his membership in the Communist Party. The House then passed a bill to deport Bridges which the Senate rejected as unconstitutional.<sup>89</sup> A Supreme Court decision in another case<sup>90</sup> led to a new law authorizing the deportation of aliens belonging to an organization advocating the violent overthrow of government regardless of the time of membership.<sup>91</sup> On this basis, a new deportation hearing was held and the examiner found that Bridges was a Communist Party member and recommended his deportation. The Board of Immigration Appeals reversed this finding; but the Attorney General accepted the views of the examiner and ordered Bridges' deportation. The case is now being referred to the United States Supreme Court with all the indications of a *cause célèbre*.

*Safety and Health.* The need for continuous and maximum production directed attention to the importance of safety and health. Prior to the commencement of the defense program, although the Walsh-Healey Act made it a violation of Government contracts to maintain unsanitary or hazardous conditions of work, the

<sup>85</sup> H. R. 6724, vetoed by the President, April 6, 1940, 86 CONG. REC. 4157.

<sup>86</sup> H. R. 9774, 76th Cong., 3d Sess., introduced May 15, 1940.

<sup>87</sup> H. R. 4860, 76th Cong., 1st Sess., introduced March 8, 1939.

<sup>88</sup> H. Res. No. 67, reported adversely by the H. Committee on the Judiciary, March 24, 1939, 84 CONG. REC. 3273.

<sup>89</sup> H. R. 9766, 76th Cong., 3d Sess., introduced May 14, 1940.

<sup>90</sup> Kessler v. Strecker, 307 U. S. 22 (1939).

<sup>91</sup> Act of June 28, 1940, 54 STAT. 670, 673.

Federal Government relied upon state officials to enforce the safety and health requirements of that act.<sup>92</sup> In the course of the defense program, however, the Secretary of Labor appointed a National Committee for the Conservation of Manpower in Defense Industries which enlisted a voluntary staff of safety consultants from private industry and offered their advisory services to Government contractors. In 1940 Congress appropriated sufficient funds to permit the employment of a nation-wide staff of safety men so that their services might be made available to Government contractors on a full-time basis.<sup>93</sup> These men have been used primarily as consultants to supplement the work of state factory inspectors and other state health officials.

The war Congress both reinforced and relaxed safety laws in other special fields within its jurisdiction. In 1941 the Longshoremen and Harbor Workers Compensation Act was applied to injured employees in our island possessions and foreign naval bases.<sup>94</sup> For the District of Columbia Congress added industrial safety provisions to the existing minimum wage law.<sup>95</sup> In the realm of coal mining it adopted an inspection law which rejected punitive sanctions but which started a necessary program of investigation.<sup>96</sup> In the maritime industry Congress authorized the head of any agency administering a navigation or inspection law to waive compliance at the request of the Secretary of Navy or War.<sup>97</sup> Considerable concern was expressed by many concerning the extent to which the relaxation of safety regulations in law and in practice might hinder the war effort. These few Acts of Congress merely disclosed some of the complexities of that problem.

*Social Security.* In no field of labor law have the prospects of progress during the war been more promising and the results more disappointing than in the realm of social security legislation. The war economy seemed to offer an ideal soil for the growth of the social security program. The conversion of industry to the production of war goods kept cutting down the supply of consumers' goods available on the market; at the same time it kept increasing the income of workers. To avoid inflation it was necessary to siphon off some of the income, and social security taxes were believed well suited to that purpose. Moreover, the increase of social security was an assertion of the success of our way of life in the center of a cataclysmic world. So it was proposed to extend the existing social security benefits to excluded groups such as domestic, agricultural, and maritime workers, and to develop new forms of social security in the fields of public health and industrial hygiene. Unfor-

<sup>92</sup> Compliance with the safety, sanitary and factory inspection laws of a state was prima facie evidence of compliance with the Public Contracts Act, Act of June 30, 1936, 49 STAT. 2036, 41 U. S. C. §35 (1940).

<sup>93</sup> Labor-Federal Security Appropriation Act, 1942, Pub. L. No. 146, 77th Cong., 1st Sess. (July 1, 1941).

<sup>94</sup> Act of Aug. 16, 1941, 55 STAT. 622, 42 U. S. C. (Supp. I) §1651.

<sup>95</sup> Pub. L. No. 271, 77th Cong., 1st Sess. (Oct. 14, 1941).

<sup>96</sup> Act of May 7, 1941, 55 STAT. 177, 30 U. S. C. (Supp. I) §§4 f. *et seq.* Originally introduced in 1939, it passed the Senate and was blocked in the House Committee on Mines and Mining. Only after amendments confined it to investigations was it enacted.

<sup>97</sup> Pub. L. No. 507, tit. V, 77th Cong., 2d Sess. (March 27, 1942).

tunately, however, in the defense years of 1940 and 1941, Congress was preoccupied with other issues and failed to concern itself with social security legislation. On January 7, 1942, in his budget message to Congress, the President clearly set forth his desire for such legislation.<sup>98</sup> As yet his words have not been heeded.

