LABOR LAW - WAR LABOR PROBLEMS AND POLICIES

Paul M. Oberndorf  
*University of Michigan Law School*

Donald H. Treadwell  
*University of Michigan Law School*

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"God is on the side with the most artillery." Wars in the past have been fought by armies of men. The war today is being fought by armies of machines, and ultimate victory will belong to the side which can most quickly place an overwhelming force of fighting equipment on the world battlefield. For many months the United States stood as a spectator while other nations prepared their economies to amass such a force. We are now faced with the imperative need of overtaking and passing the capacity for production of war equipment that has been built or
seized by the Axis nations, a need which will stretch our potential capacity to the utmost.

In the past, differences between management and labor have been an impediment to our productive effort. These differences have been most severely felt in two regards: first, pressure on the part of the unions to prevent the utilization of newly developed and more efficient machinery and techniques; second, actual cessation of work in strikes or lockouts to which labor and management have resorted to resolve their differences. The authors do not intend to discuss the first problem except merely to recognize its importance today and the difficulty of the issues involved. The decline in the number of strikes and lockouts since war was declared might indicate that the second will not be an important problem in this war. However, the catastrophic effect that a work stoppage in a key war industry would have, and the fact that in the past the number of work stoppages has increased during war periods, make it seem desirable to attempt, during this "honeymoon" period, to prevent work stoppages from arising later. The solution to this problem may involve serious encroachments upon personal liberties and property rights. However, because of the broad scope of the war power, it is not likely that legislation or executive action in this field will be held unconstitutional. The issues are of a practical rather than a legal nature. Hence this article is directed to the analysis of the practicability of the methods of resolving labor-management differences which have been attempted in the United States and the kindred countries, Canada and Great Britain.

I. Causes of Strikes and Lockouts During Wartime

One of the most important points of controversy between labor and management is the wage scale. Labor's normal demand for a higher wage scale is intensified by a rising cost of living which is not accompanied by a commensurate increase in its total income. While to date

1 "The Congress shall have the Power to ... provide for the common Defense and general Welfare of the United States ... [and] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." U. S. Const., Art. I, § 8. The powers of Congress include the right to pass any legislation necessary and proper for the successful prosecution of the war. The Constitution is not suspended during wartime, but the existence of the war is the most important factor in determining whether legislation is necessary and proper, or reasonable where validity depends on that element. ROTT- SCHAEPF, CONSTITUTIONAL LAW 381 (1939). In a recent decision the Supreme Court stated that Congress has the constitutional power to draft men for battle service, and "its power to draft business organizations to support the fighting men who risk their lives can be no less." United States v. Bethlehem Steel Corp., (U. S. 1942) 62 S. Ct. 581 at 590. War powers are not to be limited narrowly in their execution. Jacob Ruppert, Inc. v. Caffey, 251 U. S. 264, 40 S. Ct. 141 (1920).
workers in our war industries have received very large increases in
their real income, when our economy becomes fully adjusted to war-
time production, the cost of living may outstrip income because of the
necessary curtailment of production of consumers' goods at the same
time that the consumers' money income is increased through capacity
employment. As the cost of living rises, the employee's real wages
decrease, making it impossible for him to maintain the same standard
of living to which he has been accustomed. The only courses available
to him are to accept the reduced standard of living as his contribution
to national defense or demand higher wages. If the employer is un-
willing to meet demands for a wage increase and the decline in the
employee's standard of living has been of sufficient severity, em-
ployees will be tempted to use the severest sanction in their control,
the strike, in order to obtain the increases they feel are warranted.

It must be remembered that the individual workman does not look
at the labor picture in its entirety but is concerned only with the rela-
tionship between his own income and the cost of living in his own
locality. Therefore, where there is a broad spread in wages in a com-
pany or particular industry, there may be considerable justifiable dis-
satisfaction among certain workers, although wages as a whole may be
actually increasing faster than the general cost of living. Nor is merely
raising the wages of the workmen likely to be more than a temporary
economic analgetic, since increased wages will tend to cause prices to
rise, reducing the real income of the wage earner and completing the
cycle.

In time of national crisis, such as war, workers are frequently willing
to accept a lower standard of living as long as they are able to obtain a
bare living wage, but as so frequently happens during a time of capacity
production, many employers are making profits considerably in excess
of those made in peacetime. These increased profits are accentuated in

2 Infra, p. 1046.
3 This is demonstrated by the experience of England in the last war, in which the
rapidly rising cost of living occasioned by the shortage of shipping and the depreciation
of the pound sterling in the world market resulted in a widespread demand on the part
of the workers in both war industries and other industries for increases in wages. Moses,
"Compulsory Arbitration in Great Britain During the War," 26 J. Pol. Econ. 882
(1918).

In Canada the antagonism of labor to the Industrial Defense Investigations Act
during its first ten years may be explained by the fact that the rising cost of living
between 1917 and 1918 made them antagonistic toward any plan which tended to
delay their obtaining higher wage rates. Selekman, Postponing Strikes 231 (1927).

For a more detailed discussion of the economic aspects of this problem, see
Slichter, Economic Factors Affecting Industrial Relations Policy in Na-
tional Defense (1941), and Twentieth Century Fund, Labor and National
Defense (1941).

time of war by two factors: profits ordinarily tend to increase during a period in which the price level rises, as raw material and fixed costs tend to lag behind selling prices; and both the people and the government are willing to pay almost any price to get the goods which are being produced.

In England in 1914 there was a sharp decline in the number of strikes, due primarily to the willingness of the workers to undergo some sacrifices because of their patriotic zeal and enthusiasm in pursuing the war. In 1915 the number of strikes began to rise, largely because the employees refused to make further sacrifices in their own standard of living while the employers were making large profits out of their wartime contracts. Likewise before the entrance of the United States into the war we find labor leaders justifying many of their demands for higher wages on the ground that the employees too should benefit from the profits of war which are being made in the defense industries.

In a few cases disputes over wage rates have arisen because of unjustifiable differentials in wage rates for the same type of work within a relatively small geographical unit or in the same company.

The demand on the part of labor for a shorter working day has seldom in and of itself been a cause for strikes, and under the present Fair Labor Standards Act it is less likely that such a demand will cause friction. However, under the emergency seven-day week there may be some demand to have the overtime work distributed among all workers, rather than to increase the hours of those employed in defense industries. Furthermore, industrial management experts have come to realize in the last few years that an overworked employee is not as efficient as one who is working more reasonable hours. Thus, it is unlikely that there will be more than an occasional instance in factories of work stoppages for the purpose of obtaining a shorter working day.

One of the primary objectives in the use of the strike in the last few years has been to obtain recognition of union organizations. The desire of management to continue production and thereby increase profits and the need of the government to secure continued production of war materials greatly increase the bargaining power of labor during time of war. Labor has not been slow in recognizing its improved bargaining position and in demanding certain concessions from government

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5 Moses, "Compulsory Arbitration in Great Britain During the War," 26 J. Pol. Econ. 882 (1918).
7 E.g., the Aluminum Company of America wage dispute, discussed infra at note 159.
8 However, frequently when there is a demand for higher wages or union recognition the workers will ask also for some change in hours.
9 There was at attempt to abolish the forty-hour week, but it was voted down in the House February 27, 1942. 88 Cong. Rec., No. 41, p. 18102 (1942).
and management to improve its general position at any time in which its services become more valuable. At the beginning of the war only about thirty or forty per cent of our defense industries were organized. It may be expected that organizational efforts will be considerably extended in industries in the near future. Even in the units in which the union has been recognized, we may expect the unions to attempt to improve their bargaining position by making demands for greater recognition at this time. Many complaints may also be expected to arise concerning alleged discrimination of employers against union members, as such complaints always are made during a period of union expansion into new plans and industries.

The existence in the United States of two major union federations has led to a considerable amount of friction over the right to represent the workers in a particular bargaining unit. While the consequent disputes may not be the result of any friction between the employers and the employees, they are in some cases intensified because of actual or alleged favoritism toward one union by the employer. There have also been a few well-publicized jurisdictional strikes between member unions of the A. F. L. or between member unions of the C. I. O. These constituted 3.1 per cent of all strikes in 1940 but were of considerably shorter duration and involved fewer men than the average strike.

The tremendous production goals set by the government have resulted in a shortage of skilled workers in almost all trades. Before the declaration of war the unions reluctantly consented to training programs and dilution of skilled workers when it was clearly shown that there was a need for the particular program. The workers felt that in the postwar curtailment of production their bargaining power would thus be considerably weakened and layoffs even greater and so sought to preserve the integrity of the trade. Now the war need should be so obvious that there should be no further controversy.

The failure of employers to maintain adequate health and safety standards has in the past been a source of friction, but apparently both management and labor have recognized the importance of maintaining proper standards, so that there should be relatively little controversy over this point.

It is difficult to determine the relative importance of these basic causes of strikes because of the varied background patterns of strikes in different periods in different countries. As the cost of living increases,

10 Twentieth Century Fund, Labor and National Defense 84 (1941).
11 Ten out of the twelve cases docketed during the week ending February 13, 1942, involved union security in some form, either alone or coupled with other demands, 9 L. R. R. 689 (1942).
12 3.1% of the strikes in 1939 and 4.6% in 1938 were caused by union rivalry. 6 L. R. R. 361 (1940).
13 52 Mo. Lab. Rev. 1109 (1941).
strikes caused by wage and hour disputes tend to increase in number. In periods of intense union organizational activity, a greater number of strikes are caused by such activity. Thus, in the United States in recent years approximately fifty per cent of the total number of strikes have arisen because of disputes over union organization, and approximately thirty per cent of the strikes involved wages and hours.\textsuperscript{14} But the strikes involving wages and hours involved more workers and caused a greater loss in man days,\textsuperscript{15} and this occurred in spite of the fact that between August, 1939, and December, 1940, the weekly earnings of factory workers had increased 13.7 per cent while the cost of living had advanced only 2.3 per cent.\textsuperscript{16}

2. \textit{Means of Avoiding and Resolving Disputes}

There are two fundamental methods of attacking labor problems. First, the cause may be removed by improving working conditions or controlling prices to prevent a decline in real wages. Unfortunately, it is impossible to solve all of the wage maladjustments in industry by one general act, and some of the basic causes of strikes, such as union recognition, do not lend themselves to this type of treatment at all. The second method is to recognize that these causes of friction exist and then set up some mechanism which can resolve the disputes without resort to strikes or lockouts. In any application of this method there are three component parts.

