The Termination Report of the National War Labor Board

Industrial Disputes and Wage Stabilization in Wartime

January 12, 1942—December 31, 1945

VOLUME I
Chapter 5

PREVENTION AND SETTLEMENT OF LABOR DISPUTES

The first of the two major responsibilities of the War Labor Board was to settle labor disputes which "might interrupt war work which contributes to the effective prosecution of the war." At the Labor Management Conference of December 17, 1941, the representatives of organized labor and industry had agreed to refrain from strikes and lockouts for the duration of the war and to refer disputed issues to a War Labor Board for final decision. This agreement was the cornerstone of the wartime labor relations structure.

The Board began its career by carrying over many of the principles and techniques of its predecessor, the National Defense Mediation Board. It placed great stress upon mediation, voluntary arbitration, and unrestricted collective bargaining.

Two basic factors, however, opposed themselves to this policy and compelled a change of emphasis—the adoption by Congress of the wage stabilization program and the heavy inflow of civilian employees. The wage stabilization program handicapped mediation and voluntary arbitration because most wage adjustments became subject to and were measured by general rules and detailed regulations established by the Board and four out of every five disputes involved wages. The case load made the Board actively concerned both with the prevention of labor disputes as well as their settlement.

In succeeding chapters the policies of the Board in dealing with disputed issues are discussed in detail. In this chapter, the preventive role of the Board is described—its efforts to reduce the number of disputes coming before it and the steps which it took in cutting short work stoppages which occurred despite its efforts.

Reducing Disputes.

The Board endeavored to reduce disputes by (a) establishing patterns or principles with respect to major issues, (b) promoting sound grievance procedure, and (c) in specific cases, encouraging the parties to settle their own problems.

"(a) Establishing Patterns.—In many important phases of industrial relations, the Board laid down patterns for employers and unions to follow in resolving their differences over new agreements. While these were not rigid rules, the parties soon came to realize that if they did not resolve the issues themselves, the Board would probably impose the patterns upon them. The maintenance of labor-management policy, the doctrine that existing union shops would not be discontinued, the provisions for seniority and grievance procedure, were some of the significant patterns for the settlement of basic non-wage issues. The "Little Steel" formula, the standard rule, the encouragement of rational plant wage structures, the principle of equal pay for equal work, and the policy on annual vacations, set forth important guides for the adjustment of major wage problems.

The patterns which the Board developed, for the most part, were of novel. As public member Lloyd K. Garrison stated:5

Apart from the Board's pioneering work in the presumably temporary field of wage stabilization, the Board has turned out relatively little that is new. On the contrary, it has relied upon industry experience as the primary source of its rulings, and has turned to the best practices of employers and unions, developed through years of collective bargaining and of trial and error, as guides for the solution of present-day controversies. In this selective process, aided greatly by the first-hand knowledge of the industry and labor leaders of the Board, as well as by the contents and agreements of the employers and unions who have appeared before us, certain precedents set in collective bargaining have been particularly relied upon, certain methods of settlement, and line of experience have been particularly singled out, and certain trends in collective relationships have been given a particular place, form, and specific expression.

In short, what the Board has chiefly done is to give emphasis and direction to processes already well under way, rather than to invent new rules.

(b) Promoting Sound Grievance Procedure.—Disputes resulting from the application of agreements were reduced by the Board's encouragement of sound grievance procedure and the use of arbitration as a terminal point. On July 1, 1943, the Board issued the following statement:

The basis for the national war labor policy in America today is still the voluntary agreement between the responsible leaders of labor and industry. Here be no strikes or lockouts for the duration of the war. All labor disputes, including grievances, therefore, must be settled by peaceful means. The increasing economic pressures imposed upon employers and employees occasion certain situations in which the parties must recognize their obligation to develop peaceful procedures for the prompt and equitable settlement of the day-to-day grievances in the plant which arise in the operation and application of the contract.

The experience of the National War Labor Board in the administration of no-strike no-lockout agreements has shown conclusively that proper procedures can be developed in the plant which, coupled with the prevention of abuse of the no-strike no-lockout agreement, Removed obstacles to high morale and maximum production. Prevented collective bargaining as a basic democratic institution in the total war effort.

The Board, in labor disputes, now refuse to settle disputes with their employees. They tell employees to "take it to the War Labor Board." They try to take advantage of labor's no-strike no-lockout policy, and they seek to discredit the union with its own members by making it important in the routine disputes in the shop. Some labor leaders refuse to compromise on a dispute with the board. They tell management to give in, or they'll take it to the Board. It is reasonable to conclude that the number of such disputes, in which the Board's influence is taken into account, is far fewer than the number settled by Board policies. See Chapter 45 and discussion of this matter.

5 Statement before American Management Association, New York City, May 24, 1944.
"These fundamental American values and aids to the successful prosecution of the war can be attained by grievance procedures by those who have intimate knowledge of the dispute. The steps and procedures for such attention to grievances must be adapted to the needs of the plant and can be best worked out by the parties themselves.

1. That the grievance procedure, whatever be its adaptation to the needs of the plant, should be of such a nature that the settlement of all grievances not otherwise resolved. For purposes of settlement of grievances by the arbitrator, impartial chairman or umpire under terms and conditions agreed to by the parties.

Therefore, the National War Labor Board, as the custodian of the strike no-lockout agreement, and as a part of the all-out effort to win agreements to accept this unique responsibility and render this patriotic service.

1. To install adequate procedures for the prompt, just, and final settlement of the day-to-day grievances involving the interpretation and application of the contract.

2. To make the full functioning of the grievance procedure a unit responsibility under the no-strike no-lockout agreement for maximum production to win the war."

