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THE UNION SECURITY POLICIES OF THE NATIONAL WAR LABOR BOARD : MAINTENANCE OF MEMBERSHIP

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CHAPTER I

THE WAR LABOR BOARD: ITS ESTABLISHMENT, ORGANIZATION AND JURISDICTION

The National War Labor Board was established by executive order of the President of the United States on January 12, 1942.[1] The creation of the Board was the President's answer to the request of the labor, employer and government representatives,[2] whom he had convened at the White House on December 17, 1941 to formulate means for eliminating strikes and lock-outs in defense industries, that "the President shall set up a proper War Labor Board to handle these disputes."[3] In view of the failure of the previous National Defense Mediation Board to function effectively for even a nine month period,[4] the atmosphere which surrounded the creation of the new Board was understandably skeptical--the greatest hope for its success being placed in the apparent sincerity of both labor and management to submerge their private interests for the duration of the war in order to achieve a total unity on the domestic production front.

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1. Executive Order # 9017; See Appendix C.
2. Government representatives were William H. Davis, Chairman of the National Defense Mediation Board and Sen. Elbert Thomas, Chairman of the Senate Committee on Education and Labor. The A.F. of L. and the CIO each sent five representatives, including Presidents Green and Murray.
3. No-strike, No-Lockout Agreement of Labor and Management; Appendix B.
4. While in theory the NDMB continued to exist until supplanted by the WLB on Jan. 12, 1942, actually its activities were effectively curtailed in Nov. 1941 when most of the CIO unions withdrew as a result of the Board's decision in the captive coal-mine case.

The present Board has already enjoyed a life span of almost twice that of its predecessor. Throughout that period it has been subjected, periodically, to external attack.[5] The evidence available, to the present time, would seem to indicate, however, that if this Board is to fare no better than the other it will be not because it has failed to deal acceptably with the union security issue, as was true in the case of the NDMB in the captive coal-mine dispute, but solely because of the unacceptability of its wage stabilization policies--an additional field of activity placed within the Board's competence by the President's Executive Order of October 3, 1942.[6]

In view of the fact that the present Board has succeeded where the other could not and since the union security policies of the two agencies were not essentially dissimilar in their main outlines at least, it is of more than academic interest to note the relative weaknesses and strong points of both so as to possibly explain the comparative longevity of the present Board and to assist in its preservation for the duration of the war.

The Establishment of the Board

The National Defense Mediation Board, like the War Labor Board, was established by executive order.[7] The Board was composed of eleven members--four each representing labor and management,

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5. For a characteristic illustration of such attacks see the New York Times editorial page, March 28, 1943.
6. Executive Order # 9250; See Appendix E.
7. Executive Order # 8716, March 19, 1941: See Appendix A.

and three public members.[8] A subsequent order of April 4 increased the total so as to include an alternate for each of the regular members.

Action by the Board might only be taken after certification by the Secretary of Labor that a controversy or dispute had arisen between an employer (or group of employers) and employees (or organization of employees) which threatened to burden or obstruct the production or transportation of equipment or materials essential to national defense, and that such dispute could not be adjusted by the commissioners of conciliation of the Department of Labor.[9] All disputes coming within the purview of the Railway Labor Act were expressly excepted from the Board's jurisdiction.[10]

In controversies and disputes so certified, the Board was authorized:[11]

a) to make every reasonable effort to adjust and settle any such controversy or dispute by assisting the parties thereto to negotiate agreements for that purpose.

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8. Ibid., Sec. 1,a. The original makeup consisted of: Public members, Clarence A. Dykstra, Chairman, William H. Davis and Frank P. Graham; Employer members, Cyrus Ching, Walter C. Teagle, Eugene Meyer and Roger Lapham; Labor members, Philip Murray and Thomas Kennedy (CIO), and George Meany and George Harrison (AFL).
9. Ibid., Sec. 2. In all 118 disputes were certified to the Board of which 96 were closed; the remaining 22 were transferred to the War Labor Board after the NDMB was dissolved. It is interesting to note that in the large majority of the cases closed by the Board, final action was taken through the "agreement" of the parties as distinguished from Board "recommendation." For a detailed analysis see Report on the Work of the National Defense Mediation Board, published by U.S. Dept. of Labor, Bureau of Labor Statistics; Washington, D. C., 1943.
10. Ibid.
11. Ibid.

b) to afford means for voluntary arbitration with an agreement by the parties thereto to abide by the decision arrived at upon such arbitration, and, when requested by both parties, to designate a person or persons to act as impartial arbitrator or arbitrators of such controversy or dispute.

c) to assist in establishing, when desired by the parties, methods for resolving future controversies or disputes between the parties: and to deal with matters of interest to both parties which may thereafter arise.

d) to investigate issues between employers and employees, and practices and activities thereof, with respect to such controversy or dispute; conduct hearings, take testimony, make findings of fact, and formulate recommendations for the settlement of any such controversy or dispute; and make public such findings and recommendations whenever in the judgment of the Board the interests of industrial peace so require.

e) to request the National Labor Relations Board, in any controversy or dispute relating to the appropriate unit or appropriate representatives to be designated for purposes of collective bargaining, to expedite as much as possible the determination of the appropriate unit or representatives of the workers.

It is to be readily noted that the authorization granted to the Board was surrounded with restrictive limitations. The Board might not intercede in any matter of its own volition; it could not settle disputes but at best might make findings of fact and formulate recommendations; it could not prescribe arbitration unless requested to do so by the parties concerned; and, finally it could impose no sanctions.[12] The basis of compliance with the Board's recommendations was contained in a statement of the order that "it is hereby declared to be the duty of employers and employees engaged in production or transportation of materials essential to national

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12. Executive Order # 8716.

defense to exert every possible effort to settle all their disputes without any interruption in production or transportation."[13a]

The disintegration of the Board was presaged by the strike call which became effective in the "captive coal mines" in Pennsylvania, West Virginia and Kentucky on September 15, 1941. The sole issue involved in this dispute was the demand of the United Mine workers for a union shop. The National Defense Mediation Board considered the stoppage as part of the general bituminous coal mining dispute which had been certified to it in April, and interceded on September 16 with a request that the miners return to work pending a settlement. On September 22nd work was resumed on the basis of a 30 day truce, after which the strike might be resumed on three days notice given by either party. In the negotiations which followed, the Board was unsuccessful in effectuating a settlement. It issued no recommendations as to a basis for settling the union shop issue but did advance two alternative arbitration proposals, both of which were unacceptable to the union. On October 27th the strike was resumed---this time involving some 53,000 miners and extending into Alabama. On October 30th, after the intervention of the President, the miners agreed to return to work until November 15th

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13a. Although the Board could not, of itself, enforce its recommendations, in practice, it was not altogether impotent. For a discussion of action taken at North American Aviation Corp., Federal Shipbuilding and Drydock Company, Kearny, and Air Associates, Inc.,---three instances in which the Board met with defiance at the hands of management, see Harvard Law Review, Vol.54, Economic Mobilization; also Defense Economy of the United States, by John C. DeWilde, in Foreign Policy Reports, Sept. 15, 1941, published by Foreign Policy Association, N.Y.

"on the understanding that the National Defense Mediation Board will proceed in full session to consider the merits of the dispute and make its final recommendations," and, "that neither party is committed in advance to the acceptance of the final recommendations."[13]

On November 10th, by a vote of 9 - 2 (CIO members dissenting) the Board made its final recommendations refusing to recognize the United Mine Workers request for inclusion of a union shop. The bases for its refusal were the facts that 95% of the workers involved were already union members, that the union was capable of completing the organization of the industry, and that therefore, the union shop was not necessary to the security of the union. Needless to say, the United Mine workers refused to be bound by the recommendations, resumed the strike on November 17th and withdrew their membership from the Board. The dispute was not finally settled until December 7 when a special arbitration panel consisting of John L. Lewis, president of the UMW; Benjamin Fairless, President of the United States Steel Corporation; and John R. Steelmen, Director of the United States Consiliation Service awarded the union shop in the captive mines.

In view of the complete breakdown of the Board under the impact of this controversy and spurred on by the added necessity

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13. Contrast this with the language of the Board's previous arbitration proposals which would have bound both parties, in advance, to accept as final the decision of either of the arbitral panels suggested. For a discussion of the whole dispute, see Monthly Labor Review, published by United States Department of Labor, Bureau of Labor Statistics, Washington, Jan. 1942, pp. 94 et seq.

for uninterrupted production after the Japanese attack on Pearl Harbor, President Roosevelt summoned a conference of government, labor and management leaders, at the White House, on December 17th.[14] The principal purpose of this meeting was to reform the procedures of the National Defense Mediation Board so as to insure the elimination of strikes and lockouts for the duration of the war. Both employer and employee representatives made suggestions of their own which were only in part accepted.

The main employer suggestions were that the closed shop should not be admitted as a subject of dispute to be adjusted by the Board and that the policies of the Board should be laid down by executive order or by Congress. Both of these were passed over. The labor members suggested that the effect of labor laws should be left intact in any action of the Board, that the Board should consist of one public member and four each from labor and industry, and, finally, that the Chairman of the Board should certify disputes to it.[15] The last two were passed over. On December 23rd the President stated the general points of agreement which had emerged from the conference[16] and on January 12, 1942 promulgated Executive Order # 9017 establishing the new Board.

There are various points of contrast between the two Boards, the net result of which serve to give the present Board of twelve members a stronger position than that of its predecessor:

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14. Vide footnote 2, supra.
15. For a discussion of the White House conference see, Monthly Labor Review, February, 1942, pp. 427 et seq.
16. See Appendix B.

1. The new Board has behind it an employer-union pledge against work stoppages, and employer-union recognition that all labor disputes shall be settled by peaceful means.[17] The old Board had to depend upon the statement in the order of March 19th that it was the duty of all parties to refrain from interruption of production.[18]

2. The new Board is directed to make final determinations of disputes. "After it takes jurisdiction the Board shall finally determine the dispute, and for this purpose may use mediation, voluntary arbitration or arbitration under rules established by the Board."[19] As noted above the National Defense Mediation Board had no power of final determination and was definitely limited as to what it might do.

3. The new Board may settle disputes by prescribing arbitration:[20] the old one had to depend upon voluntary arbitration alone.

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17. See Text of No-Strike No-Lockout Agreement; also preamble to Executive Order 9017.
18. See footnote 13.
19. Executive Order 9017, Sec. 3.
20. Ibid., See also Press Release B 341, Speech of Wayne L. Morse, p. 3. "Some columnists in America seem to have discovered in the past few days that the Board has been functioning as a compulsory arbitration tribunal. It is difficult to understand how even a columnist could have missed it for so long, because the executive order states in clear and unambiguous language that the Board shall determine disputes if necessary by arbitration under rules established by the Board. See also Mr. Morse's Address of Jan.17, 1943, delivered in New York.

4. The new Board may take jurisdiction on its own initiative; it does not, as did the National Defense Mediation Board, have to await certification by the Secretary of Labor. "The Board, in its discretion, after consultation with the Secretary may take jurisdiction on its own motion."[21]

In some respects the jurisdiction of the new Board was narrowed.[22] Section 2 of the Order, for example, provides:

> This order does not apply to labor disputes for which procedures for adjustment or settlement are otherwise provided until those procedures have been exhausted.[23]

And, again, in Section 7:

> Nothing herein shall be construed as superceding or in conflict with the provisions of the Railway Labor Act, the National Labor Relations Act, the Fair Labor Standards Act, and the act to provide conditions for the purchase of supplies etc., (Walsh-Healey Act), or the act amending the Act of March 3, 1931, relating to the rate of wages for laborers and mechanics approved August 30, 1935.

Although not immediately pertinent to the object of this inquiry, attention should be directed to the Executive Order of October 3, 1942 which vastly increased the powers of the Board by providing:[24]

> No increase in wage rates, granted as a result of voluntary agreements, collective bargaining, conciliation, arbitration, or otherwise, and no decrease in wage rates shall be authorized....unless the War Labor Board has approved such increases or decreases, and further that the Board, shall not approve any increase in the wage rates prevailing on Sept. 15,1942

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21. Executive Order 9017, Sec. 3.
22. Executive Order # 9017.
23. Ibid.
24. Executive Order # 9250; See Appendix E.

> unless such increases are necessary to correct maladjustments or inequalities, to eliminate substandards of living, to correct gross inequities, or to aid in the effective prosecution of the war.[25]

The Organization and Procedure of the Board.

The organization and procedure of the Board were until January 21, 1943 extremely simple and outlined in a few documents. The executive order which established the Board provided for its original membership on a tri-partite basis, the method of designating its officers, and, provision for a quorum.[26] On January 24, 1942 executive order 9017 was amended so as to provide for the appointment of associate members who should "be authorized to act as Mediators in any labor dispute pursuant to the direction of the Board.[27] Rules of procedure to govern the action of the Board were likewise provided in the order and in two administrative regulations of the Board itself.[28]

After the promulgation of Executive Order # 9250 on October 3, 1942 a complete statement of the procedure to be followed in cases of voluntary applications for wage adjustments by private employers was formulated by the Board.[29] The final stage in the Board's organizational development was reached on January 21, 1943

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25. For a summary statement of the Board's voluntary wage increase policies see, Address of Vice-Chairman George W. Taylor, delivered at Swarthmore College, December 6, 1942.
26. Executive Order 9017, Sec. 1.
27. Amending Executive Order 9017; See Appendix C
28. See appendices 11 and 12.
29. War Labor Board Press Release: Procedure in Cases of Voluntary Applications for Wage Adjustments.

when a plan was announced for the creation of twelve Regional War Labor Boards, with full authority to make final decisions in labor disputes and in voluntary wage and salary adjustment cases.[30] Each of the regional boards was to be set up on the same tri-partite basis of public, employer and labor representatives as the National Board. In addition, the plan called for the establishment of permanent tri-partite panels in all the larger cities of the United States to handle disputes and make recommendations to the Regional Boards.

In announcing the plan, Chairman Davis stated:[31]

> The National War Labor Board in Washington, under the new procedure, will function as a supreme court for labor disputes, reserving the right to review Regional Board decisions on its own motion or by granting a petition to appeal filed by one of the parties to a case.

The Washington Board was to issue general policy directives and assume jurisdiction over cases of general importance. The new procedure under the changed arrangements involves three steps:

1. Mediation efforts by the United States Conciliation Service.
2. Hearing before a Regional Board Panel with recommendations to the Regional Board.
3. Decision by the Regional War Labor Board.

Any party would have the right, within ten days after the issuance of the directive order to petition the National Board for a review of the case. The petitioner for review would have to

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30. War Labor Board Press Release, # B 396; see also Appendix E.
31. Ibid., p. 1.

satisfy the Board (a) that a novel question was involved of sufficient importance to warrant national action, or (b) that the procedure adopted was unfair to the petitioner and resulted in substantial hardship, or (c) that the decision exceeded the Board's jurisdiction or was manifestly in conflict with established Board policy.[32]

The new decentralization program was unanimously approved by government, labor and management representatives of the National Board. Again quoting Mr. Davis' statement which accompanied the announcement of the plan:[33]

> This program extends throughout the nation the splendid development of practical democracy which has been evolved through the tri-partite system which has worked so well on the War Labor Board during the past twelve months. It means that public, labor and management representatives on each of the Regional Boards will sit down together and settle labor disputes where they should be settled, at a conference table and not on a picket line.
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> .....
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> Another objective of the decentralization program is to have labor disputes heard by permanently established panels set up in the area in which the dispute arises. In other words, we want local citizens to settle the labor disputes among their neighbors.

Another organizational device of which the Board has availed itself has been the Industry Commission or Committee, through the use of which an entire industry is treated as a unit in labor matters by the government. These have been especially useful in the Board's

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32. Ibid., p. 4.
33. Ibid., p. 2. See also Speech of Vice Chairman Taylor, before the Regional Board for Pennsylvania, Southern New Jersey, Virginia, Delaware, Maryland and District of Columbia, March 1, 1943: See also remarks of Roger Lapham, Robert Watt and Van Bittner in Press Release # B 396.

wage stabilization program. The composition of the commissions and committees is also tri-partite and their rulings are final subject only to Board review on its own motion.[34]

The most serious objection which has thus far been made to the Board's organization has been directed to what has been termed by critics and adherents alike as the tri-partite division of its composition. An appraisal of this objection requires, first, an inquiry as to whether or not the Board has, in fact, functioned as a tri-partite body in the sense that each section of its composition understands itself to be a special pleader for those interests which it is alleged it represents; and, secondly, granting for the sake of argument that the Board is nothing more than a combination of groups representing special class interests, is there any practical consideration present in the war emergency which would justify so radical a departure from the traditional practice in the American system of legal and administrative adjudication.

Referring again to Executive Order # 9017; Section 1 of that order provides:[34a]

> The Board shall be composed of twelve special commissioners to be appointed by the President. Four of the members shall be representative of the public; four shall be representative of employees; and four shall be representative of employers.

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34. For a complete discussion of industry commissions and committees see Press Release B-195, September 11, 1942 and B-380, January 18, 1943.

34a See Appendix C.

The language just quoted is susceptible of two interpretations. One, that the four representatives of each group were intended exclusively to serve as special pleaders for their constituents, or, two, that while they must be, at the time of their appointment, truly representative of a certain group, they would thereafter submerge their special interests to the exigencies of the general welfare of the nation as a whole.

No student of American jurisprudence or of administrative law will question the undoubted soundness of the principle in our law, that no man shall be a judge in his own cause. There is, at least, a serious doubt as to whether or not the War Labor Board permits such a possibility on the part of labor or management, as the case may be. The Board as presently constituted comprises twelve individuals, eight of whom may possibly be alleged to be representatives of special interests. Throughout the Board's existence a majority vote has been requisite for the issuance of a directive order. Neither labor nor management, of themselves, are in a position to provide such a majority. In the absence of such power neither can truthfully be described as judge in its own cause. Furthermore, and of substantial assistance in determining whether or not the Board has <u>in fact</u> functioned as a combine of special pleaders, there is the record which the Board has compiled:

> IN reality it (the War Labor Board) is a body of twelve men who represent <u>primarily</u> the Nation's interest in the peaceful settlement of labor disputes, to the end that maximum production of materials of war necessary for victory will not be impaired or disrupted by quarrels between employees and employers. The employer and labor members of the Board have seen

> to it that the contentions of employer and union litigants before the Board have been carefully weighed before the entire Board before reaching its decision, but they have rendered their decisions not as special pleaders, not as representatives of industry and labor, but as representatives of the President, charged with the responsibility of judging each case on its merits as they see the merits.[35] (Italics Inserted)

And further on in proof of his contention, Mr. Morse continued:

> We have issued more than three hundred directive orders to date, and in approximately 65% of those decisions, the Board has been unanimous. In about 5% the Board has been split in a manner in which part of the labor members have voted with the employer and public members and vice versa.[36]

As of December 7, 1942, therefore, the positive actions of Board members could not be construed to prove the special pleader contention. But certainly that same record could be urged to question such a contention.

