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Policy Development in Government Wartime Seizures Arising from Labor Disputes

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POLICY DEVELOPMENT IN GOVERNMENT
WARTIME SEIZURES ARISING
FROM LABOR DISPUTES

by

Albert Martin Krueger

A Thesis Submitted to the Faculty of the Institute of Social and Industrial Relations of Loyola University in Partial Fulfillment of the Requirements for the Degree of Master of Social and Industrial Relations

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LIFE

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He attended Quigley Preparatory Seminary, Chicago, Saint Mary of the Lake Seminary, Mundelein, Illinois, and received a Bachelor of Arts degree in June, 1953 from Loyola University, Chicago.

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PREFACE

In tracing the development of governmental policy during the hectic years of World War II, the author has limited the study to a few of the more vital industries that were essential to the defense program. It is only in this way that the reader will be able to reconcile seemingly conflicting policy formulation, and at the same time realize the insurmountable task that the Federal Government faced in seeking to insure continued, uninterrupted production of essential war materials.

Very special thanks are due to Father Paul Woelfl for his kindness and helpful recommendations, and to Dr. Arthur Marlow, for his kind assistance.
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CHAPTER I

INTRODUCTION

It is never comforting to take a penetrating look at one's failures, but it can be very instructive. The passage of time will be effective to show what was and what was not important in a series of interdependent activities and the conclusions drawn will give validity to future conduct. This is especially true with regard to the formulation of governmental policy. It is one area where failure to learn from past mistakes can prove harmful, and even disastrous.

Whenever a study of government interference in labor disputes is conducted, there immediately arises a clamor for the preservation and protection of collective bargaining rights, together with a denunciation of Federal authorities for the unauthorized intervention in industrial relations.

Nowhere was the clamor more persistent than in the World War II seizure cases, in which the Federal Government seized nearly sixty vital industrial plants and facilities in order to insure the continued production of essential war materials.

It will be the purpose of this study to analyse some of the federal policies that had to be formulated and reconciled if seizure was to work fairly and effectively; to define the nature of the seizure technique as a governmental policy in wartime; to present the scope within which this
The technique was applied to prevent work stoppages; and finally, to show what effect past failures and experiences can and should have upon sound future Federal administrative policy.

The report is written to point up some of the problems that arose when seizure was adopted as a means of coping with work stoppages, and the case method analysis is adopted as the best illustration of these problems. The writer will not attempt to detail the later constitutional grounds or the legal consequences involved in each case, nor will it be necessary to examine the managerial problems that arose within the seized facility.

The study will, of necessity, be limited to a few of the more vital industries, such as coal, shipbuilding, transportation and the mail order business. It is only in this way that the reader may acquire a greater insight into the insurmountable task that the Federal Government faced in attempting to resolve industrial relations disputes.

Seizure implies that the particular crises is expected to be of a temporary nature, and that upon resolution of the controversy, the plant or facility will be returned to the owners. This will serve to distinguish a plant seized by the government from one that is owned and operated by the Federal Government in carrying out its authorized functions. In the latter case, the collective bargaining rights are not recognized at all, or at least to a limited degree; whereas, in the seizure case, those rights are protected in all events, excepting only the legal consequences involved.

Generally, the necessity for seizure arose when the health, safety and welfare of the community was threatened by the interruption in production of essential war materials for national defense.
There was little occasion during World War I to develop any large body of law on the subject of government seizure. Only three cases of defiance of War Labor Board orders occurred; two were cases of company defiance and resulted in seizure by the Federal authorities, and the third was a strike which led to President Wilson's famous "Work or Fight" order, and which resulted in a return to work by striking employees.

From 1935 and the National Labor Relations Act until 1941, and Pearl Harbor, the government's influence upon the conduct of labor relations was limited to the extent of helping employees to organize and encouraging free collective bargaining for the resolution of all industrial relations issues. The government might even provide services and outline procedures the disputants might follow to expedite settlements. Although the disputants retained full latitude in working out their grievances, government conciliation, mediation and arbitration were available means designed to bring about a "meeting of the minds."

Months before the United States became an actual participant in World War II, the urgency for a more extensive government program was felt. The national interest in maximum production made peaceful negotiation of labor disputes a matter of great public demand. In time of a national

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emergency, strikes and lockouts could not be permitted to fulfil their collective bargaining functions, even though extreme provocation existed for employees to stop work or for management to close the plant. Something more than the automatic workings of the collective bargaining process had to be evolved to bring about agreements and protect against work stoppages.

Consequently, the scope of government intervention was greatly increased during the defense period (1940-1945), by the powers of the mediation boards to issue recommendations and procedures, and by the supplementary power of the government to seize plants and facilities when work stoppages occurred.

By comparison with previously existing collective bargaining practices, the labor policy of this time modified the private rights of organized labor and management in a far reaching manner.

A labor dispute was treated as an industrial relations problem by the government mediation boards. A work stoppage in time of impending or actual war became a problem of government which had to be dealt with under the emergency powers of the President. Labor disputes then became incidental to broader considerations when strikes raised the question of whether private rights should be subordinated to the general welfare?

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3Joel Seidman, American Labor From Defense to Reconversion (Chicago, 1953) p. 240.
4Foster Rhea Dulles, Labor In America (New York, 1949) p. 331.
5Ibid. p. 332.
6Ibid. p. 333.
7Johnson, p. 2.
It must be kept in mind, however, that government seizure and operation of a plant was not to settle a labor dispute. These steps were prerequisites to a call upon employees to work under conditions of employment protested by them as being unfair and inequitable. In almost all of the World War II seizures, the striking employees returned to their jobs and continued to work during the period of government control. The government was considered to have certain proprietary, or at least supervisory powers, over the seized property, and workers there employed were considered as being employed by the government.

Again, seizure meant taking possession by the government, but not necessarily operation by the government. In a number of cases, the government did operate the seized facility, but in the majority of cases, the private owner was permitted to continue its management after seizure, although the government exercised a measure of supervision.

The study of seizures clearly indicates that the Federal Government had not prepared any plan to meet such emergencies. The authority for seizure was weak; the order showed no advance from wartime measures, and the commendable intent to have the disputing parties work out their own solutions without formal intervention was negativised by a policy which

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10Ibid.
deprived workers of their right to strike but allowed management to continue to gather the profits. The political scientists and strategists caution the Federal Government to heed this experience and prepare in advance by carefully drawn statutes for possible future emergencies. This is one case where, they point out, by having a law "on the books," a valuable purpose may be served, even if that law is never used.11

It is the intention of the writer to survey the efforts of various government agencies to induce peaceful settlement of labor disputes, and the subsequent difficulties encountered when such efforts failed, and the plants were seized to insure continued production. It will be shown that plant seizures provided neither easy nor automatic solutions to industrial relations problems, but may indeed have substantially increased the difficulty of working them out.

The greater part of the material in this thesis has been compiled from the official publications of various government agencies, and the Reports of the Work of the National Defense Mediation Board and the National War Labor Board. The remaining part was acquired by referring to numerous newspaper articles and magazine reviews, as well as current publications, Executive Orders, speeches and reports of government officials of that time.

Having stated the general area of this study, we will now proceed to a more detailed examination of the administrative policy formulated by the Federal Government during the years of 1940-45.
CHAPTER II

FAILURE OF THE FEDERAL AGENCIES TO RESOLVE WARTIME LABOR DISPUTES

The year 1941 was to prove to be one of the most disorderly and chaotic in labor history. In that year, the number of labor disputes reached a higher total than any other previous year with the single exception of 1937. In all, there were 4,288 strikes, involving over two million workers, representing approximately eight per cent of the nation's employed industrial wage earners. There were very few industries that escaped work stoppages, which, at least for a time, seriously interfered with defense production.

In early 1941, the country's rearmament program was in effect. Rises in costs of living and a greater amount of employment put many worker groups in a state of mind to demand, and, if necessary, strike for higher wages. From December, 1940 to March, 1941, the number of strikes more than doubled, and the mandates due to work stoppages more than tripled.

The threat to the defense program in these work stoppages led to the

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creation on March 19, 1941, by Executive Order, of the National Defense Mediation Board. President Roosevelt, in creating the Board, declared it to be "essential in 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 and with all possible speed." For that reason, the Board was created. It was composed of eleven members, three representing the public, and four each for management and labor. The Board was given jurisdiction only over such disputes as were certified to it by the Secretary of Labor, and he, in turn, was directed to certify to the Board, "any dispute between employers and employees that threatened to obstruct or burden the production of materials essential for national defense." Once the certification of a dispute was made, the Board was authorized by the President to take any of the following actions:

1. To assist the parties to a dispute to settle by themselves; in other words, to mediate;

2. To afford the means of voluntary arbitration when the parties agreed to abide by the ruling of the arbitrators, or to name arbitrators, when requested to do so;

3. To assist the parties in the establishment of methods of settling future disputes;

4Executive Order No. 8716.

5Miller, p. 425.

6Ibid.
4. To investigate issues between employers and employees, conduct hearings, take testimony, make findings of fact and recommendations when "the interests of industrial peace so require", and

5. To request the National Labor Relations Board to expedite its actions in disputes that involved a question of the appropriate bargaining unit. 7

Whenever a dispute was brought to the attention of the Board without certification from the Secretary of Labor, the Board was required to refer the matter to the Department of Labor.

If a dispute was certified in the prescribed manner, a panel or division of the Board, consisting of not less than three members, representing the three groups, was named to hear the case. The full Board, could, of course, hear the case, but it was not common practice to do so. 8

The Executive Order creating the board, closed with an exhortation to employers and employees that, according to Mr. Glen Miller, clearly showed the weakness of the whole organization as far as power to enforce any action was concerned:

It is hereby declared to be the duty of employers and employees in production of materials essential to national defense to exert every possible effort to settle all their disputes without any interruptions in production. In the interest of national defense, the parties should give to the Department of Labor:


8Miller, p. 425.
1. notice in writing of any desired change in existing agreements, wages or working conditions;

2. full information as to all developments in labor disputes, and

3. such sufficient advance notice of any threatened interruption to continuous production as will permit exploration of all avenues of possible settlement of such controversies so as to avoid strikes, stoppages and lockouts.\(^9\)

Even without direct power of enforcement, the Board was able to do good work and aid in the settlement of many disputes that certainly would have disrupted defense production. In judging the work of the Board, it is well to keep in mind that it began action in a case only after another government mediation agency, the Conciliation Service, had tried to settle the dispute and failed.\(^10\)

While authority to make findings of fact was available when mediation failed, it was reported that about seventy-five per cent of all wage and union-security cases were settled by agreement and without resort to making public recommendations.