(a) \textit{The substantive law.} At some stage the general fundamental rights of labor and management must be determined. This may be done in a statute which, in setting up the necessary mechanism, states the rights of the parties, as in the case of the National Labor Relations Act. Or it may be accomplished by an executive direction to a mediation board. It may be in the form of a preliminary declaration of policy by the board itself, or be developed gradually by the board’s decisions in the manner that the common law was developed. Or finally it may be independently determined in each case on the basis of what settlement will solve the particular dispute between the parties immediately involved.

(b) \textit{The procedural mechanism.} This includes the setting up of boards, panels and conciliators; the determination of the stage of the dispute at which such board, panel or conciliator will take jurisdiction; and the extent to which the parties are subject to the findings made in

\textsuperscript{14} Wage and hour disputes caused 31.2\% of the strikes in 1938; 26.5\% in 1939; 30.2\% in 1940, while union organization caused 47.9\% of the strikes in 1938, 53.5\% in 1939, and 49.9\% in 1940. 6 L. R. R. 361 (1940); 52 Mo. Lab. Rev. 1109 (1940).

\textsuperscript{15} Id.

\textsuperscript{16} SLICHTER, ECONOMIC FACTORS AFFECTING INDUSTRIAL RELATIONS POLICY IN NATIONAL DEFENSE 40 (1941).
the determination of their dispute. There are many variations possible in these procedural provisions. The parties may merely be permitted to resort to the existing judicial machinery. Special facilities for conciliation to which the parties may voluntarily resort may be provided. Resort to these special facilities may be made compulsory before work may be stopped, though the parties may not be bound to accept the recommendations of these conciliators. Arbitration boards may be set up whose decisions are binding upon the parties who have voluntarily submitted to their jurisdiction. Or strikes may be absolutely prohibited and the parties required to refer to an arbitration board or a special labor court and to abide by its decision.

(c) Sanctions. Whatever the procedure and substantive law, the power of the government to enforce their application to each dispute must be defined. The government might rely entirely upon the desire of the parties to co-operate, re-enforced perhaps by an appeal to their patriotism and coercion by public opinion after a general publication of the facts of a dispute. Or the normal peacetime sanctions of fines and imprisonment or injunction may be imposed. Or the business may be confiscated and managed by the government. If labor refuses to co-operate, those subject to the draft may be denied further extension of their deferment, or they might be put on a nationwide blacklist. By the use of police or troop protection, the right to continue work unmolested may be guaranteed to those who desire to continue work.

Any plan for settling labor disputes must in some way deal with these three factors—substantive law, procedure, and sanctions—either by directly providing a solution or ignoring the problems and leaving the parties to their existing remedies. Before attempting any evaluation of the solutions suggested here, let us make a brief survey of the wartime labor experience of three democracies whose labor problems are closely akin: Canada, England and the United States.

3. Canadian Experience

The experience of wartime Canada is of particular interest, because it has been superimposed upon the peacetime Industrial Disputes Investigation Act, passed in 1907. Originally this act applied only to strikes and lockouts in public utility and transportation industries. It required a thirty-day notice before the strike or lockout became effective and provided for the establishment of a conciliation board in the interim to attempt to settle the dispute. When the act was passed, three primary aims were sought to be effectuated: (1) to compel the employer and employees to meet and confer under the auspices of representatives

\[17\text{Can. Stat. (1907), c. 20.}\]

\[18\text{These conciliation boards were composed of one nominee of the workers, one of the management, and a third chosen by these two, or by the Minister of Labor if they were unable to agree. Id., §§ 7, 8.}\]
of the community; (2) to give the representatives of the community
an opportunity to attempt to reconcile the differences between the em-
ployees and employers and thus bring about an amicable settlement
which would prevent a stoppage of work; and (3) to furnish the com-
munity with accurate facts through an investigation by a triparte board,
so that the public could bring pressure on the parties to the dispute
to make a just settlement. The principle of this act was conciliation,
and if that were not successful, then subjection of the parties to the vague but
powerful coercion of public opinion. The act qualified the right of labor
and management to stop work because of labor difficulties by imposing
penalties if the dispute were not presented to a conciliation board before
a strike or lockout was begun. However, in order to make conciliation
more effective in practice the policy was developed of avoiding any form
of coercion whatsoever. In the period between 1907 and 1925, there
were 425 unlawful strikes, but in only sixteen cases were any penalties
imposed upon the parties, and in none of these was the government the
prosecuting party.

The Industrial Disputes Investigation Act was designed only to
conciliate disputes between an employer and a single group of em-
ployees and therefore could not be used to settle jurisdictional or inter-
union disputes. In the cases involving several groups of employees
or employers, royal commissions having powers and composition
similar to those of the conciliation board under the Industrial Dis-
putes Investigation Act were set up.

In March, 1916, the Industrial Disputes Investigation Act was
extended to include all war industries. The government recognized,
however, that in spite of its excellent record in the disputes it handled,

further methods must be invoked to prevent the many illegal work
stoppages. In July, 1918, boards of appeal were set up to hear con-
troversies that could not be settled by the boards of the Industrial Dis-
putes Investigation Act. The decisions of these boards were binding
on both parties. In October all strikes were made illegal, but as these
acts became inoperative upon the Armistice, there is virtually no ex-
perience from which to draw conclusions as to the efficacy of the com-
 pulsory arbitration schemes.

19 Selekman, Postponing Strikes 20 (1927).
20 Id. 118. During the same period there were 640 applications for boards. Id. 64.
21 These commissions were appointed by the Governor-General under his power to
appoint commissions to investigate any matter concerning the good government of
Canada. Selekman, Postponing Strikes 291 (1927).
23 These boards consisted of two labor representatives, two representatives of
management, and a chairman selected by these four. P. C. 1743, July 11, 1918, 18
Lab. Gaz. (Can.) 616 (1918).
24 18 Lab. Gaz. (Can.) 983 (1918).
What in effect amounted to compulsory arbitration was applied in the coal districts of western Canada with the appointment of a director of coal operations for that area in June of 1917. The mine workers acquiesced in this appointment largely because of the war conditions and because of the immediate postwar activities of the radical union which the government was attempting to undermine in favor of the United Mine Workers. This appointment was recalled in 1921.

The ineffectiveness of the Canadian conciliation measures in coping with the problems presented in times of emergency is graphically illustrated by the record of Canadian strikes. From only 40 strikes in 1914 and 38 in 1915, work stoppages skyrocketed to 290 in 1918 and then gradually fell to approximately the prewar levels by 1922.

During the war the effectiveness of voluntary agreements between workers and employers was shown. In July, 1918, the railroads and six operating unions voluntarily established the Canadian Railroad Board of Adjustment Number 1. The workers voluntarily gave up the right to strike and the board was given the power to interpret existing agreements but not to arbitrate the terms of new agreements. All parties lived up to the full spirit of the agreement. This board has been continued in peacetime, although in 1921 the right to strike was reinstated by agreement.

The Canadian experience demonstrates that conciliation can be effective in settling disputes provided that the personnel of boards is of a high caliber and provided their function is conciliation and not the determination of abstract justice. Sincere adherence to this program has in Canada obtained the confidence of the workers and the employers and has provided for the successful solution of many disputes. There are, however, limits to the effectiveness of this type of machinery. Where the gravamen of the dispute relates to union organization or where there is some fundamental economic disturbance, conciliation has been relatively ineffectual, for the conflicting interests of the parties are almost irreconcilable. In the industries of relative stability, such as the railroads, this type of conciliation has been extremely effective. The necessity for maintaining an all-out production in wartime led the Canadians to impose stronger measures, but the results obtained in

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25 Seleman, Postponing Strikes 297 (1927).
26 Id. 69.
27 Id. 298; 18 Lab. Gaz. (Can.) 981 (1918).
28 The ineffectiveness of conciliation is demonstrated in the Canadian coal industry, where there has been almost constant dispute over wages and working conditions. This situation is aggravated by the uneconomic location of the coal fields at a greater distance from the Canadian market than the competing American coal fields, so that it is impossible to pay wages equivalent to those paid in the American fields. Seleman, Postponing Strikes, 313ff. (1927).
Canada are inconclusive because of the limited manner in which they were applied.

In the present war the Canadians have again extended the Industrial Disputes Investigation Act to all war industries. In addition to reinstating this procedural machinery, the government has also determined additional basic substantive rights of the parties. In 1939 it was made a criminal offense to discriminate against employees for the sole reason that they belonged to labor unions. In June, 1940, an Order in Council was issued requiring collective bargaining implemented through the conciliation boards and calling for fair and reasonable wages and working conditions. By an Order in Council in September, 1941, strikes were made unlawful in war industries unless sanctioned by a majority vote of the workers affected in a government conducted election. Violators of this order were subject to fines and imprisonment. The government attempted to cope with the wage problem in December, 1940, by setting up a system whereby wage increases in war industries were sharply limited but provided that bonuses commensurate with the increases in the cost of living index should be paid to workers. On October 24, 1941, this plan was extended to virtually all Canadian industries. A National War Labor Board composed of four or more representatives each of labor and employers was set up with similarly constituted provincial boards to administer these wage plans and to make the adjustments that should be necessary in particular industries. While the government was thus limiting the future income of employees, it should be noted that it also was levying a tax of seventy-five per cent upon all profits above the prewar normal.