Now, secondly, granting for the sake of argument, that the Board is nothing more than a combination of groups representing special interests, is there any practical consideration present in the war emergency which would justify so radical a departure from the traditional practice in the American system of legal and administrative adjudication.

Here again it must be borne in mind that the Board differs from both courts of law and other administrative tribunals. First of all its existence is admittedly temporary; secondly, it enjoys no

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35. Speech of Public Member Wayne L. Morse, delivered before the American Bar Association, New York City, December 7, 1942. Press Release B-341.
36. Ibid.

powers of enforcement nor can it effectuate in any way its reccomendations but through recourse to the President. In such event, it should further be remembered that the President is perfectly free to act upon or disavow the decisions of the Board. In this sense the Board may be classified, from an administrative point of view, as an advisory adjunct of the President, with no real power of compulsion apart from such action as the President may choose to take.

The greatest practical argument in favor of retention of the present method of composition is undoubtedly the overall success which the Board has had in eliminating strikes and lockouts, and the statements in favor of this method of composition made by all members of the Board. In their own words the tri-partite principle has the following advantages:

> It brings to one table representatives of management and labor. It gives to every member the right to speak his piece and to find out why the other fellow disagrees. No one can serve on any tri-partite labor Board without learning plenty, including tolerance. Decision across the table develops truth, exposes fallacies.
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> With all due respect to the public members of the national and regional boards, they too need the education which management and labor can give them and which they could no get if they sat alone without the voting check of management and labor. [37]

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37. Letter to the Editor, N. Y. TIMES, March 28, 1943., signed by all employer members.

The Jurisdiction of the Board

The jurisdiction of the present Board, in so far as it concerns problems of union security, is derived from Section 1 and 3 of the Executive Order of January 12, 1942. Section 1 of the order creates a National War Labor Board and Section 3 provides that "the Board shall finally determine the dispute, and for this purpose may use mediation, voluntary arbitration, or arbitration under rules established by the Board." The character of the disputes which shall be so finally determined is also defined in Section 3 as those "which might interrupt work which contributes to the effective prosecution of the war."[38]

That the Board is not intended to survive after the present war is sufficiently clear from the language of the order itself as well as from the public statements of all members of the Board. The original conditions which surrounded its creation are additional evidence that its continuation after the war would be vigorously opposed by labor and management alike.[39] The public members of the Board have, furthermore, already put themselves on record as opposing such continuation.[40] The greatest hope of all concerned is that while the Board, as such, will disappear with the end of the war, the approach to the whole field of labor relations which it may have

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38. Here again it must be noted that the Executive Order of October 3, 1942 increased the powers of the Board in wage stabilization matters to include wage questions of all types, whether disputed or not.
39. White House Conference and No-Strike No-Lockout Agreement; Also N. Y. TIMES, March 28, 1943.
40. See remarks of Chairman Davis; Speech delivered before the American Arbitration Association, Nov. 23, 1942; Press Release B-312.

developed, largely under compulsion, will survive. In this connection the Report of the Secretary of Labor for the year ending 1942 is worth quoting:[41]

> I do not suggest that the use of this method (recourse to a peace time War Labor Board) be made compulsory, but rather predict that if we train and develop this machinery conscientiously, we shall build up gradually an all but universal reliance on the process of adjustment rather than on the strike or lockout as a method of settlement of differences about wages, hours and working conditions, about unions' rights and obligations, individual rights and obligations and employers' rights and obligations.

The perplexing jurisdictional problems which the Board has had to meet relate to the character of the disputes which the Board may finally determine and the extent of its powers in respect to such disputes; and to the procedures which the Board may utilize for determination. At the time of the present writing the Board has clearly defined its position in regard to the latter: with the exception of certain ambiguous language in one opinion,[42] to be dealt with later at length, its position in regard to the former is likewise established.

Under the terms of the original order, the Board was empowered to determine only such dispute cases as threatened to interrupt work which contributes to the effective prosecution of the war. The

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41. Annual Report of the Secretary of Labor, 1942; Published by the Government Printing Office, Washington, D. C.
42. Matter of Municipal Government, City of Newark and State, County and Municipal Workers of America, Local 277, (CIO); Board of Transportation of the City of New York and Transport Workers Union of America (CIO(and Transport Workers Union of Greater New York, Local 100, (CIO); Metropolitan Utilities District, Omaha, Nebraska and American Federation of State, County and Municipal Employees, Local 431, (AFL): See Press Release B-359.

prime question in each case was therefore, to determine whether or not a given dispute so threatened the war effort. The Board has held consistently to the view that the character of the subject matter and of the parties are not the basic considerations which determine jurisdiction,[43] but that, rather, jurisdiction has depended upon an affirmative answer to the question: does the dispute threaten to interfere in any way with the successful prosecution of the war?[44] Or, in other words, "the possible effect of a given labor dispute upon the war effort is the only criterion to be consulted in determining whether the War Labor Board should properly take jurisdiction of the case."[45] (Italics Inserted)

As the Board has repeatedly pointed out, both in its opinions and in the public remarks of its members, the question of the possible effect of a given labor dispute upon the war effort is in each case a question of fact. In times of modern war practically any disruption will have repercussions, either direct or indirect, upon the war effort.[46] The whole matter of the types of disputes over which the Board will assume jurisdiction was completely reviewed and formally determined in its unanimous opinion of June 29, 1942 in Matter of

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43. Compare, however, the language of the Board in the cases cited in the previous footnote.
44. Address of Public Member Wayne L. Morse, Chicago, October 17, 1942: See Press Release B-247.
45. Address of Public Member Wayne L. Morse, Washington, D. C., September 17, 1942: See Press Release B.-204.
46. Ibid.; Here again compare the result arrived at in the cases cited in footnote 42.

Montgomery Ward and Company, Inc., and United Mail Order, Warehouse and Retail Employees Union, Local 20, CIO.[47]

The Montgomery Ward case was first certified to the Board by the Secretary of Labor on June 2, 1942. The company immediately challenged the Board's jurisdiction on the ground that the dispute did not come within the premises of Executive Order 9017. On June 16, 1942 the Board ordered hearings to be held before a special panel, informing the Company at the same time that it would be given full opportunity to present its arguments on the jurisdictional issue at those hearings. The hearings were held on June 22, 23 and 24 and on June 26th the Panel recommended to the Board that the case came clearly within the Board's jurisdiction.[48]

As pointed out in the Panel's Report, the company was engaged in the sale and distribution of merchandise through mail order houses and retail stores. It owned and operated nine mail order houses, 650 retail stores, and 200 mail order sales units throughout the country. Its net sales aggregated $500,000,000 per year and altogether it employed between 65,000 and 70,000 persons. The present dispute involved 5500 employees, 5000 of whom worked in the Chicago mail order house, 300 in its Chicago warehouse and 200 in the retail store situate opposite the mail order house. For the year ending June 1, 1942, sales of the Chicago mail order house aggregated in excess of 85 million dollars, while the retail

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47. War Labor Board Case # 192; See Press Release B-114.
48. Ibid., p. 2.

store's volume for the same period was slightly under $4,000,000. The company maintains its establishments throughout the United States.

The contentions of the parties on the jurisdictional issue were summerized by the Panel as follows:[49]

> The Company contends that the Board is without jurisdiction to adjust the dispute, because the company does not produce any war materials, has no government contracts, and does not distribute what cannot be readily obtained by purchasers elsewhere. Therefore, the Company argues, the dispute is not 'one which might interrupt work which contributes to the effective prosecution of the war' within the meaning of Section 3 of the President's Executive Order setting up the Board.
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> The Union contends, first, that the Company's chief mail order customers are farmers; that the company is engaged in selling farm equipment, machinery and things from local stores in the farm areas; that farm mechanics serving others besides themselves rely on procuring from the Company by mail order their tools and equipment: that, in particular, the Company has supples of wire for hay baling and binder twine which are unprocurable in ordinary retail stores; and that farmers who have purchased farm machinery from the Company can get replacement parts only from the Company, since the machinery sold by the Company's competitors differs in kind from that sold by the Company.
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> The Company replies that only about 2½% of all the net sales of the Chicago Mail Order House represent farm equipment, and that, even if the Chicago House were closed by a strike, the farmers could get adequate supplies from other mail order houses of the Company or from the Company's competitors.
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> The Union's second main argument is that a strike which would close the Company's Chicago units would have grave repercussions elsewhere, which would be most certain to spread an interruption of work thereby interfering with an effective prosecution of the war.

49. Ibid., pp. 2, 3.

The Panel's Report and the Board's opinion laid the greatest stress on the union's second main argument:[50]

> The most important question is not what effect a strike in Chicago would have on the Company's business there and elsewhere, but what effect it would have on industrial relations generally, and particularly on industrial relations in plants directly producing or distributing war materials. (Italics inserted)

And then, further on, in an attempt to limit the all-inclusiveness of the rule just announced, the Panel continued:[51]

> We do not suggest to the Board that every dispute, however small or isolated, concerns the national policy or properly comes under the Board's jurisdiction. Necessarily a selection must be made between those whose scope and location and probable effects are such as to threaten the public interest in the midst of war, and those which are of an incidental significance. (Italics Inserted)

In adopting both the recommendations and reasoning of the Panel, the Board enlarged, through explanation, its own position.[52] Three excerpts from the opinion summarize the Board's conclusions:

> It is to be noted that the national understanding with the President agreed to by representatives of labor and industry covers all labor disputes. It is also to be noted that the question of determining what disputes may interrupt work which contributes to the effective prosecution of the war is left to the judgment and discretion of the War Labor Board. Such a procedure is highly to be desired because obviously the question of determining the extent to which a given labor dispute might interrupt work which contributes to the effective prosecution of the war is a question of fact. Such a question of fact can be determined best by that agency of the government which is entrusted with the carrying out of the agreement that labor disputes shall be settled by peaceful means for the duration of the war.

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50. Ibid., p. 5.
51. Ibid.
52. Ibid., pp. 7,8.

> The War Labor Board appreciates the fact that the line of demarcation between so-called labor disputes which do not affect the prosecution of the war and those which do, is not a clear and definite one between fixed knowns. Very good arguments can be made in support of the proposition that any labor dispute, no matter how minor in nature, is almost certain, at least to some degree, to register a detrimental effect upon the war effort.
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> .....
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> .....The War Labor Board has taken in consideration the position that any labor dispute which may properly be adjudged a 'major dispute' that is one which in case of a strike or lockout is bound to directly affect no only a large number of workers involved in it, but also will affect detrimentally both directly and indirectly, the daily lives of a large number of peole, is one which in light of war conditions falls under the jurisdiction of the Board.
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> The decisions of the Board show its position that the question as to what disputes do or do not 'interrupt work which contributes to the effective prosecution of the war' is not one which can be determined by the application of some hard and fast rule. The cases differ one from another in many respects, and, hence, the problem becomes one of balancing interests and passing judgment upon degrees of effects which the various disputes have upon the war effort.

On the basis of the Board's opinion in the Montgomery Ward case the general rule might be formulated that, the Board will assume jurisdiction in all dispute cases which, directly or indirectly, may affect the successful prosecution of the war, regardless of the character of the subject matter or of the parties concerned.[53] Further,

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53. Despite the Board's reiterations that the character of the parties concerned would not determine its jurisdiction, the decision of the Board in the New York, Newark and Omaha cases (see footnote 42) was rendered purely on the basis of the character of one of the parties concerned in each of the three cases. "There is no doctrine more firmly established in American jurisprudence than the one that state governments and their subdivisions, within the sphere of their own jurisdiction, are sovereign. This sovereignty cannot be interfered with or encroached upon by the United States government."

in such cases as the jurisdiction of the Board may be questioned the burden of proving an exception lies squarely upon the party alleging such exception. Such questions as the size of the dispute and its possible effect upon civilian morale generally will have probative weight with the Board in reaching its determination.

Although the affirmative jurisdiction of the Board has its basis in Section 3 of Executive Order 9017, the full content and extent of that jurisdiction has to be appraised in the light of possible limitations imposed by Sections 2 and 7 of the Order.

Then, later, in a series of mental gyrations in order to reconcile the instant decision with the previous language of the Montgomery Ward case. "It is inconceivable that a dispute between a local government and its employees might reach such a point of disturbance as to impede and interfere with the successful prosecution of the war. Such a case would be an extraordinary one indeed, but should it occur, it is unthinkable that the doctrine of sovereignty as applied to local governments would be so interpreted as to deny to the President as Commander in Chief of the Army and Navy, the power to take such action in the premises as might be necessary to carry on a particular service, the disruption of which was impeding the war effort."

Here the Board solved the jurisdictional issue by neatly concluding that the facts of the case did not constitute a possible threat to the war effort, either directly or indirectly. The size of the dispute and its possible effect on civilian morale--both factors which were emphasized in the Montgomery Ward case--were not considered. In the New York case 32,000 employees were involved, almost six times as many as those concerned in the Montgomery Ward case and furthermore the New York subways which might have been disrupted served as the only means of transportation for large numbers of war workers.

Section 2 provides:[54]

> This order does not apply to labor disputes for which procedures for adjustment or settlement are otherwise provided until those procedures have been exhausted.

Section 7 provides:[55]

> Nothing herein shall be construed as superseding or in conflict with the provisions of the Railway Labor Act; the National Labor Relations Act; the Fair Labor Standards Act; the Act to provide conditions for the purchase of Supples (Walsh-Healy Act); or the Act amending the Act of March 3, 1931, relating to the rate of wages for laborers and mechanics, approved August 30, 1935.

The strongest attack on the Board's jurisdiction, based on the language of Section 7, as well as a sweeping denial of the constitutionality of the Board was presented in Matter of Bethlehem Steel Corperation, Republic Steel Corp., Youngstown Sheet and Tube Company and Inland Steel Company and United Steelworkers of America, CIO,[56] decided by the Board on July 16, 1942.

In counsels' briefs, the companies maintained (1) that a collective bargaining agreement containing a union maintenance clause would be in violation of the National Labor Relations Act and (2) counsel for Youngstown Sheet and Tube Company challenged the authority of the Board. During the course of his oral argument he stated: "I raise a legal question which as far as I know has not heretofore been raised in any proceedings before the National War Labor Board. It goes not merely to the authority of this Board to

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54. See appendix C.
55. Ibid.
56. This is the so-called "Little Steel" case and will be so referred to hereafter. War Labor Board Cases # 30,31,34,35.

impose a union security clause, but goes to the authority of this Board in a much more fundamental respect and that is to issue any directive order which requires anybody to enter into any kind of contract."[57]

The Board chose to answer first the fundamental objection raised by Youngstown Sheet and Tube Company.[58]

> The National War Labor Board was created through the exercise of the President's war powers. Hence the jurisdiction, powers and duties of the Board stem directly from the war powers of the President. The Board functions as a war agency. It is directly responsible to the President and obligated to exercise the powers and carry out the policies entrusted to it by the President. The arguments advanced by counsel for the companies questioning the jurisdiction of the Board fail to take into account this fact.
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> The objections to the jurisdiction of the Board overlook the fact that there is inherent in the war powers of the President the authority to take such steps as may be necessary to prevent and settle labor disputes which threaten to disrupt the successful prosecution of the war. The President of the United States as Commander in Chief of the armed forces of the nation, burdened with the duty of seeing that our armed forces are not only successfully directed but also are adequately supplied with the weapons of war, has by executive order entrusted to the National War Labor Board the duty of finally determining all labor disputes which 'might interrupt work which contributes to the effective prosecution of the war.
> .....
>
> It is immaterial that the issues involved in the dispute are over wages and union security. It is immaterial that in peacetime the parties might conceivably be justified in raising some legal objection to the enforcement of an arbitration award of which they do not approve. In wartime there is no basis

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57. Ibid., pp. 37, 38. (Only those jurisdictional issues immediately pertinent to the main objective of this paper are herein discussed.
58. Ibid., p. 38.

> for questioning the power of the President to order what amounts to compulsory arbitration for the settlement of any labor dispute, such as the instant one, which threatens the war effort. The President having entrusted this duty to the National War Labor Board, it follows that those who challenge a decision of the Board, challenge the war powers of the President.

In answer to the companies' objection that a collective bargaining agreement containing a union maintenance of membership clause would be in violation of the National Labor Relations Act, [59] the Board's opinion stated:

> Counsel for the companies in this case contend that Section 7 of the Executive Order takes this case out from under the jurisdiction of the Board because the issues involved conflict with the provisions of the National Labor Relations Act. The position of counsel is untenable because section 7 of the Executive Order must be read in connection with its relation to Section 2. It is the view of the War Labor Board that Section 7 merely reiterates the point that the Executive Order is not to be construed as superseding or conflicting with the jurisdiction of the several agencies functioning under the acts enumerated in the section.
>
> In other words, Section 7 of the Executive Order does not place a limitation upon the power of the Board finally to determine on their merits whatever issues may arise in a labor dispute, but rather when read in conjunction with Section 2 of the order, it places a procedural limitation upon the War Labor Board in that the procedures of other existing agencies for the settlement of labor disputes shall be exhausted before the War Labor Board takes jurisdiction. That is, the section lays down the rule in effect that the War Labor Board shall not supersede or conflict with the jurisdiction of the agencies empowered to carry out the provisions of the various acts enumerated in the section. However, even granting for the sake of argument, that Section 7 of the order relates to matters of substantive law rather than to procedural rights only, there is nothing in

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59. Ibid., pp. 42, 43.

> the decision of the War Labor Board in this case which conflicts with the provisions of the National Labor Relations Act or any other law enumerated in Section 7.

In answer to the argument that maintenance of membership was contrary to the National Labor Relations Act the Board pointed out that this did not follow if the maintenance of membership clause falls within the provise of Section 8(3) of the NLRA.[60] The "provided clause" in section 8 allows contracts which require as a condition of employment membership in a contracting labor union which is the exclusive representative of the employees in an appropriate unit.[61] It is obvious that the maintenance of membership clause goes no further than to require as a condition of employment membership in the union.[62] As the opinion further illustrates the only difference between the maintenance of membership clause and the closed shop provision, is that the latter requires all workers to be union members as a condition of employment whereas membership maintenance requires that the worker continue his membership as a condition of continued employment only, however, in respect to those employees who after the prescribed 'escape' period elect to remain members or

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60. Section 8(3) of the National Labor Relations Act provides: "It shall be an unfair labor practice for an employer...by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, that nothing in this act... shall preclude an employer from making an agreement with a labor organization to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in Section 9(a), in the appropriate collective bargaining unit covered by such agreement when made."
61. Little Steel Case, p. 43.
62. Ibid.

who become members thereafter.[63] As the opinion properly concludes:[64]

> It would be a tortured construction of the National Labor Relations Act to rule that any agreement which provides for a degree of unionism less than the closed shop would be in conflict with the law, whereas a closed shop agreement would not be.

Finally in regard to the procedures which the Board may utilize for determination of disputes, some uncertainty existed during the Board's early history as to what was intended by the language of Section 3 of Executive Order 9017 that the "Board... may use mediation, voluntary arbitration, or arbitration under rules established by the Board."[65] (Italics inserted) The language of the order itself as well as the whole history of the Board's activity to date demonstrate unquestionably that what was intended by the words "arbitration under rules established by the Board" was compulsory arbitration.[66]

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63. Ibid.
64. Ibid.
65. Executive Order # 9017, p. 1.
66. See footnote 20.