On February 7, 1944, the chairman of the Board suggested to the regional chairmen that this program might be implemented "by an appropriate administrative unit in each region or planned local activities of the regional boards, or by both," in a memorandum to the Regional Chairmen.

For purposes of discussion, the Chairman put forward the suggestion that each regional Board establish a unit which would make itself expert in the techniques of effective grievance procedure in any plant which be involved in a dispute case pending before the Board, and along which reveals that the company and the union are seeking a solution because they had failed to learn how to live together, this unit would at once outline the situation and recommend remedies which would not supersede a panel or other board agency which has been referred but would advise the panel, the company, the union as to defects in the existing grievance procedure and its amendments.

The executive director of the National Board made the national suggestion that the panels which handle dispute cases may also give "thought and time to improving labor-management relations in cases which come before them."

On February 28, 1944, the Board passed another resolution, ratifying its policy with respect to the settlement of grievances:

"It is the established policy of the National War Labor Board to settle that grievances which can be settled under the established procedures of collective bargaining agreement be settled in that manner without referral to the procedures of the Board. In addition, the Board expects all grievances to be heard in the absence of established grievance procedures, to settle grievances by direct negotiation and voluntary arbitration."

The Board also made clear that when the parties did not establish grievance machinery or the established machinery was ineffective in settling specific grievances, the Board might refer unsettled grievance cases to an arbitrator.

(c) Encouraging Collective Bargaining.—In addition to general pronouncements, the Board acted in specific disputes to promote settlements by the parties. In a speech by one of the public speakers at a conference, the Board, a number of such actions are described.

In keeping with the best practice in American industry, the Board has followed a policy of extending agreements about to expire, pending completion of negotiations for a new agreement. This policy, coupled with the policy of the National War Labor Board, under the strike no-lockout agreement, the Board cannot claim credit for original agreement or the administration of the doctrine—the War Labor Board in War World I was the originator—its consistent and successful use by the Board will undoubtedly result in widespread acceptance of the doctrine in contract renewal negotiations after the war.

As a general rule, the Conciliation Service has refused to certify par-disputes to the Board, and the Board has refused to assume jurisdiction unless collective bargaining has been exhausted.

The Board has refused to process cases containing numerous issues unless the issues were narrowed by collective bargaining, and, if necessary, the aid of a special Board representative. An extreme example is the Wright Aeronautical UAW-CIO case in which 85 issues were certificated to the Board refused to process any part of the case unless the issues were mutually reduced. The Board's resolution in that case stated:

"There are many of these issues concern relatively minor matters which the Board, however, is persuaded to the contrary. The Board is of the opinion that the parties have not discharged their obligation to bargain collectively; and that the Board has stated on many occasions that such a case is not a substitute for free collective bargaining."

The Board has returned various issues for further collective bargaining after hearing by a Panel, and after consideration of the case by a Revising Board, or by the National Board at the appeal stage. Where the parties are so disposed, the Board has established the principle and returned the cases to the parties to bargain out the details. Recent examples are the severance pay in the recent CIO Basic Steel cases, and the issue of review in the AFL Airframe cases.

The parties are agreed in principle but are in disagreement as to the approach, e.g., the 'inequalities' issue in the Textile and Meatpacking Board has established guideposts and returned the issue to the parties to negotiate on that basis.

The Board has been reluctant to issue directive orders on certain issues that they should be settled by collective bargaining in the part-there is a better way than by decision, because of the inability of the parties to agree. In the case of contracts that were not subject to change until the expiration date, except for agreement, the Board refused to order a change in the agreement to provide a means to handle the grievance.

(c) The case of Aluminum Company of America, 131-2331-D (July 16, 1944), and American Smelting and Refining Company Case No. 74 (Dec. 29, 1945).

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to foresee and control the consequences, the risk of creating a basis for disputes, or because the determination of the issues by the Board is beyond the scope of the Board's functions as intended by Congress. Examples of such issues are incentive systems and automatic repressions.

In addition to making the parties bargain collectively, the Board has its powers by making collective bargaining work. In this respect, the Board has dealt with three principal issues: (a) failure to follow the contract machinery for the settlement of disputes; (b) insistence on the spirit of the agreement; and (c) violations of contract machinery—head on by refusing to take jurisdiction over, or to decide, disputes, when the contract contains a method for handling such disputes, is simply fatal and binding arbitration.

The second problem—insistence on the letter rather than the spirit of the contract—has been a difficult one. Often the most serious labor disputes have arisen in plants where both sides were letter perfect in their observance of the contract. An investigation of those situations by Board experts has revealed that the contract is not rigidly adhered to in spirit. In one case a union official may be abusing the contract by deliberately framing grievances in order to harass management, and to bring about a reputation for himself as an able, feared, and aggressive leader. In another case, the company may be abusing the contract by conduct less obvious but none the less destructive, e.g., by going through all the motions of fairly considering grievances, but with a predetermination 'not to give an inch,' and with the object of winning a favorable decision from an arbitrator. Such cases require careful and expert diagnosis, and delicate treatment.

The third problem, namely, violations of contract obligations, has not arisen as often. American employers and unions have been the Board, supported by the public members, and has been record maintained in time of war. Thus, for example, the Board has unanimously rejected attempts of either party to force the expiration of the fixed term, even though it may have been impossible to obtain any favorable result. A few aggravations of the Board has withheld or withdrawn them, and the basis of the contract. The Board, though which has violated its contract. On the other hand, the Board, though urged to do so, has refused to develop a formal system of penalties for breach of contract, on the ground this is a matter for legislation or for the court.

Checking Strikes and Lockouts.