From March, 1941 to January, 1942, final settlements were secured in ninety-six of the cases that came before the Board; ten were settled before they even went to hearings; and of the eighty-six cases settled after a hearing was held, about twenty-two were terminated by contracts voluntarily entered into

\(^9\)Executive Order No. 8716

\(^10\)Jaffe and Rice, II, 2.
by the parties without the direction or assistance of the Board.\textsuperscript{11}

It must be noted that neither in mediation nor in making recommendations did the Board have any standards or preconceived rules on which to base its decisions. Neither Congress nor the President had enunciated any principles for the settlement of labor disputes, and the Board itself did not develop any standards.\textsuperscript{12}

While this lack of precedents and rules was not too significant at the time, since settlements were essentially something that the parties themselves developed and ratified, inconsistencies became apparent later, and the responsibility for them would be placed upon the Board.\textsuperscript{13}

The Board was not entirely successful in preventing strikes in cases that came before it. There were, for example, eighty-five separate strikes that occurred in seventy-two cases of a total of 111 cases that were certified to the Board.\textsuperscript{14}

However, since strikes were in actual progress in more than fifty-five per cent of the cases certified, the Board was often confronted with a difficult situation, for which it was not fully responsible. Moreover, it must be remembered that the Board could only hear those cases certified to it by the Department of Labor. It would only be natural for that department to be

\textsuperscript{11}Ibid.

\textsuperscript{12}Miller, p. 430.

\textsuperscript{13}Ibid.

somewhat hesitant to refer a case, since that would involve a "confession of failure," and such delay would render the work of the Board more difficult.16

In view of the limited effectiveness of the National Defense Mediation Board and the emergency created by the outbreak of the war, President Roosevelt, on December 17, 1941, called a labor and industry conference to discuss labor policies for the duration of the war. The conference was attended by twelve union officials divided equally between the American Federation of Labor and the Congress of Industrial Organization and twelve industrial leaders. A number of points were readily agreed upon and President Roosevelt, and the co-chairmen of the conference announced the results.17 These were:

1. For the duration of the war, there shall be no strikes or lockouts.
2. All labor disputes were to be settled by peaceful means, and
3. A National War Labor Board was to be established for the peaceful settlement of disputes that did arise.18

The President acted promptly, and on January 12, 1942, he issued an Executive Order creating the new Board. The President cited, as reasons for it, the declaration of war, which "demands that there shall be no interruption of any work which contributes to the effective prosecution of the war," and the

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16Jaffe and Rice, II, 8-10.
17Ibid.
18Executive Order No. 9017, dated January 12, 1942.
points of agreement reached at the labor-management conference.\textsuperscript{19}

The Board was made up to twelve "special commissioners", equally divided among labor, management and public representatives. Provision was made for alternate members for employer and employee representatives.\textsuperscript{20} A set procedure for the settlement of disputes was specified. The steps were:

1. Direct negotiations between the parties involved,

2. If settlement were not reached in this manner, the conciliators of the Department of Labor were to be called in if they had not previously entered the case, and

3. If successful conciliation failed, the case was to be certified to the new Board.\textsuperscript{21}

However, unlike the National Defense Mediation Board, the War Labor Board was not entirely handicapped in the event a case was not certified to it; on its own discretion and after consultation with the Secretary of Labor, it could take jurisdiction over a case.\textsuperscript{22}

This power of the Board to act of its own volition was significantly different from that of its predecessor. In terms of the Executive Order, "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. No longer was the Board an agency that


\textsuperscript{20}Reproduced in Executive Order No. 9017.

\textsuperscript{21}\textit{Ibid}.

\textsuperscript{22}Miller, 426.
could only mediate, but it could also formulate rules under which an arbitration proceeding would be conducted. It amounted to the creation of an agency empowered to conduct compulsory arbitration for the duration of the war.23

Once the new agency was established, the old National Defense Mediation Board ceased to exist. Its personnel, records, equipment, etc., were transferred to the War Labor Board. The new body was destined to become one of the most important of the war agencies.

The National War Labor Board began its functioning as the final court of appeal for all labor disputes not settled earlier, including railway labor cases. However, on May 22, 1942, the President, by Executive Order 9172, created the National Railway Labor Panel. All railway disputes not otherwise adjusted were to be heard by three-man boards named from that panel, and such a board was "to have exclusive and final jurisdiction of the dispute and shall make every reasonable effort to settle such dispute." Thus, the War Labor Board lost a little of its jurisdiction at an early date, but it still retained more than it could properly care for.24

By the end of November, 1942, 918 dispute cases had been referred to the Board, together with over eight hundred wage settlements submitted for approval and almost four hundred arbitration agreements.

23 Kaltenborn, p. 122.
24 Ibid. p. 123.
However, in that time, it closed only three hundred and thirty cases, leaving a backlog of almost six hundred dispute cases alone. Even within the first year of its life, objections began to be raised concerning the slow handling of business, an objection that was to become more pronounced as the backlog of cases grew. The slowness with which decisions were rendered was due in part to the inheritance of the more difficult cases which the National Defense Mediation Board has been unable to settle. In addition, the National Board in Washington was attempting to decide too many cases directly. This might have been desirable, since precedents and policies were being formulated, but it could not long be continued. Another reason for the slow action was that the members of the Board were split in their opinions in more than one-fourth of the cases considered in the first year.

The Board saw fit to limit its jurisdiction in another field. In December, 1942, it stated that it did not have authority to issue any directive or order in a dispute between state and municipal employees and their employing government. Such a limitation did not greatly reduce the number of cases brought before the Board.

In view of the slow functioning of the Board, and the exclusive centralization of work in Washington, D.C., a major reorganization was effected in

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25Ibid.
26Ibid. 122-124.
January, 1943. At that time, the original field organisation of ten regions, each with its tripartite regional advisory council, was abandoned. Instead, a twelve region organization with regional War Labor Boards instead of advisory councils was set up. The National Board delegated authority over labor dispute and wage and salary adjustment cases to the regional boards. The Washington agency kept original jurisdiction in disputes that were national in character. In addition, the National Board acted as a supreme court to which decisions of the regional boards could be appealed within ten days. Appeal was not an automatic right. The Board granted right to appeal if:

1. A significant, novel question was involved,
2. Procedure was unfair to the petitioner, or
3. The decision exceeded board jurisdiction or conflicted with established policy.

At the same time, the Board officially dropped the mediation function. Thereafter, the representatives of the Board were concerned with making findings of fact and recommendations. However, there was no question that the persons involved missed no chance of settling an issue. Whether or not the mediation function could be officially performed, it did not cease to exist in January, 1943. 28

Up to June, 1943, the activity of the War Labor Board was based only on an Executive Order of the President creating the Board and outlining the functions to be performed. In any case of refusal to accept board rulings, the only

28 Miller, p. 433.
method of enforcement was to apply governmental pressures and seize the plants and facilities by Executive Order.

In June, 1943, Congress acted "to give legal statement of a federal policy on labor disputes in war industries." 29

The Act authorized the President to take over plants needed for the prosecution of the war, or in which war production had ceased because of a labor dispute. 30

Congress intentionally left compliance with the Act and the directives of the War Labor Board for executive action. The measures applied when an employer refused to comply with an order were several. Sanctions in the form of withholding of contracts and the denial of priorities for goods, fuel, transportation and the like were to be tried first. 31

In the event that such sanctions did not bring compliance, the plant could be seized and operated by the government. In application, however, the sanctions to which I have referred were not very effective. Cancellation of war contracts was not an intelligent method of punishment, since it hurt the government as much or perhaps more than it did the company to be disciplined. The denial of priorities was not quite so harmful to the public but tended to

29 War Labor Disputes Act, Public Law 89, Chapter 144, 78th Congress, 1st Session, June 25, 1943.

30 Mets, p. 265.

31 Ibid.
have the same general effect. This meant, in the final analysis, that when compliance measures progressed beyond the public pressure and urging of acceptance of awards or rulings of the Board, about the only recourse was the seizure of the plant. This could be done without a stoppage of production as would occur with a denial of priorities or a cancellation of contracts.\(^{32}\)

Nevertheless, seizures were not resorted to very often. Under the old National Defense Mediation Board, only three minor seizures took place;\(^{33}\) under the War Labor Board, there were more plants and facilities taken over, but the number was relatively small when compared with the total number of cases handled. From the time the reorganization of the War Labor Board took place until mid-year, 1945, almost three and one-half years, there were thirty-eight seizures reported, twenty-eight under President Roosevelt's administration and ten in the first two months under President Truman.\(^{34}\) Taking the period as a whole, there was less than one seizure per month, but the number grew from year to year. For example, there were only three seizures in 1942, and there were fifteen in the first five and a half months of 1945.\(^{35}\)

The power to seize and operate plants extended, under the War Labor Disputes Act, for six months beyond the legal end of hostilities, which was to


\(^{34}\)Snoqualmie Falls Lumber Strike, Cheney Silk, and Federal Shipbuilding and Drydock Strike, June-August, 1941.

\(^{35}\)Ibid.
be proclaimed by the President or by a joint resolution of Congress.

The seizures just referred to, obviously, were not all alike. They were about evenly divided between those resulting from defiance by labor and from defiance by management. When a seizure was ordered, it might be effected by any designated government agency, chosen on the basis of the nature of the business being taken over. The following government agencies seized and operated plants or facilities in one or more instances: Army, Navy, Office of Defense Transportation, Department of the Interior, Department of Commerce, War Shipping Administration, and the Petroleum Administration for War. The Army did the greatest amount of such work, taking over about half of the plant operations. Some of the seizures were of single plants or facilities and others were of hundreds of units, as in the case of the coal mines.

In most of the cases, the facilities were returned to private operation within a few weeks or months. However, a few instances of management recalcitrance were such as to require several months of government operation and occupation, and in one case, of several years. Generally, once labor had succeeded in provoking the seizure of a plant and certain changes in working conditions had been made by the operating government agency, the complainants were often quite willing to have the plants returned; some managements were more inclined than others to stand on a certain principle and thereby give

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36 Mels, p. 232. Toledo, Peoria and Western Railroad Case.
longer periods of opposition.37

Before a more detailed investigation can be made into the administrative problems that the Federal Government encountered in its use of the seizure technique, the reader must keep in mind the fact that seizure and operation of a plant was not to settle a labor dispute. These steps were the prerequisites to a call upon employees to work under conditions of employment protested by them as being unfair and inequitable. Generally, though, workers could be expected to respond to such a call from the government as a public service that could not be avoided in time of war and so long as they were not requested to work for the profit and benefit of the employer. Plant seizure provided the basis for terminating a strike without restricting the right to strike against a private employer.