CHAPTER II

TYPES OF RELIEF GRANTED BY THE BOARD SHORT OF MAINTENANCE OF MEMBERSHIP

The War Labor Board has consistently maintained that the principal reason for its creation was to promote the effective prosecution of the war through insuring production. The approach which the Board has evolved, in order to accomplish its objective, has been conditioned by the implications of the no-strike, no-lock-out agreement and by the traditional attitudes of labor and management in matters affecting labor relations. The no-strike, no-lock-out agreement divested both labor and management alike of effective private recourse in dispute cases and made the government a party to every labor dispute. The precise function which the government should assume in this war-time arrangement had to be developed out of the institutional procedures and modes of thinking which were already existent in the field of labor relations at the time the Board was created. The basic general assumption upon which the Board proceeded was that both labor and industry recognized their interests to be common rather than conflicting ones,[1] although the means advanced by each for reaching the common objective, were often widely apart.

In the whole of the Board's record to date there is little evidence that in its union security policies it has been motivated

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1. Wayne L. Morse, Speech delivered before the American Bar Association, December 7, 1942, National War Labor Board Press Release B-341.

by a desire to protect any union for the union's sake. The important consideration in each case has been: what, in the present circumstances, will best aid the war effort[2]? The Board was early convinced "that a strong, responsible and properly operated union would aid production.[3] The reasoning behind this conclusion was summarized by Public Member Morse as follows:[4]

> When the fear of anti-union activity is removed, there is then a proper basis for harmony and intelligent cooperation between union and management. An attitude of mutual respect between labor and industry is the foundation for a real participation in production by the workers. It should be realized that the laborer has a stake in the company for which he works; if he feels he is a part of it and just not the recipient of kingly largess he may be expected to work more diligently and put more thought into his job.

In seeking to establish a common agreement between labor and management as to the proper course to be followed, the Board was confronted with two extremes---labor's persistent demand for the closed shop and management's equal vehemence for its traditional policy of the open shop. In between these two extremes the Board has pursued a compromise, middle of the road policy, searching for a solution which would protect the union adequately, where the facts demonstrated a need for such protection, without, at the same time, penalizing the employer. To have imposed the closed shop would have been in direct

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2. Wayne L. Morse, Speech delivered before the Federal Bar Association, Washington, D.C., September 17, 1942. Press Release B-204.
3. Ibid., p.8.
4. Ibid.

contravention of the national policy; while a decree of the open shop might have resulted in such industrial strife as to seriously impede the war effort.

In all the Board has been faced with three main types of disputes for determination[5]; those relating (1) to union recognition and status; (2) the terms of future agreements, and, (3) applications of the terms of existing agreements. Disputes centering around the issue of union status have been met with the Board's development of the maintenance of membership and checkoff formulas, to an analysis of the former of which this study is mainly devoted. Intervention in other types has been avoided, as far as possible, in the belief that these should be worked by the parties themselves, and, that the National War Labor Board is not, and could not become, a substitute for collective bargaining.[6] In a substantial number of cases, however, the Board has been forced, in the absence of a voluntary agreement between the parties, to decree union recognition,[7] the terms of future agreements, and the application of such terms.

The following summary though necessarily not exhaustive indicates the various forms which the Board's union security policies have taken, short of decreeing maintenance of membership.

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5. George W. Taylor, Speech delivered before Swarthmore College Student Union, Swarthmore, Pennslyvania, December 6, 1942, Press Release B-338.
6. Ibid., p. 3.
7. As will be noted later such has only been the case until the proper agency would act, or, where the precise relief sought was not afforded by any other agency.

TYPES OF UNION RELIEF GRANTED:

A. General Conditions of Work Specified:

In a large number of cases the Board has directed the inclusion in an agreement of a variety of general work conditions. This is quite apart from those cases in which the Board has found itself forced to draw up an entire contract.[8] In the Frank Foundries Corporation case[9] the whole of Section 4 of the Board's order is devoted to directions of this type.[10] Female employees are guaranteed equal pay for equal work.[11] Provision is made for lunch periods for each work shift and discrimination because of race, color, creed or nationality is prohibited.[12] In the Western Pennsylvania Motor Carriers Association case[13] the Board struck out a provision which permitted employees "to refuse to work, or haul, to or from any place where there is any labor trouble".[14] In the Canal Carriers Association case[15] the Board ordered a basic eight hour day. In the Matter of the Employees and Tool and Die Workers in the Detroit Area[16] the Board established maximum rates of pay for highly specialized mechanics in order to prevent "pirating" of labor; and in

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8. Matter of Arcade Malleable Company, Inc., and Steelworkers Organizing Committee, Local 2570. Press Release B-55.
9. Matter of Frank Foundries Corporation and International Union of United Automobile, Aircraft and Agrincultural Implement Workers of America, Local 909, Press Release B-199.
10. Ibid., p. 2.
11. Ibid.
12. Ibid.
13. Matter of Western Pennsylvania Motor Carriers Association and International Brotherhood of Teamsters, Local 249. Press Release B-201.
14. Ibid.
15. Matter of Canal Carriers Association and United Marine Division, Local 333, International Longshoremens Union, Press Release B-259.
16. Matter of Employees and Tool and Die Workers in the Detroit Area, Press Release B-346.

the Detroit Steel Products Company and Interstate Steamship Company[18] cases the Board ordered clauses relating to overtime pay, seniority, grievance procedure, bonuses and call-in pay.

In at least one case, Matter of Strand Baking Company and General Drivers Union, International Brotherhood of Teamsters of America,[19] the Board refused to institute a sick benefit and hospitalization service on the ground that "the work concerned was not characterized by any extraordinary hazards nor increased dangers to health over and above that which the average working person encounters."[20] The Board added added, in its opinion:[21]

> Granted that there exist many hospitalization agreements in American industries requiring the employers to deduct fixed amounts from pay of the employees, it is to be noted that most of those agreements are the result of voluntary collective bargaining negotiation between the parties thereto and are seldom imposed by arbitration.

B. Orders to enforce compliance with previous National Labor Relations Board Decisions:

In Matter of Shell Oil Company, Inc., and Oil Workers International Union, Local 367, the Board directed the company to recognize the Oil Workers International Union as exclusive bargaining agent in accordance with a previous decision of the National Labor Relations Board.[23] Section 1 of the War Labor Board's order directs as follows:

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17. Matter of Detroit Steel Products Company and United Automobile Workers Union, Press Release B-444.
18. Matter of Interstate Steamship Company and National Maritime Union, Press Release B-420.
19. Press Release B-348.
20. Ibid., p. 2.
21. Ibid.
22. Press Release B-212. See also Matter of Pacific Gas and Electric Company and Utility Workers Organizing Committee.
23. Ibid.

> The Board recognizing the findings and conclusions of the National Labor Relations Board as controlling directs as follows:
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> > The Company shall recognize the Union as the exclusive bargaining representative in the unit defined by the National Labor Relations Board in Case # R-626.

In a number of cases the Board has ordered the reinstatement of discharged employees[24] as previously directed by the National Labor Relations Board, and in one case has directed the disestablishment of a company union likewise previously ordered by the Labor Relations Board,[25]

C. Orders designating temporary bargaining agent pending National Labor Relations Board certification:

In a number of cases the War Labor Board has designated a temporary bargaining agent pending a certification by the National Labor Relations Board. In Matter of United States Cartridge Company and the International Association of Machinists[26] the Board ordered union and the cartridge company "pending determination by appropriate wuthority of the bargaining unit" to "proceed to negotiate and sign a contract". The contract so entered into was to remain in effect until such time as the National Labor Relations Board might determine a different unit as appropriate for the purposes of collective bargaining.[27]

In both the Virginia Electric and Power Company[28] and Thompson

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24. Press Release B-318.
25. Press Release B-433.
26. Press Release B-235.
27. Ibid., p. 1.
28. Matter of Virginia Electric and Power Company and Amalgamated Association of Street, Electric Railway and Bus Employees. Press Release B-281.

Products Company[29] cases the War Labor Board directed the management to recognize a union as the representative of its members for the presentation and adjustment of grievances until such time as the National Labor Relations Board certified a labor organization as exclusive representative. In both cases the kind of recognition granted was definitely limited to the extent that the union could act only for its own members and then only for the purpose of presenting and adjusting grievances. It is interesting to note that in the Virginia Electric Company case the Board also directed that "in the interest of harmony" the company should refrain from entering into any contractual relationship with the present union or with the independent union which claimed to represent certain of the company's employees "until such time as the collective bargaining agent is chosen under the law".[30]

D. Preferential Hiring and the Union Shop:

Various forms of preferential hiring have been decreed by the Board. In most of these instances the particular kind of preferential hiring ordered either had been agreed to previously by the parties themselves, or, was the general practice in the industry concerned.[31]

In no case to date has the Board ordered the inclusion of either a closed or union shop arrangement for the first time. In a few cases the Mediation Panel, before which the disputes were originally heard

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29. Matter of Thompson Products Company and United Automobile Workers of America, Local 300, Press Release B-323.
30. Press Release B281. See also Matter of Baltimore Transit Company and Association of Motor Bus Employees where like relief was given.
31. Matter of Interstate Steamship Company and National Maritime Union, Press Release B-469: Matter of 15 Paint Manufacturers, B-250.

has recommended a union shop. In such cases the Board has refused to accept the Panel's recommendations.[32] In Matter of 15 Clay Sewer Pipe Manufacturers[33] the Board did continue a union shop arrangement which had existed between the parties in their previous agreement over the company's request that the clause be reduced to maintenance of membership. In rejecting the company's request, the panel which originally heard the dispute stated:[34]

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32. Matter of Wilson Jones Company and United Paper, Novelty and Toy Workers International Union, Press Release B-216.
33. Matter of 15 Clay Sewer Pipe Manufacturers and United Brick and Clay Workers of America, Press Release B-319
34. Ibid. In line with the decision in the present case the Board, on February 13, 1943, decided in Matter of Harvill Aircraft Die Casting Corporation and National Association of Die Casting Workers, Local 101, CIO, that a company cannot abandon a union shop already established by a prior contract reached through bona fide collective bargaining. "By this decision notice is given to both workers and management...that no company can take advantage of the Board's standard provision for union security to reduce the provision for the union shop to the provision for maintenance of membership... and that no company can take advantage of the no-strike agreement to throw out a union shop previously establihed by agreement between the parties."
Through a curious factual circumstance the union in the Harvill case actually had to accept something less than the union shop. The previous agreement between the parties, providing for a union shop, had expired on April 13, 1942. The present order was not issued until February 13, 1943. In the meanwhile new employees had been hired. The Board's order decreed that in respect to such new employees the union shop provision was not to apply and substituted for them the standard clause for membership maintenance. Actually, then, the form of union security in the present case was somewhere in between the union shop and membership maintenance. To be distinguished from both the 15 Clay Sewer Pipe Manufacturers case and the Harvill case was the Board's decision in an earlier case, Matter of Pioneer G-E Motor Company, August 31, 1942, in which the Board did reduce a closed shop to membership maintenance. In the Pioneer case there had been a chenge of bargaining agent at the time of the dispute; the previous AFL affiliate which had had, for three years, a closed shop agreement with the company, was supplanted by a CIO union. In view of this fact the Board refused to order the continuation of the old arrangement.

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

E. Checkoff of Union Dues:

The checkoff of union dues and initiation fees is the logical corrollary of the maintenance of membership clause. For this reason, especially since the Little Steel decision, the two have been paired, usually, in the Board's orders. The idea underlying the checkoff, in all of its forms, is to have the employer deduct the amount of the union member's dues or other financial obligations to the union from his paycheck, periodically, and remit them directly to a duly designated representative of the union. The checkoff furnishes for the financial security of the local concerned the same kind of protection which the membership maintenance clause provides for its numerical security. Superficially it might appear that a checkoff of union dues is pure surplusage in those agreements where membership maintenance has already been guaranteed. Actually each clause has a distinct objective.

The essence of membership maintenance is that all members of the union shall maintain their membership in good standing in accordance with the constitution and by-laws of the union. The checkoff requires, exclusively, the individual member's compliance with his financial obligations to the union. Apart from such other incidents of union membership as attendance at union meetings and service on union committees, both protected in maintenance of membership but

excluded in the checkoff, the whole field of intra-union organization, responsibility and authority is contemplated by membership maintenance and no where implied in the checkoff. Because of its relatively limited purpose the checkoff can in no sense be understood as a substitute for membership maintenance.

Like maintenance of membership the checkoff has been decreed by the Board in various forms. It had also been previously been made use of by the National Defense Mediation Board. As early as July 16, 1941 one form of the checkoff had been suggested by the old Board and finally formed the basis of the agreement in the case in which it was suggested.[35] In the present Board's history the use of the checkoff, as a form of union security, has been almost as frequent as the grant of maintenance of membership.

The commonest form of checkoff decreed by the Board is the one included in the Little Steel order.[36] By its terms,

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

In this formula each employee is allowed the full escape period of 15 days in which to withdraw from the union if he does not desire

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35. Matter of Cheney Brothers and Textile Workers Union of America, Case # 47, National Defense Mediation Board.
36. Little Steel Case, p. 2. For further illustrations of the same type of checkoff see Press Releases B-205; B-226; B-241; B-246; B-257; B-271; B-278.

to have his dues checked off for the duration of the agreement. The union is required to furnish to the War Labor Board a notarized list of members in good standing at the close of the escape period and if any employee named on that list asserts that he withdrew from membership prior to that date, the dispute must be adjudicated by an arbiter specially appointed by the War Labor Board whose decision is final and binding upon all parties concerned.[37] Finally the union agrees that neither it nor any of its officers or members will intimidate or coerce employees into union membership. If any dispute should arise upon an alleged violation of this pledge it may finally be resolved by an arbiter appointed by the Board.[38]

A second variation of the checkoff was the clause ordered in Matter of Harbison Walker Refractories Company and United Brick and Clay Workers of America, AFL, Local 702,[39] decided by the Board on September 23, 1942. The formula in the Harbison Walker Case provided:[40]

> By voluntarily subscribing to a uniform printed authorization card any employee of the company...may authorize the Company to make deductions from his pay on account of union dues and initiation fees owed by such employee. The text of such authorization card shall include the period of the authorization, the date and amount of auch authorization and any other relevant matters and shall be

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37. Little Steel case, p. 2.
38. Ibid., p. 4.
39. Press Release B-211.
40. Ibid., p. 4. For other cases in which the same variation was ordered see: Matter of North American Refractories and United Brick and Clay Workers, Locals 448,456,504,510; Matter of Kentucky Fire Brick Company and United Brick and Clay Workers, Local 510. Press Release B-211.

> determined by agreement of the Company and the Union. Funds collected in this manner shall be remitted promptly by the company to an agent of the union duly authorized by the union to receive such funds.

Here the union was again, as in the Little Steel case, to furnish a notarized list of members in good standing at the close of the escape period and also pledged not to coerce or intimidate employees into joining. The notable differences in the formula in the present case were that an individual certification was required from each employee before his dues would be checked off in place of the implied consent of the Little Steel formula, and, while the term of the checkoff in the Steel case was irrevocable, here the Board's order would seem to permit a stipulated period of dues deduction which might be less than the duration of the agreement.[40]

In Matter of Ralston*Purina Company and Flour, Feed and Cereal Workers Union, AFL, Local 19184, the Board ordered a formula which included certain elements of both the previous Little Steel and Harbison Walker formulas. Here the Board's order specified:[41]

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40. Closely resembling the Harbison Walker formula was the one used in the two earlier cases of Matter of Arcade Malleable Company, and, Matter of White Sewing Machine Corporation, decided Mayl, 1942 in which the employee, in addition to having to agree individually to the checkoff, was also clearly free to revoke at any time.
See Also Matter of Armour Leather Company, June 10, 1942, where the Board's order directed: "The company agrees to honor dues assignments upon receipt of written orders from any employee. The Union agrees that such assignments shall be strictly voluntary on the part of the employees". The assignment form agreed upon indicated that it was to be revocable at the employee's pleasure.

41. Press Release B-316, decided November 24, 1942.

> The company will deduct from their wages and turn over to the proper officer of the Union the initiation fees and union dues of such members of the union as individually and voluntarily certify in writing that they authorize such deductions. Such authorizations, once given, shall be irrevocable.

Both the usual 15 day escape clause and the no-coercion pledge were included in the order. The compromise feature of the decision was that while each employee was free to decide for himself as to the checkoff (Harbison Walker), once he so chose the certification was to irrevocable (Little Steel).

The union security clauses directed in the Marshall Field, International Harvester and Federal Shipbuilding cases may likewise be classified as variations of the checkoff although labelled by the Board as maintenance of membership. In each of the three cases, as will be discussed in the following chapter, the real objective sought to be protected was the financial security of the union concerned. Without question, in the Marshall Field case at least, a voluntary checkoff clause would have accomplished everything which the so-called maintenance of membership clause ordered was expected to accomplish.

In concluding, attention is called to the fact that in no case has the Board ordered a "compulsory" checkoff, that is, one in which the employee has been given no choice as to whether or not he wishes to be bound by the clause. The kind and the degree of the choice presented has varied in many of the cases. In the Little Steel formula the choice would appear to be the most limited of all of those examined. Here in joining the union the employee likewise agreed to be bound by the checkoff; and, further, his assent to join would be

implied if he failed to withdraw within the 15 day escape period which the clause provided. A much greater freedom of choice was permitted in the Harbison Walker and Ralston Purina cases where the clause was to apply only to such employees as certified, in writing, their intention to be bound. Finally the greatest freedom of employee choice appears in such cases as White Sewing Machine, Arcade Malleable and Armour Leather where the employee not only must certify his intention to be bound in writing, but is also left free to revoke that certification at any time.

CHAPTER III

THE MAINTENANCE OF MEMBERSHIP FORMULA

The union security safeguard of maintenance of membership, in all of its various forms, represents a compromise which has been reached by the War Labor Board between the union ideal of the "closed shop" and the possible disintegration of union membership which might result from the no-strike pledge of organized labor given to the President in December 1941. The fundamental theory upon which the Board undertook originally to grant maintenance of membership was that a union which has relinquished its right to strike and, more particularly, its right to seek wage increases as such, may, in all likelihood, suffer the loss of its status. In the absence of tangible benefits received through its efforts, it may fail to retain the loyalty and confidence of its members with a resultant disintegration. While it is not the purpose of this paper to debate the feasibility of such a condition it is well to bear in mind the possible repercussions, in the post war period, of union disintegration. The net result might be to superimpose one additional problem of large magnitude upon a whole series of inevitable dislocations which are bound to emerge when the time is reached for reconverting out present war time economy to a normal, peace-time basis.