Despite the adherence of most unions and most employers to the no-strike no-lockout agreement, and despite the Board's efforts to reduce disputes, work stoppages occurred throughout the year. Indeed, nearly 2,400 strikes and lockouts occurred in disputes which were subsequently certified to the Board. An additional eleven hundred work stoppages occurred while cases were pending. The Board and nearly 900 occurred after Board decisions.

Together with the U. S. Conciliation Service, the Board forcefully and expeditiously to settle such work stoppages. A fundamental principle of the Board, which was taken over from the National Defense Mediation Board, was the rule that the Board would not consider the merits of any case while a strike or lockout was in progress. The Board's position on this point is well marked in the majority opinion in E.A. Laboratories Case 114-1144-D (January 20, 1945). The opinion stated in part:

1 For an analysis of these work stoppages and their significance, see Chapter 4.
2 An additional significant exception to this was the Board's approval of the agreement only in the case of the Secretary of the Interior, during the G. I. Service operation of the Nation's coal mines in 1942. This action of the Board was vigorously opposed by one of the public members.

The prevention and termination of strikes, for the purpose of minimizing interference with war production, is the mainstay of the Board's existence. Termination of strikes, for the purpose of minimizing interference with war production, is the mainstay of the Board's existence. It is a procedure which the Board acts in the public interest and not in the interest of the contestants.

In order to effectuate the foregoing principles, the Board has sought to develop fair and orderly procedures. Frequently, in this case, the union seeks to have the Board issue a compulsory order which limits the strike to a single industrial operation of the employer. In this situation the Board is not exercising the Board's major objective of terminating the strike, and the employer seeks to have questions regarding the work settled in its satisfaction before resuming production. Such a procedure would conflict with the Board's main objective of terminating interference with war production. Experience has shown, moreover, that the Board cannot give proper consideration to a labor dispute in an industrial operation if the strike is a single one, and the Board may be. A necessary first step in the Board's procedure, before the Board determines whether the strike is to be terminated and that the strikers be hired to their jobs with utmost dispatch. Fairness requires that neither party should have an advantage because of the strike. Therefore, as a necessary first step, the Board directs the strike to be terminated and production continued under the conditions prevailing at the time of the strike, leaving the matter of relieving the strike to the arbitrator for determination.

Following the adoption of the War Labor Disputes Act on June 4, 1944, with its requirement that workers must give notice of their desire to strike and have the NLRB conduct a strike vote, the unions maintained that an affirmative strike vote justified a strike. The Board's answer to this position was presented in Altimere Manufacturing Co. Case No. 118-501-1 D (October 12, 1944), as follows:

We think it advisable at this point to state our views with regard to the possibility of strike action following a referendum vote under Section 8 of the Labor Disputes Act. There is no doubt that after the taking of the vote, whatever its outcome, and unless and until the plant is taken over by the President under Section 3 of the Act, a strike may lawfully be called, provided the conditions not to strike in wartime remain. It might be argued that Section 8 of the Act is inconsistent with the concept of a no-strike agreement. But a careful consideration of Section 8 reveals the unsoundness of such argument.

In the first place, the section is limited to the plants of 'war contractors.' The omission of this term in Section 2(c) is such as to exclude from its coverage the important segments of the economy in cases where no war contracts were involved. Surely Congress must have intended that in these and other cases the economy excluded from the operation of Section 8 the no-strike agreement should continue to be effective in segments covered under Section 8. Obviously, the no-strike agreement continues to operate, and the question is whether the Board can be prevented from going into a strike, whether by certain violations of the agreement and intended to but to destroy it. The opening clause of Section 8 indicated that the Act was seeking to disallow by secret ballot under Government auspices, certain such interruptions in wartime. 'In order to take no chances, Congress indicated by the opening words of Section 8 that it had acted in order that the President may be apprised of labor disputes which threaten seriously to interrupt war production.' So that he might be in advance, if the ballot was adverse, to take possession of the plant. The Board can act as of the date of the vote under Section 8 with its criminal sanctions in the possible event of a strike. As a member of the Board, a member of the Military Affairs Committee which charged the bill, said to the House: 'It Section 8 does not prevent a strike agreement; it simply supplements it. It does not run counter to any way.'
The position was reaffirmed in a statement issued by the Chairman George W. Taylor concerning a strike of rubber workers at the Goodyear Tire and Rubber Co. (June 23, 1945). The statement read in part:

"It is reported that there is some effort in Akron to find justification for the strike by reasoning that it is a legal strike because of the vote taken under the War Labor Disputes Act. Over and above any such contentions there is the fact of labor's voluntarily-assumed no-strike pledge and the national policy against strikes. International officials of the United Rubber Workers have told local union that the no-strike pledge remains in effect. The National Labor Relations Board has ordered a termination of this walkout. And above all other considerations is the need of America's soldiers and sailors. The rubber shortage cannot be filled by the use of second-hand, retread and damaged tires, even tires with cracked sidewalls, which now are being rushed to the Pacific because of the current war effort. The Navy has announced that this strike may well cost us lives."

"Japan attacked us at Pearl Harbor. Japan must still be defeated. It must be defeated before the Pearl Harbor attack. American leaders and industrialists accepted a no-strike no-lockout pledge for the duration of the entire war. This pledge was the answer of American labor to a national emergency. American workers and industrialists must continue to work as a home-front team to back up the fighting forces which will win the war. And when we win the war, the no-strike, no-lockout policy must be continued while the nation's needs are met."

In addition, the statement emphasized the policy of the Board not to decide issues in dispute while a strike exists.

"The issues in dispute were certified to the War Labor Board on January 31, 1942. The Board has not been asked to act on these matters until the strike has ended. The Board's policy is not to decide issues in dispute. That policy will continue until the Board has decided that the strike is over."