37Miller, pp. 440-442.
CHAPTER III

EARLY USE OF THE SEIZURE TECHNIQUE

Mediation by the National Defense Mediation Board was novel in two respects. First, mediation was carried through by a panel which included representatives of employers and employees as well as public representatives. Secondly, there was "a subtle element of compulsion" in the Board's mediation proceedings. As Mr. Jaffe explained it in his report of the Board's proceedings, "The parties understood that failure to agree involved a gamble as to what the Board would recommend. The parties understood also that public opinion and even governmental force might compel acceptance of the recommendation." In view of this fact, there was some question as to whether the Board's mediation proceedings should even be termed "Mediation", although Mr. Jaffe suggests that "generally speaking, the Board was satisfied that it had succeeded in convincing the parties that its intentions were mediatory."1

Although the Executive Order creating the Board did not make the recommendations binding upon the parties, still, in practice, the recommendations were quasi-compulsory. In the Federal Shipbuilding and Drydock Case and in the Air Associates Case, the President ordered the

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1Jaffe and Rice, Report, 1112.
plants commandeered by the Army when the companies failed to abide by the Board's recommendations. Moreover, in some cases, it appeared that the companies were threatened with cancellation of government contracts for non-compliance.2

In still other cases, the President publicly requested compliance with the Board's recommendations. In practice, the Board's power to investigate and to issue findings for settlement was clearly akin to compulsory arbitration with compulsory acceptance of the award, though technically and legally, it could not be so designated.3

The Board issued public recommendations in more than twenty of the seventy-eight cases which were settled prior to December 7, 1941, and in thirteen cases, only one of the parties announced publicly that it would not abide by the recommendations.4 In four instances, the employer involved announced a refusal to obey the recommendations.5 In two of these cases, which will now be discussed, the refusal resulted in government seizure of the plants, and in the other two cases, the employer finally capitulated to avoid losing the government contracts.

2This occurred in the Air Associates case and the Lincoln Mills case, New York Times, October 20, 1941 and October 12, 1941, pt. 2, pp. 11-12.

3A recommendation resembled in force as well as in form an arbitral award.

4Air Associates, Inc. case.

THE EARLY SEIZURE CASES.

The Federal Shipbuilding and Drydock Corporation was a subsidiary of the United States Steel Corporation and the Industrial Union of Marine and Shipyard Workers of America (C.I.O.). The dispute involved the issues of union recognition for foremen and supervisors, the union shop, vacations, and the grievance machinery. The dispute was certified to the Board on June 30, 1941. The War Labor Board immediately requested the union to postpone a strike, that was scheduled to begin July 1. By July 14, the parties had reached an agreement on every issue except the union shop demand. This issue was referred by the three member panel to the full Mediation Board of eleven members. On July 24, twenty-two members of the Board and the alternates discussed the issue for five hours and then remanded the case back to the original panel. On July 26, the panel recommended, with the employer member dissenting, what has since become known as the "maintenance of membership" clause in union contracts.

The complete recommendation was:

In view of the joint responsibilities of the parties to the National Defense, of their mutual obligations to maintain 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,

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6Case No. 46 of the National Defense Mediation Board.

as set out in the 'Atlantic Coast Zone Standards', incorporated herein and made a part hereof, the company engages on its part that any employee who is now a member of the union, or who hereafter, voluntarily becomes a member during the life of this agreement, shall, as a condition of continued employment, maintain membership in the union in good standing.8

This provision gave the union substantially less than the "union shop" that had been demanded, and the union twice rejected the recommendation. However, on August 3, the union finally voted to accept the recommendation. During this period, the Company notified the Board that it refused to accept the recommendation and this refusal led to a strike on August 7, involving sixteen thousand employees.9 Thereupon, the Board voted to take no further action in the dispute.

The charge was made that the Board had ordered a closed shop, but on August 16, William H. Davis, Chairman of the War Labor Board, correctly denied this. He stated that the Board had refused to recommend a closed shop or any provision which would compel anyone to join the union.

It was also charged that the union violated the no-strike pledge, but, on August 13, Mr. Davis sent a letter to the Secretary of the Navy, Henry Knox, stating that "the no-strike provision was not to become effective in the plant of the Federal Shipbuilding and Drydock Corporation until the new agreement incorporating the Atlantic Coast Zone

9Ibid.
Standards and the no-strike provision were signed. The present strike was not, as Mr. Korndorff of Federal in his statement said it was, "in violation of the union's recent agreement outlawing strikes in our yard for a period of two years."

On August 19, President Roosevelt sent personal letters both to the head of the company and to the president of the union asking immediate resumption of work. This appeal proved to be fruitless. By this time, both the union and the company officials had asked the government to commandeer the plant, and on August 24, 1941, the President, by Executive Order, directed the Secretary of the Navy to seize and operate the plant. Steps were taken to insure an immediate resumption of work. All employees returned to work "for the government", with the understanding that the recommended "maintenance of membership" agreement would be carried out.

On September 11, the President wrote Mr. Davis asking the Board to consider whether the recommended "maintenance of membership" provision was in conflict with the National Labor Relations Act and on September 17, Mr. Davis replied that neither the Mediation Board nor the General Counsel of the National Labor Relations Board believed that there was any conflict. Thus ended the first major case involving refusal to abide by the Mediation Board's recommendations. On January 25, 1942, the Secretary of the Navy returned the plant to private operation and the case was submitted to the

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National War Labor Board. This Board also recommended a "maintenance of membership" provision and this time the company accepted the recommendation under protest.\textsuperscript{11}

The second important case that involved a refusal to abide by the Mediation Board's recommendations resulting in seizure was that of Air Associates, Inc. of Bendix, New Jersey,\textsuperscript{12} and the United Automobile Workers, Aviation Division (C.I.O.). A strike occurred on July 14, 1941, and the case was certified to the Mediation Board on July 17. The dispute involved the proposed terms of a collective bargaining agreement and the reinstatement of employees allegedly discharged for union activity.

On July 24, the Board recommended:

1. The prompt return to work of all employees in any way involved in this dispute, without discrimination, and

2. All questions involving back pay to be submitted to an arbitrator to be appointed by the Board.

3. Collective bargaining negotiations to be instituted immediately, and, if not reached by August 9, the matters in dispute to be submitted to an arbitrator, and

4. All the decisions of the arbitrator are to be binding.\textsuperscript{13}


\textsuperscript{13}Case No. 51 of the National Defense Mediation Board.
The union quickly accepted these recommendations, but the company officials replied that they would not accept the provisions relating to arbitration. The strike was called off on July 29, and negotiations between the parties were resumed. However, these negotiations were soon broken off, and the Mediation Board, at the instance of its Chairman, Mr. Davis, appointed Professor Harry Shulman of Yale University to investigate "all points still in dispute." A second strike was called September 30, with the union charging the company with failure to bargain on certain issues and with moving machinery out of the plant. Hearings were reconvened before the Board on October 6, and on the afternoon of October 8, both the president of the company and its counsel refused to remain in Washington for further hearings; this was the first time that representatives of either party had walked out on the Board in the middle of its mediation efforts.15

On October 9, the Board issued recommendations calling for:

1. An immediate resumption of production,
2. An immediate return to work of all strikers,
3. Immediate reemployment of all strikers without discrimination, and
4. resumption of negotiations before the Board.16

The union accepted the Board's recommendations and the strikers voted to return to work. However, on October 11, the company notified

15National Defense Mediation Board Press Release PM-815, July 29, 1941
16Ibid.
the Mediation Board that it refused to accept the recommendations. Air Associates President, F. Leroy Hill, stated that he was unwilling to dismiss new employees in order to reinstate the strikers, but he offered to place strikers on a preferential list to be rehired whenever vacancies occurred. Mr. Hill also stated that the strike was not seriously interfering with production.

On October 24, Under-Secretary of War Robert Patterson and William Knudson, Chief of the Office of Production Management, announced that they had succeeded in six hours of uninterrupted conferences in persuading the company to accept the Mediation Board's recommendations. The strikers were reinstated, but apparently not at their previous jobs. The union charged that skilled mechanics had been assigned jobs of "scrubbing floors." Moreover, non-striking employees conducted "riotous demonstrations" inside the plant and "twice forced the removal of reinstated C.I.O. strikers under police guard."

On October 30, the President, by Executive Order, directed the army to seize and operate the plant. During the process of the dispute, many persons had become convinced that the personalities involved were in a large measure responsible for the difficulties in securing a settlement.

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Governor Edison of New Jersey had at one time publicly requested that Mr. Hill, President of Air Associates, Inc., withdraw as an individual from the negotiations in order to expedite the settlement. On November 19, the board of directors of the company at "the instance of the War Department" secured the resignation of Mr. Hill and H.I. Crowe, President and Executive Vice-President respectively. Upon hearing this news, a spokesman for Under-Secretary of War Patterson stated that the plant would be returned to private operation "just as soon as we figure that they have a management there that will not have labor trouble."20

On November 29, Frederick G. Coburn was selected President of Air Associates, Inc., and his selection was praised by Under-Secretary of War Patterson, as "a step in the right direction." Despite the change of management, however, the Army retained control of the plant for more than an additional month. On December 26, 1941, a completed agreement was signed by the company and the union, and a few days later, the company was returned to private operation.21

Thus ended the second major instance where a refusal by one of the disputants to a labor problem to abide by the Mediation Board's recommendations resulted in seizure of the plant facilities by the government.

21Kaltenborn, p. 99.
The National War Labor Board placed somewhat less emphasis on mediation than the National Defense Mediation Board, but it too had no enforcement authority in dispute cases. Where either or both of the parties ignored a decision by the Board, the only remedy was to refer the case to the President for action. In general, the War Labor Board had been successful in securing quick compliance with its decisions, but there have been several notable instances of defiance. Moreover, as of September 14, 1942, it could be stated that "there had not been a single case involving a defiance by either a labor union or an employer in which the Board had not met that defiance with a unanimous front."

The following is an attempt to summarize some, but by no means all, of the instances of refusal to accept a War Labor Board order, necessitating governmental intervention.

The first case involved the Toledo, Peoria and Western Railroad. A strike had been called on the railroad for December 24, 1941. Mediation by the National Mediation Board had been unsuccessful, but the Board had urged arbitration. The union had accepted arbitration, but the company had refused. The case was referred to the National War Labor Board, which, on February 20, 1942, requested the company to arbitrate.

This was likewise refused. On February 27, 1942, the War Labor Board formally ordered the company to agree to arbitration. The company again refused, and on March 12, 1942, the Board "unanimously, and for the last

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time" ordered arbitration. This request was again refused. On March 16, President Roosevelt urged arbitration, but even this request was refused.

On March 21, 1942, the railroad was seized by the Federal Government. Even after government seizure of the railroad, the War Labor Board urged the company to arbitrate, and when this request was again refused, ex parte arbitration hearings were undertaken. After almost fourteen months of government operation, the disputants arrived at a satisfactory agreement and the railroad was returned to private control.

The General Cable Company case was the second instance of government seizure resulting from failure to accept an order of the War Labor Board. On August 5, 1942, the War Labor Board applied the wage formula that had previously been developed, and refused to grant a general wage increase to the employes of the General Cable Company. The vote was seven to two, with one A.F. of L. member voting with the majority and the two C.I.O. members dissenting.