The first specific effort of the Administration to obtain social security legislation on a war basis was the proposal to pay displacement benefits to workers unemployed by the conversion of industry from peace to war production. Hearings were held upon a bill to provide war displacement benefits, training wages, and travel allowances to such workers.<sup>99</sup> Payments were to supplement state unemployment compensation benefits by 20%, but the administration was placed under the Federal Social Security Board. In view of the recent federalization of the employment service, this bill was regarded by the state unemployment compensation officials as the beginning of a move to consolidate their agencies and to remove them from office. As a result they led a crusade against the bill that was overwhelming. Various compromises were proposed. It was suggested that the Federal Government appropriate \$300 million to provide relief benefits to displaced workers<sup>100</sup> and reimburse the states for payments made by them to displaced workers who attended classes for war industry.<sup>101</sup> But these proposals were to no avail. The resistance of the state officials forced an abandonment of federal aid to war displaced workers.

In the field of old age insurance, the states were not concerned but the problems raised by the war were not very obvious, and no war adjustments have been made. One of the first problems was the possible loss of benefits because of a worker's transfer from covered employment to military service. Under the Social Security Act, old age benefits are computed at a certain percentage of the average monthly earnings of the worker during the period of his employment.<sup>102</sup> If he leaves covered employment, his average earnings fall and his benefits are correspondingly reduced and may be lost entirely. This situation faced the men who entered the armed forces, for their period of military service was not considered covered employment.

To cure this defect, the worker might have his status frozen as of the time he entered the armed forces, or he might be given credit for the time of his service.<sup>103</sup> The wage rate used for his period of military service and the contributions made therein presented difficulties but not insuperable problems. Unfortunately, no administration bill has been introduced to care for this situation. Already the survivors of some of the men killed in the war have lost the full benefit of their former contributions and many men in service and their wives still face that possibility.

<sup>98</sup> Message from the President of the United States to Congress, 88 Cong. Rec. Jan. 7, 1942, at 40, 42.

<sup>99</sup> *Hearings before the H. Committee on Ways and Means on H. R. 6559, 77th Cong., 2d Sess., Feb. 11-17, 1942.*

<sup>100</sup> H. R. 6639 and 6640, 77th Cong., 2d Sess. (1942).

<sup>101</sup> H. R. 6701 and S. 2270, 77th Cong., 2d Sess. (1942).

<sup>102</sup> Act of Aug. 10, 1939, tit. II, §201, 53 STAT. 1373, 42 U. S. C. §409(c) (1940).

<sup>103</sup> Under the Railroad Retirement Act provision was made to give credit for time served in the armed forces. Act of Oct. 8, 1940, 54 STAT. 974, 1014.

Another field of social security even more immediately affected by the war has been that of family welfare. The enlistment and induction of men with dependents left many families in need of financial assistance. To cope with this situation the Family Security Committee of the Office of Defense Health and Welfare Services proposed an extension of the Social Security Act to provide federal grants for local public assistance and a law to provide supplemental pay or family allowances to married men in the armed forces.<sup>104</sup> The War and Navy Departments also endorsed the suggestion of a family allowance, and after some debate over its amount and over the desirability of additional amounts for cases of dire need, Congress enacted a law providing for uniform family allowances.<sup>105</sup> The problem of further assistance has been left to existing agencies of relief.

Related to this situation of family need has been the problem of child care. The employment of mothers in war industries left many children with inadequate care at home. After investigation, the Children's Bureau of the Department of Labor planned community programs for the care of such children.<sup>106</sup> The funds available for maternal and child care under the Social Security Act were exhausted by normal needs; hence an additional appropriation was proposed for the state care of children whose mothers were working in war industries. To date, no such provision has been made.

A few minor improvements have been made in the Railroad Retirement<sup>107</sup> and Railroad Unemployment Compensation laws.<sup>108</sup> But aside from the provision for family allowances there has been no important extension of the Federal Social Security Act and no development of new social security measures during the defense or war periods.

*War Powers and Appropriations.* Many statutes of utmost importance to labor have not borne the label of labor legislation. The early defense acts<sup>109</sup> readjusted the Government's methods of doing business and conferred extraordinary powers upon executive officers. In so doing they found it necessary to reaffirm or amend existing labor laws. As indicated above, they expressly preserved the Davis-Bacon and Walsh-Healey Acts, and amended the Eight-Hour Law. A few of the first defense appropriation acts made some minor changes in labor law such as the provision for cash in lieu of vacations for War and Navy Department employees<sup>110</sup> and the waiver of a performance bond guaranteeing the wages of construction laborers.<sup>111</sup>

<sup>104</sup> Jeter, *Family Security and National Defense* (Dec. 1941) 4 SOCIAL SECURITY BULL. 3-6.

<sup>105</sup> Pub. L. No. 625, 77th Cong., 2d Sess. (June 23, 1942).

<sup>106</sup> U. S. DEP'T OF LABOR, CHILDREN'S BUREAU, DEFENSE OF CHILDREN SERIES; *Proceedings of Conference on Day Care of Children of Working Mothers*, 1941, *id.* PUB. NO. 281.

<sup>107</sup> The Second Revenue Act of 1940, of Oct. 8, 1940, 54 STAT. 974, 1014, credited military service for annuity purposes under the Railroad Retirement Acts.

<sup>108</sup> The Act of Aug. 13, 1940, 54 STAT. 785 and the Act of Oct. 10, 1940, 54 STAT. 1094, clarified the status of coal miners and increased the benefits under the Railroad Unemployment Insurance Act respectively.