Chapter 6

JURISDICTIONAL DISPUTES

Jurisdictional disputes are conflicts between unions over the right to perform a given type of work. They are not numerous compared to labor disputes as a whole and they rarely involve large numbers of workers, but they frequently have wide repercussions. Jurisdictional disputes have plagued the American labor movement for many years. Many of the disputes which were certified to the Board were merely episodes in a long history of controversy. Notable examples are the disputes between the Brotherhood of Carpenters and the International Association of Machinists and between the Teamsters Union and the Brewery Workers. Few types of labor disputes have been so bitter and so difficult to settle.

Procedure in Settling Jurisdictional Disputes.

The Board had scarcely begun when a jurisdictional dispute was certified to it on January 31, 1942. The Board was immediately confronted with the problem of the proper procedure to be followed in handling the dispute. Executive Order No. 9017, 1941, the experience of the National Defense Mediation Board, and the Board's jurisdictional disputes and the Labor-Industry Conference of December 17, 1941, offered no guide to the Board in settling these disputes. A period of trial and error therefore was inevitable. Board procedural policy, with respect to settling jurisdictional disputes, evolved in a series of individual cases, a discussion of which follows:

Spicer Case:

Spicer Manufacturing Co. Case No. 2140-D (Board Award, January 19, 1942) involved a dispute between the UAW-CIO and the Building Trades Unions of the AFL over the right to install plumbing and power equipment and various machines in a building constructed for the Spicer Co. by a contractor. The CIO, which represented the Spicer employees, contended that such work had been allocated to the permanent maintenance workers employed by the Spicer. The contractors, however, employed an AFL union exclusively.

On certification of the dispute, the Board referred the case to the ALF and CIO. The Board then voted to refer the dispute to the ALF and CIO. When this action also failed, a public hearing was held. The hearing was conducted in two sessions, the first on March 1, 1942, and the second on March 4, 1942. The hearing was conducted in two sessions, the first on March 1, 1942, and the second on March 4, 1942.
Chapter 9

GRIEVANCE PROCEDURE

In a notable opinion, Dr. George Taylor, then vice-chairman of the War Labor Board, stated: "Collective bargaining is a process, not a contract". Collective bargaining is the making of an agreement once a year. It is a day-to-day process and, on this score, the grievance procedure plays a highly important role. The grievance procedure should be set up so as to make unnecessary unresolved disputes over the application of the agreement. The Board's general policy, however, is to favor effective grievance machinery and the use of arbitration when their supervisors have already been discussed in Chapter 5. This chapter describes Board action with respect to the number of problems which obstructed the attainment of effective grievance machinery.

What is a Grievance?

The dictionary definition of a grievance is a "cause for complaint." In the collective bargaining sphere, this is obviously very broad. Issues which do not strictly pertain to the employment relationship are not usually regarded as grievances to be handled under the grievance procedure. But even within the employment relationship the meaning of a grievance is limited. Certain managerial functions may be recognized as the exclusive responsibility or prerogative of management and may not be submitted to worker challenge. The extent to which the union "encroached upon management's prerogatives" is a significant factor in collective bargaining history. It varies greatly from industry to industry and from plant to plant. In some industries, the employer determines new wage rates and the union may bring a grievance only after the rate has been set. In other industries, the union takes an active role in the determination of the rates, and may raise grievances as to the procedure of setting rates. In some establishments the employer's right to hire and discharge foremen is unquestioned; in others, it is subject to union officials. Occasionally an employer may be willing to discuss problems with union officials, and the company considers a management prerogative; yet he may not be willing to submit the problem to arbitration. The question whether or not an issue was subject to the grievance procedure provided in a contract was raised in numerous dispute cases before the Board.

Many contracts do not clearly define or enumerate those issues which are to be regarded as grievances, but rather, in a general and loose clause, discuss the manner in which grievances may be settled. Similarly, the Board did not ordinarily define

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1 Chrysler Corporation Case No. 2959-CS-D (August 27, 1948). For a brief discussion of "management prerogatives" or "management rights," see Appendix J-16.
2 American Can Co. and Chem. Co. Case No. 2341 (June 29, 1945).
A similar modification was made in *U. S. Gypsum Company Case No. 111-2354-D* (May 25, 1944). The regional board had directed that arbitration should be added as the last step in the grievance procedure by the parties. The company appealed from a decision claiming it was Board policy to recognize management's right to set or change piece rates and that any disputes arising from such adjustments were to be resolved through the grievance procedure. This position was upheld when the board substituted the language of the Phelps Dodge case for the arbitration clause "shall include a provision that grievances to be arbitrated shall be limited to those concerning interpretations or application of the terms of the contract." In addition to those cases which involved the coverage of grievance clauses there were cases before the Board in which the dispute centered on whether a specific issue was properly subject to the grievance procedure. These issues were both wage and non-wage in character.

Grievances Over Piece Rates.

Among wage grievances, the setting of rates for piece rate incentive workers was in dispute in several cases. In one case, *Phelps Dodge Company Case No. 111-1148-D* (May 1944), the prior contracts had provided that any grievance not settled by the parties was to be decided by an umpire except that the umpire "shall not have jurisdiction over wage rates." In the directive issued to settle the dispute, the terms of the new contract, no such limitation was placed upon the umpire's authority. The directive, rather, provided that indicative rates should be set in the first instance by the company and the union. The union was granted the right to challenge through the grievance procedure any new or already established rate which was deemed inequitable.

This order was appealed by the company on the ground that it deprived the company of the vital function of rate determination by transferring this function to a third (the umpire) unacquainted with the wage structure in the industry. The company maintained that an arbitrator who had authority over rate grievances, mutually agreed-upon or required by law to govern rates, and who in such circumstances, shall become a matter to be handled jointly by the company and the union under the grievance procedure established *.