On August 10, the employees went on strike in protest over the decision. The local union officials, the international union officials and William H. Davis all urged the cessation of the strike. When the employees refused to end the strike, the War Labor Board referred the case to the President. On the same day, August 13, the President ordered the Secretary of the Navy to seize and operate the plant.

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The strikers immediately returned to work, and soon a resolution was voted upon and passed by the strikers urging that the plant be returned to private operation and the War Labor Board order be accepted. The Navy thereupon withdrew from the plant on August 20, one week after the order of seizure.25

The third case of government seizure in response to a government refusal to accept an order of the War Labor Board involved the S.A. Woods Machine Company.26

On August 1, 1942, the National War Labor Board unanimously granted a "maintenance of membership" clause in the dispute concerning the Woods Machine Company. The company announced that it would refuse to abide by the order. On August 14, the employers members of the Board telegraphed the President of the Woods Machine Company urging acceptance, and stating that "as members of the Board representing industry, we will urge the Board and the President to take prompt and effective action to compel compliance." The company again refused to accept the order, and urged the Board to institute suit in the courts to test the validity of the order. The Board refused to do this, and urged the company to announce acceptance of the order. When the company still refused to comply, the Board referred the dispute to the President.


26S.A. Woods Machine Company case., 2 War Labor Board Reports 159.
In response, the Army seized the company's plant on August 19, 1942 at the direction of the President. Thus ended the third major instance of continued refusal to abide by a decision of the National War Labor Board.27

The discussion in this chapter has related to the activities of both the National Defense Mediation Board and the National War Labor Board in dispute cases with the period ending with the reorganization announced in late January, 1943. Until that reorganization, the labor dispute cases coming before the Boards, were handled in the central office in Washington, D.C. Moreover, during that period, the Boards attempted mediation in the majority of the dispute cases and issued decisions only when mediation had failed to produce a settlement. The War Labor Board formally announced its abandonment of mediation procedures. Therefore, the discussion above relates primarily to the period from January 1941 to January, 1943.

Although there were important differences between the National War Labor Board and the previous National Defense Mediation Board, there were also important similarities. William L. Leiserson, a prominent mediator, had stated that there was no essential difference between the general form and function of the two boards, and he added, "One was a mediation board that arbitrated. The other was an arbitration board that mediated."28

27 Ibid.
However, the crucial test for the War Labor Board was yet to come, and that involved the Captive Coal Mines and the United Mine Workers of America (C.I.O.), headed by Mr. John L. Lewis.
CHAPTER IV

THE BITUMINOUS COAL ISSUES IN 1943

In every democratic country engaged in World War II, the coal mining industry was the center of bitter and prolonged labor disputes, and the United States was no exception. During most of 1943, a bitter controversy raged which not only threatened seriously to impair the nation's war effort, but also very nearly engulfed the nation's machinery for the peaceful settlement of labor disputes. The issues were complex and the American public was never adequately informed as to how they were resolved. 1 This chapter is an attempt to present the facts in their proper setting and as clearly and concisely as possible.

Before the 1941-1943 coal industry contract expired on March 31, 1943, the United Mine Workers Union presented the provisions that they wanted included in a contract "for 1943-1945." Their chief demands included a $2.00 per day increase for inside and outside day men, a minimum day rate of $8.00, comparable increased for tonnage workers, an increase of the vacation payment from $20.00 to $50.00, double time for work on Sundays, the supplying of tools, mine supplies and safety equipment to the miners without charge, and a redefinition of the term "mine worker" to make it include all persons employed inside or

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outside the mine, except the superintendent. The intent of this last demand was to open the way for all supervisory, clerical and technical employees, except the superintendent, to become members of a union, affiliated with the United Mine Workers.²

When it seemed that the negotiators would fail to reach an agreement before the existing contract expired, the President urged them to continue to produce under the existing contract until a new agreement was reached, with the understanding that it would be retroactive to April 1, 1943. The union indicated that it would continue work under the old contract until May 1.³

After continued failure of the parties to arrive at an agreement, the case was certified to the National War Labor Board on April 22, and on the 24th, the Board directed the parties⁴ "to continue under the old contract until the differences that now separate the parties are peacefully and finally resolved, and with the understanding that if the new agreement included any wage adjustments, these would be completed and applied retroactively from March 31, 1943."⁵

In accordance with its usual procedure, the Board appointed a tripartite

³Ibid. p. 1105.
⁴Operators Negotiating Committee, Appalachian Joint Conference and the Southern Appalachian Joint Wage Conference and the United Mine Workers of America.
⁵Ibid.
panel to hear the dispute. When the panel began its hearings on April 28, however, the miners' representatives failed to appear. The panel recessed its hearings the same day when it learned that mine stoppages were already in progress.

On May 1, a general strike began and the President ordered the Secretary of the Interior "to take over and operate the mines." He announced that on April 29, he had sent a telegram to the miners' officials calling their attention to the fact that spreading strikes were interfering with the war effort. He asked the miners to resume production and stated that if work was not resumed by the following Saturday, he would use all of his powers as President and Commander-in-Chief to prevent further interference. He urged them to submit their case to the War Labor Board. He referred to the investigation of retail prices then being conducted by the Office of Price Administration in the mining areas and promised that violation of ceiling prices would be dealt with promptly. He also stated that he would discuss the situation further with the miners over the radio on Sunday, May 2.

In his radio address, President Roosevelt praised the workers for the

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6 The panel consisted of Morris L. Coke, Chairman and Management Engineer from Philadelphia, David B. Robertson, labor representative and President of the Brotherhood of Firemen and Engineers, and Walter White, industry representative, and Assistant to the Chairman of the Business Advisory Council of Dept. of Labor.


8 War Labor Board, Termination Reports, p. 1116.
wonderful production job they were doing and declared that "it must not be
hampered by any one individual or by the leaders of any one group here back
home."9 He reminded them that the miners as well as many other labor
organizations had agreed to the "no-strike pledge" during the war.10

Although the union officials had "declined to have anything to do with the
fact finding of the War Labor Board," he declared that the Board was "ready to
give the case a fair, impartial hearing" and he assured the miners that any
wage adjustment would be made retroactive to April 1.

In view of the fact that the mines had been taken over, the President
reminded the workers that the government needed their services as much as those
of the military and of the workers in war plants. He appealed to their devotion
to the miners in the armed services and the wounded at home in the hospitals.
He declared that the production of coal would go on and that those who wanted
to work would have the protection of troops, if necessary.

In the meantime, the Secretary of the Interior would apply the terms of
the old contract the miners had with the operators, subject to any new contract
negotiated with the operators or adjustments made with the War Labor Board.

Following the President's speech, Mr. John L. Lewis announced a fifteen
day truce and directed the miners to return to work. The miners began return-

9Franklin D. Roosevelt, Memoirs and Personal Papers of F.D.R., (New York,
1946) p. 233.

10Labor-Management Agreement of December, 1941.
ing to their jobs on May 3 and 4.\footnote{Taylor, p. 119.}

The War Labor Board panel resumed its hearings on May 6, following receipt of advice that the work stoppages had been terminated. Again the union representatives failed to appear. The Board, however, assigned one of its top staff members to present the union's case on the basis of the transcript record of negotiations between the union and operators during March. While the panel was obtaining the facts, the Board issued an Interim Directive Order on May 11, instructing the parties to resume collective bargaining May 17 at 10:00 A.M. under arrangements to be worked out by the parties jointly in consultation with a Division of the Board.\footnote{War Labor Board, \textit{Termination Reports}, p.1108.}

The only response this directive brought from the miners was a telegram on May 17, to the Secretary of the Interior saying that they would continue at work until midnight, May 31.\footnote{Ibid.}

In the meantime, the panel completed its finding of fact and submitted its report on May 25. On the basis of this report, the Board issued a Directive Order on May 29.

Before discussing the Board's Directive Order, it is important to keep in mind the reason for the refusal of the union officials to present their case to the Board. The miners, as well as the American Federation of Labor and the
Congress of Industrial Organization had made a "no-strike pledge" shortly after the outbreak of the war,\textsuperscript{14} and regarded it "in the essence part of a bargain". As they understood it, labor questions "were to be settled by a War Labor Board on their merits, that is, with fairness and impartiality. Thus, the minute that an executive order was issued limiting the action of the War Labor Board, we consider that a violation of the agreement of which our "no-strike pledge" was a part.\textsuperscript{15}

The miners' union held that the government's agreement had been violated and that therefore the "no-strike pledge" was null and void. The miners also declared that they would not work unless they had a contract, but that they did not want the mines to close down because "we are just as patriotic as any men or class of men in this nation."

The Directive Order that was issued by the Board on May 29 denied the union's request for a general increase of $2.00 per day. The Board pointed out that if the miners could work an extra day a week at time and one-half, assuming a work year of two hundred and forty days, they would receive an annual income exceeded only by industries building ships, locomotives, automobiles, machine tools, aircraft and electric and steam railroad cars.\textsuperscript{16}

\textsuperscript{14}This was the No-strike, no-lockout agreement of World War II, and also the basis upon which the National War Labor Board was established.

\textsuperscript{15}Statement by George Meany, labor member, War Labor Board Executive Session, November 4, 1943, pp. 449-452.

\textsuperscript{16}The bituminous coal industry is largely a seasonal industry because of variable demand and because bituminous coal cannot be stored indefinitely like anthracite. For many years, the industry has averaged about two hundred working days per year.
The Board recommended that the parties "agree on a reasonable contract provision, wherever the mines are operating six days a week, whereby the operators will give a fair and equal opportunity to individuals to work during each of the six days." 17

The Board denied the miners' request for double time on Sunday because under Executive Order No. 9240, only time and one-half could be allowed unless Sunday was the seventh consecutive day of the week. The demand for an increase from $20.00 to $50.00 in payment for vacation time was granted on the basis that $50.00 represented approximately one week's pay. The Board also denied the miners' demand that the operators should buy for use by the miners, explosives, mine supplies, and tools made only by concerns employing union workers.

The Board decided that "unless otherwise mutually agreed" the contract should run for two years beginning April 1, 1943. Wage rates could be reopened by either party at the end of the first contract year by giving thirty days notice of a demand for a change. They could agree at any time during the contract to a change in wage rates, subject to approval of the Board.