<sup>109</sup> See note 19, *supra*.

<sup>110</sup> Act of June 28, 1940, 54 STAT. 676, 679.

<sup>111</sup> Pub. L. No. 43, 77th Cong., 1st Sess. (April 29, 2941).

Other defense measures and the subsequent war powers acts contained authorizations for executive action that completely altered the aspect of labor law administration.

The Selective Training and Service Act of 1940<sup>112</sup> established rules for the return to private employment of the released inductees. The standards of living of the men in the armed services were also afforded some protection by the Soldiers' and Sailors' Civil Relief Act of 1940 which suspended the enforcement of certain civil liabilities against such persons.<sup>113</sup> A provision which became significant in labor disputes was the section of the Selective Training and Service Act which authorized the President to seize and operate any industrial plant if the owner refused to manufacture war supplies ordered by the War or Navy Department. This section was relied upon in the seizure of plants shut down by labor disputes.

The war also required several enabling acts which made possible extensive and important modifications in labor regulations. The First War Powers Act, 1941, gave the President broad power to redistribute the functions of all executive bureaus, to make or amend all Government contracts (without regard to certain labor statutes), and to regulate all trade or communications with the enemy.<sup>114</sup> Under this act, OPM was converted into WPB; the War Labor Board and the War Manpower Commission were created; the labor supply and training sections of WPB and the Department of Labor were transferred to the Federal Security Agency; and the Bureau of Labor Statistics was made more directly responsive to the Chairman of the War Manpower Commission. Another statute which authorized the President to requisition any property required for defense reinforced his power to seize strike-bound plants.<sup>115</sup> A miscellany of other powers was provided for in the Second War Powers Act, 1942, some of which had significance for federal labor laws such as the power to waive navigation and vessel inspection laws whenever such action was deemed necessary in the conduct of the war.<sup>116</sup>

The annual appropriation acts have also been of tremendous weight in the effective administration of labor laws. Through the control of administrative funds, laws of almost unlimited potentiality have been caused to stagnate, while other incidental statutory authorizations have been expanded to major fields of labor regulations. The appropriations granted such agencies as the Department of Labor, the Social Security Board, and the NLRB to administer statutes enacted prior to the defense program have been increased slightly to meet normal growth, but they have been dwarfed by the immense appropriations given those agencies and others for war labor work.<sup>117</sup> It is obvious that in time of war there must be a persistent effort to curtail peace-time expenditures and to convert the customary activities of

<sup>112</sup> Act of Sept. 16, 1940, 54 STAT. 885, 890, 50 U. S. C. §308.

<sup>113</sup> Act of Oct. 17, 1940, 54 STAT. 1178, 50 U. S. C. §§501-585.

<sup>114</sup> Pub. L. No. 354, 77th Cong., 1st Sess. (Dec. 18, 1941).

<sup>115</sup> Pub. L. No. 274, 77th Cong., 1st Sess. (Oct. 16, 1941).

<sup>116</sup> Pub. L. No. 507, 77th Cong., 2d Sess. (March 27, 1942).

<sup>117</sup> In addition to the increase of funds for war activities, there has been a tendency to utilize labor agencies for extraneous war work such as the use of the Wage-Hour inspection staff to detect violations of priority orders.

Government agencies to war work, but what has not been so apparent is that the provisions of appropriations acts have effected a marked change in the nature of the labor law program of the Government.

Appropriation acts have probably been most significant as labor laws in that they have provided for employment. The estimates of the persons employed by the vast war expenditures<sup>118</sup> are one-half a million persons in June, 1940, three and a half million in June, 1941, and eleven million at the end of May, 1942.<sup>119</sup> The last figure is slightly more than one fourth of our total nonagricultural employment. In contrast, the public works program of the PWA, the WPA, the CCC, and the NYA has dwindled; their budgets have been cut drastically and their functions shifted to war purposes. The most fundamental labor adjustments to the war have been mentioned in no statutes, but have been directed through the provisions of war powers and appropriations acts.

## II. AT THE STATE LEVEL

The defense program was essentially a program of our National Government and it was not until after the declaration of war that the states began to make basic adjustments to the emergency. The early expansion of production and employment brought to the fore many labor problems, but the Federal Government created the agencies and the activities to deal with them. In several instances the state governors and labor law administrators were asked to confer with federal agencies on defense legislation. One of these conferences, called by the Council of State Governments with the co-operation of the United States Department of Justice, proposed a state anti-sabotage law.<sup>120</sup> Although bitterly opposed by organized labor and denounced by a conference of state labor administrators, the law was adopted by many states. The predominant attitude of state labor officials, however, expressed in an annual conference called by the Secretary of Labor, was that national unity and maximum production could best be assured by the maintenance of existing labor standards with as little change as possible.<sup>121</sup> There was considerable discussion of labor training, safety and health, and the voluntary adjustment of labor disputes in relation to national defense, but such defense measures required no new laws. The defense program, therefore, made only a slight impression upon state labor laws.

The war changed this situation. Although the National Government still dominated the emergency program, the states were called upon to make certain adjust-

<sup>118</sup> War expenditures increased from \$1,600 million in fiscal 1940, to \$6,300 million in fiscal 1941, to \$22,000 million by the end of May, 1942. U. S. TREAS. DEP'T BULL. (May 1942) 6; U. S. Treas. Dep't, Daily Statement, May 30, 1942.