While it may now be demonstrated that the War Labor Board has, in the fifteen months of its existence, evolved a definite union security policy, its progress in so doing has been gradual and not without intermittent reversals, apparent or real. In the first

quarter of 1942 when the Board found itself harried, on the one side, by labor's demand for the closed shop and, on the other, by the employers' refusal to grant, voluntarily even the barest concession to labor's security, it had no defined policy of its own through which to resolve the issue. At best all that it had were a few basic ideas, all corollaries of the no-strike pledge, which it tried to articulate in the orders and opinions which it issued. Throughout this earlier period, and possibly extending through the first half of 1942, the Board was experimenting, or, to paraphrase in its own words, it was undertaking "to resolve each case on its own merits." Some confusion and reversal was the inevitable result of this experimental approach. It was not until August 24, 1942 in the Norma Hoffman case that the Board succeeded in presenting for the first time the complete version of membership maintenance which has since come to be referred to as the standard clause, having laid the immediate groundwork for that clause in the two previous Ranger Aircraft and Little Steel cases, decided on June 12th and July 16th respectively.

The complete history of the development of the standard clause began with the decision of the National Defense Mediation Board in Matter of Weyerhaeuser Timber Co. (Snoqualmie Falls Lumber Co) and Puget Sound District Council Lumber and Sawmill Workers, Local 2545, AFL,[1] decided April 19, 1941, and ended with the promulgation of Executive Order # 9250 on October 3, 1942. At the time that the

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1. National Defense Mediation Board: Case # 5.

executive order was issued the full standard clause[2] had already been granted in no less than 17 cases and, what is more significant, in only two cases since the Norma Hoffman decision, Matter of Golden Belt Manufacturing Co., and Matter of Dallas Manufacturing Co., did the Board depart radically from the clause. Since the issuance of Executive Order # 9250 the wage stabilization aspect of the Board's duties has far overshadowed its union security policies, and while a substantial number of disputes involving union security have been determined since October 1942, no new development of Board policy has emerged during this latest period. The period between October 3, 1942 and April 15, 1943 has been notable for the refinement of the union security policy evolved from Snoqualmie Falls to the Norma Hoffman case.

Some form of union membership maintenance clause was used in twelve National Defense Mediation Board cases.[3] As defined by the old Board, "union maintenance, unless otherwise noted, provides simply that a person who at the time of the contract is, or who thereafter becomes, a member of the union, shall as a condition of employment[4] remain a member in good standing." Those cases in which variations of the clause were used included: Matter of Employers Negotiating Committee and International Woodworkers of America, CIO;[5]

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2. In exactly the same text as in the Norma Hoffman case.
3. Report of the Work of the National Defense Mediation Board, published by U. S. Department of Labor, Bureau of Labor Statistics, pp. 64 et seq.
4. Ibid., p. 65
5. NDMB: Case # 31, subsequently referred to WLB.

Matter of Columbia Basin Area Loggers and Sawmill Operators and Columbia River District Council No. 5, IWA, CIO;[6] Matter of North American Aviation, Inc., and United Automobile Workers of America, Local 683, CIO;[7] Matter of Sealed Power Corporation and International Union United Automobile Workers of America, Local 637, AFL;[8] Matter of Western Cartridge Co. and Chemical Workers Union, Local 22574, AFL;[9] Matter of Federal Shipbuilding and Dry Dock Co. and Industrial Union of Marine and Shipbuilding Workers of America, Local 16, CIO;[10] Matter of Lincoln Mills and Textile Workers Union of America, CIO;[11] Matter of Weyerhaeuser Timber Co. and Puget Sound District Council Lumber and Sawmill Workers, Local 2545, AFL;[12] Matter of Utica and Mohawk Cotton Mills, Inc. and Textile Workers Union of America, CIO;[13] Matter of American Cyanamid Co. and Chemical Workers Union, Local 22051, AFL;[14] Matter of Alabama By-Products Corp. and United Mine Workers of America, Local 12136, CIO;[15] Matter of Hammond and Irving, Inc. and International Association of Machinists, Local 153, AFL.[16]

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6. NDMB: Case # 34, closed June 5, 1941.
7. NDMB: Case # 36, closed July 1, 1941.
8. NDMB: Case # 43, closed July 19, 1941.
9. NDMB: Case # 44, closed September 29, 1941.
10. NDMB: Case # 46, closed August 23, 1941.
11. NDMB: Case # 57, closed October 13, 1941.
12. NDMB: Case # 5, closed April 19, 1941.
13. NDMB: Case # 23, closed May 16, 1941.
14. NDMB: Case # 88, closed October 24, 1941.
15. NDMB: Case # 95, closed November 12, 1941.
16. NDMB: Case # 111, closed January 8, 1942.

In ten of the twelve cases just cited no escape provision of any kind was included. In the Hammond and Irving case a definite escape provision was included since employees were not bound to maintain their union membership unless they agreed to do so by voluntarily signing individual pledges. The Lincoln Mills case provided for withdrawal from membership for "legitimate" reasons. The reccomendation in this case read as follows:[17]

> All employees now members of the union, or who may become members of the union shall, as a condition of employment, remain members in good standing during the life of the contract, provided that individuals may withdraw from the organization for legitimate reasons. Any individual desiring to withdraw from the organization for legitimate reasons shall set such forth in writing. Such legitimate reasons shall not be related to wages, hours and conditions of employment and shall be subject to review and approval of a Board consisting of two representatives of the union and two representatives of the company. In accepting or rejecting the reasons advanced by the employee wishing to withdraw, a decision of the Board shall be unanimous. In the event the Board is unable to agree unanimously as to whether or not the reasons advanced are legitimate reasons, the matter shall then be referred to an impartial person for determination. Should the Board be unable to agree as to an impartial party to whom the matter is to be referred, he shall be selected by the Director of Conciliation, United States Department of Labor. Decisions of such impartial persons shall in no way be considered as establishing precedents.

Development of the Full Standard Clause Under the War Labor Board:

In the period between January 12, 1942 and October 3, 1942 some variation of membership maintenance was ordered by the War

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17. Report of the Work of the National Defense Mediation Board, pp. 204-205.

Labor Board in 44 cases.[18] In approximately 75% of these cases the formula decreed was either that of the Norma Hoffman, Little Steel or Ranger Aircraft decisions.[19] Furthermore in 9 of these orders the Board's opinion was unanimous; in thirteen additional cases one or more employer members voted in favor of membership maintenance; while, in 22 cases, the employer members, as a group, dissented.[20] The exact text of the clauses ordered in each of the 44 cases follows:

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18. Due to the lack of completeness of the Board's records, at the present time, this enumeration may not be fully exhaustive. However all major cases decided during the period are included with the possibility that no more than a very few relatively unimportant orders may have gone unnotices. In this same period the total number of cases disposed of by the Board numbered 129.

19. Norma Hoffman formula --- 17 cases
Ranger Aircraft formula --- 7 cases
Little Steel formula --- 7 cases
Marshall Field formula --- 3 cases
Individual formulas --- 10 cases.

20.

Unanimous	Employers Split	Employers Dissent
Phelps Dodge	Marshall Field	Walker Turner
S. A. Woods	Ranger Aircraft	International Harvester
Warner Auto	E-Z Mills	Federal Shipbuilding
Bemis Bros.	Ryan Aero	Robins Drydock
Norma Hoffman	Consolidated Steel	Nevada Copper
Pioneer G-E	Coos Bay	Hotel Employers
Bethlehem Steel	American Can	Caterpillar Tractor
Towne Robinson	Mack Manufacturing	Little Steel (4 cases)
Standard Tool	Golden Belt	J. I. Case
	Dallas Manufacturing	United Rubber
	Harbison Walker	Carnegie Steel
	Kentucky Fire	Goodrich Rubber
	NO. Amer. Refract.	Firestone Rubber
		J. H. Williams
		Shell Oil Co.
		Monolith
		Wilson Jones
		Browne and Sharpe
		General Motors.

It should be noted that while the employer members were unanimous in the Norma Hoffman and Pioneer G-E cases, the labor members of the Board dissented in both.

Date	Name of Case	Text of Clause
2/4/42	Matter of Marshall Field and Textile Workers Union CIO.[21]	All employees who are now members of the union or who may in the future become members will be required as a condition of employment with the company to maintain their membership in good standing during the life of this contract: Provided that this provision shall apply only to employees, who, after the consummation of this agreement, individually and voluntarily certify in writing that they authorize union dues deductions, and will, as a condition of employment, maintain their membership in the union in good standing during the life of the contract. Upon the receipt of the above authorization, the Mill agrees to deduct from the weekly earnings Union dues in the amount of 25c per week, to be paid to the union.
4/10/42	Matter of Walker Turner Co., Inc. and United Electrical, Radio and Machine Workers of America, Local 455, CIO.[22]	All production and maintenance employees who are now or who on November 27, 1941 were or since have been members in good standing of United Electrical, Radio and Machine Workers of America shall for the duration of this contract remain in good standing as a condition of continued employment with the company. All production and maintenance employees not now members of the local who elect to join during the term of this agreement shall remain in good standing for the duration of this contract as a condition of continued employment with the company. Provided, however, that if any member is certified by Local 435 not to be in good standing as defined in paragraph----of this Article the case may be treated by the company as a grievance and submitted to the

21. Press Release # PM 2421.
22. Press Release # B-31.

Date	Name of Case	Text of Clause
	Walker Turner (cont)	grievance machinery. If through such process such employee is declared not to be in good standing the arbitrator shall (1) direct the company to discharge the employee, or (2) direct the company to deduct from the first pay period of each month during the term of this contract and pay to the union a sum equivalent to the employee's union dues and also, if any fine is imposed upon the employee, a sum equivalent to that fine, and the employee shall be deprived of his seniority rights under all the seniority provisions of this contract. Local 435 shall furnish to the company and to the Board a notarized list of its members in good standing as of Nov. 27, 1941 and of those who have since become members. If any employee named on this list or the company disputes the accuracy of this list the dispute shall be adjudicated by an arbitrator appointed by the War Labor Board, whose decision shall be final and finding upon the union, the company and the employee. The union agrees that neither it nor any of its officers or members will intimidate or coerce employees into membership in the union. If any dispute arises as to whether there has been any violation of this pledge or whether any employee affected by this clause has been deprived of good standing in any way contrary to the constitution and by-laws of the Union, the dispute shall be regarded as a grievance and submitted to the grievance machinery provided in the contract for final and binding determination.

Date	Name of Case	Text of Clause
4/15/42	Matter of International Harvester Co. and Farm Equipment Workers Organizing Committee CIO.[23]	All employees who are now members of the union in good standing or who may in the future become members will be required as a condition of employment with the company to maintain their membership in good standing during the life of this contract. Provided that this provision shall not apply until the National War Labor Board has certified to the company in writing that a majority of the members of the local union who are employees of the company have voted affirmatively on this specific issue by secret ballot in a referendum conducted under the auspices of the Board subsequent to the signing of this contract.
4/24/42	Matter of Federal Shipbuilding and Drydock Co. and Industrial Union of Marine and Shipbuilding Workers of America CIO.[24]	In view of the joint responsibility of the company and the union to maintain maximum production during the present emergency and of their reciprocal guarantees that there shall be no strikes or lockouts for a period of two years from June 23, 1941, as set out in the Atlantic Coast Zone Standards agreement incorporated herein and made a part hereof, there is an obligation upon each employee who is now a member of the union or who hereafter voluntarily becomes a member to maintain his membership in the union in good standing during the life of this agreement. If any member is certified by the union not to be in good standing as defined in Section 3 of this article, the case may be treated by the company as a grievance and submitted to the grievance machinery. If through this procedure such employee is declared to be not in good standing the arbiter shall discharge the employee unless as a condition of continued employment the employee agrees to

23. Press Release # B-33.
24. Press Release # X-1068.

Date	Name of Case	Text of Clause
	Federal Shipbuilding (cont)	request the company, in writing, to deduct from his pay his financial obligations to the union. In any case in which the company is so requested to make deductions the company will deduct from the first pay period of each month during the term of this contract and pay to the union a sum equivalent to the union dues, and also if any fine is imposed upon the employee a sum equivalent to that fine. Immediately after the signing of this agreement the union shall furnish to the company and to this Board a notarized list of those members in good standing as of that date. If any employee named on the list asserts that he has withdrawn from membership in the union, or if the company disputes the accuracy of the list, the assertion or dispute shall be adjudicated by an arbiter appointed by the National War Labor Board whose decision shall be final and binding upon the union, the company and the employee.
6/2/42	Matter of Robins Dry Dock and Repair Co. and Industrial Union of Marine and Shipbuilding Workers of America. 25	All present and future employees of the company who are members, or become members, or are reinstated as members of the union shall remain members in good standing for the duration of this agreement, as a condition of employment. Any question arising in the interpretation of the foregoing provision or its application to any individual shall be handled as follows; (a) The company and the union shall each appoint a representative to settle the question by joint conference. (b) If the representatives are unable to agree, the question shall be submitted to arbitration in accordance with Article 25 of the Labor Agreement of

25. Press Release # B-81.

Date	Name of Case	Text of Clause
	Robins Dry Dock Co. (cont)	Jan. 16, 1942. In keeping with the spirit of this agreement, and within the limits of its constitution and by-laws, the union will give serious consideration to reinstatement in good standing by reason of delinquency in dues or otherwise. The company will administer appropriate discipline to any supervisory or other employee attempting to undermine the status of the union or to discourage employees from becoming members thereof. The union will only use peaceful methods in soliciting new members. Any questions arising under this provision shall be handled as a grievance in accordance with Articles 24 and 25 of the agreement.
6/4/42	Matter of Consolidated Copper Corp: Chino Mines Division and Metal Trades Department, AFL. 26	All employees of the Company who are members in good standing of any signatory union as of the effective date of this agreement shall remain members of said organization during the life of this agreement as a condition of employment. Every employee who in the future shall become a member of any signatory union shall maintain his membership during the life of this agreement as a condition of employment. Immediately after the signing of the agreement, each of the signatory unions shall furnish to the National War Labor Board a notarized list of its members in good standing employed by the company as of the date of the agreement. If any employee named on such list asserts that he had previously withdrawn from membership in the union, the assertion shall be adjudicated by an arbiter whose decision shall be final and binding upon the union and the employee. If the union and the employee cannot.

26. Press Release # B-86.

Date	Name of Case	Text of Clause
	Consolidated Copper Corp. (cont)	agree upon the arbiter, they shall so report to the National War Labor Board, which will then appoint an arbiter.
6/4/42	Matter of Hotel Employers Association of San Francisco, and San Francisco Local Joint Executive Board of Hotel and Restaurant Employees. 27	All persons employed in any hotel now a member of the San Francisco Hotel Employers Association who, at the date of this agreement, are members, in good standing, of any of the unions signatory hereto and all persons employed by any of the member hotels who shall become members of any of the signatory unions after the date of this agreement shall be required, as a condition of employment , to retain their membership in such union in good standing during the life of this agreement.
6/12/42	Matter of Ranger Aircraft Engines and United Automobile Workers of America, CIO. 28	All employees who, 15 days after the date of the Directive Order of the National War Labor Board in this case, are members of the union in good standing in accordance with the constitution and by-laws of the union, and those employees who may thereafter become members shall, as a condition of employment, remain members of the union in good standing during the life of the agreement. The union shall promptly furnish to the War Labor Board a notarized list of the members in good standing as of the date 15 days after the date of the directive order. If any employee named on that list asserts that he has withdrawn from membership in the union, the assertion or dispute shall be adjudicated by an arbiter appointed by the National War Labor Board whose decision shall be final and binding upon the union and the employee.

27. Press Release # B-87.
28. Press Release # B-95.

Date	Name of Case	Text of Clause
6/12/42	Matter of E-Z Mills and International Ladies Garment Workers Union, AFL. 29	Same as Ranger Aircraft.
6/18/42	Matter of Ryan Aeronautical Company and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO. 30	Same as Ranger Aircraft.
6/24/42	Matter of Phelps Dodge Corporation and Metal Trades Department, AFL, 31	Same as Ranger Aircraft.
7/4/42	Matter of Caterpillar Tractor Co. and Farm Equipment Workers Organizing Committee, CIO. 32	Same as Ranger Aircraft.
7/16/42	Matter of Bethlehem Steel Corporation, Republic Steel Corporation, Youngstown Sheet and Tube Co., Inland Steel Co. and United Workers of America, CIO. 33	Same as Ranger Aircraft plus the following no coercion clause: The union agrees that neither it nor any of its officers or members will intimidate or coerce employees into membership in the union. If any dispute arises (as to whether there has been any violation of this pledge or whether any employee affected by this clause has been deprived of good standing in any way contrary to the constitution and by-laws of the union) the dispute shall be regarded as a grievance and submitted to the grievance machinery, and, if necessary, to the final determination of an arbitrator appointed by the National War Labor Board in the event that the collective bargaining agreement does not provide for arbitration.

29. Press Release # B-96.
30. Press Release # B-103
31. Press Release # B-112
32. Press Release # B-118
33. Directive Orders and Opinions in Little Steel Case, published by U. S. Government Printing Office, Washington, D. C., 1942.

Date	Name of Case	Text of Clause
7/16/42	Matter of United States Rubber Company and United Rubber Workers of America, CIO. 34	Same as Ranger Aircraft.
7/22/42	Matter of J.I. Case Company and International Union, United Automobile Aircraft and Agricultural Implement Workers of America, CIO. 35	Same as Ranger Aircraft.
8/1/42	Matter of S.A. Woods Machine Company and United Electrical, Radio and Machine Workers of America, CIO. 36	Same as Little Steel.
8/1/42	Warner Automotive Parts Division and International Union, United Automobile Aircraft and Agricultural Implement Workers of America, CIO. 37	Same as Little Steel.
8/5/42	Matter of Coos Bay Logging and International Woodworkers of America. 38	The employer agrees that any present regular employee who is now a member of the union recognized as the sole collective bargaining agency or who after this date becomes a member, or is reinstated as a member of the union, shall, as a condition of continued employment, maintain membership in good standing. The employer approves of its employees who are employed in the classes of work covered by this agreement becoming members of the union which is a party of this agreement. So far as is consistent with law, the

34. Press Release # B-125.
35. Press Release # B-127.
36. Press Release # B-138.
37. Press Release # B-139.
38. Press Release # B-144.

Date	Name of Case	Text of Clause
	Coos Bay Logging (cont)	employer agrees to recommend that all new employees in the classes above described who are found satisfactory to the employer after a probationary period of 40 days work join the union recognized as the sole collective bargaining agency.
8/6/42	Matter of Consolidated Steel Corp. and United Steelworkers of America, CIO. 39	Same as Little Steel.
8/15/42	Matter of Bemis Bros. Bag Company and Textile Workers Union of America, CIO. 40	The Company and the Union agree at all times to use their best efforts to promote and maintain friendly and harmonious relations. The Company will not countenance any discrimination against or interference with the union and its members in the conduct of the union's lawful activities. The company recognizes that initial membership in the union is voluntary, and further agrees that neither the union nor its members will intimidate or coerce employees into joining the union. Employees who, 15 days after the date on which the plant contract is signed are members of the union in good standing in accordance with the constitution and by-laws of the union and those employees who may thereafter become members of the union shall, as a condition of continued employment, maintain membership in good standing with respect to the payment of dues in the union during the life of this agreement. Should any such employee fail to maintain membership in good standing, the union will notify the company promptly, with evidence of his membership, so that appropriate action may be taken under this paragraph. Such evidence of membership will bear the written signature of such employee.