Although the full effect of many of the later orders has not been felt as yet, it seems apparent that the Canadian government has not completely solved the strike problem. During 1941 there were 259 strikes. These were spread throughout the year although the

29 P. C. 3495, November 7, 1939; 9 L. R. R. 207 (1941).
30 Can. Stat. (1939), c. 30. There have been only two instances of the enforcement of this act. As no special agency was created to enforce it, it was difficult to prove that union membership was the sole reason for the discrimination. 9 L. R. R. 207 at 208 (1941).
31 P. C. 2685, June 29, 1940.
33 P. C. 7440, Dec. 16, 1940.
34 P. C. 8253, Oct. 24, 1941, 41 LAB. GAZ. (Can.) 1367 (1941). By thus directly tying wages with the price level the government is maintaining the existing price level. An increase in prices will not merely intensify the demand for increased wages, but will automatically increase wages, thereby precipitating an inflationary spiral. Supra, pp. 1043-1044. Hutchison, “Canada’s Great Experiment,” CHRISTIAN SCIENCE MONITOR WEEKLY MAGAZINE 6 (Nov. 22, 1941).
35 41 LAB. GAZ. (Can.) 1367 (1941).
36 9 L. R. R. 207 at 208 (1941).
greater number occurred between April and October. As yet it is too early to tell whether the orders of September and October are responsible for the subsequent decline or whether it may be explained entirely by seasonal and other factors.

The Canadian acts and orders do indicate, however, that the government is at present tending away from the conciliatory methods which proved relatively satisfactory in peacetime toward a system in which the respective rights of labor and management have been defined by executive orders and determined by commissions appointed by the executive. The control of management and labor will be complete in the fields to which it has been applied if the penalties provided are in fact imposed upon those who violate the laws and rulings. Certainly Canada has not been very quick to impose such penalties upon labor law violators in the past, but the exigencies of war may force a change of policy in this respect if the strike curve should not continue the downward trend of the last few months.

4. English Experience

The experience of England during the first world war indicates the change in temper of both the government and labor in regard to strikes during the course of a major war. Upon the declaration of war there was a sharp decline in the number of strikes. Only five per cent as many workers were involved in strikes in the last five months of 1914 as were involved in the first seven months. This initial truce, caused largely by the patriotism of both employees and employers, was broken in 1915, because of a rise in food costs and because the employees objected to the profiteering of numerous employers under their war contracts. The government took cognizance of this fact in the Treasury agreement of March, 1915, by which representatives of employers and employees agreed that there should be no stoppages in war work and that all disputes should be voluntarily submitted to arbitration but that the award should not be binding upon either party.

Continued strikes caused the government to take more stringent action on July 2, 1915, when the Munitions of War Act was passed, providing for a twenty-one-day waiting period before a strike or lockout could be legally made and imposing fines upon workers and employers for illegal strikes or lockouts. It also provided that all workers must obtain a leaving certificate from their employer in order to leave their jobs. Besides qualifying the right to stop work, the act set up

87 Compiled from the monthly labor statistics in 41 LAB. GAZ. (Can.) (1941).
88 Moses, “Compulsory Arbitration in Great Britain During the War,” 26 J. Pol. Econ. 882 (1918).
89 Id.
40 5 & 6 Geo. 5, c. 54, § 2 (1915). This act further provided for the limitations of profits to 120% of the average profit of the two years immediately preceding the war.
procedural machinery to settle trade disputes. The Minister of Munitions was empowered to appoint Munitions Tribunals from a panel composed of an equal number of labor and management representatives, with himself as chairman. There was no appeal from these tribunals without a certificate from the Minister of Munitions. Facilities for arbitration were also provided.

In spite of these measures, the number of days lost in strikes continued to rise. Eighty-five per cent of the total number of days lost during the war period was lost subsequent to the passage of the Munitions of War Act, although the act was in effect for only seventy-five per cent of the war period. The strikes were, however, of slightly shorter duration on the average. At this time the government also began to make increasing use of the Defense of the Realm Act, which made it criminal to incite strikes contrary to the national interest. This, of course, would apply only to the leaders of the strike movement. Despite such stringent measures, the annual number of strikes remained fairly constant for the first three years of the war.

During the latter part of the war the Minister of Munitions was authorized to suspend the application of the leaving-work clause of the Munitions of War Act, and the government made no general attempt to apply the penalty provisions of the act for illegal strikes and lockouts. In spite of the fact that over one and one-half million workmen had violated the provisions of the Munitions Act and the total fines for these violations would have amounted to fifty-five million pounds, only one-fifth of one per cent of all the strikers violating this law were ever prosecuted. In one instance even after a proclamation had been issued asserting that the penalties would be imposed, the government declined to carry out its threat.

In the last year of the war, the number of strikes doubled. However, this cannot be laid entirely to the relaxing of the sanctions, as they had not been strictly enforced for some time. The principal cause of these strikes was disputes over wages, probably influenced more by the rising cost of living than by the impotency of the sanctions against strikes.

41 Moses, “Compulsory Arbitration in Great Britain During the War,” 26 J. Pol. Econ. 882 at 886 (1918).
42 5 & 6 Geo. 5, c. 54, § 14 (1915).
43 There were 706 strikes in 1915, 581 in 1916, and 688 in 1917. 27 Lab. Gaz. (Gr. Brit.) 5 (1919).
44 Moses, “Compulsory Arbitration in Great Britain During the War,” 26 J. Pol. Econ. 882 at 896-897 (1918).
45 Id. 887.
46 In the last few months of 1917 the number of strikes began to climb rapidly and in 1918 reached a total of 1252. 27 Lab. Gaz. (Gr. Brit.) 5 (1919).
47 Id. 6.
The procedural machinery which had been set up was notably ineffectual in the settlement of the more important strikes. In most of these the final settlement was obtained only through the extra-legal intervention of government officials who attempted to bring the parties together to resume production, basing their plea upon the necessity for national unity in the face of the enemy. The real coercive force in most of these settlements was apparently the personal and political prestige of the governmental representative which crystallized a strong public opinion against the striking workers.

The use of extreme sanctions was successful in the treatment of the strikes incited by the Clyde Workers' Committee. This involved a general movement to strike in vital plants to force the government to repeal the Military Service Act and the Munitions of War Act and to remove all limitations upon wage increases and strikes. In this case the government requested the military authorities to deport the ring-leaders from the country. This effectively broke the strike, but it must be noticed that in this case the movement of the Clyde Workers' Committee had been generally repudiated by the British Trade Union officials.

The British World War I experience displays but little attempt to alter the substantive rights of the parties except in a qualification of the right to strike and to leave work, both of which were subsequently partially reinstated. The procedural innovations were relatively unimportant, differing little from normal arbitration procedures and industry councils. However, the government was willing to resort to extraordinary procedures when the strike was of sufficient importance to require immediate settlement. From the sanctions that were applied, some interesting facts may be gleaned. The early months of the war indicate that patriotism can be a real factor in preventing work stoppages, provided the standard of living of the workers is not depressed too much and provided other economic classes are suffering an equivalent deprivation. Where the dispute was of sufficiently wide repute to permit the marshalling of public opinion, it was a powerful coercive force. Sanctions of fines and imprisonment, in so far as they were enforced, did not appear to be very effective.

Drawing upon her experiences in the last war, Great Britain today has seen fit to adopt a different war labor policy, a policy based on co-operation and understanding backed by a bare minimum of coercion. The present control exercised by the government is not a result of a single act but has been developed slowly since the German army marched into Poland in 1939. Recently control has been extended

48 Moses, "Compulsory Arbitration in Great Britain During the War," 26 J. Pol. Econ. 882 at 893 (1918).
49 Id. 895.
somewhat more rapidly, although the principle of voluntary co-operation between management and labor which has been relied upon throughout the war continues to be basic in industrial relations.

A few days prior to the declaration of war the Emergency Powers (Defense) Act of 1939 was passed, permitting the government to take the necessary measures to secure the public safety, defense of the realm, maintenance of public order and the efficient prosecution of the war, and to maintain essential supplies and services. Under this law defense regulations were issued, empowering the government to waive hours which had been prescribed by law for certain essential industries and providing that a person should not be deemed guilty of an offense because he took part, or persuaded others to take part, in a strike.

Following the military reverses in Norway, the Churchill government took office and enacted legislation which effected greater control of labor. The Emergency Powers (Defense) Act of May 22, 1940, requiring persons to place themselves, their services, and their property at the disposal of His Majesty, was passed, and the Minister of Labor was given unprecedented power to control labor. Pursuant to this act the defense regulations were amended by a comprehensive order whereby the Minister of Supply was empowered to declare any enterprise subject to control and thereafter to determine what work it should do; the Minister of Labor was authorized to direct any person in the United Kingdom to perform any service which the Minister found him capable of doing. Thus even before the fall of France the government had asserted the power to deprive employers of the right to direct their business as they desired and to deprive employees of the right to work where they chose.

The most stringent of Great Britain's war labor orders was passed two months later when the Conditions of Employment and National Arbitration Order of July 18, 1940, was issued by the Minister of Labor, Mr. Ernest Bevin. Mr. Bevin had formerly been head of the Transport and General Workers' Union, which has a membership of almost one-sixth of all the organized workers in Great Britain. The order was proposed by the National Joint Advisory Council, which is composed of fifteen representatives of the Trades Union Congress and fifteen representatives of employer associations. Thus labor played an important part in the promulgation of this order.