<sup>119</sup> Estimates provided by the Bureau of Labor Statistics, Occupational Outlook Division.

<sup>120</sup> Federal-State Conference on Law Enforcement Problems of National Defense, Washington, D. C., Aug. 5-6, 1940.

<sup>121</sup> *Proceedings of the Seventh and Eighth National Conferences on Labor Legislation, Washington, D. C., Dec. 9-11, 1940, and Nov. 12-14, 1941*, DEP'T OF LABOR, DIV. OF LABOR STANDARDS, BULL. Nos. 45, 52.

ments. In January, 1942, representatives of most of the state labor departments convened in Washington to confer with the Secretary of Labor and officials of the War and Navy Departments and of WPB on the need for relaxing certain state labor laws to expedite the war program. The conference concluded that laws which might hinder maximum production, such as absolute hours laws, night work laws, and Sunday work laws, should be relaxed by administrative exemptions rather than be repealed or suspended by legislative action. A uniform exemption procedure was outlined for all the states. It called for an application by the war contractor, an investigation of need by the state department of labor, and the granting of permits limited to a definite number of workers and a prescribed period of time. In emergency cases, permits might be given first and the investigation made later. These procedures were designed to meet all war needs, without hesitation, yet to avoid abuse and to preserve standards for the post-war years. It was decided tentatively that an eight-hour day and a 48-hour week were the optimum hours for war work, that safety and health laws must be enforced to avoid accidents and absenteeism, and that there was then no need to modify the state child labor laws. These standards<sup>122</sup> were the basis for the affirmative action taken by the states in the war program.

*Hours of Work.* An investigation of the state labor laws that might be considered restrictive of war production revealed laws in 44 states limiting the hours of work of women, in 20 states forbidding night work by women, in 21 states requiring one day of rest in seven, and in 38 states prohibiting work on Sunday.<sup>123</sup> There was general agreement that wherever a law impeded essential war work some provision should be made to waive or suspend its operation. Steps to that effect were taken in all states concerned. At times the adjustment was effected through executive action and at times through legislation.

Only eight states had regular legislative sessions in 1942 and eight held special sessions. Many bills to suspend or amend labor laws deemed obstructive of the war effort were introduced, but only a few were adopted. In New York, Virginia, and Louisiana a state labor official was empowered to grant permits waiving the labor laws that restricted hours of work. The New York and Louisiana statutes<sup>124</sup> authorized dispensations to facilitate employment on a seven-day or multiple shift basis as well as employment without the usual hours limitations; but the laws expressly required demonstration that exemptions were needed for maximum production of war goods, that other employees were unavailable, that other technological adjustments could not be made, and that the health and welfare of the workers were safeguarded. Dispensations were to be limited in time and might be revoked when found unnecessary. The Virginia statute<sup>125</sup> authorized the Commissioner of Labor

<sup>122</sup> U. S. Dep't of Labor Release, Jan. 27, 1942 (mimeo.) (S. 42-41).

<sup>123</sup> *Summary of Laws and Regulations Governing Hours of Work in Industries Manufacturing War Supplies*, U. S. DEP'T OF LABOR, DIV. OF LABOR STANDARDS (1942).

<sup>124</sup> N. Y. War Emergency Dispensation Act of Jan. 29, 1942, incorporated in N. Y. Laws 1942, c. 544; La. Acts 1942, Act No. 41.

<sup>125</sup> Va. Acts 1942, c. 105.

to permit the employment of women only up to 10 hours a day or 56 hours a week, with similar restrictions as to time, employees, and war purpose. Massachusetts, Maine, Louisiana, and Rhode Island enacted laws conferring upon the governors of those states general war powers broad enough to include the issuance of rules and regulations affecting labor conditions.<sup>126</sup> The Massachusetts statute definitely authorized the suspension of any law affecting the employment of persons when necessary to remove any delay or obstruction in the production or transportation of war materials. These statutes have been applied only in specific instances, upon a consideration of the war needs in each case.

A few more limited statutes on hours of work were also adopted in response to the war program. Kentucky suspended the observance of all holidays other than Independence Day, Labor Day, and Christmas for the duration of the war.<sup>127</sup> South Carolina authorized its Commissioner of Labor to permit Sunday work in machine shops<sup>128</sup> and Sunday employment of children and women on Government work in mercantile and manufacturing establishments.<sup>129</sup> Conscientious objectors were exempted and protected from discrimination. In New Jersey the governor was empowered to suspend or alter the law requiring a 30 minute mealtime whenever such action would not endanger health or production.<sup>130</sup> Mississippi memorialized Congress to suspend the 40-hour week provisions of the federal laws.<sup>131</sup> These statutes evidenced the general willingness of the state legislatures to do whatever appeared necessary to unburden war production of legal encumbrances. Their failure to enact more such legislation was probably due not only to the opposition of local organized labor and the state labor officials, but also to the fact that the War and Navy Departments did not request further legislation.