39. Press Release # B-143.
40. Press Release # B-156.

Date	Name of Case	Text of Clause
	Bemis Bros. (cont)	Should any dispute arise as to the application of this paragraph which cannot be promptly determined between the parties, the dispute shall be submitted for final and binding determination to the Conciliation Department of the U.S. Department of Labor.
8/24/42	Matter of Norma-Hoffman Bearings Corporation and United Electrical Radio and Machine Workers of America, CIO. 41	In order to secure the increased production which will result from greater harmony between workers and employers and in the interest of increased cooperation between union and management, which cannot exist without a stable and responsible union, the parties hereto agree as follows: All employers who, 15 days after the date of the National War Labor Board's Directive Order in this matter, are members of the union in good standing in accordance with the constitution and by-laws of the union, and all employees who thereafter become members, shall, as a condition of employment, remain members of the union in good standing for the duration of this contract. The union shall promptly furnish the National War Labor Board a notarized list of its members in good standing as of the 15th day after the date of the National War Labor Board's directive order in this matter. If any employee named on that list asserts that he withdrew from membership in the union prior to that day, and any dispute arises, or if any dispute arises as to whether an employee is or is not a member of the union in good standing, the question as to withdrawal or good standing, as the case may be, shall be adjudicated by an arbiter appointed by the National War Labor Board, whose decision shall be final and binding on the union, the employee, and the company.

41. Press Release B-165.

Date	Name of Case	Text of Clause
	Norma-Hoffman (cont)	The union agrees that neither it nor any of its officers or members will intimidate or coerce employees into membership into the union. If any dispute arises (as to whether there has been any violation of this pledge or whether any employee affected by this clause has been deprived of good standing in any way contrary to the constitution and by-laws of the union), the dispute shall be regarded as a grievance and submitted to the grievance machinery, and if necessary, to the final determination of an arbitrator appointed by the National War Labor Board in the event that the collective bargaining agreement does not provide for arbitration.
8/26/42	Matter of Carnegie Illinois Steel Corp. and United Steelworkers of America, CIO. 42	Same as Norma-Hoffman.
8/31/42	Matter of Pioneer G-E Motor and United Electrical, Radio and Machine Workers of America, CIO. 43	Same as Norma-Hoffman.
9/1/42	Matter of Bethlehem Steel Co. and Industrial Union of Marine and Shipbuilding Workers of America, CIO. 44	Same as Norma-Hoffman.
9/2/42	Matter of America Can Co. and Steel Workers Organizing Committee, CIO. 45	Same as Norma-Hoffman.

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42. Press Release # B-168.
43. Press Release # B-175.
44. Press Release # B-177.
45. Press Release # B-178.

Date	Name of Case	Text of Clause
9/2/42	Matter of Towne Robinson Nut Co. and United Automobile, Aircraft and Agricultural Implement Workers of America, CIO. 46	Same as Norma-Hoffman
9/4/42	Matter of Mack Manufacturing Co. and United Automobile, Aircraft and Agricultural Workers of America, CIO. 47	Same as Norma-Hoffman.
9/8/42	Matter of Golden Belt Manufacturing Co. and Textile Workers Union of America, CIO. 48	Same as Marshall Field.
9/8/42	Matter of Dallas Manufacturing Co. and Textile Workers Union of America, CIO. 49	Same as Marshall Field.
9/17/42	Matter of B.F. Goodrich Co. and United Rubber Workers of America, CIO. 50	Same as Norma-Hoffman.
9/17/42	Matter of Firestone Tire and Rubber Co., and United Rubber Workers of America, CIO. 51	Same as Norma-Hoffman.
9/18/42	Matter of J.H. Williams Co. and United Steelworkers of America, CIO. 52	Same as Little Steel plus the following clause: The Company will not interfere with the right of the employees to join the union or engage in union activities and the union agrees that

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46. Press Release # B-180.
47. Press Release # B-184.
48. Press Release # B-192.
49. Ibid.
50. Press Release B-200.
51. Ibid.
52. Press Release # B-205.

Date	Name of Case	Text of Clause
	J. H. Williams Co. (cont)	such activities will not be carried on in the plant or on company time or in such manner as to interfere with the efficient operation of the company. The company will not discriminate against, interfere with, restrain or coerce any employee because of membership in or activities in behalf of the union.
9/19/42	Monolith Portland Cement Co. and International Union of Mine, Mill, Smelter Workers of America, CIO. 53	Same as Norma-Hoffman.
9/23/42	Matter of Harbison Walker Refractories Co. and United Brick and Clay Workers of America, CIO. 54	Same as Norma-Hoffman.
9/23/42	Matter of Kentucky Fire Brick Co. and United Brick and Clay Workers of America, CIO. 55	Same as Norma-Hoffman.
9/23/42	Matter of North American Refractories Co. and United Brick and Clay Workers of America, CIO. 56	Same as Norma-Hoffman.
9/23/42	Matter of Shell Oil Co. and Oil Workers International Union, CIO. 57	Same as Norma-Hoffman.
9/25/42	Matter of Wilson Jones Co. and United Paper, Novelty and Toy Workers Union, CIO. 58	Same as Norma-Hoffman.

53. Press Release # B-210.
54. Press Release # B-211.
55. Press Release # B-211.
56. Press Release # B-211.
57. Press Release # B-212.
58. Press Release # B-216.

Date	Name of Case	Text of Clause
9/25/42	Matter of Brown & Sharpe Manufacturing Co. and International Association of Machinists, CIO. 59	All employees and all applicants for membership who, on May 21, 1942, were members of the union in good standing or had signified their intention of becoming members, in accordance with the constitution and by-laws of the union, and those employees who may hereafter become members shall, as a condition of employment, remain members of the union in good standing during the life of this agreement. 15 days after the date of the Directive Order, the union shall furnish the National War Labor Board an authorized list of its members in good standing as of May 21, 1942. If any employee named on the list asserts that he withdrew from membership or had withdrawn his application prior to that day, or if any such employee asserts his intention to withdraw within 15 days of the date of this order, and any dispute arises, or if any dispute arises as to whether an employee is or is not a member of the union in good standing, as the case may be, such dispute shall be adjudicated by an arbiter appointed by the National War Labor Board, whose decision shall be final and binding on the union, the employee, and the company.
9/26/42	Matter of General Motors Corp. and United Electrical, Radio and Machine Workers of America, CIO. 60	Same as Norma-Hoffman.
10/2/42	Matter of Standard Tool Co. and United Automobile, Aircraft and Agricultural Implement Workers of America, CIO. 61	Same as Norma-Hoffman.

59. Press Release # B-217.
60. Press Release # B-218.
61. Press Release # B-223.

Six of the foregoing cases require detailed analysis and explanation since in each of these, either, some new development in the membership maintenance clause appeared for the first time, or, the Board in its opinion accompanying the Directive Order developed at length the underlying policy which it was later to follow. In four of them, the Walker-Turner, Federal Shipbuilding, International Harvester and Caterpillar Tractor cases, all employer members of the Board were opposed to the grant of membership maintenance; in one, Ryan Aeronautical,[62] the employer members split; while in the last, the Norma-Hoffman case, the decision was unanimous. Furthermore, the Caterpillar Tractor case is significant only because of the suggestions advanced in the dissenting opinion of the employer members.

The Walker-Turner Case.

This case came to the Board on several points, including a request on the part of the bargaining agent for a union shop,[63] that is for a clause in the agreement requiring all present employees to join the union as a condition of continued employment and all employees subsequently hired to join the union within a stipulated period of time. The Board finally decided, by a vote of 8-4 to grant a maintenance of membership clause. Briefly that clause provided (1)

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62. It should be remembered that the maintenance of membership clause decreed in the Ryan case was identical with that in the Ranger case. While the Ranger order is dated June 12th and the Ryan order June 18th actually the Ryan case was decided on June 11th. The official release of the order was delayed a week while Board members prepared their opinions.

63. Press release B-31, p. 3.

that all union members who were members in good standing at the time the previous contract expired (Nov. 27, 1941) or who became members in the period intervening from that date and the date of the present order (April 10, 1942) were required as a condition of continued employment with the company to remain members of the union in good standing for the duration of the contract. (2) As soon as practicable after the signing of the present agreement there was to be made available to all employees eligible for union membership, but not actually members, a printed copy of the contract as well as a printed copy of the union's constitution and by-laws. Any person who so desired might signify his intention to join the union by signing an application card reciting that intention and also the intention to remain a member in good standing for the duration of the contract. (3) The clause further provided that if a member was certified by the local not to be in good standing, the case might be treated by the company as a grievance and submitted to the grievance machinery. If the employee in question were to be found, through this procedure, to be not in good standing, the arbiter could do either of two things: (a) direct the employer to dismiss him, or, (b) direct the company to deduct from his salary, the amount of his union dues and the sum of any fine which might be imposed.[64]

The majority of both the original panel which heard the dispute and of the Board itself rested its case in support of the clause upon the previous history of the bargaining relations at the

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64. Ibid., p. 2. See also Monthly Labor Review, June 1942, pp. 1347-1348.

Walker-Turner plant; particularly upon the hostility which the management had shown to unionism in general and to this union in particular; and, upon, the apparent good record of the local in question even in the face of tremendous adversity. In his opinion, accompanying the order in the case, Chairman Davis reviewed all the financial responsibilities of membership as well as the other incidentals of the local's organization---all of which he found reasonable and democratic. In that portion of his opinion dealing with the subject of union security Mr. Davis recited the contentions of both parties, calling attention to the disinclination of the management to offer any compromise of its own, even refusing the following union suggestion:

> (1) In the union recognition clause shall be included a statement that, while no employee need join the union, membership in the union is perfectly consistent with the company's policy.
> (2) The company shall give each new employee a copy of the contract, a copy of its own rules and regulations, and a union application blank. 64a

On the basis of its review of the company's long term labor policy the Board found the following pertinent facts:[65]

> 1. The company's attitude towards organized labor in general and this local in particular is certainly not one of cooperation or helpfulness.
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> 2. The wages paid by the company are lower than the standard of wages for such work and the increase recommended by the panel is not sufficient to bring the scale up to the standard. The reason for the low wages lies in the fact that a higher

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64a. Ibid., p. 9. See Also Todd Galveston Drydock case (NDMB) in which the company agreed to a clause stating its belief in employees belonging to the certified union but not binding them to join.

65. Ibid., p. 9.

rate, by its own admission, would bankrupt the company and this is in turn due, to a large extent, to the company's reinvestment of its funds in plant and equipment during the past year, in preference to increasing wages to standard levels.

3. Since October 27, 1941, when these negotiations began, there has been a great deal of delinquency among the union members. Active dues paying members have decreased by about 25%.
4. During that time the union, under the national agreement that there shall be no strikes and all disputes shall be settled by peaceful means, was obligated not to strike and it lived up to that agreement.
5. The constitution and by-laws of the union provide for a very reasonable initiation fee and dues. At present the initiation fee is fixed at $2.00 and the monthly dues are $1.00.

Of tremendous significance to an inquiry into the objectives which lay behind the Board's union security policy are Mr. Davis'[66] statements that:

> In finally disposing of this issue the duty of the National War Labor Board is to find that solution which will help win the war by bringing about a maximum production at this plant.

And:[67]

> It is seen that by ordering this clause the Board rejects the recommendation of the minority member of this panel, that each employee now be required to sign a card expressing his willingness to be bound by the clause. Under the peculiar facts of this case, it is clear that such a requirement would defeat the very end for which a clause was inserted. Here we have a situation in which a union which refrained from striking has already begun to disintegrate. They have been unable, through no fault of their own, to get for their membership a wage to which the membership not without reason feels entitled. To require the union now to recanvass the membership in the light of these circumstances would merely accelerate the forces of disintegration already in operation.

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66. Ibid., p. 10.
67. Ibid., p. 11. See also Monthly Labor Review, June 1942, p. 1348 for a discussion of these same points.

In answer to the objection that maintenance of membership was tantamount to granting a closed shop Mr. Davis stated:[68]

> This is not a closed shop contract in which a man is compelled to join the union. This clause applies only to employees who have voluntarily joined the union in the past. When a man joins a union he knows that one of the normal and usual contract provisions which the union will try to get is some form of union shop clause.
> Thus in joining he accepts for himself the proposition that membership in the union may be a condition of his employment...It binds them to nothing more than the performance of their voluntarily assumed obligations to support the union, upon which the union and their fellow union members have every right to rely when they assume the burdens of negotiating and administering the contract, and the obligations to abide by the contract and not to interrupt war production for any cause.

The dissenting opion of Roger Lapham, in which all employer members concurred, stated in part:[69]

> We dissent from this decision because it conditions the individual's right to work for an employer upon his continued membership in a labor organization. The decision requires all company employees who were, on or after Nov. 27, 1941, members of a labor organization to maintain union membership in good standing under penalty of dismissal or loss of seniority rights.
> By this action the Board refuses to give any union employee an opportunity to say whether his obligation to maintain union membership meets his approval or not. The principles involved here are fundamental. We are not concerned with a voluntary agreement accepted by management, union and employees in the process of collective bargaining. On the contrary we are concerned with a directive order of this Board requiring a union maintenance provision over the objection of management without first ascertaining whether the workers affected approve or not. To arbitrarily impose these obligations without the consent of those affected, in our opinion, will tend to destroy the cooperation so essential to maximum production.

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68. Ibid.
69. Ibid., p. 15.

> The opinion of the majority creates the impression that their decision is founded upon voluntary action of the workers in that they are, or were, members of the labor organization which requires protection from this Board. With this we disagree. When these employees joined the union, they did not agree to forfeit their jobs or their seniority rights if they exercised their right to withdraw from the union. In any organization governed by democratic principles, its members retain their right to be heard in opposition to policies and to resign at will. Why should the members of labor unions be denied these rights?
> The effect of the directive order supports the view that organized labor, having agreed not to strike while the war lasts, should not be refused concessions which might have been obtained by economic force in peace time. If this should happen, then labor, in giving up the right to strike, would actually be surrendering nothing. Ultimately such a policy leads to union shop, closed shop, control of hiring, and finally, the transfer to others of the rights and obligations of management. A determination of these vital issues will affect the daily lives of every citizen. Such matters, in out opinion, should not be decided by an administrative Board, but should be left to the elected representatives of the people.

The International Harvester Case.

The union security clause in this case provided that "all employees now members of the union in good standing or who might become members will be required, as a condition of employment with the company, to maintain their membership in good standing during the life of the contract."[70]

The unique factor in this case was that the maintenance of membership clause was not to apply until the War Labor Board certified to the company, in writing, that a majority of the members of the

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70. Press Release # B-33, p. 3.

local union had voted affirmatively on this specific issue by secret ballot in a referendum conducted under the auspices of the Board subsequent to the signing of the contract.[71]

The order specified the conditions of the balloting which were to include due notice as to the time and place of voting, an unequivocal statement of the issue to be voted upon, a ballot to be prepared by the Board and adequate provision to be taken so as to insure the secrecy of the balloting process.[72] Guarantees against "packing" the electorate on the part of both employer and union were also provided.[73]

As in the Walker-Turner case, the facts here again demonstrated a bitter history of union-management relations. The present dispute extended back to March 1941---a period of more than a year. The Mediation Panel, by a vote of 3-2, had decided against any form of union security, expressing the belief that "further progress toward a less strained company-union relationship is both desirable and necessary."[74] It was of the opinion that progress toward such an end could best be accomplished through an educational process rather than through the grant of some form of membership maintenance.[75] The panel was led to its conclusions, partially at least, by the belief that a good many of the company practices which the union feared and desired to be made secure against had already been eliminated and were bound

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71. Ibid.
72. Press Release # B-33, p. 3.
73. Ibid.
74. Ibid., p. 8.
75. Ibid.

to be further diminished after the signing of the present contract.[76]

In disregarding the Panel's recommendation,[77] the Board stated:

> It would seem to be a foregone conclusion that industrial harmony with resultant maximum production will be difficult to obtain in the company's plants unless the question of union maintenance is determined by the union membership itself. There can be no doubt of the fact, in the light of their past experience with the company, that the union believes the company is basically unfriendly to unionism. Rightly or wrongly that is the attitude of the union involved in this case. And so long as feelings of fear, suspicion and distrust exist, it is to be expected that a great deal of the energy of the union will be devoted to maintaining its position of strength and to keeping its fences repaired, so to speak, within the industry.
>
> So long as the union believes it necessary for it to be on guard against company policies and strategies or independent union drives against its membership there is bound to be a diversity of effort from maximum production within the plants of the company. On the other hand if a majority of the members vote upon themselves, as a condition of employment, membership in the union for the duration of the contract, the major result is bound to be a much greater stability in employer-union relationships than now prevails.
>
> The plan will dissipate much of the cause for ill-feeling and distrust which now exists between management and the union. It will place very definite responsibilities and obligations upon the union to keep its house in order. It will protect management from many of the abuses of which it complains. If the majority of the members vote for this plan of security it will tend to eliminate rival union organization activities because it will freeze membership of that union now possessing the collective bargaining rights for the life of the contract, thus making ineffective any attempted raids upon its membership. It will give the union effective disciplinary powers over any member who violates the terms of the

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76. Ibid.
77. Ibid., pp. 11, 12.

> contract or who is guilty of those abuses of which employers so frequently complain.[78]

The dissenting opinion of the four employer members is significant since therein, for the first time, they manifested their willingness to subscribe to membership maintenance provided that certain conditions were met.[79]

> In our discussions in this case, we said we were willing to require a worker to remain a member of the union provided
>
> Either
>
> A. Each worker certified, in writing, his willingness to remain a member of the union during the life of the contract, as a condition of employment,
>
> or
>
> B. If the contract provided the worker must remain a union member, then within ten days after the execution of the contract each union worker would be given the opportunity to resign from the union. Failing to resign within these ten days, he would be required to stay a union member for the contract period.

The so-called "escape" provision later introduced into membership maintenance clauses by the Board was almost precisely the compromise offered in this dissent.

The Federal Shipbuilding Case.

As in both previous cases the attitude of the management had been one of long term hostility toward unionism---the present dispute having had its origin ten months before. The union had petitioned for a union shop which petition had been denied when the case was

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78. In the secret election which was held by the Board shortly after the present order was issued, employees belonging to three different unions participated. Out of a total of 10,751 ballots cast, 9703, or 91% voted in favor of the clause; 1000 voted against it and 48 ballots were void.