The provisions of the Conditions of Employment and National

50 2 & 3 Geo. 6, c. 62 (1939).
51 3 & 4 Geo. 6, c. 20 (1940).
52 Defense Regulations, §§ 546, 55, Burke, Loose-Leaf War Legislation 612 (1941).
53 Id., § 58A, p. 622. Fair remuneration must be paid.
54 Stat. Rules & Orders (1940), No. 1305.
55 "British Unions and the Law," 153 Nation 604 (1941). The author of this article is a British economist who prefers to have his name withheld.
Arbitration Order pertaining to arbitration may be summed up in the following general terms: when a dispute occurs or is likely to occur, either party may report it to the Minister of Labor; the Minister shall then refer it for settlement to the appropriate existing industrial council which generally settles labor disputes. If no such council exists or if it has failed to bring about a settlement with reasonable promptness, the Minister may then refer it to the National Arbitration Tribunal for final adjudication. A strike or lockout is illegal (1) if the dispute has not been reported to the Minister, (2) if, in the event of its not being otherwise settled, the Minister has referred it to the National Arbitration Tribunal within twenty-one days of its being reported to him, or (3) if the strike or lockout is in contravention of any agreement, decision or award made by a conciliation board or by the Tribunal. Sanctions are not provided in case of violation.

The strike problem, however, has not been completely solved by these measures, even though there were fewer strikes in 1940 than in any other of the past fifty years. The passage of the stringent Employment and Arbitration Order in July seemed to affect the monthly strike trend very little if at all, and beginning in March, 1941, the number of strikes increased considerably, there being approximately thirty-five per cent more strikes in the first nine months of 1941 than in the corresponding period of 1940.

There seems to be some doubt as to whether or not strikes are absolutely prohibited by this law. See 153 Nation 604 (1941). But in a case where six engineering apprentices were arrested when they went on strike without first serving the proper notification, the magistrate declared their action was illegal, saying, "The law says they must not strike unless certain conditions are fulfilled." Schoenfeld, "Development of British War Labor Policy," 52 Mo. Lab. Rev. 1079 at 1081 (1941).

Disputes in the coal mining industry accounted for more than 2/5 of the total number of strikes and over 3/5 of the workers involved in both 1939 and 1940. Only two strikes in 1940 involved more than 5,000 men, and both of these were coal mine strikes, one involving 26,000 men and the other 20,000. “Changes in Working Conditions in British Labor in 1940,” 52 Mo. Lab. Rev. 829 at 832 (1941).
The reason for the relative impotency of these measures might be sought in the basic economic causes of strikes. There was a thirteen per cent increase in the cost of living in 1940 in spite of orders fixing rents and prices of certain basic foods and approximately a two per cent increase in 1941, while the wage scale continued to climb at a uniform rate in both years. Therefore, the real wage index would apparently indicate that there should have been fewer strikes caused by wage disputes in 1941 than in 1940, while, as the statistics show, there were thirty-five per cent more. The explanation for this discrepancy might be that the workers were willing to postpone their demands to retain their former standard of living during the dark days of 1940 when France fell and the threat of invasion was foremost in the minds of every Englishman. Then when the pressure of the war became less acute in the following year, they again asserted their demands.

The question of hours should not be too pressing, as England has found from its experience in this and the last war that total output generally is not increased by extremely long hours, for because of fatigue the workers adjust themselves to longer hours and decrease their effective rate of production. England now is trying to put a fifty-five or fifty-six hour week into effect in most industries, but this may be stretching the endurance of workers too much as the problem of absences due to fatigue became serious in 1941.

In order to prevent loss of production through unnecessary turnover of labor and absenteeism, the Essential Work (General Provisions) Order of 1941 was issued. This order provided that the Minister of Labor may enter the name of any enterprise engaged in "essential work" as defined in the order in a Schedule of Undertakings. Each establishment so scheduled must be given notice in the form of a cer-

59 52 Mo. LAB. REV. 831 (1941).
60 Taken from cost of living index figures given in 48 LAB. GAZ. (Gr. Brit.) 289 (1940) and 49 id. 242 (1941).
61 The changes reported in the first nine months of 1941, in the industries for which statistics are compiled, are estimated to have resulted in a net increase of about £1,500,000 a week in the wage rates of over 7,500,000 workers. In the corresponding nine months of 1940, approximately 7,700,000 workers in these industries received a net increase estimated at about £1,750,000 a week. 49 LAB. GAZ. (Gr. Brit.) 200 (1941).
62 While a sixty-hour week has been resorted to in some industries, it has been found unprofitable from the standpoint of increased production. Also output has been increased by allowing Sundays off. In comparing these working hours with working time in the United States, it must be remembered that American industry is keyed to a higher tempo, and therefore while the hours here are shorter, the work is more strenuous. Kossoris, "Hours and Efficiency in British Industry," 52 Mo. LAB. REV. 1337 (1941).
63 Id. at 1344-1345.
64 Stat. Rules & Orders (1941), No. 302, Burke, Loose-Leaf War Legislation 880 (1941).
Before an enterprise is scheduled permanently the Minister must be satisfied that the employees are protected as to their terms of employment; for example, conditions must not be less favorable than those established by collective agreement. Once an industry is scheduled the management forfeits the right to discharge employees, except for serious misconduct, and the employees' right to leave the plant is strictly controlled. A certain minimum time-rate is guaranteed; thus a worker is entitled to the guaranteed minimum wage while he is working. Absenteeism and tardiness without reasonable excuse is reported to the national service officer, who may then impose penalties subject to appeal.

England, in contrast to the United States, has not had to worry about union recognition problems, as these have been largely settled in the earlier turbulent years of union organization. Collective bargaining has now become universally accepted, and the British labor movement has become relatively stable, as indicated by the fact that, with an industrial population only one-third that of the United States, there were nearly as many union members as in the United States. Also since most of the unions are integrated into one common organization, the Trades Union Congress, there have been no strikes resulting from union rivalry.

The political aspect of the British attempt to gain full co-operation of labor in the war effort is a new approach to the problem and apparently has had considerable effect. It has been relatively easy to incorporate labor elements into the war government because of the existence of a strong labor party in Parliament, closely connected to the labor movement through such men as Bevin and Greenwood. The Prime Minister has included these men in the Cabinet and war councils, and other labor elements have been given an opportunity to participate in the direction of the war effort through such panels as the National Joint Advisory Council. Labor in general is apparently much more willing to make sacrifices if it feels that it will have some voice in the conduct of the war and in the formulation of social policies for the post-war years.

The most radical part of the British war labor program has been the declaration of the power to mobilize manpower and industry completely and to assign specific tasks and working conditions to each man.

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65 McCauley, "Why Britain Has No Labor Problem," 104 NEW REPUBLIC 850 (1941).
66 There are 6,234,000 members of the British trade unions, which is nearly as many members as the A. F. L. and C. I. O. have combined. Id.
67 There have been no organizational strikes in England since the Transport Workers' Strike in 1937. Id.
68 Supra at note 55.
and machine. As yet this has not been translated into general practice because of the expressed belief of Bevin that free people can outproduce slave labor.\(^6\) Whether these measures could be successfully imposed in case of serious disputes is debatable, but apparently the mere statement of them has been feasible only because the public realizes the importance of production and those affected most adversely—the workers—have been given some voice in the determination of these policies.

5. United States Labor Experience during World War I

The relative simplicity of materiel and strategy of the last world war in comparison with the present war had its parallel in the field of labor relations in the United States. Then the United States had only one national union organization—the American Federation of Labor—and it purported to speak for American labor as a whole. Union membership was recruited largely from skilled ranks, and the unions were struggling to gain recognition of the right to organize. Relatively small numbers of American workers were organized. Then as now, however, labor problems were within the province not only of the federal government by also of the various state governments, and the states were not hesitant to assert that authority.

Nearly all the states enacted labor legislation of some sort in 1917.\(^7\) The diversity of this legislation indicates the extremes of labor legislation and the intensity and direction of public opinion on labor problems. Several statutes passed in 1917 indicate the awakening of the state legislatures to the problems of labor and attempt to solve these problems by removing the basic causes of discontent.\(^8\) A greater number of statutes sought to prevent work stoppages merely by limiting rights of labor. Some of these purported generally to develop production and eliminate waste,\(^9\) or to give an executive officer general power to secure

\(^6\) When critics have claimed that Mr. Bevin has shown too great a reluctance to conscript labor for work in the defense program, Mr. Bevin replies that it is important to keep the good will of the workers and that a free people can outproduce the slave labor of the Nazi system. 53 Mo. LAB. REV. 1400 (1941).

\(^7\) U. S. DEPT. LAB. BUREAU OF LABOR STATISTICS, Bull. No. 244, p. 5 (1918) (Clark, "Review of Labor Legislation of 1917").

\(^8\) At least two states enacted legislation making it unlawful for railroad companies to discharge employees against whom charges had been filed by "spotters" or detectives without holding hearings in which the accused employee was allowed to face his accuser. Mich. Pub. Acts (1917), No. 92; Ohio Laws (1917), p. 603. Other states made it an offense for the employer knowingly to obtain the services of workmen by false representations. Colo. Laws (1917), c. 54; Tenn. Laws (1917), c. 48. Several of the mining states passed laws regulating the work in mines and set up commissions to deal with mining problems. Wash. Laws (1917), c. 36; Kan. Laws (1917), c. 238; Ill. Laws (1917), p. 599; Ark. Acts (1917), No. 130; Colo. Laws (1917), c. 45.

\(^9\) Cal. Laws (1917), c. 32.
the most effective utilization of state resources in the war effort. A number of "suspension statutes" were enacted permitting the suspension or modification by the executive of all laws concerning labor. Severe penalties were imposed for interference with employment through the practice of what was designated as criminal syndicalism—the doctrine which advocates crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform.

Four states went to extreme limits. New Hampshire made it unlawful to encourage strikes or lockouts in any plant producing military supplies. Kansas subjected persons loitering without visible means of support to fine and imprisonment if they refused to accept fair wages. Maryland and West Virginia passed laws which provided for compulsory service.