The federal war officials were generally content with the few changes in state labor laws because of their relaxation by executive or administrative action. Most of the restrictive state laws expressly permitted special exemptions for extra work during an emergency. Where such flexibility was lacking, the new laws supplied it or the state authorities proceeded under a general implied power of the governor to issue necessary regulations whenever the existence of the state is threatened. As a result, permits have been granted for overtime, night work, and Sunday work in war industries, regardless of the usual statutory limitations. Cases have been handled individually and the permits adapted to the actual need. Of approximately 1,448 applications filed in the first four months of the war, all but 129 were granted.<sup>132</sup> Those rejected revealed upon investigation the availability of other labor or the possibility of other operational adjustments. The situation has been followed closely

<sup>126</sup> Mass. Acts 1942, c. 13; R. I. Pub. Laws 1942, S. 25; Me. Laws 1942, c. 305; La. Acts 1942, Act No. 148.

<sup>127</sup> Ky. Acts 1942, S. 58.

<sup>128</sup> S. C. Acts 1942, Gov. No. 904.

<sup>129</sup> S. C. Acts 1942, Gov. No. 903.

<sup>130</sup> N. J. Laws 1942, c. 31. The mealtime was reduced from 45 minutes to 30 minutes and overtime was permitted from 8 hours to 10 at time and one half pay for women workers in Louisiana. La. Acts 1942, Act No. 183.

<sup>131</sup> Miss. Laws 1942, H. R. 38.

<sup>132</sup> *Hours, Overtime and All-Out Production* (April 1942) 5 LABOR STANDARDS 33-36.



by various federal agencies and the continued relaxation of the state hours laws to facilitate the war program has been assured in all states.

*Labor Disputes.* Most of the early efforts to enact labor laws aiding the war program were concerned with the elimination of strikes and other destructive practices, measures urged long before the declaration of national emergency. Maryland forbade sitdown strikes,<sup>133</sup> Texas outlawed violence in labor disputes,<sup>134</sup> and Georgia required notice and a waiting period before strikes or lockouts.<sup>135</sup> California prohibited strikes and boycotts against non-union goods.<sup>136</sup>

The major group of state laws on labor difficulties in defense production was the accumulation of anti-sabotage laws. There were 18 of them enacted in 1941 and 1942.<sup>137</sup> All but two<sup>138</sup> followed closely the model recommended by the Council of State Governments. They outlawed injury to or interference with property and defective workmanship with intent to hinder or interfere with the prosecution of the war. Mere attempts, conspiracies, and unlawful entry on property to the same ends were also prohibited. To placate organized labor, the laws contained a section preserving the right to organize, to bargain collectively, and to engage in other lawful concerted activities for mutual aid and protection. California, New Hampshire, and Wisconsin added that the statute was not to be construed to make strikes illegal.<sup>139</sup> Organized labor still opposed these laws and kept down their number.<sup>140</sup>

Recently Mississippi enacted a law making it a crime to use force or violence or threats to prevent anyone from engaging in any lawful vocation.<sup>141</sup> The management-labor agreement to arbitrate all disputes, however, made it possible for labor to withstand all other efforts to adopt such legislation.

*Child Labor.* The augmented demand for labor in the defense industries affected child labor regulation slightly although fear of an ultimate labor shortage caused many attacks upon existing laws. Such laws as were adopted, exempting newspaper carriers from the child labor law of Indiana,<sup>142</sup> relaxing night work standards for theatrical performances in California<sup>143</sup> and the District of Columbia,<sup>144</sup> and lowering the age limit for bowling alley pin boys in New Jersey,<sup>145</sup> may have reflected somewhat the curtailed labor supply due to defense activity.

<sup>133</sup> Md. Laws 1941, c. 340.

<sup>134</sup> Tex. Laws 1941, H. 800.

<sup>135</sup> Ga. Laws 1941, Gov. No. 293.

<sup>136</sup> Calif. Laws 1941, S. 877 (passed over veto).

<sup>137</sup> Ark. Acts 1941, Act No. 312; Calif. Laws 1941, c. 184; Colo. Laws 1941, c. 173; Fla. Laws 1941, c. 20252; Ky. Acts 1942, Sabotage Prevention Act; Me. Laws 1941, c. 237; Md. Laws 1941, c. 388; Mich. Pub. Acts 1941, Act No. 366; N. H. Laws 1941, c. 47; N. M. Laws 1941, c. 176; N. Y. Laws 1941, c. 868; Okla. Laws 1941, c. 52; Pa. Laws 1942, Act No. 13; S. C. Acts 1941, Act No. 148; Tenn. Pub. Acts 1941, c. 158; Utah Laws 1941, c. 31; Vt. Laws 1941, Act No. 188; Wis. Laws 1941, c. 106.

<sup>138</sup> The New York and South Carolina acts, *supra* note 137, were confined to the damaging of military or naval equipment, supplies or stores.

<sup>139</sup> Statutes cited in note 137, *supra*.

<sup>140</sup> The Governors of Texas and Oregon were induced to veto such bills.

<sup>141</sup> Miss. Laws 1942, S. 28.

<sup>142</sup> Ind. Acts 1941, c. 51.

<sup>143</sup> Calif. Laws 1941, c. 287.

<sup>144</sup> Pub. L. No. 380, 77th Cong., 1st Sess. (Dec. 26, 1941).

<sup>145</sup> N. J. Laws 1941, c. 139.

Most child labor laws, however, permitted the employment of enough young people to meet immediate needs and the defense program had its chief effect in discouraging the elevation of child labor standards rather than in destroying existing standards.