The question of whether or not rerating and retiming of jobs for which techniques are introduced is justly determined by the company, under the five-year contract as will be discussed more fully later, the Board followed these recommendations and ordered:

Pay for Equal Work Grievance.

The Board followed the policy of equal pay for equal work as established in *Five Star Department Stores Case No. 111-107-R* (August 4, 1944) after directing that wage rates be set in accordance with the method of determining rates for the job. However, the Board added the following: \footnote{8831} If a dispute arises as to whether the same work is being done, this dispute shall be considered a proper subject for settlement through the grievance procedure of the parties.*
generally filled by men. As in many industries, women were brought in to fill jobs formerly held by men. The union's request that any disagreements over the rates should be considered grievance was granted by the Board when it ordered:

"Any alleged inequality or inequity with respect to a new wage classification may be made the subject of a grievance at any time during the break-in period in accordance with the grievance machinery set forth in this contract. The objective in the settlement of wage rate inequalities shall be equal pay for similar work."

Classification Grievances.

The above order refers specifically to grievances over classifications arising out of the equal pay for equal work provision of the contract. The Board also dealt with grievances over general classification questions. One of the early cases involving this issue was the Manufacturing Company Case No. 2635-D (April 5, 1943). Classification differences as well as differences over rating up-grading were subject to the grievance procedure. However, the union claimed that this procedure was inadequate and required that a new classification of wage rates be jointly negotiated in other similar cases, the company protested that to give the union equal voice in determining job classification rates was depriving management of one of its prerogatives. Another case made by the company was that in the event the parties did not reach agreement an arbitrator would be called in to resolve the differences. Such a procedure in effect would mean that an outsider would be setting the wage structure for the employees.

The Board felt that the grievance procedure (arbitration last step was added to it) was sufficient protection for the employees. It denied the request for a complete job reclassification and said that any "dispute involving job classification be handled through the regular grievance procedure."

Similarly, where increases within a rate range were based on merit as in Western Electric Company Case No. 2691-D (October 14, 1943) the Board ordered that disputes about such increases be handled through the regular grievance machinery. Where differences over length of time employees had been employed remained at one rate [General Electric Company Case No. 3264-HO (August 26, 1944)] and claims that the company had discriminated in an arbitrary or capricious manner in its determination of [merit] increases [Mazson Corporation Case No. 1117-D (June 19, 1948)].

Hours and Shifts

Scheduling of hours and shifts were issues which the Board attempted to place in the category of grievances which sometimes the Board left to management; exclusively in the U.S. Cartridge Company Case No. 2292-D (October 1942), Borg-Warner Company Case No. 4263-D (October 1943), and Texas Pipe Line Company Case No. 1779-D (March 29, 1945). To illustrate the Board's varying stance on the issue. In all these cases the union requested the change in working shifts and schedules be jointly determined on the grounds that such a procedure was authorized by the National Labor Relations Act provision in which hours of operation was specifically designated as a subject of collective bargaining. Unilateral determination by the company, it was claimed, would not only deprive the union of legal rights but also the morale of the employees.

U.S. Cartridge Case the company's answer to this was that a rapidly expanding production required numerical changes in working schedules. To allow the union an equal voice in the determination of these shifts would seriously impair the operation of the plant. The Board felt that it would be in the interest of maintaining a "cooperative relationship" between the company and the union. The company should "consult with and obtain the advice of the representatives of the union" before making any changes in working schedules. It also allowed the union to raise grievances regarding a change in shifts.

The Board shall be notified of any change in their working schedules by a notice three days prior to the date of the contemplated change, and any dispute arising out of a change in the working shifts shall be subject to the grievance procedure provided for in the agreement between the parties.

Cases similar to those above were used by the parties in the Borg-Warner Case. In this case, the company asked the regional board to establish schedules departing from the normal 30-hour week, and to determine the starting time of daily and weekly work schedules without allowing the union any privilege in discussing such changes. The Board unanimously denied the company's position when it ordered that where a departure from the normal week schedule was necessary a conference of the grievance committee and the company could be held to try to agree on a mutually satisfactory arrangement. The order continued: ""* * * the right to make working schedules rests with the management in order to avoid adversely affecting operations of the plant."

The board took similar action in the Texas Pipe Line Company Case, where the regional board had ordered that before any permanent change in the working schedules was instituted, the company should be held to represent the workers' representative and that ""in case discussion does not result in agreement, the case shall be subject to standard grievance procedure.""

The last sentence that the company appealed on the ground that the board had contravened established policy. The appeal was accepted and the Board vacated the sentence referred to the union the right only to confer on changes in the event of shift bonuses and overtime for Sunday work which the Board decided were to be resolved under the grievance procedure. The issues arose in Levytee Company Case No. 3970-CS-D (April 13, 1945), when the company appealed a regional order which directed the parties to arbitrate the question of payment of double time for Sunday work. The Board ruled that in the second case, it was provided that in case the parties failed to reach agreement the remaining issues in dispute should be settled through the grievance procedure. The Board accepted the petition...
tion and amended the regional order to provide that if the parties were unable to agree, the regional board should make the decision.

Seniority Grievances.

Definitely recognized as proper subject for grievances, on the other hand, were disputes over seniority rights in promotion, transfers, hiring and firing. The opinion in Johns Manville Company Case No. 111-2526-D (May 9, 1944) unequivocally disposed of the majority's disagreement with industry claims that questions of promotions should be left solely within the discretion of management and pointed out the widespread acceptance of the principle that disputes over seniority should be submitted to the grievance machinery as follows:

"Clauses calling for referral to the grievance machinery of disputes as to the applicability of contractual seniority provisions are a common feature of American collective bargaining agreements, and are express recognition of the legitimacy of the interest of employees in a regularized procedure governing their promotions and layoffs."