These statutes indicate that the American people were awake to the necessity of preventing work stoppages and that at least certain groups of them were willing to go to almost any length. The approach was more frequently that of restricting labor rather than of constructively trying to solve labor's problems.

Even without any legislation the courts evinced a willingness to restrict strikes through the injunction. Injunctions were allowed on the common-law ground that the court had this power whenever necessary to prevent irreparable injury to property or to a property right. In two states, and one federal district, the courts went even further.

In Minnesota the Commissioner of Labor was to act in the event of war to secure public safety and perform all the acts and things necessary and proper so that the military, civil and industrial resources of the state might be most efficiently applied to the maintenance of the defense of the state and nation. In Colorado the governor was directed to co-operate with the national government in securing the adequate production of foods and the necessaries of life. Other states adopted similar legislation. Massachusetts did not go quite so far, and the state board of labor and industries was directed to appoint a committee to consider applications for emergency suspension of labor laws.

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Conn. Laws (1917), c. 326, § 1; N. H. Laws (1917), c. 194; Vt. Laws (1917), No. 172. Massachusetts did not go quite so far, and the state board of labor and industries was directed to appoint a committee to consider applications for emergency suspension of labor laws. Mass. Laws (1917), c. 342, § 24.

Idaho Laws (1917), c. 145; Minn. Laws (1917), c. 215.

N. H. Laws (1917), c. 146.


and in part based an injunction on the necessities of wartime, the New York Supreme Court saying:

"The production of war industries is so closely and immediately connected with actual military operations that it may be said to be a part of them. Can it then be that with means afforded by the government to adjust difficulties between employers and employees in war industries that a labor union has the right, for any cause whatever, to induce or incite workmen in such industries to strike, or not to work, and thereby to jeopardize the successful outcome of our country's military operations, and all that depends upon them, even though so to do would have been lawful in times of peace? Any answer other than no is unthinkable." 81

Under the United States Constitution the states have always been able to call upon the President for the assistance of troops in quelling civil disorders. 82 The President has also the independent power to call out troops to assist federal civil officials to protect federal property and to enforce federal laws and orders of the federal courts. 83 Serious labor disputes frequently tend to create disorders which would warrant the dispatch of troops, as has actually been done in twenty labor disputes in the past. 84

The dispatch of troops and the command of their actions are in the discretion of the President, thereby giving him a tremendous influence on the final outcome of the dispute. Thus by sending troops to break up a picket line or keep a plant closed, the President may break a strike or make it more effective. The manner in which this extraordinary power is employed will be determined by the President's conception of the rights of the parties to the dispute and of the public, and the expediency of using troops in settling the dispute.

In only a few instances during the last war period were disturbances serious enough to warrant the dispatch of troops. The copper mine strikes of Arizona and Montana were the only instances while the United States was actually at war. These involved a series of strikes instigated by the Industrial Workers of the World to obtain recognition in Arizona and wage increases in Montana. Troops were sent to Arizona in July, 1917, and then returned for eighteen months in Octo-

83 U. S. Const., Art. II, § 3. The basis for the use of troops in the aid of the federal government is the recognized principle that when the civil power is inadequate either the army of the nation or the militia are at the service of the nation to compel obedience of its laws. In re Debs, 158 U. S. 564 at 582, 15 S. Ct. 900 (1895).
ber. In September, 1917, they were sent to Montana.\(^8^5\) The troops were supposedly sent to preserve public order but contributed to the collapse of the strike by maintaining free access to the mines for independent workers. This demonstrates the effectiveness of the coercion which the President may apply to maintain production through application of the powers of his office.\(^8^5\)

The federal government, however, recognized the inadequacy of the state and existing federal machinery and set up special machinery for settling disputes during the war. In the first days of the war many independent agencies were set up to govern labor-management relations in particular industries. Usually these agencies were composed of an equal number of representatives of labor and management. In a few industries, particularly within the ambit of army supply, the agencies were composed entirely of army officers. Because of the number and independence of these agencies, there was general confusion and frequent conflict over their respective jurisdictions of labor disputes.\(^8^7\)

In the early spring of 1918, upon the recommendation of a committee composed of six employer representatives and six representatives of the American Federation of Labor, the National War Labor Board was set up by presidential proclamation.\(^8^8\) This board had jurisdiction over all controversies "in the fields of production necessary for the effective conduct of the war" and also "in other fields of national activity [where] delays and obstructions . . . might, in the opinion of the national board, affect detrimentally such production." The board could not take cognizance of a controversy in a field where there was by an agreement or federal law a means of settlement which had not been yet invoked. In all instances where a board did not exist or where an appeal was made from an existing board the National War Labor Board could and did act. The wide field of the board's jurisdiction is demonstrated by the fact that of approximately 1,250 controversies presented, only 50 were dismissed for lack of jurisdiction\(^8^9\) and 315 were referred to other tribunals.\(^9^0\)

\(^8^6\) In the Colorado Coal Strike of 1913-1914, where the miners struck for union recognition, President Wilson first attempted mediation before dispatching soldiers, and in the Bituminous Coal Strike of 1919, where the workers struck for an increase in wages commensurate with the rising cost of living, he again tried mediation before sending troops. Cannon, "Use of Federal Troops in Labor Disputes," 53 Mo. Lab. Rev. 561 at 567, 570 (1941). These cases show that the President has ordinarily sought to settle the dispute through mediation before resorting to more extreme measures.
\(^8^7\) Twentieth Century Fund, Labor and National Defense 103 ff. (1941).
\(^8^9\) Id. 13, 16.
\(^9^0\) Id. 20.
The principles by which the board was guided were set out in the beginning by the proclamation, which adopted in toto the principles established by the labor-management committee. These were: that there should be no strikes or lockouts; that the right of employees and employers to organize should not be denied or interfered with in any other way; that a living wage should be sought as a minimum; that existing standards of health and safety were to be maintained; and that all union shops were to continue as union shops for the duration of the war, although nonunion shop conditions should not be grounds for complaint.

The terms of creation of the board gave it no legal authority to impose its decision upon the parties. In the 199 cases which were submitted by both parties, the board required that the parties agree in advance to be bound by the decision and either party had a contract remedy if the other failed to live up to this agreement. In the 1052 ex parte cases submitted, the board had to rely upon the support of public opinion and indirect sanctions such as the alteration of priority ratings and the buying power of the production and supply departments of the army and navy. These proved fully as effective as any direct sanction. In only three cases was there any determined resistance to the board’s findings. In the Western Union and Smith & Wesson cases the government simply took over the plants of the recalcitrant employers. When the machinists in Bridgeport refused to abide by the board’s decision, the President threatened to deprive the workers of employment through blacklisting them in the federal employment service and to remove their deferred status in regard to military service.

The upward trend in the number of strikes during the previous three years was sharply reversed when the National War Labor Board was established in 1918. At no time did strikes seriously hamper the war effort. The main cause of the strikes which did occur was a demand for higher wages, which was no doubt accentuated by a fifty-six

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91 Id. 16-17.
92 Letter from the President to striking employees at Bridgeport, Conn. Id. 36.
93 In 1915 there were 1,420 strikes; in 1916, 3,678; in 1917, 4,233; in 1918, 3,181. 4 Mo. Lab. Rev. 601 (1917); 8 id. 1858 (1919).
94 Twentieth Century Fund, Labor and National Defense 107 (1941).
95 Number of strikes caused by demands for increased wages other demands

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<td>1918</td>
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4 Mo. Lab. Rev. 605 (1917); 8 Mo. Lab. Rev. 1861 (1919).
per cent rise in the cost of living index between 1914 and 1918. The early recognition that a living wage should be maintained enabled the board to settle satisfactorily the wage questions which made up more than half of its cases.

The effectiveness of the board is probably attributable to two factors. First, the full co-operation of responsible labor leaders was obtained by following exactly the recommendations of the conference committee in which the A. F. L. had equal representation with management. The second feature was the character of the awards. Two basic tenets were followed throughout: first, that a living wage should, in all cases, be paid to workers, and second, that some sort of bargaining relationship should be established whether the plant was organized or unorganized. Basing the findings of the substantive rights of the parties on the general principles set forth originally and emphasizing the two basic tenets, the board was able to arrive at decisions which were almost always acceptable to the parties. The backing of the board by public opinion and the support of labor and management made the resort to more drastic sanctions seldom necessary, although such sanctions were available when needed. On the whole the policy of conciliation and arbitration seemed well suited to meet the situation at that time.

6. United States Experience in the Present War

The circumstances with respect to labor relations in which the United States found itself at the outbreak of the present war in 1939 were considerably different from those which the nation faced in 1917. In 1917 the unions were, in many industries, fighting for existence, their most serious problem being whether employees had a right to organize at all. Today the right to organize and bargain collectively is guaranteed by the National Labor Relations Act. The National Labor Relations Board, set up under the act, has jurisdiction to determine the application of these general principles to a particular situation when there is a dispute between groups of employees or between employees and management. There are now more than 9,000,000 organized workers. In all major industries there are strong union organizations, and in many closed-shop agreements exist. Unions in general, and especially the C. I. O. unions, have been aggressively seeking new members.
from both organized and unorganized plants, and their rapid contemporary growth has made them unwilling to accept an agreement similar to that established during the last war whereby the status quo would be maintained. Today, unions are directing their forces toward obtaining union security agreements.