79. Press Release # B-33, p. 24.

originally heard by the National Defense Mediation Board despite the fact of the almost universal practice of closed shop agreements in the shipbuilding industry on the West Coast and the further fact that this same union had but recently negotiated a union shop at the Camden, N. J. plant of another shipbuilder. The National Defense Mediation Board's recommendation, like that in the present order, had been for maintenance of membership.[80]

The case introduces two new developments in the Board's concept of maintenance of membership. By actual operation of the procedure decreed, an "escape" period was permitted during which union members might disassociate themselves from the union and thus take themselves outside the application of the clause. This escape period would include the time from which the Board's order was issued (April 24, 1942) and such future date at which the formal contract between company and union was entered into.[81] Secondly, the clause provided an alternative to dismissal in respect to union members who might fail to maintain their membership in good standing. In place of automatic dismissal, such employees would have the alternative of agreeing to request the company to deduct from their paychecks the amount of their financial obligations to the union and thus save their jobs. The dues deduction alternative to dismissal in this case was distinctively more advantageous than in the Walker-Turner case since in that case the right to recommend dues deduction was discretionary with the arbiter in the grievance procedure and not enjoyed, as a

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80. NDMB Case # 46.
81. Press Release # X-1068, p. 7., paragraph 4.

matter of right, by the delinquent employee member. In the present case, the intent of the Board, as expressed in the Directive Order, appears to have been primarily to protect the financial security of the union rather than its numerical security.

While the reasoning in the Board's opinion is not novel but largely a reiteration of the principles announced in previous decisions a few of the remarks of the majority, as well as of the separate concurring opinion of Chairman Davis are worth noting. Mr. Lapham's dissent also merits attention.

In answer to the objection that the clause amounted to the grant of a closed or preferential union shop, the majority opinion states:[82]

> The maintenance of membership clause does not require any worker, at any time, to join the union. It does not require the employer to employ only members of the union and is, therefore, not a closed shop. It does not require the employees who have been hired by the company to join the union and is, therefore, not a union shop. It does not require the company to give preference in hiring to members of the union, and is, therefore, not a preferential union shop. It does not require any old employee, any new employee, or any employee whatever to join the union at any time.
> The maintenance of membership clause requires only that any employee who is a member of good standing, at the time the contract is signed, or who thereafter voluntarily joins the union, shall remain a member in good standing. This he is required to do as part of his obligation to keep the provisions of the contract made by the union with the company on his behalf. Every employee who, since the original recommendation of July 26, 1941, has chosen to remain a member in good standing, or who has since joined the union, has had full knowledge of this provision and has thus made the choice voluntarily to maintain his membership. All others have already resigned.

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82. Ibid., p. 10.

In demonstrating the value to the general welfare of a stable unionism, especially in wartime, the opinion continues:[83]

> The case for maintenance of membership is based not only on the equities in this case, but also on its value to the nation. The experience of the War Labor Board has shown how strong, responsible union leadership can help keep production rolling. History affords no parallel to the success of this voluntary agreement between labor, management and the government. In the first three months of 1942, less than 6/100 of 1% of all the time worked in war production has been lost by strikes.
> Mainly responsible for this amazing record are the labor leaders of America who courageously stand guard day and night over the keeping of this agreement. The few leaders who have failed their country in a few situations serve to emphasize the overwhelming number of those who settle, stop and prevent strikes at their first threat.
> .....
> A stable responsible union is better for management than an unstable irresponsible union. An unstable membership contributes to an irresponsible leadership. Too often members of unions do not maintain their membership because they resent the discipline of a responsible leadership. A rival but less responsible leadership feels the pull of the temptation to obtain and maintain leadership by relaxing discipline, by refusing to cooperate with the company, and sometimes by unfair and demogogic agitation and attacks on the company. It is to the interest of management, these business leaders have found, to cooperate with the unions for the maintenance of a more stable, responsible leadership.

In answer to the argument that the Government was, in effect, ordering workers to become union members or lose their jobs, Chairman Davis had this to say:[84]

> It should be observed that the clause ordered by the Board, in this case, leaves every employee free to join the union or not to join, as he chooses. The order of the Board applies only to men who have already voluntarily joined the union, and it imposes even upon them the obligation to maintain their membership only in a limited sense.

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83. Ibid., p. 11.
84. Ibid., p. 16.

And further on, in defining this limited sense, Mr. Davis explains:

> (The) clause contained in the order will not become effective until it is incorporated in a contract entered into by the parties. Pending such time any individual member of the union at the shipyard has a right to formally withdraw from the union. (Italics Inserted)
> An individual member has the right to withdraw from the union, if, for some reason of conscience or otherwise, he cannot adhere to the principles which a majority of the union wishes to forward. In the event that such a person wants to withdraw, the only penalty entailed is that he continue to pay his dues for the duration of the contract. This a very normal common law concept.
> A man may join a club and obligate himself to pay dues for a certain period. The law gives him the right to withdraw from the club and to cease to be associated with its members but such withdrawal does not, of necessity, legally or in good conscience, cut off his obligations to help the organization discharge the financial obligations it has incurred by continuing to pay his dues for a limited period.

It would seem that the majority and the dissenting employer member minority were practically agreed in principle in the present case--the only reason discernible for the dissent being a technical insistence on a stated period for withdrawal in place of the implied period provided in the Directive Order. At the time that the Directive Order was issued there evidently existed some doubt among the Board members themselves as to whether or not the language of the order did provide for some period of time during which members could withdraw from the union. There can be no doubt but that in Chairman Davis' opinion such a period is definitely emphasized. What the minority members were insisting upon was a stated period for withdrawal similar to that provided in the Ryan Aeronautical case.

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85. Ibid.

Mr. Lapham made this sufficiently clear in his separate concurring opinion in the Ryan case,[86] when he stated:

> In the (Federal Shipbuilding and Drydock Company case the majority opinions, but not the Directive Order, did explicitly state the individual's right to withdraw from the union before the agreement between the company and the union was executed.

The Ryan Aeronautical Case.

The Ryan case serves as a landmark in membership maintenance history for a number of reasons. The bitter and protracted management-union antagonism present in the Walker-Turner, International Harvester and Federal Shipbuilding cases does not seem to have been present in the instant case. For the first time the Directive Order of the Board stated in unequivocal language that a 15 day escape period was to be provided during which union members might withdraw from the union if they did not wish to maintain their membership in good standing for the duration of the contract. And, most significant, the came marks the first time that part, at least, of the Board's employer membership voted in favor of a maintenance of membership clause which required something less from the individual worker than a voluntary certification in writing of his intention to remain a member in good standing.

The separate concurring opinion of Employer Member Roger Lapham, in which Richard Deupree concurred and the dissenting opinion of Employer Member E. J. McMillan, concurred in by Horace Horton, are, perhaps, more interesting than the majority opinion. In his

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86. Press Release # B-103, p. 9.

opinion Mr. Lapham explains the reasons for his affirmative vote. It is interesting to note that he refers to the inclusion of a 15 day escape clause as merely the satisfaction of one of his "main" objections. He feels, moreover, that it is inconsistent for the Board not to also include within the Order some similar provision for dues deduction in lieu of dismissal such as was stipulated in the Federal Shipbuilding case. This remark is strange indeed when it is recalled that Mr. Lapham was among the dissenting minority in the Federal case. Finally Mr. Lapham hints at certain additional conditions which are later expressed more formally in the Caterpillar Tractor case.[88] Mr. Lapham's concurring opinion states in its essential parts:

> While in the present case, as well as in many others, the necessity for a union maintenance clause is not apparent, I have voted with the public and labor members because they have met a main objection to any union maintenance of membership clause.
> However, I believe, as pointed out in Mr. McMillan's dissenting opinion, that if this Board prescribes any form of union maintenance it should avoid compelling an employer to discharge a competent employee merely because he chooses not to continue his union membership. In these days of national emergency it would not seem in the public interest to compel discharge for this reason alone. In the Federal Shipyard case the Directive Order provided: "If through this process such employee is declared not to be in good standing the arbiter shall discharge the employee unless as a condition of continued employment the employee agrees to request the company, in writing, to deduct from his pay his financial obligations to the union." It seems inconsistent not to include some such provision in any union maintenance clause prescribed by this Board.
> .....
> In concluding I refer to an editorial appearing in the June 13th issue of the "Saturday Evening Post" and quote one paragraph:
> "What the Board (The War Labor Board) has not said,

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88. Ibid., p. 10.

> but has strongly implied, is that, if the relation between worker and employer is to be handed over to a majority of the union, backed by the power of the government, the inevitable consequence is that the government must step in to make it certain that the manner in which labor leaders use this new power is in accord with justice, reason and the public interest."
> To date labor is unwilling to accept such simple, statutory requirements providing for registration of unions, filing of union constitution and by-laws and filing of audited sworn statements of receipts and expenditures. If by governmental order we are going to impose any form of employee-employer relationship, it follows that ample protection in some way should be afforded union members against the improper acts of union officers, just as stockholders are protected against improper acts of their officers and directors.
> It follows, as night the day, that when people are given power, they must be willing to accept the corresponding responsibilities and regulation that go with it.

Mr. McMillan, in his dissent, like Mr. Lapham completely reverses his position in the Federal Shipbuilding case when he states:[89]

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

In addition to detailing the history of the union security issue under both the National Defense Mediation Board and the War Labor Board, the majority opinion, written by Public Member Frank P. Graham, included the following significant excerpts:[90]

> In order to understand our first almost unanimous agreement on union security we have to look beyond the usual arguments for and against union security to the history of both the National Defense Mediation Board and the National War Labor Board.

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89. Ibid., p. 12.
90. Ibid., pp. 1, 7.

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

.....

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

Finally this maintenance of membership provides three basic guarantees: first, it guarantees democracy in America against the tragedy both of the disintegration of responsible unions during the war and against the defenselessness of industrial workers after the war; second, it guarantees, through responsible union leadership and stable union membership in the crucial transition from war to peace, against a violent revolution and the rise in America of a fascist, communist or imperialistic dictatorship;and third,

> it affords one of our chief hopes that the all out production for destruction in winning the war for freedom shall be converted into all out production for winning the peace and for organizing plenty for America and for the stricken and hungry peoples still hopeful for freedom, justice and peace all over the world.

The Caterpillar Tractor Case

The Directive Order in this case was issued on July 4, 1942, about three weeks after the Board's order in the Ryan case and ten days after the unanimous decision rendered in the Phelps Dodge case. In all three cases the maintenance of membership clause ordered was identical. In the Ryan case as we have seen, Employer Members Lapham and Deupree voted in favor of membership maintenance; in the Phelps Dodge case the decision was unanimous, Employer Members Mead and Deupree having participated; in the present case all employer members dissented. The employer members who participated were Roger Lapham, Horace Horton, George Mead and E. J. McMillan. Of these four Mr. Lapham had voted in favor of the present clause in the Ranger and E-Z Mills cases as well as in the Ryan case and Mr. Mead had participated in the Phelps Dodge case. Neither Mr. Horton nor Mr. McMillan had ever agreed to any form of membership maintenance.

In explaining his apparently contradictory position Mr. Lapham develops two major contentions, neither one of which is completely new. For his first point he insists that a maintenance of membership clause is not warranted on the merits in the case:[91]

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91. Ibid., p. 12.

> In the Caterpillar case it is difficult to justify a maintenance of union membership clause on the basis of the merits in this case. It will be the company's first contract with this union as the exclusive bargaining agency for employees...
> The national union with which Local 105 is affiliated and the local union itself are relatively young and neither organization has yet acquired a proven background of responsibility. The company, on the other hand, has a history of progressive development dating from 1925 when it employed only 1350 employees. At the present time employment exceeds 15000, and the company occupies an outstanding position in its field. The record in the case discloses no evidence of any charge of unfair labor practice and the panel in its reports emphasizes the cooperative manner and the good faith of the management. In my opinion the order in this case should simply require union recognition with the inclusion of what might be termed a "harmony" clause such as the Board ordered in the Babcock Wilcox case. 92

For his second point Mr. Lapham develops the suggestion first made by him in the Ryan case which suggestion contemplated a more effective regulation of unions either by statute or by the Board.[93] His recommendation in the present case being that:

> The Union, on or before---shall file with the Secretary of the National War Labor Board, on prescribed forms, statements as to the following:
>
> 1. Copy of constitution and by-laws.
> 2. Names of officers.
> 3. Amount of dues and initiation.
> 4. Statement of receipts and expenditures.

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92. The clause in the case referred to read as follows:
> The company and the union agree in good faith to cooperate with each other in promoting harmonious relations and in the interest of harmonious relations, the company recommends that those employees who are now or who may become members of the union continue their membership during the life of the contract. New employees will be presented with a copy of this contract by the company, upon hiring, and will be asked to cooperate in carrying out the obligations of the contract.

93. Press Release B-118., p. 15.

> These statements shall be filed not more frequently than twice a year and copies of the statements shall be made available to the membership of the union.

In a special concurring opinion directed to Mr. Lapham's dissent Public Member Wayne L. Morse undertook to answer both of the minority's contentions. In reply to the argument that membership maintenance was not warranted by the facts, Mr. Morse refers to the statement of the Panel which heard the dispute[94]:

> They (the members of the Panel) recognize the a spirit of management hostility to the union has pervaded the plant in the past; and that the consequence of the management's failure in the past to dispel that spirit by a complete cooperation with the union is pretty much the same as it would have been if the management were engaged in anti-union activity. Furthermore, while the top management is not acting in bad faith, it is not at all clear that the hundreds of persons in subordinate supervisory positions are equally not motivated by anti-union hostility. It is entirely clear that the past relations between the union and the company have not been successful. Improvement in those relations is essential for a greater production of war materials. The majority of the Panel believe that union security is a measure which promises great improvement in this direction. The fact is that the union membership does have a feeling that the company is hostile to it.

In regard to the minority's second contention, Mr. Morse concludes[95]:

> It is the opinion of this writer that the position they have taken is highly improper and constitutes a proposal which exceeds the functions and purposes of the War Labor Board.
> .....
> Just what would it accomplish if it adopted the proposal? Investigations show that copies of the constitutions and by-laws of all unions appearing before

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94. Ibid., p. 25 et seq.
95. Ibid., pp. 27, 28.

> the War Labor Board are now requested by the Administrative Office of the Board and are on file. Likewise, the names of the officers of all the unions appearing before the Board are on file with the Board. The amount of dues and initiation fees charged by every union which has appeared before the Board in a dispute has been provided the Board whenever it has asked for the same.
>
> Now what about a statement of receipts and expenditures? Of what use would such a statement of receipts and expenditures be to the War Labor Board if it should require it? Is it the implied suggestion of the employer members that if the War Labor Board should reach the conclusion that the dues and initiation fees are too high that it should deny union maintenance unless the dues and initiation fees are lowered? Is it the view of the employer members that the War Labor Board should assume the duty of policing the financial policies and practices of American unions? It is understandable why some American employers would like to have the War Labor Board, or some other government agency, assume such jurisdiction, but they should not overlook the fact that fairness would require that the adoption of such a policy should be made to work both ways. That is, it should be applied to employers as well as to unions.
>
> In the opinion of this writer it would be equally absurd the suggest that the War Labor Board should go into the financial practices and policies of employers and employer associations and police the same, as it would that they should follow such a course in connection with union finances. That is not what the War Labor Board has been set up to do.

The Norma-Hoffman Case

The order in the Norma-Hoffman case concludes the Board's development of the maintenance of membership formula. Apart from the inclusion of a voluntary checkoff in the Little Steel Case there is no essential difference between that clause and the one in the present case. Four elements comprise the body of the formula: (1) A brief introductory preface reciting the objective sought to be achieved through membership maintenance. Although this clause does

not appear in these same words in any previous order, the same thought was expressed more elaborately in Article B of the Board's order in the International Harvester case; (2) The same 15 day escape clause as was first used in the Ranger and Ryan cases; (3) Provision for a notarized list of members as of the close of the escape period in the same text as in the Ryan and Ranger cases: (4) A no-coercion clause identical with that in the Little Steel formula and undoubtedly derived originally from the no-coercion clause stated in paragraph 3 of the Board's order in the Walker-Turner case.

The most significant paragraph of the Board's opinion consists of a statement of the conditions which must be satisfied before it will grant any form of union security. This is the first time that the Board, in an opinion, so forcefully and directly, makes proven union responsibility a condition precedent to the grant of relief although the same factor undoubtedly carried great weight with the Board in the Little Steel case.[96] The text of the opinion[97] in this regard follows:

> The National War Labor Board wishes to make clear that the granting of union maintenance is not an automatic reaction to a demand for some sort of union security; it is granted only after a thorough examination of the merits of the case and careful deliberation. The Board, before granting such a clause, must be of the opinion that it will result in industrial harmony and increased cooperation between management and union. The Board must also have ascertained to its satisfaction that the union is a responsible organization capable of fulfilling all of its obligations to its members, the management and the Board. The union in this case meets such tests.

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96. Little Steel case, p. 10.
97. Press Release B-165, p. 6.

The Norma-Hoffman case has a two-fold significance. In it the so-called full standard clause appeared for the first time and, since the case was decided, unions seeking relief have been subjected to a much closer scrutiny than ever before.

CHAPTER IV

DENIALS OF MAINTENANCE OF MEMBERSHIP AND CONDITIONS PRECEDENT TO THE GRANT OF UNION RELIEF

The policy of the Board in withholding maintenance of membership from unions in certain cases and in requiring specified conditions to be fulfilled before granting any form of union security has not been altogether clear. The Board has refused, in a number of cases, to recommend membership maintenance for a variety of reasons. Moreover, it may be noted that since the Norma-Hoffman case the Board has inclined toward a much closer examination of the union petitioning for relief than in the cases which were decided prior to August 24, 1942.

Prior to the Norma-Hoffman decision the Board had refused, in just three cases, to recommend the inclusion of a maintenance of membership clause in an agreement as requested by the union concerned. In all three cases some alternate form of union security was provided, and, furthermore, in each of them the union had indicated to the Mediation Panel its willingness to accept the form of union security which was later decreed by the Board. In each case the contract being negotiated at the time the Board assumed jurisdiction was the first one between the parties.

In Matter of Bower Roller Bearing Company[1] and in Matter of Remington Rand Company, Inc.[2], decided on March 12th and April 23rd respectively, the first two cases in which a union request for maintenance of membership was refused, the Board recommended a voluntary and revocable

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1/ Press Release B-1.
2. Press Release B-41

checkoff of union dues. In both cases the contract being negotiated was the initial one between the parties and the testimony before the Panel indicated clearly that this was the most the unions concerned hoped to secure from the Board.[3]

In Matter of Armstrong Brothers Tool Company,[4] decided May 6th, the Board again refused a union request for membership maintenance. As in the previous two cases, the contract under negotiation was the first one between the parties. In the Armstrong case, however, unlike the other two, there was ample evidence of a bitter anti-union feeling on the part of the employer which manifested itself in the form of company encouragement to non-union members to resist the further organizational efforts of the union. Despite the company's attitude the union had managed to enroll 426 members out of a total company employment of 500. A fair reading of the Panel's Report in this case would again seem to indicate that while the union had originally petitioned for a union shop, or at least membership maintenance, what it actually sought was protection against the company's hostile attitude. The Board recommended the inclusion of the following two clauses in the agreement, both of which substantially satisfied the merits of the union's claim:[5]

> The Company will not permit any employee or group of employees to engage in activities on Company premises tending to undermine the union, its membership or its collective bargaining status, and will administer appropriate discipline to any employee engaging in such activities. If such activities nevertheless continue the Company and the union will discuss further methods

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3. Ibid., p. 2.
4. Press Release B-60.
5. Ibid., p. 5.