In United States Gypsum Company Case No. 111-9 (March 9, 1945) a typical clause on grievances over seniority was ordered. The clause provided that the company might make promotions or transfers and employees would give consideration to seniority, along with ability, experience and performance. It further provided that an employee who had filed a complaint for promotion, and who had acquired greater seniority than an employee advanced, might take his complaint to the grievance machinery.

In an opinion in Norwey Machine Products, Division of the Warner Corporation Case No. 111-5665-D (April 27, 1945) the union's right to use grievance procedure in settling disputes over disciplinary action was upheld. The pertinent section of the opinion follows:

"The right to question any disciplinary action as being violative of employee rights. Such questions are subject to consideration under the grievance procedure.""}

Miscellaneous.

In addition to the above discussed issues there were numerous disputes over every day working conditions and rules governing the conduct of employees in the plant, such as uniforms, work apparel, military furloughs, purchases at the company store, etc.

A general statement of the position of the Board on work rules was contained in the opinion of Fulton Farms Company Case No. 2510-CS-D (November 8, 1942). There had been wide differences between the parties over management prerogatives and rights. The Board ordered that the following provisions be incorporated in an agreement between the parties:

"The union agrees that the operation of plants and direction of employees, including the control of production and efficient operation of the plant, are the right and responsibility of the company. Should the parties through the grievance procedure reach an agreement, then the terms of the grievance procedure of the contract."
store managers and not between the employees and the
company. A panel found that there was no grievance
mach
through which the controversy over costs of supplies could
res
olved. In order to correct this situation, it recommended
the company permit its employees to purchase supplies di-
from it. The effect of this recommendation would be to make
grievance over supply costs subject to settlement under the
procedure in the contract.

The company petitioned for review of the regional dis-
order, ordering these recommendations on the ground that it
was forcing the company into the distribution business.
National Board found that the regional board did not exceed
jurisdiction and denied the appeal on February 5, 1944.

In addition to the above issues, the following were also
to be proper subjects for the grievance procedure:
1. Differences over the return of employees away on military
   leave, Pacific Telephone and Telegraph Company Case No. 2806-D
   (October 29, 1942).
2. Differences over rate of vacation pay. Ford Motor Company
   No. 2772-D (November 29, 1942).
3. Differences over whether company is in fact paying an agree-
   wage increase, Frank Foundries Company Case No. 5931-D
   (September 5, 1942).
4. Differences over working conditions arising from the merger
   of companies, Western Union Telegraph Company Case No. 111-
   (May 23, 1945).
5. Differences arising from work assignments when the produc-
   tion line is held. Henry L. Stiegel Company Case No. 111-
   (April 18, 1942).
6. Differences arising from medical examinations made by the em-
   physician. Wright Aeronautical Corporation, Case No. 111-
   (October 3, 1943).

The preceding discussion was merely illustrative rather
all-inclusive. Many other types of issues were regarded as
subject to the arbitration process, depending upon the
q
questions are discussed in some detail in a later section
s
scope of arbitration.

The Structure of Grievance Procedures.

There is no single ideal grievance procedure. A procedure
meets the needs of a steel mill may be totally inadequate
for a small machine
Grievance procedures must be carefully tailored to the
owners of an industry, the size of a plant, the number of em-
involved, the degree of understanding between the parties
numerous other factors.

Grievance procedures in existing agreements have a
numbers of steps. Small establishments generally have on
or three steps; larger establishments sometimes have as
as six or seven. The Board did not attempt to lay down
fixed pattern because it believed that the parties there
could best work out their own procedures on the basis of
knowledge of the plant and other pertinent factors. As
Lloyd Garrison pointed out in a speech before the Am
Management Association, on May 24, 1944, the Board
stressed the importance of not having too many steps
and making sure that you have different people at the different
There is no use in multiplying steps if you have the same
framing around the same table each time."

already noted, the Board insisted, as a matter of paramount
ence, upon arbitration as the final step of grievance pro-
It also looked with favor upon a stage in the grievance
rd, in addition to arbitration which provided for discussion
the top management and top union officials of unsettled
ences. The Board's reasoning on this phase of grievance
re is well expressed in the opinion in General Chemical
Case No. 267:

be been the experience of the National Board to discover
cases coming before it that the high officials of the Companies
and concerned frequently are unaware of the facts and merits of a
depute in which their Company or union has become involved. This
be particularly true of disputes which started as relatively
s within the plant and which in most instances could
have been adjusted very quickly by the president of the Company or
representative if he had known about them prior to their developing
utes of major significance resulting in their certification to the

arbitration Board.

Because the Board has seen such a large number of grievances
posed in conferences between company presidents and high

tial that it has amended the panel's recommendation on grievance
in the instant case to provide for the submission of a grievance
resent of a company, or his representative, and to the president
eral union, or his representative, for settlement by them if possible
ible by the Board.

right of Individuals to Present Grievances.

Every case of the basic issues of grievance procedure involved
individuals (as distinct from the right of the union)
set and settle grievances. Does the individual employee,

or not, have the right to take up
his grievances with management? Or must he deal through the
bargaining agency? May non-union employees deal with
separate grievance procedure with management or must
procedure of the contract be followed? Questions of
frequently came before the War Labor Board.