Until the differences between the parties were "peacefully and finally resolved in accordance with the procedure set forth in this Directive Order, 18

17War Labor Board, Reports, 1109.
they were to continue the uninterrupted production of coal under the contract terms and conditions that existed on and prior to March 31, 1943, with the understanding that any wage adjustments included in the new agreement shall be computed and applied retroactively from March 31, 1943. [18]

Following the issue of this Directive Order, widespread strikes began on June 1. The Board ordered the parties to cease negotiations until the strikes were called off. On June 3, the President ordered the miners to return to work by June 7. This time, however, he merely reminded the miners that "they are working for the government on essential war work and it is their duty no less than that of their sons and brothers in the armed forces to fulfill their war duties." [19]

The President repeated that as soon as the miners returned to work, the dispute between them and the operators would continue to be handled under the "jurisdiction of the War Labor Board and in accordance with the customary and established procedures governing all cases of this sort." On June 4, the miners' president recommended to their policy committee that the miners should return to work June 7. The miners returned to work again.

On June 18, 1943, the War Labor Board issued its final Directive Order. This amounted to a series of amendments to the agreement in effect since April 1, 1941, and certain additions to the Directive Order issued May 25.

[18] Ibid.
[19] Ibid. p. 1110.
A few instances in wage rates were permitted for certain classes of labor; the demand for portal to portal travel time was denied, and the miners would receive the increased vacation pay as provided in the previous Directive, but in the interest of the national war effort, the vacation period in 1943 would be eliminated. The agreement was to run to March 31, 1945, with provision for reopening the wage rate issue at the end of the first contract year, at any time the parties mutually agreed and submitted the results to the Board and at any time a significant change in governmental wage policy occurred. 20

Continued Union Defiance.

The miners refused to accept the Board's order and on June 21 began a general strike for the third time. The Board on June 22 reported the situation to the President and presented the Board's unanimous opinion that "the Board's Directive Order should be enforced and that all the powers of government necessary for its enforcement should be exercised." On June 23, the President issued a statement in which he said that "the action of the leaders of the United Mine Workers coal miners has been intolerable and has rightly stirred up the anger and disapproval of the overwhelming mass of the American People." 21

He declared that the mines would be operated by the government under the terms of the Board's Directive Order of June 18. He stated that "the govern-

20 Ibid.
21 Taylor, p. 122.
ment had taken steps to set up the machinery for inducting into the armed services all miners subject to the Selective Service Act who absented themselves, without just cause from work in the mines under government operation."

Whether by coincidence or not, the union, on June 23, issued a "back to work" order with the stipulation that work would continue only under government operation and not beyond October 31. This action occurred two days before the War Labor Disputes Act was passed, which made it unlawful to interfere with government operation of a mine or plant by instigating or ordering strikes and lockouts under penalty of a fine of $5,000 and imprisonment for not more than one year or both. 22

Following the Board's decision, strikes began again to spread and on October 29, the Board referred the situation to the President. He then ordered the Secretary of the Interior on November, to take repossession of the seventeen hundred mines which had been turned back to the owners by October 12, and to negotiate a contract with the miners governing terms of employment for the period of government operation, subject to War Labor Board approval. However, the miners did not return to work immediately. 23

On November 3, the Secretary of Interior and the President of the miners made an agreement putting into effect all the provisions of the proposed

22War Labor Disputes Act (Smith-Connally Act) June 25, 1943.

Illinois agreement, which had not been disapproved by the Board. For the purposes of the agreement, the parties assumed an average travel time in the mines of forty-five minutes, and cut down their thirty minute lunch period to fifteen minutes and devote the other fifteen minutes to productive work with payment at time and one-half. The provision was "made applicable to all existing rates effective in all bituminous coal disputes."24

Using the Illinois basic rate, as an illustration, this was intended to provide a basic daily wage in that area of $8.50 a day. It was estimated that this arrangement would increase production twenty million tons or more.

The Illinois Supplementary Agreement.

On August 3, 1943, the War Labor Board held a hearing at which the representatives of the Illinois Coal Operators Association25 and the miners appeared to submit for approval a two year agreement which extended and modified the 1941-1943 contract. The major provisions included an eight hour day with time and one-half for the eight hour, a forty hour week with time and one-half for work on the sixth day, and a general increase of $1.25 a day to "each mine worker" to cover portal to portal travel in the mine. The phrase "each mine worker" included those who worked outside the mine and did not

24 Illinois Supplementary Agreement submitted and approved by the War Labor Board, August, 1943.

25 Illinois Coal Operators Association and the United Mine Workers of America and District 12, United Mine Workers, Case No. 13-273, August 24, 1943.
travel within it.

Also included in the agreement was the phrase "$1.25 for each day worked, retroactive to April 1, 1943 and hereafter to April 1, 1945," which in reality made the provision nothing more than a general wage increase for the period.

The majority of the Board in giving its decision stated that the "Illinois Agreement now submitted to the Board presents for the first time a true portal to portal method of compensation for the mine workers." The majority approved the method of payment which indicated pay for travel time, but they did not approve an amount which would exceed the amount that the miners would have been entitled to under the old contract merely for productive work. Thus, the proposed agreement "would increase the hours of work at the face by four and one-half hours per week, making a total of forty six and one-half hours per week at the face or fifty one hours, portal to portal. Because of the payment of overtime for all hours over forty per week, working time and travel time, the total weekly wage would be approximately $55.50.26

The Labor members of the Board dissented strongly from the majority position. In a written opinion, the A.F. of L. members voted that "a majority of the Board has seen fit to question this wage adjustment, not because they do not believe that the method of determining portal to portal pay is not genuine;

26 Decision of the Board on October 26, 1943. Case No. 13-273.
not because they do not believe that travel time is not work time; but rather, they have rejected this agreement because they believe that travel time should not be paid for in full." The minority opinion went on to point out the differences of opinion between the members of the majority as to how the amount of compensation should be computed. 27

In general, the proposed contract of the Illinois Operators and the union would pay each miner who was on the payroll from April 1, 1943 to June 20, 1943, the amount of $40.00 as a retroactive adjustment and in full settlement of all accrued portal to portal compensation. The War Labor Board approved this as a reasonable settlement.

The agreement was referred to the Board on November 5. It approved the agreement subject to clarification and resubmission of the provisions for paying tonnage or piece workers and for pushing mine cars by hand in mines where it was not practical to deliver them to working places other than by pushing. 28 On November 4, most of the miners returned to work.

Under this agreement, the workers paid by the day would receive no more pay for work performance in a forty hour week than they would under the 1941-1943 contract, which was consistent with the wage stabilization program. The Board felt that the agreement made by the Secretary of the Interior as affecting tonnage workers did not reflect these principles, and that to make them

27.Ibid.
28.Ibid.
effective, the travel time rate for tonnage workers should be only "two-thirds of that specified in the proposed Illinois Agreement." 29

An Agreement With the Strikers

Although the Board had its way in requiring a lower rate for travel time than for production time, and in requiring an addition to production time if the miners were to receive the $8.50 daily basic rate, still it was annoyed because the Secretary of the Interior had made an agreement with the miners before they had all returned to work. This was a violation of one of the Board's fundamental rules. 30

Although the agreement had been negotiated during a strike, "contrary to the Board's principles," they felt that the national interest in time of war would not be served by a rejection of the agreement, on the ground that another agency of the Federal Government had done what the Board itself would not have done. 31

Even though the miners had not complied with the Board's Directive Order on June 18, the majority of Board members felt that a rejection of the agreement because of this non-compliance "would be a resort to technicalities of procedure in the face of a national crisis."

The Board reaffirmed its policy of "declining to treat with strikers"


30War Labor Board, Termination Reports, p. 1120.

and was "satisfied that the leaders of organized labor, who, with one exception, had patriotically kept the "no-strike pledge" and will continue to keep it." 32
The non-compliance of the miners, they declared "did not warrant a hasty conclusion that the compliance program of the War Labor Board had broken down."

In a letter to the Board on November 12, the Secretary of Interior explained that the earnings and travel time payment of tonnage workers would be calculated by multiplying the total tons produced during a pay period by the tonnage rate. This average rate of earnings would be paid for the first seven hours of work in each day and time and one-half of this rate for the eighth hour. This would result in the same earnings for the first forty hours of each week as under the "1941-1943" agreement.33

On November 20, the Board replied that it approved the method of computation the Secretary had suggested for the first forty hours, but that it could not approve the payment of time and one-half of the straight time production rate for travel time as well as for production work after forty hours. When the instructions of the Deputy Coal Mines Administrator were issued to the Operating Managers of the various coal mines, the recommendations of the Board prevailed.34

Along with its general approval, the Board also issued a warning that

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32Ibid. p. 257.
33War Labor Board, Termination Reports, p. 1112.
"the weeks which lie ahead will be a crucial period for organized labor."

Legislative sanctions, more thorough-going than now exist may be required "unless organized labor itself demonstrates from now on its determination to accept the bitter with the sweet, and to comply with the orderly processes of government which have been set up to cope with wartime conditions."35

The Return to Private Operation

These warnings seemed to have some effect. On December 17, 1943, a committee representing the miners and coal operators producing over seventy percent of the nation's tonnage submitted a "Supplemental Wage Agreement" to the Board for its approval. It set forth terms of employment to be made effective when the mines were released from government possession and to continue until April 1, 1945.36

The terms of employment were practically the same as those in effect under government operation. However, that agreement was based on the assumption that forty-five minutes per day was the average travel time. By the time the Board rendered an opinion of approval on May 19, 1944,37 the Board had received the preliminary report of the committee appointed to study travel time. This report covered eighty-four per cent of coal produced at mines having contracts with the union and showed an average travel time of approximately fifty-six

37Case No. 13-351.
minutes. The Board decided that the difference of twelve minutes over forty-five minutes was "reasonably within the principles of its former decisions" and consequently, could "be approved for the private operation of these mines."

The supplemental agreement also provided for the payment of $40.00 to each employee on the payroll from April 1, 1943 to June 20, 1943, as agreed compensation for all portal to portal claims from April 1, 1943 to November 3, 1943, when, under government operation, the portal to portal basis began. The Board had approved this in its Directive on October 26, 1943.

On May 31, 1943, the Secretary of Interior began to return the mines back to private control. By June 21, the process was completed.

The net gain for the miners as a result of this bitter and drawn-out case was slight. They had to modify their demand for a $2.00 a day increase for working seven hours daily. On the other hand, they did get some retroactive pay for travel time and recognition of travel time as compensable time even though the courts had not finally ruled that the Fair Labor Standards Act applied to travel time in coal mines.

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38 A later study gave an average of fifty-eight minutes.

39 Supplemental Wage Agreement, December, 1943.

40 Arthur Suffern, The War Labor Board and Coal, Member of the War Labor Board (Washington, 1942)
The Coal Issues in 1945.

Industrial relations in the coal industry returned to the newspaper headlines early in 1945. In an effort to establish a transition from one contract to another without any interruption in production, the miners and the operators began negotiations for a new contract on March 1, 1945, a month before the expiration of the old contract. Three days previously, the miners had filed notice under the provisions of the War Labor Dispute Act,\(^1\) that a strike might occur. Then they presented demands more far-reaching in some respects than in previous years.