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

The first significant case in which membership maintenance was refused was Matter of Monsanto Chemical Company and Chemical Workers Union, AFL,[6] decided on August 27, 1942, just three days after the Board's order in the Norma-Hoffman case. In the Monsanto case a strike lasting for five days had occurred with the evidence clearly demonstrating that the decision to strike had been specifically recommended by the union leadership in violation of labor's no-strike pledge of December 1941, and also in violation of a resolution made by this local, six months earlier, that it "would permit nothing to interfere with, or interrupt production, thus assuming our rightful share of the responsibility for the inevitable result---total victory, an honorable peace, and the right to live as free men".[7]

In the course of its opinion the Board referred to the statement in the Norma-Hoffman case that "before union maintenance will be granted,[8]

> the Board must also have ascertained to its satisfaction that the union is a responsible organization capable of fulfilling all of its obligations to its members, the management and the Board.

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6. Press Release B-169.
7. Ibid., p. 3.
8. Ibid.

The following portions of the Board's opinion are interesting because they seem to contradict the oft-quoted statement that membership maintenance is not a reward to be granted to good unions and denied to bad ones.[9]

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

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9. Ibid., p. 2 et seq.

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

The union involved in this case is fully aware of its obligations under the no-strike no-lockout agreement. Thus as the Panel points out:

> On December 22, 1941, John F. Burns, President of Local 22606, Chemical Workers Union, sent a latter to Mr. Osborne Bezanson, of the Monsanto Chemical Company which contained the following resolution that was passed by the union on December 18, 1941. 'Whereas since our last meeting a state of war has been declared, and whereas it is our purpose and determination to do our part in defense of our country, Be it resolved that we, the members of Chemical Workers Union, Local 22606, Everett, Mass., AFL, will do everything in our power to cooperate with our government, our employers, and the American Federation of Labor, as freedom loving American workers, to the end that nothing shall interfere with, or interrupt production, thus assuming our rightful share of the responsibility for the inevitable result---total victory, an honorable peace, and the right to live as free men.

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

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

As a partial recompense for the denial of union security, the Board stated its intention to keep in touch with the situation in the case so as to preclude the possibility of the company's taking advantage of the union. Further the Board indicated that at the close of the present contract (which had less than a year to run) a union request for membership maintenance would again be entertained for review.

Since the Monsanto case the Board has refused, on five occasions, to recommend maintenance of membership despite union requests. In each of the cases work stoppages had occurred, with the evidence clearly indicating that the union leadership had concurred in the stoppages. In all cases the Board's orders indicated that, after a specified period of time, ranging from three to six months, the union might petition for a reopening of the union security issue, and, if the facts then warranted it, a supplemental order might issue. In four of the cases, Matter of General Chemical Company, Buffalo, New York and Federal Labor Union, AFL,[10] Matter of Pettibone Mulliken Corporation and International Molders and Foundry Workers Union, AFL,[11] Matter of East Alton Manufacturing Company and Chemical Workers Union, AFL,[12] and Matter of Pittsburgh Limestone Company and United Mineworkers of America[13] no union security provision of any kind was recommended. In one case, Matter of General Chemical Company, Cleveland, and United Mineworkers of America, CIO,[14] while

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10. Press Release B-209.
11. Press Release B-260.
12. Press Release B-332.
13. Press Release B-417.
14. Press Release B-277.

membership maintenance was denied the Board did order the inclusion of the following clause in the contract:[15]

> The Union agrees that neither it nor any of its officers or members will intimidate or coerce employees to join the Union. The Company agrees that neither it nor any of its officers or supervisory employees will intimidate or coerce employees to refrain from joining the union and that it will not tolerate activities on its premises designed to undermine the Union's position as employees's representative with respect to this contract.

The decision of the Board in Matter of Worcester Pressed Steel Company and United Steelworkers of America, CIO,[16] is an apparent exception to the general rule announced in the foregoing cases, despite the efforts of the majority opinion to distinguish the facts in the case from those in the Monsanto case and thus to reconcile the two opinions. The important facts in the case were: (1) a three day work stoppage had occurred at the company's plant; (2) the strike was neither instigated nor condoned by either the local or international union; (3) the union leaders were primarily responsible for getting the men to return to work; (4) the company had provoked the stoppage, partially at least, through its uncooperative attitude, and, (5) as pointed out by Dean Morse, toward the close of his opinion, the six month delay period for review had almost expired. During this period the union had conducted itself blamelessly.

A careful reading of the entire opinion indicates that the Board will not necessarily deny membership maintenance merely because of a work stoppage. While such a stoppage would raise a rebuttable presumption that the union was irresponsible, certain facts might be

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15. Ibid., p. 3.
16. Press Release B-238, decided October 8, 1942.

urged by the union to refute the presumption. Among these facts are: (1) the attitude of the union leadership towards the stoppage, (2) the attitude of the company in its labor relations, and, (3) the presence of factors or equities which would indicate that the granting of a membership of maintenance would result in better relations between the parties and would be in the interest of greater war production. The weight carried by factor (3) would be sufficient in itself to overbalance the combined weight of both (1) and (2). The last paragraph of Dean Morse's opinion states the rule to be followed in future cases in which strikes were present:[17]

> Thus to summarize, it may be said that ordinarily where a strike occurs in violation of labor's no-strike pledge to the President, the Board will not grant any form of union security to the union involved because that union will not have demonstrated the qualities of leadership and responsibility which enable the Board to feel that maintenance of membership will be in the best interests of our war effort. However, in the instant case it appears that the strike was not sponsored by the leaders of the union. Furthermore, it appears that to some extent the company was responsible for this strike because of a lack of cooperativeness in negotiationsand because of a somewhat belligerent attitude. In both the Monsanto and General Chemical cases the Board found that the companies involved were in no way parties at fault as far as adopting tactics which might be considered as being somewhat provocative of the strike is concerned. A further consideration and a most important consideration which has caused the Board unanimously to grant maintenance to the Union at this time is the fact that the six month delay period recommended by the Panel has almost expired. Throughout the negotiations before the Board's Panel and in its communications with the Board the union leadership has demonstrated attitudes of reasonableness and cooperativeness which have impressed the Board most favorably. The Board is convinced that any

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17. Ibid., p. 5.

> longer delay in granting union maintenance protection to the Union in this case would not be conducive to sound labor relations with the Company or to maximum production within the plant.

The latest development in this line of cases is presented in Matter of Yellow Truck and Coach Manufacturing Company and United Automobile Workers Union, CIO,[18] decided December 14, 1942 and Matter of Ohio Steel Foundry Company and United Automobile, Aircraft and Agricultural Implement Workers of America, CIO,[19] decided January 11, 1943 in both of which cases a probationary maintenance of membership clause was awarded to unions which had participated in work stoppages. The records in the two cases indicate that the work stoppages were not condoned by the union leadership and, in the Ohio Steel Foundry case, the management had partially provoked the strike by discharging the president of the local and in refusing to reinstate him in accordance with the Coniliation Panel's suggestion.

In the Yellow Truck case the Board required the International union to hold itself responsible for the cessation of strikes at the plant by providing as a condition in the Directive Order:[20]

> First, that the International Union assign one of its representatives to work with the officials of the local union for the purpose of promoting the best operation of this agreement, and
> Second, that the International Union investigate promptly and fully the conduct of the local union in regard to the work stoppages which have taken place in this case, and that it notify the National War Labor Board as to whatever disciplinary action is taken as a result of such investigation.
> The National War Labor Board desires to make it

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18. Press Release B-349.
19. Press Release B-379.
20. Press Release B-349, p. 2.

> very clear that it deplores the work stoppages which have occurred in this case. If further work stoppages occur after the union has been given ample opportunity under the union maintenance clause to check those tendencies which have led to work stoppages in the past, the Board will reconsider its conditional grant of union maintenance in this case. The Board is of the opinion that those responsible for the work stoppages in this case are deserving of severe reprimand and censure for the reason that they have committed acts which are inconsistent with the loyal support of our war effort.

Conditions Precedent to the Grant of Relief.

Since the approach which the Board has followed has been pragmatic, for the most part, and since its decisions have been rendered, in a large number of its cases, on the basis of a balancing of interests or conveniences, the task of deducing any well developed set of conditions precedent to the grant of union security is impossible. The policy of the Board has been oriented, totally and completely, upon the understanding, on its part, that its existence is justified purely on its record of preventing work stoppages which might in any way interfere with the successful prosecution of the war. In the accomplishment of this end the Board has been relatively indiscriminate in its choice of means.

In proceeding to assure maximum production in our war industries the Board was early convinced that a strong and responsible unionism was prerequisite to industrial peace. Its union security policies have been directed, therefore, to the establishment of such a type of unionism. The Board has concluded that in so doing it has not helped any union for its own sake but rather has provided one of those

essential conditions without which the general welfare of the American people would inevitably have suffered. Whatever incidental benefits unions, as such, may have gained through the application of these policies have been acknowledged by the Board as no more than they might reasonably have been expected to secure for themselves had they not divested themselves of their normal redress in December 1941. In functioning, incidentally, as a trustee for the rights of organized labor, so to speak, the Board has acted in the firm conviction that in time of war a constructive unionism is an indispensable prerequisite to maximum production and in the belief that a short, war-time paternalistic attitude founded on the basis "of the principles of beneficence" towards unionism might eventually bring about such responsibility in labor's leadership as to permit a new era in labor-management relations when we again return to normal.

As noted previously, The Board's order and opinion in the Norma-Hoffman case introduced a new trend in its union security policies. Three days thereafter the Monsanto opinion emphasized this trend. A reading of the later Yellow Truck order in conjunction with the Norma-Hoffman and Monsanto cases permits us to conclude that unions participating in work stoppages ordinarily will be denied any protection by the Board. While this trend represents the present general rule exceptions such as the Worcester Pressed Steel order have been permitted. In each case the primary consideration of what will best aid the war effort is controlling and this will involve a factual determination. Although the Board has periodically

insisted upon democratic union leadership and organization, reasonable union dues and initiation fees, and a compromising and cooperative attitude on the part of unions seeking relief, there can be but little doubt that the single controlling factor in the Board's determinations, as a whole, has been its desire to insure maximum production and to order such form of union security which it believes will afford, in the premises, the surest means of securing such maximum production.

Executive Order # 8716

WHEREAS, it is essential to the present emergency that employers and employees engaged in production or transportation of materials necessary to national defense shall exert every possible effort to assure that all work necessary for national defense shall proceed without interruption...

1. (a) there is hereby created in the Office for Emergency Management a Board to be known as the National Defense Mediation Board (hereinafter referred to as the Board). The Board shall be composed of eleven members to be appointed by the President, of whom three shall be disinterested persons representing the public, four shall be representatives of employers and four shall be representatives of employees. The President shall designate as chairman of the Board one of the members representing the public.

   (b) Each Board member receives necessary traveling expenses and $25.00 per diem of actual service unless he is an officer or employee of the United States.

2. Whenever the Secretary of Labor certifies to the Board that any controversy or dispute has arisen between any employer (or group of employers) and any employees (or organization of employees) which threatens to burden or obstruct the production or transportation of equipment or materials essential to national defense (excluding any dispute coming under or within the purview of the Railway Labor Act as amended) and which cannot be adjusted by the commissioners of conciliation of the Department of Labor, the

Board is hereby authorized...

(a) to make every reasonable effort to adjust and settle any such controversy or dispute by assisting the parties thereto to negotiate agreements for that purpose;

(b) to afford means for voluntary arbitration with an agreement by the parties thereto to abide by the decision arrived at upon such arbitration, and, when requested by both parties, to designate a person or persons to act as impartial arbitrator or arbitrators of auch controversy or dispute;

(c) to assist in establishing, when desired by the parties, methods for resolving future controversies or disputes between the parties; and to deal with matters of interest to both parties which may thereafter arise;

(d) to investigate issues between employers and employees, and practices and activities thereof, with respect to such controversy or dispute; conduct hearings, take testimony, make findings of fact, and formulate recommendations for the settlement of any such controversy or dispute; and make public such findings and recommendations whenever in the judgment of the Board the interests of industrial peace so require;

(e) to request the National Labor Relations Board, in any controversy or dispute relating to the appropriate unit or appropriate representatives to be designated for purposes of collective bargaining, to expedite as much as possible the determination of the appropriate unit or appropriate representatives of the workers.

3. Whenever a controversy or dispute is certified to the Board, in accordance with section 2, the Chairman...shall designate as a division of the Board

as he deems necessary to take action with respect to such controversy and dispute...provided (a) that no less than three members shall be assigned to any such division; and (b) that each of the three groups represented on the Board shall be represented on any such division.

4. Whenever a controversy or dispute which has not been certified to it in accordance with section 2 is brought to the attention of the Board, it shall refer the matter to the Department of Labor.

It is hereby declared to be the duty of employers and employees engaged in production or transportation of materials essential to national defense to exert every possible effort to settle all their disputes without any interruption in production or transportation. In the interest of national defense the parties should give to the Conciliation Service of the Department of Labor and to the Office of Production Management (a) notice in writing of any desired change in existing agreements, wages, or working conditions, (b) full information as to all developments in labor disputes, (c) such sufficient advance notice of any threatened interruptions to continuous production as will permit exploration of all avenues of possible settlement of such controversies so as to avoid strikes, stoppages, or lockouts.

THE WHITE HOUSE,
March 19, 1941.

FRANKLIN D. ROOSEVELT.

No-Strike No-Lockout Agreement of Labor and Management

December 1941

1. There shall be no strikes or lockouts.

2. All disputes shall be settled by peaceful means.

3. The President shall set up a proper War Labor Board to handle these disputes.

National War Labor Board
Regional Offices

Region	Chairman	Address	Territory Covered
I.	Saul Wallen	209 Washington Street, Boston.	All of Northeast
II.	Theo. Kheel	220 E. 42nd St. New York City.	New York and northern New Jersey.
III.	S. Garrett	21 E 12th St., Philadelphia.	Pa., Del., Md., D.C., Southern New Jersey.
IV.	M.Van Hecke	116 Candler Bldg., Atlanta.	Tenn., Ala., Miss., Va., Ga., N.C., S.C., Fla.
V.	Lewis Gill	629 Euclid Ave. Cleveland.	Ohio, West Virginia, Kentucky.
VI.	Robert Burns	222 W. Adams St. Chicago.	Ind., Ill., Wis., Minn., N.D., S.D.
VII.	Jos. Hoskins	911 Walnut St., Kansas, Mo.	Mo., Ark., Neb., Kansas, Iowa.
VIII.	Floyd McGown	Mercantile Bank, Dallas.	Texas, La., Oklahoma.
IX.	Chas. Graham	504 Boston BLdg. Denver.	Colo., New Mex., Montana, Wyoming, Utah, Idaho.
X.	T.F. Neblett	1355 Market St., San Francisco.	Calif,, Nevada, Arizona.
XI.	Edwin Witte	Penobscot Bldg., Detroit.	Michigan.
XII.	G.B. Noble	Stewart Bldg., Seattle.	Washington, Oregon.

Executive Order # 9017

WHEREAS by reason of the state of war declared to exist by resolutions of the Congress, approved December 8, 1941 and December 11, 1941, respectively, the national interest demands that there shall be no interruption of any work which contributes to the effective prosecution of the war; and

WHEREAS as a result of a conference of representatives of labor and industry which met at the call of the President on December 17, 1941, it has been agreed that for the duration of the war there shall be no strikes or lockouts, and that all labor disputes shall be settled by peaceful means, and that a National War Labor Board be established for the peaceful adjustment of such disputes:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and the statutes of the United States, it is hereby ordered:

1. There is hereby created in the Office for Emergency Management a National War Labor Board, hereinafter referred to as the Board. The Board shall be composed of twelve special commissioners to be appointed by the President. Four of the members shall be representative of the public; four shall be representative of employees; and four shall be representative of employers. The President shall designate the Chairman and Vice-Chairman of the Board from the members representing the public. The President shall appoint four alternate members representative of employees and four representatives of employers, to serve as Board members in the absence of regular members representative of their respective

groups. Six members or alternate members of the Board, including not less than two members from each of the groups represented on the Board, shall constitute a quorum. A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board.

2. This order does not apply to labor disputes for which procedures for adjustment or settlement are otherwise provided until those procedures have been exhausted.

3. The procedures for adjusting and settling labor disputes which might interrupt work which contributes to the effective prosecution of the war shall be as follows: (a) The parties shall first resort to direct negotiations or to the procedures provided in a collective bargaining agreement. (b) If not settled in this manner, The Commissioners of Conciliation of the Department of Labor shall be notified if they have not already intervened in the dispute. (c) If not promptly settled by conciliation, the Secretary of Labor shall certify the dispute to the Board, provided, however, that the Board in its discretion after consultation with the Secretary may take jurisdiction of the dispute on its own motion. After it takes jurisdiction, the Board shall finally determine the dispute, and for this purpose may use mediation, voluntary arbitration, or arbitration under rules established by the Board.

4. The Board shall have power to promulgate rules and regulations appropriate for the performance of its duties.

5. The members of the Board (including Alternates) shall receive necessary traveling expenses, and, unless their compensation is

otherwise prescribed by the President, shall receive in addition to traveling expenses $25.00 per diem of subsistence expense on such days as they are actually engaged in the performance of duties pursuant to this order. The Board is authorized to appoint and fix the compensation of its officers, examiners, mediators, umpires, and arbitrators; and the Chairman is authorized to appoint and fix the compensation of other necessary employees of the Board. The Board shall avil itself, insofar as practicable, of the services and facilities of the Office for Emergency Management and of other departments and agencies of the government.

6. Upon the appointment of the Board and the designation of its Chairman, the National Defense Mediation Board established by Executive Order # 8716 of March 19, 1941, shall cease to exist. All employees of the National Defense Mediation Board shall be transferred to the Board without acquiring by such transfer any change in grade or civil service status. All records, papers, and property, and all unexpended funds of the National Defense Mediation Board shall be transferred to the Board. All duties with respect to cases certified to the National Defense Mediation Board shall be assumed by the Board for discharge under the provisions of this Order.

7. Nothing herein shall be construed as superseding or in conflict with the provisions of the Railway Labor Act (Act of May 20, 1926, as amended, 44 Stat. 577; 48 Stat. 926, 1185; 49 Stat. 1169; 45 U.S. Code 151), the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 457, 29 U.S. Code 151 et seq.), The Fair Labor Standards Act (Act of

June 25, 1938; 52 Stat. 1060; 29 U.S. Code 201 et seq.), and the Act to provide conditions for the purchase of supplies, etc., approved June 30, 1936 (49 Stat. 2036; 41 U.S. Code, sections 35-45), or the Act amending the Act of March 3, 1931, relating to the rate of wages for laborers and mechanics, approved August 30, 1935 (49 Stat. 1011; 40 U.S. Code, Section 276 et seq.)