Management recognition of the increased bargaining power of labor has resulted in a large increase in the number of collective bargaining agreements between unions and employers. These contain grievance procedures adequate to handle the majority of minor complaints successfully. This voluntary method of settling disputes is not generally efficient in newly organized industries because of the ineptitude of the persons involved and the persistence of antagonisms between employers and employees. In some industries where unions have been established for a longer period of time, voluntary arbitration procedures have been developed, but they have been adopted very slowly in the newly organized industries. The Conciliation Service of the Department of Labor has also been active in this field in assisting the parties to reach a settlement where the grievance machinery has failed. In the fiscal year 1938-1939, the service acted in 1,678 disputes involving a million and a half workers. In recent months its efforts have been directed primarily toward the defense industries. Likewise, the problem of labor relations is further complicated by the existence of two major union organizations—the A. F. L. and the C. I. O. There has been considerable controversy in the past between these groups, and in many plants there has been active and heated competition for members.

Current labor problems are emphasized by the large amount of state legislation regarding labor and labor organizations. Such legislation has taken several different forms. Some has been designed to avoid violence in labor disputes; forty states have provided conciliation service acted. 91.4 per cent of the disputes were adjusted successfully. Id. 90.

100 Twentieth Century Fund, Labor and National Defense 79 (1941).
101 Id. 87. In 761 of these cases a strike had been called before the conciliation service acted. 91.4 per cent of the disputes were adjusted successfully. Id. 90.

agencies, to which the federal conciliation service has frequently referred disputes; seven states have enacted the so-called Little Wagner Acts similar to the National Labor Relations Act, and finally, some legislation has been designed to limit the right to strike. This latter type of legislation has usually found expression in one of four forms. Some acts penalize an employee who maliciously breaches a contract of service, "knowing or having reasonable cause to believe that the consequence of his so doing will endanger human life, or cause grievous bodily injury or expose valuable property to destruction." Others limit the right to strike in certain industries only. A third type of statute postpones the right to strike for a certain number of days after notice to strike has been served. Many of this last group of statutes make a distinction between ordinary industries and those industries which are "affected with a public interest," a longer period of postponement being required in the latter case. Before the United States entered the war the Attorney General of Michigan ruled that any plant engaged in defense work was "affected with a public interest." Violation of these statutes is a misdemeanor and punishable as such. Probably injunctive relief would also be available. The fourth

103; Minn. Stat. (Mason, Supp. 1938), §§ 9950-6, 2254 (18a); Nev. Comp. Laws (Hillyer, 1929), § 7140. For further discussion of this topic, see Smith and Delancy, "The State Legislatures and Unionism," 38 Mich. L. Rev. 987 at 992 ff. (1940).


106 Colo. Ann. Stat. (1935), c. 97, § 32 (industries affected with a public interest). "Where the exercise of the right to strike by employees of any employer engaged in . . . the production, harvesting or initial processing . . . of any farm or dairy product produced in this state would tend to cause the destruction or serious deterioration of such product, the employees shall give to the board at least ten days' notice of their intention to strike. . . ." Wis. Stat. (1941), c. III.II.

107 Georgia requires all unions to give a 30-day notice before calling any strike. 9 L. R. R. 31 at 49 (1941); Ga. Acts (1941), p. 515, Code Ann. (Supp. 1941), §§ 54-793.


type of legislation prohibits picketing during a strike unless a majority of the workers have voted in favor of the strike. A Wisconsin statute\[^{111}\] which authorized injunctive relief against violators was upheld by the state supreme court,\[^{112}\] although a similar Oregon statute\[^{113}\] which imposed criminal sanctions was held to violate the guarantee of freedom of speech.\[^{114}\] However, as this guarantee is construed more narrowly in time of war, a similar federal statute would probably be upheld, at least if confined to war industries. The requirement that a vote be taken before a strike may legally be called has never been applied by the national government,\[^{115}\] but might eliminate work stoppages where only a small percentage of the workers are actually dissatisfied.

While the federal government has not as yet adopted any similar legislation with general application, the principle of postponing strikes by requiring a "cooling off" period was applied in the Railway Labor Act of 1926, as amended in 1934.\[^{116}\] This law requires that each party give the other thirty days' notice before making any proposed change in working conditions and creates a board of mediation with the duty of adjusting the dispute if the parties themselves cannot reach an agreement. If the board fails to adjust the dispute at once, an attempt is made to persuade the parties to submit to arbitration. Then if the parties do not arbitrate and if the dispute threatens to tie up transportation seriously, the board may recommend that the President appoint an emergency board to investigate and report to the public. In case an emergency board is appointed, the status quo must be maintained for another thirty days. This requirement of a "cooling off" period in the Railway Labor Act has been held constitutional.\[^{117}\] During this time both parties were held to have a property right in the maintenance of the status quo, enforceable by mandatory injunction if necessary.\[^{118}\] In the five years following the passage of the amended act in 1934 there have been no major strikes. There were just two strikes and two minor stoppages in 1936. In 1938 and 1939, 235 cases were disposed of, with

111 Wis. Stat. (1939), §§ 111.06(2)(c), 111.07(4), (7).
112 Hotel & Restaurant Employees' International Alliance v. Wisconsin Employment Relations Board, 236 Wis. 329, 294 N. W. 632, 295 N. W. 634 (1940).
115 This was proposed in the Smith bill, discussed infra, at note 144.
only one resulting in a strike, and since 1934, it has been necessary to appoint six emergency boards.\textsuperscript{119}

The success of this act has led to considerable agitation for the enactment of a similar law to govern all industries engaged in producing war materials. In the first few months of 1941 several bills were introduced in Congress which sought to require a "cooling off" period before strikes would be legal in defense industries.\textsuperscript{120} However, it must be remembered that the railroad situation is unique in that the unions have been established for over seventy years and have become firmly entrenched, with eighty per cent of the shop and one hundred per cent of the running employees as members.\textsuperscript{121} Because the members are better disciplined and because of the long union history, the postponement of strikes does not weaken the union morale. There is also strong public sentiment requiring disputes to be settled without disrupting transportation. Then, too, emergency boards would lose their effectiveness if used too frequently, because the willingness of the public to support their recommendations depends upon the conviction that a serious emergency exists. Of course, the seriousness of the situation could not be doubted today, but nevertheless general employment of an emergency board would eventually tend to lessen its prestige in the eyes of the workers.

The A. F. L. and the C. I. O. have both come out against such limitation on their fundamental right to strike, because it could completely deprive them of their most powerful weapon to enforce their demands.\textsuperscript{122} Since strikes could no longer be called at the most opportune time, the element of surprise would be removed. The management would have sufficient time to employ strikebreakers, move goods from plants and completely prepare for the threatened walkout. Also, they argue that strikes at present do not occur without previous notice, for generally strike action is taken only after other means of adjusting a dispute have been exhausted. Further, the unions feel that such laws would simply delay to the last minute all attempts to reach an agreement and thus defeat early mediation.\textsuperscript{123}

\textsuperscript{119} Twentieth Century Fund, Labor and National Defense 93 (1941).
\textsuperscript{120} The sixth board was set up last fall when the railroad unions threatened to go out on strike. Time, Nov. 24, 1941, p. 21:3.
\textsuperscript{121} The Ball bill required a 10-day notice of intention to seek alteration in working conditions and an additional 10-day postponement if the negotiations should be unsuccessful. S. 683, 77th Cong., 1st sess. (1941), § 5(e). The Vinson bill required a 30-day postponement. H. R. 4139, 77th Cong., 1st sess. (1941), § 2. The Smith bill required 30 days. H. R. 2695, 77th Cong., 1st sess. (1941).
\textsuperscript{122} Twentieth Century Fund, Labor and National Defense 94 (1941).
\textsuperscript{123} 48 American Federationist, No. 3, p. 8 (March 1941); Labor’s Non-Partisan League, Who Causes Strikes? (1941).
\textsuperscript{123} Ralston and Shea, “Labor Today,” Pittsburgh Post-Gazette 7 (April 22, 1941).
The man in the street seems to favor the complete prohibition of strikes in war industries. In a nationwide poll taken early in December, 1940, 67.6 per cent of those interviewed stated that they believed strikes should be prohibited by law in such industries. Today, since the declaration of war, the percentage would undoubtedly be even greater. However, both of the two largest employer organizations of the country, the National Association of Manufacturers and the United States Chamber of Commerce, have declared themselves against the prohibition of strikes. It has been argued that such laws against strikes will not make men work, nor do they remove the difficulties which produce strikes, since strikes are symptoms and the real need is to alleviate the underlying causes. In spite of the conflicting viewpoints, it was clear that everyone—labor, management and the public—wanted some action to be taken to eliminate work stoppages when the United States committed itself to the cause of the United Nations through the Lend-Lease Bill.

Responding to the demand for action, the President in March, 1941, set up the tri-partisan National Defense Mediation Board, composed of four representatives of labor, four of management and three of the public. The first important problem, extent of jurisdiction and power, was handled very cautiously. The Mediation Board could not take cognizance of a case until it was certified by the Department of Labor or the Office of Production Management. When the board did gain jurisdiction it was empowered to use all "reasonable means" to obtain a settlement, and if a settlement were not obtained, then the evidence and findings were to be made public. The approach of the board was definitely one of conciliation and mediation, as evidenced by its powers. Still, in a proper case, the power of the President to seize and operate plants and to protect workers who wished to cross picket lines could be used to coerce management and labor, respectively. Such power was used in the North American Aviation Company case.

124 SCHLICHTER, ECONOMIC FACTORS AFFECTING INDUSTRIAL RELATIONS POLICY IN NATIONAL DEFENSE 85 (1941).
125 Id. 85.
126 Executive Order No. 8716, 6 FED. REG. 1532 (1941).
127 The North American Aviation strike of 1941 began in June of that year. At the time of the walkout the matters in dispute were being considered by the National Defense Mediation Board working under an agreement with the government to postpone the strike action until three days after the board's recommendation was made. Because the company was engaged in defense production, direct appeals were made to the strikers by both President Roosevelt and the president of the C. I. O. Warnings by government officials were also issued to the effect that failure to resume production would result in government operation of the plant. These appeals and warnings were unsuccessful and accordingly on June 9, by presidential proclamation, the War Department was ordered to take over the armed possession of the plant. The President declared the action was necessary because the strike jeopardized the ability of the United...
This, however, was a remedy entirely separate from the activity of the Mediation Board and could be invoked only by a special appeal to the discretion of the President.