Employers generally made three contentions in support of
right of individuals to deal directly with management: (1)
the individual to present grievances is guaranteed
Wagner Act. (2) Without such a right, employees who
belong to rival unions would be able to take advantage of
l the provision of a fair opportunity to settle their grievances. (3) The
ference of a third party, the union representative, frequently
unnecessary animosities.

ly, the unions raised the following points: (1) Permitting
individual employee to settle his own grievances without the
ge,ing the job of a shop steward or other union representative labor
and special treatment not justified under the contract
employees who are inexperienced in collective bargaining
re to settlements "counter to their own interests." (2)
often alleged that unions refused to handle the grievances of the non-members.
Individual settlements of grievances may establish precedents which would seriously affect the position of the union. Until the fall of 1944, the Board generally took the position that individual employees, whether union members or not, have the right to represent themselves in the settlement of grievances. This position was supported by many existing agreements throughout the country.

Examples of the Board's position are found in the Atlantic Steel Works Case No. 2909-D, 49 L.R.B. 185 (Dec. 30, 1943), the Zion Cooperative Mercantile Institution Case No. 111-110-D, (November 25, 1943), and the Aluminum Company of America Case No. 111-110-D (November 25, 1943). In the Atlantic Basin Case, the building commission had made a clause which required employees to take up any grievance through the shop stewards. The company claimed that non-union employees would be denied the right to present individual grievances. The National Labor Relations Board in a supplementary directive order (August 28, 1943) modified the shipbuilding commission's directive by inserting in the grievance procedure a clause which guaranteed the right of individual employees to present grievances by themselves to the foreman.

In the Zion Case, the regional board allowed individual employees to take up grievances directly with management through an entire grievance procedure without any union participation. The union appealed, and the National Board modified the regional order requiring union participation in the settlement of any grievances after the first step.

In a case involving the Torrance California Plant of the Aluminum Company of America, the regional board ordered at the first step that "any employee having a grievance shall present it, preferably in writing, to his shop steward who shall take it with the foreman." The company appealed that issue to the National Board on the ground that the Wagner Act policy was being violated. The Board thereupon modified the regional board order by adding the following provision: "An alternative, the employee or any group of employees may present grievances directly to the representative of the company designated to hear grievances." When the CIO protested this decision, Public Member Morse sent a letter to the union which read in part as follows:

"The National Labor Board gave very careful consideration prior to ruling that the employee or any group of employees submit grievances directly to the representative of the Company designated to hear grievances. After a thorough study of the question, it came to the conclusion that the last quoted provision should be inserted in the agreement because it is a matter of public interest."

The National War Labor Board gave very careful consideration prior to ruling that the employee or any group of employees submit grievances directly to the representative of the Company designated to hear grievances. After a thorough study of the question, it came to the conclusion that the last quoted provision should be inserted in the agreement because it is a matter of public interest.

The interpretation quoted above is: "Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit fit for such purposes shall be the exclusive representatives of all employees in the unit for the purposes of collective bargaining. Provided, that any individual employee or a group of employees may be heard at any time to present grievances to their employer."

In July 1943 the Ninth Circuit Court of Appeals (San Francisco) was confronted with the issue whether an employer had the right to incorporate in a grievance procedure other than that established under the terms of the bargaining agreement which he had signed with a union. The court held that, contrary to previous National Labor Relations Board decisions, such dual grievance machinery was illegal. It further stated that employers were not precluded from using grievance procedures with non-union employees which were covered under the collective bargaining agreement.

In September 1943, however, the General Counsel of the National Labor Relations Board issued an interpretation of Sections 8 (5) and 9 (a) which ran counter to the Ninth Circuit Court of Appeals. The interpretation pointed out that the clause which provides for the exclusive right of the exclusive representatives to negotiate and contract in behalf of all employees is not applicable to the applicability of the terms of its contract as involved in the settlement of grievances and in the establishment of precedents in the determination of grievances. It is exclusively to negotiate concerning such interpretation, application, and precedents.

General Counsel then concluded:

"Section 9 (a) should be interpreted by the Board as limited to the rights of representation of the employees to present grievances to the employer."

The inter pretation quoted above is: "Section 9 (a) should be interpreted by the Board as limited to the rights of representation of the employees to present grievances to the employer."
their employer by appearing in behalf of themselves at every stage of the grievance procedure set up in the collective agreement (regardless of what it so specified), but leaving the exclusive representative entitled to be present and to negotiate at each such stage concerning its validity in the review, application or interpretation of its contract and the disposition of the grievance. The extension by employees to individuals or groups of employees of greater rights in respect to handling grievances should be treated as violations of Section 8 (1) and (5).”

This interpretation of the National Labor Relations Board given indirect but not conclusive support by a United States Supreme Court decision10 on February 28, 1944. The court, in that individual contracts may not be made by employees when a union has been certified as exclusive bargaining representative.

In May 1944 the National Labor Relations Board issued a decision in *Hughes Tool Company Case No. 16-C-1018 in which it explicitly affirmed its policy with regard to the right of individuals to present grievances. The Immediate Report of the Examiner which was adopted by the National Labor Relations Board stated in part as follows:

“It is clear to the undersigned that the respondent has misconstrued the language of the proviso to Section 9 (a) of the Act. The proviso exactly what it says and no more. That is, that an individual employee or group of employees may present grievances to their employer. Having presented the grievances to the employer, the rights of the individual employee or group of employees respecting grievances cease and the settlement of grievances must then be entrusted to negotiations between the employer and the employees’ exclusive bargaining representative for all employees represented by such a representative. The proviso preserves to the individual employees or group of employees the opportunity to bring before the employer and the exclusive bargaining representative grievances which otherwise may never be presented or considered by the employer. The right that a grievance is presented by the recognized representative of the employees’ consideration is not an empty right.