The war changed this situation very little. The outstanding field of employment in which there was a demand for child labor and some resultant legislation was agriculture. The war industries drew away the mobile labor groups and the war wage levels made it extremely difficult for farmers to obtain labor at customary rates. Accordingly, New York enacted a law permitting children 14 and over to leave school to work on farms for 30 days in the school year<sup>146</sup> and another law allowing the issuance of work permits without the usual requirement of a promise of employment;<sup>147</sup> California provided that schools closed for agricultural work may continue to receive state financial aid;<sup>148</sup> and New Jersey established a State Commission on Student Service to regulate the release of children 14 years of age and over from school for agricultural work and to provide for the transportation and housing of those sent away from home.<sup>149</sup> The New Jersey law also permits a week's work of six 8-hour days or five 10-hour days and requires wages comparable to those paid adults. These relaxations are probably all the more significant because a wide latitude is generally provided for employment of children in agriculture.

To avoid a widespread abandonment of child labor standards and to minimize the abuses of existing lax laws, the Children's Bureau of the United States Department of Labor, together with the Department of Agriculture, the United States Office of Education, and the United States Employment Service, issued a policy statement on the employment of children in agriculture.<sup>150</sup> It recommended that young persons 16 years of age be employed before children of 14 and 15, that school sessions be dovetailed with agricultural work, and that children of 14 and 15 be released from school only if farm labor could be supplied in no other practicable way. Such a program called for more than the child labor standards of many agricultural states.

In a few miscellaneous statutes, child labor was affected favorably as well as adversely. School reporting was improved in Virginia;<sup>151</sup> lunch periods were required in Maine;<sup>152</sup> and child employment under 18 was prohibited in the penal institutions of New York.<sup>153</sup> Louisiana and Puerto Rico raised their minimum age from 14 to 16 in most occupations, reduced the maximum hours of work for children, and improved their enforcement provisions.<sup>153a</sup> In relaxing their hours laws for war work, New York,<sup>154</sup> Louisiana,<sup>154a</sup> and Virginia<sup>155</sup> expressly preserved existing

<sup>146</sup> N. Y. Laws 1942, c. 233.

<sup>148</sup> Calif. Laws 1942, c. 22.

<sup>150</sup> *Policies on Recruitment of Young Workers for Wartime Agriculture*, U. S. DEP'T OF LABOR, CHILDREN'S BUREAU (March 1942).

<sup>152</sup> Me. Laws 1942, c. 324.

<sup>153a</sup> La. Acts 1942, Act No. 341 (July 17, 1942); Puerto Rico Acts 1942, Act No. 230 (May 12, 1942).

<sup>154</sup> *Id.* c. 544.

<sup>154a</sup> La. Acts 1942, Act No. 41 (July 5, 1942).

<sup>147</sup> *Id.* c. 692.

<sup>149</sup> N. J. Laws 1942, c. 23.

<sup>151</sup> Va. Acts 1942, c. 43.

<sup>153</sup> N. Y. Laws 1942, c. 828.

<sup>155</sup> Va. Acts 1942, c. 105.

standards for minors under 18. On the other hand, Virginia opened theatrical performances to children<sup>156</sup> and New York reduced the minimum age for the operation of pleasure vessels from 16 to 12.<sup>157</sup> The war need for labor has apparently caused the enactment of only a few laws releasing children for gainful employment.

*Safety and Health.* The development of a safety program for war industries has been much more a federal activity than a state. The state laws have not been amended,<sup>157a</sup> nor has there been a noticeable increase in appropriations to care for the augmented work load. Several states attempted to concentrate their limited inspection staffs upon war plants, and in Pennsylvania, Ohio, and Wisconsin cooperative arrangements were made with the federal authorities to use state inspectors for plant visitations under the Federal Public Contracts Act. Most of the state activities in the field of safety and health, however, have been unaffected by the war.

A notable exception to the even pace of state health activity occurred in the adoption of a compulsory health insurance law in Rhode Island,<sup>158</sup> the first of its kind in the country. The law failed to provide for medical care, but it compensated workers unemployed because of illness. Although not strictly a war measure, it opened a new approach to social security in a fertile field with many war implications.

*Unemployment Compensation.* In contrast to the inaction of the Federal Government in the field of old-age insurance, the states took positive steps to adjust their unemployment compensation acts to war conditions. Since the unemployment benefit payments depend upon the continuation of contributions in covered employment and the average earnings of the employee during a period prior to his unemployment, it is essential to avoid a lapse of time for which no credit is allowed. Time spent in the armed service, in the absence of special provision, is not time spent in covered employment. To meet this situation 41 states have amended their laws. One group eliminated the period of military service from the base period used to compute earnings and benefits;<sup>159</sup> a second group froze benefit rights as of entry into service;<sup>160</sup> and a third group granted the service men wage credits for each quarter of service.<sup>161</sup>

Other amendments to the state unemployment compensation acts improved benefit schemes and extended coverage. The changes in 1940 and 1941 followed some of the 1939 amendments to the Federal Social Security Act and repaired some of the deficiencies of the early state acts.<sup>162</sup> Nearly all of the states also made provision to pay compensation to persons remaining unemployed after discharge from

<sup>156</sup> *Id.* c. 167.

<sup>157</sup> N. Y. Laws 1942, c. 546.