The most challenging demand, although regarded by some as mere surplusage, was for a ten per cent per ton royalty which should be paid to the union. The union officials said the royalty should "be deemed partial compensation in equity to the mine worker for the establishment and maintenance of his ready to serve status, so vital to the profit motive of the employer and so imperatively essential to public welfare."\(^2\)

They said the funds received would be used to provide the miners with "medical and surgical service, hospitalization insurance, rehabilitation, and economic protection."

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\(^1\)"Coal Crisis", Business Week, February 17, 1943, p. 98.

\(^2\)On May 29, 1946, during an industry-wide coal stoppage, the miners reached an agreement with the government, which again had taken possession of the mines, providing for a Welfare and Retirement Fund, financed by employer contributions of five cents a ton of coal produced for sale or use.
Even though this demand was not pressed too greatly at the time, because there was very little chance of getting any concession at the time, the royalty feature aroused considerable alarm in certain quarters.\(^{43}\)

The miners demanded that for work during the second shift, ten cents per hour should be added to existing rates; and fifteen cents should be added for work on the third shift. The vation allowance should also be increased from $50.00 to $100.00.

The miners also demanded a contract which would permit either party to terminate it by giving twenty days notice.\(^{44}\)

These were the more important demands and they were supported by an eight to one vote in favor of a strike if they were not granted. As the end of March drew near, when the existing contract would expire, Harold Ickes, the Secretary of Interior, urged extension of negotiations to May 1, if necessary, with the understanding that any wage adjustment which was approved would be retroactive to April 1, 1945.

The Secretary of Labor also urged that the parties make every effort to arrive at an agreement before March 31, and suggested the following compromise agreement:

1. A basic seven hour day with time and one-half for all overtime, travel time and lunch time to be paid at the straight time rate.

\(^{43}\)Business Week, March 3, 1945, p. 98.

\(^{44}\)Ibid.
2. A flat vacation payment of $75.00.

3. Shift differentials of four cents for the second shift and seven to eight cents for the third shift.

4. Free shoes, hats and goggles needed by the miner while on the job.

5. Assistant foremen and higher ranked employees to be excluded from unionization.

6. All the other union demands, including royalties, to be denied.

On March 30, 1945, the Chairman of the War Labor Board notified the parties that the dispute had been certified to the Board, and that a hearing would be held the following day. The parties would be expected to show why the terms and conditions of the existing contract should not be extended, pending final action on the issues in dispute and why an effective date for wage adjustments that might be finally determined should not be fixed.

After the hearing, the Board issued a Directive Order, instructing the parties to continue uninterrupted production of coal under the existing contract until their differences were peacefully and finally settled. The parties advised the Board that they were continuing their negotiations and the Board requested them to report the results on April 7, or sooner.

If the negotiations were terminated before that date, the Board, after consulting with the parties, would fix a hearing date before the Board for the


46War Labor Board, War Labor Board Reports, p. 1115.
presentation and prompt determination of the issues in dispute. On April 7, the parties reported progress, and on April 11, they presented an agreement for the approval of the Board. The new proposal introduced several significant changes in the former contract, but did not include the royalty payment.

A work day of nine hours from portal to portal was established, including pay for a staggered fifteen minutes for lunch, and without any suspension of operations throughout the day.47

Workers employed on a second shift whether paid by the day or by the ton, received four cents additional for each hour employed and those on a third shift, received six cents an hour additional.

The vacation allowance was increased from $50.00 to $75.00 and approved as not in excess of the approvable limits.

The Board estimated that the proposed agreement as contrasted with the agreement which expired April 1, 1945, would result in "an average increase for all employees of approximately eighty-one cents per day as the cost of the change-over to a system of payment for all time spent underground."

In its opinion, the Board stressed the point that "the agreement makes no change either in the regular rate of pay or in the overtime provisions of the 1941-1943 contract." But the miners did get more for travel time under the proposed agreement than they had been allowed under the 1941-1943 agreement.

47Ibid. p. 1117.
which permitted as a travel time rate only two-thirds of the basic daily rate until forty hours had been worked, and time and one-half of the travel time rate after forty hours.

The amount received by the tonnage worker would also vary with his daily earnings, but would be more than two-thirds of his average hourly earnings allowed under the 1941-1943 agreement.

The shift differentials, vacation pay, and wage inequity adjustments were all items that could be allowed without conflict with the wage stabilization policies. However, when they were added to the eighty-one cents daily cost of overtime, travel time and payment for lunch time, the total daily increase in costs amounted to $1.04.

The Board pointed out that the increase would not be uniform for all, but it decided that "the adjustments must be expressed as a totality in the light of the transition which is required and is being effected."

In conclusion, the Board declared that the effective use of collective bargaining in this case, "vividly calls attention to the general need for the full utilization of collective bargaining in the solution of labor-relations issues."
CHAPTER V

MONTGOMERY WARD AND COMPANY

National War Labor Board—Case No. 192, June 29, 1942.

Montgomery Ward and Company, Chicago, Illinois, and the United Mail Order, Warehouse and Retail Employees, Wholesale and Department Store Employees of America, Local No. 20, C.I.O.

Mr. William H. Davis, Chairman of the National War Labor Board, Washington, D.C., made a penetrating statement concerning the issues of the Montgomery Ward Seizure by the United States Government:

The most important issue is not what effect a strike would have on the company's business, but rather what effect it would have on industrial relations generally, and particularly on industrial relations in plants directly producing or distributing war materials. If fifty-five hundred workers of Montgomery Ward may properly strike in Chicago for higher wages and union security—the chief issues in this dispute—then it seems to us (the War Labor Board) almost certain that other workers in other establishments would feel that they have the same right, and that once a strike of the dimensions that are here threatened, against an employer as well known as Montgomery Ward, were allowed to take place, on the theory that the Board lacked authority to deal with the dispute, a fire would be started which before very long could turn into a conflagration.

This analysis by Mr. Davis illustrates the multi issues that confronted the

1U. S. Congress, House, Committee to Investigate the Seizure of Montgomery Ward and Co., Hearings, 78th Cong., 2nd session, pursuant to House Rule 521 May 22–June 8, 1944.
Federal Government in its attempt to quell the paralyzing strikes that interfered or threatened to interfere with continued production of essential war materials during the early years of World War II. This case was peculiarly unique in that the issue of whether the government had the authority to seize a company that was not directly involved in the production of war materials was presented.

Again, a thorough study of the case requires the presentation of rather copious background material to highlight the use of the seizure technique. In all, three cases are presented.

Case No. 192, dated June 29, 1942, presented the main issues of the controversy when first certified to the National War Labor Board by the Secretary of Labor.

Case No. 111-5353, occurred upon renewal of the yearly contract between the company and the union.

The final case resulted in seizure of the company by the Army and came as a result of refusal to recognize the present union as the exclusive bargaining agent for Ward employees and a refusal to renew the "1943-1944" contract under the same terms and conditions as the prior agreement.

CASE No. 192

FACTS BEHIND THE CASE.

Montgomery Ward was engaged in the sale and distribution of merchandise through mail order houses and retail stores. It owned and operated nine mail order houses, some six hundred and fifty retail stores, and over two hundred
mail order sales units throughout the United States. Their net sales averaged over $500,000,000 per year. ²

The present dispute involved approximately fifty-five hundred workers. On August 26, 1940, the union, Local #20, C.I.O., was certified by the National Labor Relations Board as the exclusive bargaining agent for about three hundred Schwinn warehouse employees. ³

On February 28, 1942, the union was certified as the exclusive bargaining agent for some five thousand additional workers employed in the mail order houses throughout the company.

The dispute that Mr. Davis referred to was first certified to the National Labor Relations Board by the Secretary of Labor on June 2, 1942, after a strike at Montgomery Ward and Company had been threatened in April of that year, and efforts at conciliation had proved fruitless.

When the Company was informed of the certification of the dispute, it challenged the Board's jurisdiction, alleging that this controversy did not fall within the provisions of the President's Executive Order of January 12, 1942, which created the War Labor Board. ⁴

Nevertheless, the Board met in executive session and on June 16, 1942, it

²Ibid.
³Ibid.
⁴Ibid.
unanimously resolved:

... that in case No. 192, Montgomery Ward and Company ... the Company be advised that the Board has taken jurisdiction of the case, and any objections that the company has may be stated before a panel at a hearing on June 22, 1942.

On the same day, the Board informed the company by telegram that it would be given a full opportunity before the panel to state its position on the question of jurisdiction, as well as on the merits of the dispute, and that if the question could not be settled by agreement at the panel hearing, the panel would submit a report to the Board with recommendations on all issues. 5

The Mediation Panel appointed by the War Labor Board consisted of Mr. Lloyd K. Garrison, Dean of the University of Wisconsin Law School and Public Representative, Mr. William Hanscom, Employees Representative, and Mr. Joseph L. Miller, Employer Representative.

Hearings were held before the panel on June 22, 23 and 24. The transcript of record of the panel hearings showed that the company and the union fully presented their positions and views on the question of jurisdiction, and all parties understood that the record that they made before the panel would serve as a basis for the Board's final determination of the issue. 6

4Ibid.

5Ibid.
CONTENTIONS OF THE UNION AND THE COMPANY ON THE QUESTION OF JURISDICTION.

The company contended that the War Labor Board was without jurisdiction to adjust because the company did not produce any war materials, had no government contracts, and "did not distribute what could not be readily obtained by buyers anywhere." Therefore, the company argued, the dispute was not one "which might interrupt work which contributed to the effective prosecution of the war," within the meaning of Section 3, of the Executive Order 9017, which set up the War Labor Board. 7

The union contended that the company's chief mail order customers were farmers; that the company was engaged in selling farm equipment, machinery and supplies to local stores in the farm areas; that farm mechanics rely on the company to procure their tools and equipment by mail order; that, in particular, the company had supplies of wire for baling hay and binder twine which could not be procured in ordinary retail stores; and that farmers who had purchased farm machinery from the company could get replacement parts only from the company, since their machinery "differed in kind from that sold by competitors." 8

The company replied that only two and one-half per cent of all the net sales of the Chicago Mail Order House represented farm equipment, and that even


7 *War Labor Board, Termination Reports, II, 1113.*

if the Chicago House were closed by a strike, the farmers could get adequate 
supplies from other mail order houses of the company and from competitors of 
the company.

The union's second main argument was that a strike that would close the 
company's Chicago units "would have grave repercussions elsewhere, which would 
be most certain to spread interruptions of work, thereby interfering with the 
effective prosecution of the war." 9

On Friday, June 26, 1942, the panel submitted a unanimous written report 
to the Board, with the finding that this case clearly fell within the 
jurisdiction of the War Labor Board. The panel also recommended that an 
investigator be appointed to study the wage and salary question involved in the 
case and to report to the parties before the adjourned hearing on July 13, 1942.