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE
January 12, 1942

Amending Executive Order # 9017 of January 12, 1942, to provide for the appointment of associate members of the National War Labor Board.

By virtue of the authority vested in me by the constitution and the-statutes of the United States, it is hereby ordered that Executive Order # 9017 of January 12, 1942, entitled "Establishment of the National War Labor Board", be, and is hereby, amended so as to provide for the appointment of associate members of the National War Labor Board. Such associate members shall be authorized to act as Mediators in any labor dispute pursuant to the direction of the Board.

Associate members shall receive compensation and expenses during any period of service in like manner as regular members of the Board.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,

January 24, 1942.

Executive Order # 9250

Title II: Wage and Salary Stabilization Policy

1. No increase in wage rates, granted as a result of voluntary agreement, collective bargaining, conciliation, arbitration or otherwise, and no decreases in wage rates, shall be authorized unless notice of such increases or decreases shall have been filed with the National War Labor Board and unless the National War Labor Board has approved such increases or decreases.

2. The National War Labor Board shall not approve any increase in the wage rates prevailing on September 15, 1942, unless such increase is necessary to correct maladjustments or inequalities, to eliminate substandards of living, to correct gross inequities, or to aid in the effective prosecution of the war.

Provided, however, that where the National War Labor Board or the Price Administrator shall have reason to believe that a proposed wage increase will require a change in the price ceiling of the commodity or service involved, such proposed increase, if approved by the National War Labor Board, shall become effective only if also approved by the Director.

3. The National War Labor Board shall not approve a decrease in the wages for any particular work below the highest wages paid therefor between January 1, 1942 and September 15, 1942, unless to correct gross inequities and to aid in the effective prosecution of the war.

4. The National War Labor Board shall, by general regulation

make such exemptions from the provisions of this title in the case of small total wage increases or decreases as it deems necessary for the effective administration of this order.

5. No increases in salaries now in excess of $5000 per year (except in instances in which an individual has been assigned to more difficult or responsible work), shall be granted until otherwise determined by the Director.

6. No decreases shall be made in the salary for any particular work below the highest salary paid therefor between January 1, 1942 and September 15, 1942, unless to correct gross inequities and to aid in the effective prosecution of the war.

7. In order to correct gross inequities, and to provide for greater equality in contributing to the war effort, the Director is authorized to take the necessary action, and to issue the appropriate regulations, so that, in so far as practicable, no salary shall be authorized under Title III, Section 4, to the extent that it exceeds $25,000 after the payment of taxes allocable to the sum in excess of $25,000. Provided, however, that such regulations shall make due allowance for the payment of life insurance premiums on policies heretofore issued, and required payments on fixed obligations heretofore incurred, and shall make provision to prevent undue hardship.

8. The policy of the Federal Government, as established in Executive order No. 9017 of January 12, 1942, to encourage free collective bargaining between employers and employes is reaffirmed and continued.

9. In so far as the provision of Clause (1) of Section 302 (C) of the Emergency Price Control Act of 1942 are inconsistent with this order, they are hereby suspended.

Title III:Administration of Wage and Salary Policy

1. Except as modified by this order, the National War Labor Board shall continue to perform the powers, functions, and duties conferred upon it by Executive Order No. 9017, and the functions of said Board are hereby extended to cover all industries and all employes. The National War Labor Board shall continue to follow the procedures specified in said executive order.

2. The National War Labor Board shall constitute the agency of the Federal Government authorized to carry out the wage policies stated in this order, or the directives on policy issued by the Director under this order. The National War Labor Board is further authorized to issue such rules and regulations as may be necessary for the speedy determination of the propriety of any wage increases or decreases in accordance with this order, and to avail itself of the services and facilities of such State and Federal Departments and agencies as, in the discretion of the National War Labor Board, may be of assistance to the board.

3. No provision with respect to wages contained in any labor agreement between employers and employes (including the shipbuilding stabilization agreements as amended on May 16, 1942, and the wage stabilization agreement of the building construction industry arrived at May 20, 1942) which is inconsistent with the policy herein enunciated or hereafter formulated by the Director shall be enforced

except with the approval of the National War Labor Board within the provisions of this order. The National War Labor Board shall permit the shipbuilding stabilization committee and the wage adjustment board for the building construction industry, both of which are provided for in the foregoing agreements, to continue to perform their functions therein set forth, except in so far as any of them is inconsistent with this order.

4. In order to effectuate the purposes and provisions of this order and the Act of October 2, 1942, any wage or salary payment made in contravention thereof shall be disregarded by the executive departments and other governmental agencies in determining the costs or expenses of any employer for the purpose of any law or regulation, including the Emergency Price Control Act of 1942 or any maximum price regulation thereof, or for the purpose of calculating deductions under the revenue laws of the United States or for the purpose of determining costs or expenses under any contract made by or in behalf of the government of the United States.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,

October 3, 1942.

National War Labor Board
Administrative Regulation No. 1

S801.1 The Discharge of the Duties of the Board. The Board at duly held meetings shall finally determine all disputes which fall within its jurisdiction in accordance with rules of procedure promulgated by the Board.

S801.2 Meetings. The Board shall hold regular meetings beginning at ten thirty o'clock in the morning on each Tuesday. Special meetings will be upon call of the chairman.

S801.3 The Executive Sessions and Hearing Sessions of the Board. At its regular or special meetings the Board shall sit in executive session or hearing session as the Board may determine. At its executive sessions the Board shall consider such matters as relate to the carrying on of its affairs and dispose of cases which the Board determines do not require formal appearances before the Board by the parties. If the Board so determines a formal appearance of the parties will be held at a hearing session.

S801.4 Quorum. Six members, including not less than two members from each of the groups represented on the Board, shall constitute a quorum of the Board. The word members as used in these rules and regulations, unless it otherwise appears from the context means regular or alternate members.

S801.5 Voting. Each member shall be entitled to one vote on any matter put to a vote before the Board:Provided, however, that tripartite equality of voting shall be preserved. Vote shall be by

roll call and a majority vote shall govern the decision of the Board.

S801.6 (Revised May 19th) Division of the Board. On recommendation by the Committee on New Cases, the Board may designate cases on the Board docket for handling by a division of three members of the Board composed of a public member, acting as chairman, an industry member and an employee member; provided that final decision shall be reserved for the Board.

S801.7 Decisions of the Board. When the Board has decided any case, the Chairman may designate one of the members of the Board to write the decision of the Board. Such member shall have voted with the majority. The decision of such designated member shall be the decision of the Board and shall be published as such. Any other member of the Board may write an opinion either agreeing or disagreeing with the decision of the Board, and such opinion shall be published simultaneously with the decision of the Board.

S801.8 Associate Members. The Associate Members of the Board shall be eight representatives of the public, eight representatives of employers and eight representatives of employees. The Chairman may refer any case to one or more Associate Members who shall proceed to mediate it in accordance with the rules of procedure prescribed by the Board; provided that when there are associate members representative of employers and employees on any panel so designated they shall be equal in number.

S801.9 Administrative Associate Member. One associate member shall be designated Administrative Associate Member. Such member

shall maintain offices in space allocated to the Board and shall be charged with the duty of correlating the mediation of various cases referred to Associate Members or other persons for the purpose of mediation or investigation and shall be prepared at all times to inform the Board with respect to the status of any particular case.

S801.10 Executive Secretary. With the advice and consent of the Board the Chairman shall appoint an Executive Secretary of the Board who shall be charged with the duty of maintaining the dockets and records of the Board and performing such other duties as are secretarial in their nature. The Executive Secretary shall procure a seal for the Board and shall be the custodian of the same.

S801.11 Director of Statistical Information. With the advice and consent of the Board the Chairman shall appoint a Director of Statistical Information who shall be charged with the duty, under the direction of the Vice-Chairman, of assembling and correlating such statistical data as may be pertinent to cases before the Board. In the discharge of his duties such director shall utilize as far as practicable the available facilities and personnel of other government agencies.

S801.12 (Revised May 19th) Personnel and Administration. The Chairman, with the advice and consent of the Board, may appoint and fix the compensation of such regular employees of the Board as may be necessary to perform duties of discretionary nature, whether as Mediators, Investigators, Examiners, or otherwise. The Chairman may also appoint and fix the compensation of such ad hoc Mediators

investigators or examiners and other employees as may be necessary to carry on the clerical and other administrative work of the Board, and, with the aid of such assistants as he may designate, may perform or provide for all other necessary acts of an administrative nature; provided that he shall so act within the limits of the funds allocated to the Board by the Bureau of the Budget and shall regularly report to the Board on action so taken.

S801.13 Rule 13 is hereby revoked.

S801.14 Rule 14 is hereby revoked.

S801.15 (Revised May 19th) Committee on New Cases. The Board shall appoint a committee of six of its members as a standing committee on New Cases. Two of such members shall be public members of the Board, two shall be employee members and two shall be industry members. Three members of the Committee shall constitute a quorum. Whenever any member of the Committee is unable to attend any meeting of the Committee, he may designate an alternate to sit in his stead. Upon failure of any member to designate an alternate, the Chairman may designate such an alternate. Each member of the Committee shall be entitled to one vote on any matter put to vote before the Committee: Provided, however, that tripartite equality of voting shall be preserved. The decisions of the Committee shall be by majority vote, subject to appeal to the Board. The Administrative Associate Member shall attend the meetings of the Committee but shall not be entitled to vote. Such Committee shall have responsibility for supervising the course which cases shall follow until cases are placed before the Board for decision. The Committee shall hold set hearings once each week on such regular

day as it shall determine. In carrying out its responsibility, the Committee may when appropriate assign cases to Investigators, Individual Mediators, or Panels of Mediators, or may place cases upon the Board docket for either hearing or executive sessions, and may, by such resolutions and instructions as the Committee deems appropriate delegate the routine work of the Committee to a subcommittee composed of one public member of the Board as Chairman, the Administrative Associate Member and the Executive Secretary; provided, however, that such subcommittee shall be required to report on all action taken to the full committee and the full committee shall report to the Board on all action taken by it.

S801.16 (Revised May 19th) Dockets. The Executive Secretary shall keep dockets which shall show the status of all cases pending before the Board in such form as the Chairman shall direct.

S801.17 Records and Files. The records and files of the Board shall be in the custody of the Executive Secretary of the Board and shall be kept in appropriate place in the space allocated to the Board at Washington, D.C. The secretary shall formulate a system for keeping the files so that they will be readily accessible to the Board.

S801.18 Publication of Official Acts of the Board and Press Releases. All administrative regulations of the Board shall be published in the Federal Register and all decisions of the Board and opinions as provided in paragraph 7--Decisions of the Board, shall be published in some appropriate publication designated by the Board.

National War Labor Board
Administrative Regulation No. 2.

S802.1 New Case Docket. Whenever any case is certified to the Board, or whenever the Board assumes jurisdiction of any case on its own motion, the Executive Secretary shall place such case on the New Case Docket. Unless otherwise determined by the Standing Committee on New Cases, the cases shall be put on the New Case Docket in the order of the time of certification or assumption of jurisdiction.

S802.2 Notice of Jurisdiction. Whenever any case is put on the New Case Docket, the Executive Secretary shall notify the parties and shall keep the parties advised of the procedure to be followed, and in the event that there is a strike or lockout in progress at the time such notice shall contain a request that the strike or lockout be discontinued and that the parties restore the status quo existing before the strike or lockout occurred, or the dispute arose, pending the determination of the case by the Board.

S802.3 Rule 3 is hereby revoked.

S802.4 Notice to Parties. Whenever any case is placed on the Mediation Docket or the Board Docket or Board Hearing Docket, the Executive Secretary shall notify the parties of the time and place of the mediation or hearing before the Board.

S802.5 Rule 5 is hereby revoked.

S802.6 (Revised May 19th) Memorandums to be filed by the Parties. Prior to the date for initial mediation proceedings and any hearings before the Board, each party to the dispute shall submit to

the Board a memorandum setting forth, in summary form, his position and the facts as to which evidence will be submitted at the hearing. Where circumstances permit, such memorandum shall be required not less than seven days prior to such proceedings and shall be filed in quadruplicate with the Executive Secretary in such form as the Chairman may direct.

S802.7 Reference to Voluntary Arbitration. If settlement of the dispute is not brought about by mediation the mediators shall try to induce the parties to submit the dispute to arbitration either by an arbiter of their own choosing or by an arbiter selected in some manner that is agreeable to the parties.

S802.8 (Revised May 19th) Reports of Investigators or Mediators. When proceedings before an Investigator, Individual Mediator, or Panel of Mediators have been concluded, if the dispute has not been settled, the Investigator, Mediator or Panel shall promptly prepare a full and accurate Report of the positions of the parties, the facts of the case and recommendations, in such form as the Administrative Associate Member shall direct. In such cases as the Committee on New Cases may designate for Hearings before the Board and in special cases which, in the opinion of the Committee, call for such action, a copy of such Report shall be transmitted to the authorized representatives of each of the parties to the dispute. The parties shall be afforded one week after the receipt of the Report within which to file memoranda setting forth any corrections of the Report, or relevant facts occurring subsequent to the proceedings on which the Report was based. Additional time for the submission of such

memorandums may, however, be granted by the Chairman of the Board, or by his appointee, upon good cause shown. Such memorandums shall be filed in quadruplicate with the Executive Secretary in such form as the Chairman may direct. Cases shall be docketed for consideration by the Board not earlier than three days after expiration of the period for submission of memorandums by the parties upon such Report, and not earlier than two days after copies of the Report of Investigators or Mediators and any analysis of the parties' memorandums are placed in the hands of the Board Members.

S802.9 Executive Sessions. At an executive session of the Board, the Board shall consider in order all cases on the Board Docket and shall dispose of them in accordance with the following principles:

(a) If the Board approves the findings and recommendations of the Mediators or Mediator, it shall thereupon render a decision of the Board based upon such findings and recommendations.

(b) If the Board determines that it is necessary to make further investigation of facts with respect to any particular case, it shall recommend to the Chairman that an investigator or examiner be designated to make such investigation and report to the Board.

(c) If the Board determines that the case is of such character that it is desirable to have the parties to the dispute appear before the Board, it shall place such case upon the Hearing Docket of the Board.

S802.10 Hearings Before the Board. The Board shall consider all cases put upon the Hearing Docket at Hearing Sessions. In the

oral presentation of the case to the Board the parties shall be allowed an equal amount of time, not exceeding fourty-five (45) minutes, unless the Board determines in advance that a longer time is necessary. The Hearings Session of the Board shall be open to the public unless in particular cases the Board rules otherwise. However there shall be no public hearings before any agency of the Board prior to the public Hearings Sessions of the Board.

§802.11 (Added May 19th) Transcripts. When the parties to a labor dispute are brought before a mediator or mediators acting for the National War Labor Board or before the Board itself, proceedings shall be conducted as hearings when fact-finding, investigation of fact or other proceedings calling for a formal record are in progress. Whenever conferences for mediation purposes are held, the Chairman shall definitely state that the proceedings do not constitute a hearing, and if a hearing is in progress shall adjourn the hearing until reconvened as a hearing. Whenever proceedings are being conducted as Hearings, as above, verbatim records shall be kept of all proceedings and copies of such records shall be available for inspection by the parties at interest. Extracts shall be obtainable by the parties on arrangement with the official stenographer. The Chairman of any hearing shall have discretion during any conference to have a stenographic record taken but such record shall be exclusively for the convenience of such Chairman and the Board or Mediators, as the case may be, and shall not be available to the parties, without permission of the Chairman for special cause shown.

Cases Received by the National War Labor Board
January 13 - December 1, 1942

Total Cases Received		2119
Disputes	918	
Arbitration Agreements	377	
Voluntary Wage Agreements	824	

Cases Closed by the National War Labor Board
January 13 - December 1, 1942

Total Cases Closed		396
Disputes	330	
Arbitration Agreements	27	
Voluntary Wage Agreements	39	

Disposition of Closed Dispute Cases
January 13 - December 1, 1942

Dispute Cases Closed: All Methods		330
Directive Order	187	
Mediation	82	
Voluntary Arbitration	26	
Other Disposition	35	

Types of Union Recognition in Effect-January 1943

Total Employed in Occupations Where Union Agreements Might be in Effect		31,000,000
Total Covered by Collective Bargaining Relations		13,000,000
Total Covered by Closed or Union Shop Agreements	6,000,000	
Total Covered by Maintenance of Membership	2,000,000	
Total Covered by Preferential Union Shop	500,000	
Total Covered by Union as Sole Bargaining Agent	4,500,000	

Types of Union Recognition in Effect-January 1943
(Expressed in Percentages)

Employed in Occupations Where Union Agreements Might be in Effect		100%
Covered by Collective Bargaining Relations		42%
Covered by Closed or Union Shop Agreements	20%	
Covered by Maintenance of Membership	6½%	
Covered by Preferential Union Shop	1½%	
Covered by Union as Sole Bargaining Agent	14½%	

Percentage of Workers Under Union Agreement by Type of Recognition in Selected Industries

Industry	A	B	C	D	E
Aircraft		10-39	10-39	1-9	60-89
Aluminum	1-9	10-39	40-59		10-39
Automobile		10-39	40-59	1-9	10-39
Baking	90-100				1-9
Breweries	90-100				
Bus & Street Car		60-89	1-9	1-9	10-39
Chemicals	1-9	1-9		1-9	60-89
Clothing (Men's)	40-59	10-39	1-9	10-39	1-9
Clothing (Women's)	90-100	1-9	1-9		
Construction	90-100			1-9	
Electrical Equipment	1-9	1-9	60-89	1-9	10-39
Farm Equipment		1-9	60-89		10-39
Furniture	10-39	10-39	1-9	1-9	10-39
Glass	10-39	10-39		10-39	10-39
Iron & Steel, Basic			60-89		10-39
Iron & Steel Products	1-9	10-39	1-9	1-9	60-89
Leather Tanning	1-9	10-39	40-59		40-59
Machine Tools	1-9	1-9	1-9	1-9	60-89
Maritime & Longshore	1-9			90-100	
Mining : Coal		90-100			
Mining : Nonferrous		1-9	60-89		10-39

Industry	A	B	C	D	E
Nonferrous Alloying	1-9	10-39	10-39	1-9	60-89
Paper & Allied Products	1-9	40-59	10-39	1-9	10-39
Pottery		1-9		60-89	10-39
Printing & Publishing	90-100				
Railroads					90-100
Rubber Tires		1-9	40-59		40-59
Shipbuilding	40-59	10-39	10-39	1-9	10-39
Smelting & Refining		10-39	40-59		10-39
Telephone & Telegraph	1-9	10-39	1-9		60-89
Textile : Cotton	1-9	10-39	1-9		60-89
Rayon & Silk	10-39	10-39	10-39		40-59
Hosiery	90-100	1-9			1-9
Woolen & Worsted	10-39	10-39	10-39		60-89
Trucking	90-100				

LEGEND

A -----Closed Shop
B -----Union Shop
C -----Membership Maintenance
D -----Preferential Hiring
E -----Sole Bargaining

Statistics Supplied by United States Department of Labor, Bureau of Labor Statistics, Industrial Relations Division.

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