<sup>157a</sup> Louisiana adopted new boiler inspection laws. La. Acts 1942, Acts Nos. 204, 205 (July 11, 1942).

<sup>158</sup> R. I. Pub. Laws 1942, c. 1200.

<sup>159</sup> Thirty states have adopted this means: Ariz., Ark., Calif., Colo., Conn., Del., Hawaii, Ind., Iowa, Kan., Me., Md., Mass., Mich., Minn., Mo., Mont., Nebr., Nev., N. H., N. Y., N. C., N. D., Ohio, Okla., Ore., R. I., S. D., Vt. and Wis.

<sup>160</sup> Four states—Fla., Ga., S. C., and Tenn.—have adopted this means.

<sup>161</sup> Three states—Utah, Ill. and Wis.—have adopted this means.

<sup>162</sup> *Unemployment Compensation Legislation of 1941* (March 1942) 5 SOCIAL SECURITY BULL. 14-20.

the armed forces.<sup>163</sup> In 1942, however, once the federal efforts to obtain war displacement benefits failed, only the state of Michigan felt impelled to provide them.<sup>164</sup> New York enacted a law which gave transportation and temporary home relief to persons offered a job in New York or in a bordering state, and it disqualified for relief persons refusing vocational training for defense work.<sup>165</sup> Other states merely increased the benefits under their existing laws.<sup>166</sup> On the whole, however, the states have been much more responsive to the war situation in social security legislation than has the Federal Government.

*General War Powers Acts.* The uncertainty of war needs and the desirability of complete preparedness led many persons to advocate general enabling acts authorizing state governors or state defense councils to do anything necessary for the successful prosecution of the war.<sup>167</sup> In 1942 the states of Massachusetts,<sup>168</sup> Maine,<sup>169</sup> and Rhode Island<sup>170</sup> enacted comprehensive war powers acts. Although they refer primarily to the utilization of material resources and the protection of life and property, they contain general authorizations which may be applied to the use of manpower and the determination of labor standards in critical situations. Other more specific statutes with labor implications were those permitting the organization of State Guards.<sup>171</sup>

The exercise of such powers and their effect upon labor standards may be extensive or negligible, depending upon the developments of the war. So far there has been little occasion for resort to those powers. As long as the Federal Government continues to control the war program as it has, it is likely that such general state laws will remain mere potentialities.

#### IN CONCLUSION

The European war cast its influence over this country and our laws affecting labor in a gradual, though persistent manner. Much that occurred at the close of 1939 and through 1940 was a continuation of earlier trends and an effort to withstand the irresistible drift toward war. The emergence of the defense program was slow and painstaking, and the adaptations of labor law followed a similarly tortuous course. Our engulfment into the war quickened our industrial activity and led to more deliberate adjustments in labor law. But the fundamental character of our labor law was not rearranged. It appears certain that the process is still unfolding and that significant changes may yet come. Nevertheless in the two years of defense

<sup>163</sup> Forty-three states enacted such laws. See Prentice-Hall, *Unemployment Ins. Serv.*

<sup>164</sup> Mich. Pub. Acts 1942, 2d Extra Sess., Act No. 18 (terminates May 31, 1943).

<sup>165</sup> N. Y. Laws 1942, c. 925.

<sup>166</sup> N. Y., Pa. and R. I.

<sup>167</sup> All forty-eight states organized State Defense Councils under the direction of the Governors to be prepared for emergency action.

<sup>168</sup> Mass. Acts 1942, c. 13.

<sup>169</sup> Me. Laws 1942, c. 305.

<sup>170</sup> R. I. Pub. Laws 1942 (S. 25).

<sup>171</sup> The following 27 states passed a State Guard Act similar to one formulated by the Federal-State Conference on Law Enforcement Problems of National Defense: Colo., Del., Fla., Ind., Iowa, Kan., Me., Md., Neb., N. M., N. Y., N. C., N. D., Ohio, Okla., Ore., Pa., R. I., S. C., S. D., Tenn., Texas, Utah, Vt., W. Va., Wis., and Wyo.

activity and nine months of war certain definite influences have been manifested which are worthy of note.

The war has not rewritten any of the major pieces of labor legislation. Insofar as it has called for new legislation, it has expressed itself essentially through new statutes. The principal federal laws were either completely untouched or amended in insignificant details. The Federal Eight Hour Law and some of the state hour laws were amended more fundamentally. Additions were made to state unemployment compensation acts and the railroad pension and unemployment acts to refer expressly to war situations. Primarily, however, the war labor legislation has taken the form of isolated provisions within the Defense Acts, the Selective Training and Service Act, the Soldiers and Sailors Civil Relief Act, the War Powers Acts, and various appropriation acts.