DECISION OF THE WAR LABOR BOARD

On June 29, 1942, the National War Labor Board accepted the findings of 
the panel members, and decided that this dispute clearly fell within the terms 
of the President's Executive Order of January 12, 1942.

A review of the record made by the parties on the issue of jurisdiction 
satisfied the Board that the dispute was one which was in accordance with 
Section 3 of the Executive Order, creating the Board, and a controversy which 
"might interrupt work which would contribute to the effective prosecution of 
the war." 10

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9 Ibid.
The Board stressed the fact that if it did not take jurisdiction, the threatened strike would most certainly occur, since every other method of settlement had been exhausted, and the company had refused to submit the issue to arbitration.

The union asserted that it had over four thousand dues paying members in the Chicago area units, out of some fifty-five hundred eligible workers, and that a strike would effectively close down the Chicago units.\(^{11}\)

The panel had unanimously concluded that if a threatened strike of Montgomery Ward and Company in Chicago had been allowed to occur, its probable effects, both directly and indirectly on work contributing to the effective prosecution of the war, "would be sufficiently serious to warrant the Board's taking jurisdiction."\(^{12}\)

The following is an excerpt taken from the final decision of the War Labor Board regarding Case No. 192:

The general public usually pays a considerable price whenever the parties (to a dispute) resort to strikes and lockouts. Nevertheless, it is probably true that over the years, the freedom to strike has produced more social and economic gains for the country than losses. In any event, it is a deep-rooted freedom of action in our great American society, but it is one that both labor and industry as well as the great majority of citizens generally recognize must be curtailed during time of war. Thus, it is the duty and obligation of a war government to prevent the exercise of rights and privileges, which threaten to interfere with the successful prosecution of the war.\(^{13}\)

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\(^{11}\)Ibid. p. 1115.

\(^{12}\)Ibid.

\(^{13}\)11 War Labor Reports 1720
It is to be noted, in this case and others, that the War Labor Board had taken the position that any labor dispute, which could properly be called a "major dispute", that is, one which in case of a strike or lockout would directly effect not only a large number of workers involved, but also indirectly, the daily lives of a large number of people, is one which will fall within the jurisdiction of the Board. The various cases that the Board has been called upon to decide differ from one another in many respects, and therefore, the problem becomes one of balancing interests and passing judgment upon degrees of effects which the various disputes have upon the war effort.\textsuperscript{14}

Therefore, the United States Government cannot permit Montgomery Ward and Company to follow a course of complete independence of action in settling this dispute. It cannot permit the company to decide for itself whether or not this dispute or its business affects the prosecution of the war.\textsuperscript{15}

CASE NO. 111-5353, H.O., January 13, 1944.

In February, 1942, the National Labor Relations Board certified the United Mail Order, Warehouse and Retail Employees, Local 20, C.I.O., as the exclusive bargaining agent for the employees of Montgomery Ward and Company. The union was also recognized by the company as the employee representative within five other specified units.\textsuperscript{16}

Negotiations had begun for the renewal of a contract, and then broke down, and the present labor dispute was certified to the National Labor Relations Board pursuant to Executive Order 9017, dated June 2, 1942. The Board had

\textsuperscript{14}Mets, p. 251.

\textsuperscript{15}War Labor Board, Reports, p. 1723.

\textsuperscript{16}Hearings, 78th Cong., 2 Sess. 1944, p. 57.
issued a Directive Order deciding the issues and a subsequent contract between the parties finally became effective on December 8, 1942, expiring on December 8, 1943. When the union then requested the company to begin negotiations for a renewal contract, the company officials claimed that the union no longer represented a majority of the employees within the Mail Order House and Retail Stores Units, and it consequently refused to bargain with the union.17

The present labor dispute was then certified to the War Labor Board on December 6, 1943, pursuant to the provisions of the War Labor Disputes Act. The only issue presently in dispute in this case is one of union representation.18

On December 10, 1943, the Board requested the company and the union to show cause at a public hearing "why they should not consent to an election or card check to be held under the direction of the National Labor Relations Board to determine the issue as to the union's majority status in the two units, and pending the results of such an election, why the terms and conditions of the existing contract should not be extended."

The company contended that since the union did not represent the majority of the workers within each unit, the expired contract should not be extended. They also contended that any order of the War Labor Board to require the company

17 Ibid.
18 Ibid.
to treat the union as the majority representative would be contrary to the National Labor Relations Act.

The Board's position was that the question of representation was one that should be left to the determination of the National Labor Relations Board. However, the Federal Courts have held that the National Labor Relations Board's certification of an exclusive bargaining agent "is presumed to have continuing effect until changed by that Board." This principle was described as "the rule of presumed continuity of representative status." 19

**DETECTION OF THE BOARD**

The majority of the Board was of the opinion that it was not equipped nor was it a function of the Board to determine whether the union had lost or retained its majority status as representative of Montgomery Ward employees. However, the Board would furnish the parties with an opportunity to have the matter resolved by the National Labor Relations Board. This would have to be done either by consent of the parties, or if agreement could not be reached, by the union filing a petition for an election with the National Labor Relations Board within thirty days following the date of this order. 20

Pending determination by the National Labor Relations Board, however, the terms and conditions of the expired contract should continue "to govern the relations between the parties."

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20 *War Labor Board, Reports*, p. 1725.
This decision was given, first of all, to avoid the unrest and conflict that would be bound to arise if a corporation, as large, important and as centrally located as Montgomery Ward and Company, were suddenly to find themselves without a contract. Secondly, the "status quo, as of the date of the contract termination should be preserved, since the issue in question relates to the extent of union membership on that date," and therefore, the Board was satisfied that it was "fair and reasonable" to continue in effect, until the National Labor Relations Board had acted upon the dispute.

Even though the War Labor Board ordered Montgomery Ward and Company to continue its contract with seven thousand employees in Chicago, pending a final decision by the National Labor Relations Board as to what is the proper bargaining agent for them, Montgomery Ward continued to refuse to comply with such orders. While no union members had gone on strike, the company threatened to seek a court injunction against the War Labor Board.

President Roosevelt again ordered Montgomery Ward and its executive director, Mr. Sewell Avery, to renew the union contract again under the previous terms and conditions. However, this time, Mr. Avery refused to comply, stating that the issue now involved "the fundamental rights of citizens as guaranteed by the Bill of Rights and the Constitution." Since Wards was not a war

21 William H. Davis and George W. Taylor representing labor; Robert J. Watt and Carl J. Shipley, representing industry; and George H. Meade and Joseph Tanham, dissenting.

22 War Labor Board, Termination Reports, p. 1116.

23 Wards, (Chicago, Illinois) New Republic, April 24, 1944, 550
industry, but a firm distributing essentially civilian goods made by other companies, they would not again agree to the closed shop and the check-off system. Attorney General Francis Biddle thought otherwise, and the Department of Commerce was told to take possession of the company. Under-Secretary of Commerce Taylor and the former partner of Ward, Director Charles F. Glore of the financial house of Glore, Forgan and Company, was sent to Chicago to take personal control of the $300,000,000 firm. When Mr. Avery subsequently refused to surrender possession of the company to the government, Mr. Taylor returned a day later with Secretary Biddle and four members of the Army's Military Police and Mr. Avery was removed bodily from his office.\textsuperscript{24}

Life magazine reported the incident as a personal triumph for Mr. Avery, stating that he had succeeded in pushing the Roosevelt administration to its last refuge against its citizens, namely, the summoning of soldiers and had also succeeded in awakening a similar latent fear in business executives all over the country.\textsuperscript{25}

It is to be noted that the Justice Department had, for a time, considered the possibility of resorting to quieter measures against Montgomery Ward, such as suspending Ward's mailing privileges, refusing it priorities on wrapping paper, etc.\textsuperscript{26} It is no wonder that the actual seizure of the company had come as a shock and surprise to so many.

\textsuperscript{24} Montgomery Ward and the War Labor Board (Chicago, 1944), anon. rev., New Republic, (April 24, 1944), 550.

\textsuperscript{25} Grievance Issue (Chicago, 1945), anon. rev., Business Week, (February, 1945), 93.

\textsuperscript{26} Monthly Labor Laws and Decisions (Chicago, 1945), anon. rev., (February, 1945), 592.
However, it is no accident that Mr. Avery had decided at this time to make his stand against the administration. He felt and often stated publicly that the War Labor Disputes Act did not bestow on the President the power to seize Montgomery Ward. He was supported in this by the co-authors of the act, Senator Tom Connally and Representative Howard W. Smith, as well as from Representative Andrew J. May, whose Military Affairs Committee handled the bill. All flatly denied that it was ever the intent of Congress to authorize the President to seize firms such as Montgomery Ward and Company.

All said that the Act specifically limited seizure authority to war industries. In both the United States Senate and House, that week of the seizure, criticism was voiced that if Wards was a war industry, then conceivably, there was no limit to the powers of the President to enforce labor's demands. 27

27Ibid.
DECISION OF THE FEDERAL COURT ON THE SEIZURE OF MONTGOMERY WARD.

United States Judge Phillip L. Sullivan ruled that the President had exceeded his authority in ordering the Army to seize and operate Montgomery Ward and Company properties, carefully drawing the line between war industries and non-war industries for purposes of plant seizure. Judge Sullivan's decision dismissed the government's petitions for temporary and permanent injunctions, which would, if granted, have given legal sanction to the army operation of Wards.28

However, his decision was accompanied by a stay of proceedings which left the Army in possession of Wards.

Mr. William H. Davis, Chairman of the War Labor Board, declared at the time, that unless the decision was reversed, or Congress changed the law to legalize such seizures, "then the whole plan of peaceful settlement of wartime labor disputes would collapse."29

The decision of the Federal Court was based on the fact that the nature of Ward's business exempted it from the Smith-Connally Act, and the government's contention that the law was broad enough to cover a huge distribution plant, was dismissed, because, as the court stated, only production was covered by the plant seizure act. Plant seizures, the court continued, were


only legal under conditions of "necessity urgent for the public service, such as will not admit of delay."\textsuperscript{30}

Again, if Montgomery Ward and Company and its facilities "were located within the actual theater of military operations and its goods were necessary and essential for the use of the naval or military forces, then the Commander-in-Chief might lawfully take possession of them."\textsuperscript{31}

To be within the seizure power of the Act, the court explained, the company must be not merely necessary to or useful in the war effort, but must also "be equipped to produce articles necessary or useful in the war effort."