The Mediation Board did not start out with a clear-cut determination of general policies on all the controversial issues as did the War Labor Board in the last war. In the decisions of the ninety-four cases which it settled, however, the Labor Relations Reporter has traced six important tendencies: 

1. terms which are agreed on by all the parties are the most satisfactory; 
2. in wage determinations the chief considerations are fairness of rates with respect to the competitive conditions in the industry and the area and the ability of the employer to pay; 
3. decisions of the National Labor Relations Board must be accepted by the parties to the dispute; 
4. when the matter was pending before another labor tribunal, the board would not take action until a decision had been obtained; 
5. labor organizations having bargaining agency status are entitled to protection from the hostility of employers and the undermining of rival unions; 
6. except where parties agree to an all-union shop, it shall be recommended only as a last resort.

Although wage controversies and negotiations were numerous throughout the country, the issue most frequently before the Mediation Board was that of union security. This may be explained largely through the conflict between aggressive growing unionism and conservative management; each felt that the closed or union shop involved a question of policy which could not be compromised. Although this was in issue in approximately half the cases, in only one was a closed shop granted. In the rest the union was satisfied with a measure providing some protection to the union with a bargaining contract from organizational drives by an outside union. This was usually accomplished by some form of "maintenance of membership" provision in the collective bargaining agreement. In many cases a publicized statement of the management that they favored the bargaining union was deemed sufficient. In later months shop discipline and diluted security provisions were applied. It was not until the Captive Coal Mine case arose, however, that the right to a union shop was specifically denied, thus exposing the fatal weakness of the Mediation Board.

States to obtain materials to be issued to the armed forces, and seriously impaired the national defense program. A short time after the arrival of the troops production was resumed, and in less than a month after the troops had taken over possession control was again turned over to private management. Cannon, "Use of Federal Troops in Labor Disputes," 53 Mo. Lab. Rev. 561 at 571 (1941). Troops have been used twice since the North American Aviation strike. TIME, Nov. 10, 1941, p. 20:3.

129 9 L. R. R. 538 (1942).
130 Bethlehem Shipbuilding Corp., 8 L. R. R. 614 (1941).
131 9 L. R. R. 539 (1942).
132 9 L. R. R. 287 (1941).
In this dispute between the United Mine Workers (C. I. O.) and several steel companies owning coal mines, the sole issue was the union shop. Ninety-five per cent of the miners belonged to the union at the time of the dispute. Dr. John R. Steelman, Director of the Conciliation Service of the Department of Labor, tried to persuade the parties to reach an agreement, but was unsuccessful. Upon the refusal of the board to recommend a union shop, the two C. I. O. members of the board resigned on November 11, protesting that the board would apparently under no circumstances require a union shop, although the majority of the board denied this contention in their recommendations. The President refused to accept the resignations, but all the cases involving the C. I. O. were held over for later hearings, and the C. I. O. unions avoided strikes in plants where there were disputes. The confidence of the people and of labor in the Mediation Board was seriously undermined, and the patience of the people with conciliation methods in general was severely strained. The dispute was finally settled when the union and the steel companies agreed on December 1 on submission to an arbitration board composed of Dr. Steelman, John L. Lewis, representing the United Mine Workers, and Benjamin Fairless, representing the steel companies. This board awarded the United Mine Workers a union shop on December 15, but the acrimony of the dispute had ended the usefulness of the National Defense Mediation Board.

In spite of its failure in this critical case, the Mediation Board did solve a number of disputes with a minimum amount of hard feelings and loss of work. During most of its existence it had considerable prestige among unions, management and the public. Although the number of strikes increased markedly during its brief existence, the average duration of strikes during its last three months of existence was only half the average duration of strikes in the three months before it was created. This is a fair record when one considers that the Mediation Board was

133 Id. 274.
134 Id. 270.
135 Id., 329. Following the resignation of the C. I. O. members from the Mediation Board, the President called in the heads of the steel companies and the C. I. O. and told them: "I tell you frankly that the Government of the United States will not order, nor will Congress pass legislation ordering, a so-called closed shop..." TIME, Nov. 24, 1941, p. 21:1.
136 9 L. R. R. 400 (1941).
137 In January, there were 231 strikes; February, 252; March, 334; April, 378; May, 440; June, 324; July, 400; August, 460; September 475; October, 450; November, 300; December, 175. Compiled from the monthly strike statistics in the LABOR RELATIONS REPORTER, especially 9 id. 395.
138 In the three months before the National Defense Mediation Board strikes averaged 12.4 days, while in the three months preceding the war they lasted only 6.6 days. 9 L. R. R. 666 at 667 (1942).
designed not to remove the basic causes of strikes but to assist in the settlement of a dispute after it had arisen.

Although the appointment of the National Defense Mediation Board had quieted the demands for some form of labor legislation, the increase in the number of strikes which received considerable publicity in the newspapers intensified the general agitation for more stringent measures. This was reflected in the labor bills which were proposed in Congress during the summer of 1941. These bills included provisions for regulating the internal and financial affairs of labor unions,\textsuperscript{139} limiting the scope of activities of labor unions,\textsuperscript{140} making the closed shop illegal,\textsuperscript{141} prohibiting the use of violence in picketing,\textsuperscript{142} and providing for a sixty-day postponement of strikes upon an agreement to make the settlement retroactive.\textsuperscript{143}

When the ineffectiveness of the Mediation Board became apparent during the captive mine dispute, Congressional action culminated in the passage of the even more drastic Smith bill by the House of Representatives on December 3.\textsuperscript{144} The bill prohibited virtually all picketing of defense plants, jurisdictional strikes and strikes for labor organizational issues such as the closed shop, and also strikes not called by a majority of workers in the plant involved. Unions were required to register and were deprived of their legal status under the National Labor Relations Act if knowingly or negligently they allowed a Communist, Bundist, or felon to hold office. It also established a statutory mediation system under which the chairman of the mediation board could order a sixty-day cooling-off period in which calling a supporting strike would be prohibited.

Before the Senate had an opportunity to act on this bill, the United States declared war on the Axis.\textsuperscript{145} The immediate patriotic response of all Americans made it seem advisable to consider carefully this drastic legislation.\textsuperscript{146} On December 13, the President appointed a conference of labor and management representatives to try to reach an agreement concerning a labor arbiter which would resolve all disputes without interfering with the war effort. Due largely to the desire of both

\textsuperscript{139} H. R. 5015, 77th Cong., 1st sess. (1941) (Hoffman).
\textsuperscript{140} H. R. 5218, 77th Cong., 1st sess. (1941) (Walter); H. R. 5259, 77th Cong., 1st sess. (1941) (Monroney).
\textsuperscript{141} H. R. 4966, 77th Cong., 1st sess. (1941) (Hoffman).
\textsuperscript{142} S. 1811, 77th Cong., 1st sess. (1941) (O'Daniel); H. R. 5259, 77th Cong., 1st sess. (1941) (Monroney).
\textsuperscript{143} H. R. 5148, 77th Cong., 1st sess. (1941) (Boren).
\textsuperscript{144} H. R. 6149, 77th Cong., 1st sess. (1941); 87 Cong. Rec. No. 216, p. 9638 (1941).
\textsuperscript{145} 55 Stat. L. 795, 796, 797 (1941).
\textsuperscript{146} The International Executive Board of the United Automobile, Aircraft & Agricultural Implement Workers of America (C. I. O.), claiming to represent 700,000 workers, promised speedy, uninterrupted production to defeat the Axis. A strike at the shell-loading arsenal at Ravenna, Ohio, was terminated because of the war emergency. \textit{Christian Science Monitor} 4c:6 (Dec. 10, 1941).
groups to reach some solution to this critical war problem, management and labor representatives quickly came to agreement on several points: creation of a tri-partisan board with broad jurisdiction provided that other means of settlement had failed, the certification of disputes to the board by the Secretary of Labor, and the maintenance of high standards of wages and working conditions with reference to the cost of living. On the question of the closed shop there was again disagreement. Management representatives wanted to settle the issue so far as the board was concerned by refusing to consider it as an issue before the board. Labor representatives insisted that this was a vital problem. The President accepted these reports and on January 12, 1942, issued an executive order which set forth terms of the "agreement." A twelve-member National War Labor Board was set up with equal representation of labor, management and the public, labor’s representatives to be equally divided between the A. F. L. and the C. I. O. This board has jurisdiction over all disputes which interrupt the effective prosecution of the war, provided that all contractual methods of direct negotiation and the facilities of the conciliation service prove to be ineffectual. The War Labor Board may take jurisdiction upon the certification of the Secretary of Labor or upon its own motion. Once it has taken jurisdiction it is to proceed to the final determination of the dispute and is empowered to use "mediation, voluntary arbitration or arbitration under such rules established by the board" to achieve such a settlement. The absence of any limitation of the board’s power to consider the closed-shop question indicates that this will be an issue over which it has jurisdiction. Thus the two most important differences between this board and the Mediation Board are: (1) by inference from the distinction which is made between voluntary arbitration and arbitration, the War Labor Board can require compulsory arbitration, and (2) it must proceed to the final determination of the dispute.

The procedure to be followed by the War Labor Board is similar to that of the Mediation Board. In addition to the twelve regular members of the board, the President appointed twenty-four associate members. When a case is first presented to the board, the board’s committee on new cases determines whether it should be heard before the entire board or before a panel selected from the twenty-four associate members. The board adopted the practice of the Mediation Board in that the existing machinery to settle grievances should be exhausted.