Nor have the courts altered their decisions in response to the war. In the period of our defense and war programs, the United States Supreme Court rendered many far-reaching opinions, yet very few have shown the impact of the war.<sup>172</sup> The Court held federal wage and hour legislation constitutional and reversed its former ruling on the validity of federal child labor regulation;<sup>173</sup> it interpreted the language of the NLRA broadly to require the writing and signing of an agreement reached by collective bargaining;<sup>174</sup> it excluded from the application of the Sherman Act jurisdictional disputes and boycotts that did not seek the control of prices or commercial practices;<sup>175</sup> and it reversed itself on the power of state legislatures to control the fees of private employment agencies.<sup>176</sup>

In none of these significant labor decisions was the war an influential factor. The oppression of the Axis powers, however, may have helped elicit from the Court the impassioned defense of freedom of speech, press, and assemblage in its decisions denouncing laws prohibiting the distribution of handbills,<sup>177</sup> or peaceful picketing,<sup>178</sup> or in its decision upholding the right of a labor leader to suggest a strike

<sup>172</sup> It is obviously impossible to ascertain the full extent to which the Court may have been affected by the war. In a recent case counsel for an employer argued that because of the war emergency, the Fair Labor Standards Act should not be interpreted in a way that would penalize overtime work. The Court sustained the interpretation sought by counsel, but there is no indication that it did so because of that argument. *Walling v. A. H. Belo Corp.*, 62 Sup. Ct. 1223 (1942).

<sup>173</sup> *U. S. v. Darby Lumber Co.*, 312 U. S. 100 (1941).

<sup>174</sup> *H. J. Heinz Co. v. NLRB*, 311 U. S. 514 (1940).

<sup>175</sup> *Apex Hosiery Co. v. Leoder*, 310 U. S. 469 (1940); *U. S. v. Hutcheson*, 312 U. S. 219 (1941); *U. S. v. Int. Hod Carriers & Common Laborers Union*; *U. S. v. Building & Constr. Trades Council*; and *U. S. v. United Bro. of Carpenters and Joiners*, 37 F. Supp. 191 (N. D. Ill. 1941), *aff'd*, 313 U. S. 539 (1941).

<sup>176</sup> *Olsen v. Nebraska*, 313 U. S. 236 (1941).

<sup>177</sup> *Lovell v. City of Griffin*, 303 U. S. 444 (1937); *Hague v. CIO*, 307 U. S. 496 (1938); *Schneider v. Irvington*, 308 U. S. 147 (1939); *Cantwell v. Connecticut*, 310 U. S. 296 (1940); *Cox v. New Hampshire*, 312 U. S. 569 (1941).

<sup>178</sup> *Thornhill v. Alabama*, 310 U. S. 88 (1940); *Carlson v. California*, 310 U. S. 106 (1940); *Milk Wagon Drivers' Union v. Lake Valley Farms*, 311 U. S. 91 (1941); *Milk Wagon Drivers' Union v. Meadowmoor Dairies*, 312 U. S. 287 (1941); *AFL v. Swing*, 312 U. S. 321 (1941); *Hotel etc. Employees Int. Alliance v. Wisconsin Employment Rel. Board*, 62 Sup. Ct. 706 (1942); *Carpenters etc. Union v. Ritter*, 62 Sup. Ct. 807 (1942); *Bakers etc. Helpers Local v. Wohl*, 62 Sup. Ct. 816 (1942); *Allen-Bradley Local No. 1111 v. Wis. Employment Rel. Board*, 62 Sup. Ct. 820 (1942).

against a proposed court order.<sup>179</sup> The Court also seemed to refer to current dangers in its holding that strikes on board ships, even in home ports, were unlawful.<sup>180</sup> Aside from these few instances, it is not clear that the war was responsible for the substance or tenor of the Supreme Court opinions in labor cases.

As far as the legislative and judicial records are concerned, it appears that the war has not altered the basic principles of American labor law. Employees have the right to organize and to select their representatives free from the influence of their employer. Collective bargaining is required. The right to strike, though denied seamen and though voluntarily abandoned by most workers for the duration of the war, remains otherwise intact. Picketing is protected by constitutional guarantees, and boycotts are generally removed from the Sherman Act. Wages, hours, and working conditions are matters of private contract, subject to the minimum standards enacted to protect the weak from the strong in the industrial market. Social security remains as collective insurance against certain risks of our economic order. So the fabric of our labor law has weathered the onset of war without serious distortion.

The great changes wrought by the war in labor law have been produced not through legislation or court decisions, but through the orders and activities of the executive officers of our Government. The federal officials who developed the labor training and placement programs, who mediated and arbitrated labor disputes and stimulated the adoption of stabilization agreements have been making the real war changes in labor law. So on the state level, the administrative officials who granted exemptions from hours laws, night work laws, and Sunday laws to meet war needs have controlled the extent to which the war has relaxed labor standards. All of the officials have been united in a desire to contribute to the war effort, yet most have been aware of the long struggle required to obtain labor laws and of the possibilities of abuse in a complete abandonment of any of the laws. So, wherever necessary, existing standards have been relaxed, but care has been exercised to preserve a basis for post-war recoument and progress.

Between the present and the aftermath of the war lies an unexplored sea. The many attempts to scuttle our labor laws have been resisted, yet their revival is still possible. The few attempts to advance labor standards within the war program have not proceeded far, yet they too may be revived. Probably through executive action more than through legislation may we expect important developments. The War Manpower Commission has the power to rearrange our labor market and the War Labor Board may set the pattern for fundamental changes in our terms of employment. There is still the hope of expansion in our social security program. The only certainty seems to be that whatever adjustments will be deemed necessary for success in the war will be made.

<sup>179</sup> *Bridges v. California*, 314 U. S. 252 (1941).

<sup>180</sup> *Southern Steamship Co. v. NLRB*, 62 Sup. Ct. 886 (1942).