The court conceded that the President's power as Commander-in-Chief authorized seizures (within the theater of war) of arms, supplies, food, clothing, transportation facilities, and all implements of war to the extent of the needs of the armed forces, but decided that out of the field of combat, the position of Commander-in-Chief does not warrant the seizure of private property, except in case of immediate and impending danger, in which, action by Congress would come too late, and the circumstances required the exercise of the extreme of implied power. Since the plants involved are not in the theater of war, and the emergency is not immediate, the powers of the Commander-in-Chief did not warrant this seizure, and Congress must supply the remedy, if


\textsuperscript{31}\textit{Ibid.}
voluntary cooperation will not avoid the difficulty.\textsuperscript{32}

On June 10, 1945, the Sullivan decision was reversed by a two to one ruling of the Circuit Court of Appeals, thereby giving the Army judicial approval of its seizure of Montgomery Ward mail order properties, as well as a mandate to carry out the National War Labor Board’s Directive. Montgomery Ward did state its intention to appeal the decision to the United States Supreme Court and to ask the Circuit Court to stay the execution of the National War Labor Board’s orders. The basis of the entire legal problem upon which the decision of the Circuit Court depended was, "What is production?" The court contended that the word "production" would have to be defined broadly in terms of the present total industrial structure, whereas, the lower court held that Ward’s business was not production that would affect the war effort.\textsuperscript{33}

Just before the Army turned Montgomery Ward and Company back to control of the company executives, two problems remained yet to be solved. One was the extent of the government’s obligation to pay back wages that were due employees under the War Labor Board’s orders. The other was the recurrence of the old dispute between Chairman Sewell Avery and the union.\textsuperscript{34}

The clauses that caused so much confusion over back pay were the

\textsuperscript{32}War Labor Board, Termination Reports, 1117.

\textsuperscript{33}Ibid.

\textsuperscript{34}To Pay or Not (Chicago, 1945) anon. rev., Business Week (September, 1945) 100.
following in the Executive Order under which Ward properties were seized:

Provided that the Secretary of War is authorized to pay the wage increases specified in said Directive Orders from the effective dates, specified in said Directive Orders to the date of possession of said plants and facilities is taken under this order, only out of the net operating income of said plants and facilities during the period of their operation by the Secretary of War.35

Government sources estimated that approximately one million dollars in wage adjustments ordered by the War Labor Board would be due employees.

When the government finally relinquished control of Montgomery Ward in October, 1945, the finance officer in charge of operation set the retroactive at $785,090. A later company estimate was $1,342,000.36

The Army announced that it could not make the retroactive payment because its orders stipulated that the wages must be paid from the net operating profit, and according to Army bookkeeping records, there was no profit available.37

The above statement led to an appeal to the President. Under the union's interpretation of the original Executive Orders covering the seizure, the President was prepared to draw on his emergency fund to pay the retroactive wages. Conferences that followed with Attorney General Biddle indicated that checks on the government fund had already been made out. However, when Mr. Biddle left office, the new Attorney General, Tom Clarke, read the Executive Orders differently, and ruled that the Federal Government was in no way

35Executive Order No. 9017, dated January 12, 1942.
36Hearings, 78th Cong., 2 Sess., 1944, p. 16.
37Ibid.
responsible for such wages. The checks were apparently destroyed.\textsuperscript{38}

The union contended that if President Truman failed to act, they would carry the fight to Congress, if necessary. In the meantime, hardly one-third of Ward employees, who were still awaiting retroactive pay, were employed by the company, and the number was dwindling daily.\textsuperscript{39}

Thus, the crisis at Montgomery Ward ended as inauspiciously as it had begun, with a myriad of problems awaiting the returning Ward executives.

\textsuperscript{38}\textit{Ibid.}

\textsuperscript{39}\textit{Ibid.}
CHAPTER VI

SUMMARY AND CONCLUSIONS

The wartime experience with industrial seizures provides very little basis for generalizations regarding the wisdom of seizure as a government labor policy. The underlying disputes were settled in many cases either through direct negotiations or by the government's voluntary mediation agencies. Seizure did, however, in many cases, provide a face-saving excuse for terminating a strike or delaying it pending further negotiations or mediation. ¹

Ludwig Teller states that there is good reason to suspect that the government consciously avoided any formulation of rules or principles relating to seizure. This may have been desirable or even inevitable during a wartime period, when good labor-management relations were the result of voluntary agreement of the parties involved. But it is clearly imperative that today a more comprehensive study be made of the legal and economic characteristics and consequences of seizure, together with an analysis of governmental policies and procedures that should be followed in connection with labor crises. ²

The experiences of the National War Labor Board in World War II highlighted the extent to which the government must control industrial relations in time of war. This board had jurisdiction over all labor

¹ Teller, p. 1017.

² Ibid. p. 1018.
disputes which threatened the effective prosecution of the war. Its powers over these controversies were complete and final. In the vast majority of cases, disputants complied with decisions and accepted the awards in good faith. However, when compliance with its decisions was not imminent, the dispute was referred to the President for further action. When this occurred, and if the circumstances warranted, he frequently ordered seizure of the plants by the government to insure continuous production, as was evident during the Roosevelt administration alone, when plants were seized on forty different occasions.\(^3\)

When the President established the National War Labor Board, the procedure to be followed in the adjustment of labor disputes was clearly specified. Labor and management were expected to resolve their differences through peaceful negotiation. Strikes and lockouts were outlawed by voluntary agreement of the parties. In other words, the collective bargaining process was the first line of defense against costly work stoppages.\(^4\)

If, however, for some reason, the dispute was not resolved by direct negotiation, then the United States Conciliation Service was to attempt to bring about peaceful negotiations through mediation. Only if mediation failed, did the War Labor Board take jurisdiction of the dispute, but once


\(^4\)Ibid.
it had assumed jurisdiction, the Board had the power to use mediation, voluntary or compulsory arbitration to settle the controversy. Consequently, the national policy for the settlement of labor disputes in wartime consisted of many elements.

In peacetime, mediation was the only effective method of government intervention in labor disputes. But during a national emergency or wartime period, the employer and employee both realized the vital necessity for uninterrupted production, and for this reason, arbitration was used effectively for the settlement of industrial relations problems.  

From January 12, 1942 to June 25, 1943, wartime labor disputes were settled in accordance with the procedures outlined by the President, and with the single exception of the coal strike, they proved very successful in stabilizing the nation's wartime economy, regardless of the effects of paralyzing strikes.

The government's wartime policy for the operation of strike-bound plants, and the legal authority for seizure were considerably clarified in June, 1943, when the War Labor Disputes Act was passed by Congress. Whereas, previously, a stoppage in production was dealt with under the emergency powers of the President, now, the legislative branch of the government assumed its part of the burden in restricting private rights in the interest of the general welfare.  

5 Ibid.
6 Miller, p. 433.
Congress formally approved, in general, the plant seizure policies previously followed by the President.

The Act provided:

.....that the President has power to take immediate possession of any plant upon a failure to comply with the provisions of this Act, and that the authority granted by this section for the use and operation by the United States or in its interest of any plant of which possession is so taken, shall also apply to any plant, mine or facility equipped for the manufacture, production or mining of any articles or materials which may be required for the war effort or which may be useful in connection therewith. Such power may be exercised by the President through such department or agency of the government as he may designate, and may be exercised whenever the President finds, after investigation, that the war effort will be unduly impeded or delayed by such interruption, and that the exercise of such power or authority is necessary to insure the operation of such plant, mine or facility in the interest of the war effort. 7

There were certain restrictions placed upon the right to strike by the War Labor Disputes Act. Individual employees were not required to work against their wills even though strikes against government operated plants and facilities were made illegal. Then too, unions were required to give notice of a threatened work stoppage in any plant operated by a "war contractor." Uninterrupted production was required in such plants for thirty days following the filing of such notice. During this period, the National Labor Relations Board would take a secret ballot to determine whether or not the employees "will permit any such interruption of war production."

7War Labor Disputes Act, Public Law 89, Chapter 144, 78th Congress, 1st session, June 25, 1943.
If the reasoning of the government was correct, the threat of strikes would be eliminated in a single manner without any congressional action to restrict the right to strike. But the reasoning proved incorrect. Most workers did want to avoid strikes in wartime, but they did not want to work under conditions that were, in their opinion, grossly inequitable. And, of course, many of the strikes that took place during the war were initiated by the employees themselves, and often over the strong opposition of their union leaders.

But why is it that free collective bargaining must become a "wartime casualty?" Why must government take such a firm hold over the process during war? And what sort of national labor relations policy would result if the United States were plunged into another full-scale war?

The above considerations rebel against a national labor policy which controls the substance of collective bargaining. It is entirely proper for the government to make collective bargaining mandatory. However, sound industrial relations are not promoted by legislation that limits the freedom of labor and management to formulate the type of agreement which they feel is best and which will best meet the needs of both parties. A government mandate is a poor substitute for the judgment of those who are the direct participants in the collective bargaining process, the employer and the labor union.8

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8Witney, p. 245.
Moreover, Fred Witney, in his book, "Government and Collective Bargaining," points to the experiences of the World War II administrative program which should serve to caution those who would support a program of increasing government control over the collective bargaining process. An examination of the labor relations program of that era was of particular importance in a period of "deteriorating international relations."

One of these experiences that was an outgrowth of the war was the passage of the Taft-Hartley Act in 1947. This act removed a number of vital issues of industrial relations from the area of free collective bargaining. Management and labor no longer had the freedom to negotiate agreements which conformed to their own wishes and desires. Taft-Hartley demanded that both the employer and the labor union bargain collectively. Such a policy contrasted sharply with that of the Wagner Act, which until 1947 was the prevailing labor law of the land. The Wagner Act merely urged the employer to bargain collectively, and it did not dictate the terms of an agreement that might be completed as a result of negotiations. Now, however, the government, through Taft-Hartley, took a firm hold over the content of collective bargaining. The disturbing fact of the situation, of course, is that the character of these controls may shift, depending upon the political and economic stresses of the time. It remains to be seen how future Congresses will apply the Taft-Hartley precedent.

With the outbreak of the Korean War, the nation once again prepared for a full scale war.
The result was to bring about the same kind of labor controls as were in operation during World War II. Actually, by December, 1950, the government had already established the framework for general control over the entire economy and a firm policy in labor relations had already been formulated. The Defense Production Act of 1950 was passed by Congress, authorizing the President to impose emergency controls when he felt such a program was necessary. The new Economic Mobilization Act was also set up by President Truman in the fall of 1950, and Alan Valentine, former President of the University of Rochester was appointed Chief.

This agency was composed of two major branches, price stabilization and wage stabilization, both geared to prevent inflation in a wartime economy. The whole wage-price control structure occasioned by the Korean conflict was patterned after the wage-price control program of World War II. No longer can one regard this experience as being of mere historical importance.

An examination of the experiences of the Federal Government's wartime labor policy reveals the character of the pressures in a wartime economy. It tells us what to expect in the area of industrial relations in the event of a third World War. Present and future administrative policy will draw heavily upon the labor precedent of the war years, and an analysis of past errors and miscalculations will act as a safeguard in establishing sound future administrative policy.
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