147 Management’s proposals are set forth in 9 L. R. R. 537 (1942); the union’s proposals are set forth id. 538.
148 Labor’s representatives also recommended certification upon the request of either party.
150 Executive Order No. 9038, 7 id. 527; 9 L. R. R. 666 (1942).
151 9 L. R. R. 605 (1942).
This machinery is adequate to handle the great majority of disputes. Where it is inadequate and the parties cannot be induced to mediate or arbitrate their differences, they may now be compelled to arbitrate. The executive order which established the War Labor Board conferred on it no independent power to levy sanctions on the parties to enforce its recommendations. By publicizing the facts of the case the board may marshal public opinion in its support. The effectiveness of this sanction will depend upon the general confidence in the integrity and ability of the board. However, the executive branch is amply fortified to enforce these decrees through the exercise of priorities, the property seizure statutes, and the use of troops to protect plants and nonstriking workers. To what extent these sanctions will be utilized is an independent matter entirely within the discretion of the President. Past experience and the organization of the War Labor Board indicate that every attempt will be made to bring the parties to agreement through ordinary channels and through voluntary arbitration, with the threat of compulsory arbitration and sanctions held in reserve, to be used only in extreme and stubborn cases. Whether having this plenary power in reserve will strengthen or weaken the position of the conciliators is difficult to say. Parties may be willing to compromise on a slightly unfavorable position rather than run the risk of a completely unfavorable decision by an arbitration panel. On the other hand, knowledge that such coercion is ultimately available might induce parties who believe strongly in the justice of their position to refuse any offers of compromise.

In contrast with the order setting up the War Labor Board of 1918, the executive order creating the present board did not make any determination of the substantive rights of labor and management. This determination was left to the board. The formulation of these basic rights is the most important factor in solving the labor problem. Due to the differences in the views of management and labor on the issue of the closed shop, it is unlikely that the board will be able to adopt in advance a statement of these basic rights. Undoubtedly these rights will be gradually established through the determination of individual cases in a manner analogous to the development of case law. Questions which will in all probability be most difficult include the union shop, wage differentials between male and female workers, and the basis of overtime and double time compensation in those industries which are operating a 168-hour week for the first time. Wages in general will probably be a frequent issue, but as management and labor have both

155 Ten of the twelve cases docketed during the week ending February 13, 1942, involved wage demands either alone or coupled with other demands. 9 L. R. R. 689 (1942).
conceded that a living wage should be maintained, a successful solution will depend to a large extent upon the success of the government's price-fixing policy and its willingness to permit further increases in wage rates. Disagreements as to working conditions may be expected to arise as obsolete factories and mines are again opened and all plants are pushed to capacity production. Modern grievance procedures should be adequate to settle these questions satisfactorily, however, without resort to the War Labor Board.

The importance of the union shop issue is illustrated by the first five cases which arose after the creation of the board, all of which were settled by agreement of the parties. In four of the cases, the demand for a closed shop was satisfied by an agreement to maintain the status quo, though in one of these cases the management also promised to encourage workers to join the union. In the fifth case, the union ignored the question of security and accepted a pay increase.

In the first decision handed down by the War Labor Board, February 10, 1942, an indication was given as to the formula to be followed in all wage disputes. This dispute, involving the Aluminum Company of America, was over the existence of a wage differential between the northern and southern plants and lack of a substantial differential between workers on the day, afternoon and night shifts. In regard to the north-south differential, the board, with the four management members dissenting, ordered the southern scale raised seven cents an hour, thus reducing the differential thirty-five to forty per cent. The decision was based partly on prevailing wage rates in the southern area, but also on the fact that the company was making sufficient money so that it could afford to pay rates as high as or higher than any others in the locality. On the same basis the board awarded the afternoon and evening shifts a slight premium. Four labor members and one public member dissented on the ground that a greater premium should be paid although not as much as the union had demanded.

157 Wolverine Tube Co., id.
158 Maytag Company, id.
159 9 L. R. R. 684 (1942).
160 Under the reasoning of this decision the government will determine whether or not wage increases are granted, for in these industries the entire output of the industry is ultimately sold to the government. Therefore the prices which the government pays will determine the margin of profit. The size of the profit, in turn, will be an important factor in determining whether or not to grant a wage increase. Should the government decide to prevent wage increases two courses are open: (1) sharply increasing the taxes on profits, a method which would, however, tend to stabilize wages even in those industries in which the wage scale is less than the average; (2) reducing the prices which the government is paying for supplies. In many cases, however, the government has already let contracts for many months in advance.
In the Federated Fishing Boats case, which was decided on the same day, representatives of the owners refused to appear before the board to argue the question who should pay for war risk insurance unless the board would guarantee in advance that the present union-management contracts would be extended for the duration. The board refused to so guarantee and continued to hear the case ex parte, basing their decision on the record of the case as it was compiled. In holding against the owners, the War Labor Board condemned their defiance and said if it were continued it should be repudiated by all people and "challenged by whatever forces of Government may be necessary to obtain compliance." This rather futile challenge indicates the weakness of the board's own coercive powers.

The ultimate decision of the board regarding these rights is impossible to foresee at the present time. However, the board will be faced with some difficult problems until these substantive rights have emerged from their decisions and become generally recognized.

7. Conclusions

As yet it is too early to determine whether the National War Labor Board and the coexisting mediation machinery will satisfactorily solve our war labor problems. The experiences of Canada, England and the United States in this and the past war indicate, however, that in several aspects they may be deficient.

(a) The principal shortcoming is the lack of a determination of the substantive rights of management, labor and the public in the field of labor relations. A definite statement of the underlying rights or policies to be followed would serve as a guide for the demands and actions of the parties and would eliminate many of the disputes which are outside of the borderline area. It would also establish a standard by which the public could evaluate the merits of the claims of the disputants.

Admitting the need for these standards, the problem who shall make this determination remains. The present practice of gradually evolving them from the decisions of the Labor Board and mediation agreements will by degrees develop a clear set of principles while still retaining flexibility and permitting each case to be decided on the basis of the merits as disclosed by the evidence in that particular case. However, it would seem to encourage disputes for the purpose of raising these questions until the rights of the parties have been determined on all controversial points and thus delay the attainment of stability

161 9 L. R. R. 688 (1942).
162 Id. 689. The employers subsequently complied voluntarily with the order. 10 L. R. R. 194 (1942).
in labor relations.\textsuperscript{163} Probably, therefore, the most satisfactory method of formulating the substantive law would be to reconvene, for the purpose of stating such law, the joint labor-management council which recommended the establishment of the National War Labor Board. The determinations of this council would undoubtedly be more acceptable than those made by an agency in which labor and management are less directly represented. However, in view of the previous disagreement on the closed-shop issue, perhaps an agreement satisfactory to both factions could not be reached on all issues. In that event the determination would have to be made by Congress or by the President.

The difficulty of making these determinations should not be underestimated. Although both labor and management have agreed that a living wage should be maintained—and the principle has been applied in the Aluminum Company case—with the increased tempo of war production and the decreased production of consumer's goods, the real income of the people generally will necessarily decline. To make this decline acceptable to the workers, experience has shown that war profits must be strictly curtailed. The closed-shop issue is more likely to cause trouble, as both management and labor feel that it involves a fundamental question of policy. A possible solution may be to freeze the status quo except in those cases where the union demonstrates to the satisfaction of the board that it has obtained virtually complete membership.

It seems advisable that the right to strike should be suspended for a reasonable time while suits are pending before a conciliation or arbitration panel. The widespread belief that the right to strike should be completely suspended for the duration is based on the assumption that this would automatically prevent work stoppages. The English and Canadian experience demonstrates the error in this assumption. It must be remembered that strikes are the ultimate sanction that labor can employ to obtain its rights. If the right to strike is suspended, an adequate substitute must be established. This must consist of a tribunal in which both management and labor have confidence and which will equitably determine the rights of the parties in particular cases. It should be empowered to coerce any recalcitrant party to abide by its determination.

(b) Unless the determination of the general substantive rights is accompanied by an efficient and equitable procedural mechanism for applying these substantive rights to particular cases, the determination is rather pointless. The present setup in the United States appears to be fairly adequate. Conciliation of disputes promotes good will and is

\textsuperscript{163} William M. Leiserson states the case in favor of making an immediate statement of general policies in 9 L. R. R. 696 (1942). Wayne L. Morse, public member of the War Labor Board, supports present procedure in 10 L. R. R. 193 (1942).
successful in too many cases to be discarded. In those disputes which cannot be settled by conciliation, however, arbitration must be, and is, available. However, permitting extraordinary appeals to the President as in the Captive Mines case seems to weaken unnecessarily the position of the board as a board of final arbitration, since the parties are less willing to submit to an adverse decision as long as a possibility of appeal is open.

(c) When the rights of the parties have been determined in a particular case, sanctions must be available to guarantee that they will abide by this determination. The ideal solution would be to have a board which has so completely won the confidence of the parties that they would be willing to accept its decisions. However, in some cases it will undoubtedly be necessary to apply some form of coercion. To cope with this problem, it would seem advisable to place in the War Labor Board some of the sanctions which now rest in the executive; for example, the board might be empowered to authorize the taking over of plants by the government and the removal of occupational deferments from the workers. It must be recognized that it is difficult to obtain satisfactory production from recalcitrant management and labor, but satisfactory production may best be obtained by making the parties realize the responsibility which rests upon them and thus creating the desire to maintain production. In both England and the United States one of the most effective means of reaching this result has been through the pressure exerted by an aroused public opinion. The rapid increase in the number of people having friends or relatives in the armed forces who are directly dependent upon adequate weapons is causing a tremendous increase in the intensity of this public opinion. Ultimately, however, victory will be won only if those in whose hands our production facilities lie are willing to make the greatest possible use of those facilities, for this is a battle of production.

Paul M. Oberndorf
Donald H. Treadwell