“This interpretation of the proviso is consistent with the broad policy enunciated by the Act and with the provisions of the Act requiring that bargaining be conducted exclusively with the representative of all employees. This interpretation, moreover, is compelled by a long line of decisions by the United States Supreme Court and numerous Circuit of Appeals.”

On August 11, 1944, the National Labor Relations Board order to clarify the position taken by the Trial Examiner was adopted upon Section 9 (a), and the proviso, and reached the following conclusions:

1. In granting the exclusive bargaining agent the right to bargain with the employer, the National Labor Relations Act also grants the exclusive bargaining agent “the right to contract in behalf of employees respecting the procedures by which grievances are presented and adjusted.”

2. The procedure provided in the contract must be used in the presentation of grievances by individuals or groups of employees to present grievances to their employer by appearing in behalf of themselves—although not through any labor representative—every stage of the grievance procedure. However, the exclusive bargaining representative at every stage of the grievance procedure or the settlement of the grievance.

3. The grievance is to be considered disposed of only when the employee, the exclusive bargaining representative and the individual employees of the group of employees reach agreement. Until this agreement is reached any party may carry the grievance to the subsequent stage of the grievance procedure.

The employer may meet with individual employees or groups of employees alone only when the majority union does not wish to participate in the settlement of the grievance. Nevertheless, in such instances the settlement should be consistent with the terms of the collective bargaining agreement.

Following this interpretation two cases were acted on by the National Labor Relations Board involving the issue of presentation waivers—*Koppers Company Case No. 111-5532-D (October 14, 1944), and Revere Copper and Brass Company Case No. 3587-D (November 14, 1944). In both of these cases the director of grievances which appeared to be contrary to the interpretation of the proviso were modified by the Board to conform to the principles enunciated by the National Labor Relations Board. The clause from the regional board in the Koppers Case read:

“Refuses, disputes, and grievances that may arise between the company and the union shall be initially be taken up between the aggrieved employee and the department steward on the one hand and the department steward on the other.”

This clause resulted from the panel recommendation that a clause of time would be effective if the shop steward were considered as the first instance. Since the union was the certified bargaining agent, it was felt that the employer should be present when a grievance was considered. The company appealed to the National Board on the ground that this clause was contrary to the Act and that the panel had no jurisdiction to consider the matter. The majority of the National Board felt that the right of the employee to present his case should be guaranteed a hearing before a departmental board and that no individual can be made to present grievances as guaranteed by Paragraph 9 of the NLRA. In the *Revere Copper and Brass Company Case the order was evidently designed to avoid any possible conflict between the National Labor Relations Act and to guarantee to employees the rights under the Act. The dispute in this case was settled with the contract which provided:

“Grievances of employees shall be presented in the first instance to the employee or the department involved by the employee, by the department, or both. In the event the grievance involves collective bargaining, the department will be called in before bargaining with the employer and will be present to represent the employee in any further hearing on the grievance.”

The employee contended that the second sentence of the paragraph should be eliminated on the ground that individual employees under the National Labor Relations Act had the right to present grievances personally and directly to the employer—where in turn, had the right to adjust the grievance. Under this clause, the company further claimed, foremen, feeling that the grievance might involve collective bargaining, were unwilling to have responsibility for adjusting it without first notifying the department steward.
The chief contention of the union was that when an employee approached management alone he frequently obtained a more liberal settlement of a grievance than when he approached management with a union representative assisting him. The union contended that this was because minor matters not present to the stewards, yet feared, from experience, that other matters affecting all employees might be settled by the foremen without consulting with the union.

The panel recommended that all grievances be presented to the employee or steward or both and, further, that the representative of the exclusive bargaining agent should be entitled to present and negotiate at each stage of the grievance procedure. The regional board, however, did not accept these recommendations but ordered that the provision that the steward be present before bargaining on grievances involving collective bargaining issues be eliminated from the contract. This action was apparently taken in an effort to avoid confusion and dispute by the dividing line between collective bargaining and grievances.

The union claimed in its petition to the National Board that the elimination of the sentence would only create another problem whether individual or group bargaining by other than designated bargaining agents was legal.

It was pointed out in the discussion before the National Board that the National Labor Relations Board's decision in the Holt Case indicated that where a certified union that had the right to be represented at each stage in the grievance procedure if it so desired. It was clear that a grievance procedure involving collective bargaining and the regional board's order was not consistent with the decision of the National Labor Relations Board. On this basis the regional order was reversed by the National Board and the inclusion of the sentence in the previous contract was directed.

The Board's directive in the highly complex R. R. Don and Sons Co. Case No. 4038-D (January 26, 1945) differed from the Holt Case in that there was a certified union that had the right to be represented at each stage of the grievance procedure if it so desired. It was clear that the National Labor Relations Board's decision was applicable to the employer's production of grievances and the Company's policy of handling grievances.

The Douglas Aircraft Company, Inc. Case No. 111-A (May 17, 1945) represented a modification of the Douglas decision and a close parallel to the NLRB formula in the Holt Case. The company's claim was based on the basis of the Court decision in the North American Aviation Case, which established the right to continue a separate grievance procedure established.
dispute which had been pending for 25 months. The Board adopted the recommendation against arbitration.

**GRIEVANCE PROCEDURE**

As a general rule, speed in the settlement of grievances is a most effective means of preventing industrial strife. One means of achieving this is the setting of time limits. In *General Chemical Corp. v. NLRB* (Sept. 18, 1942) the Board opinion stated:

The Board has also amended the Panel’s recommendation in another respect, which it considers important, namely, it has fixed a time limit for settlement of grievances by negotiations between the parties. One of the important causes of labor unrest in many industries is the failure of the representatives of the Company and of the union to settle grievances with dispatch. Although a particular grievance may appear to be a minor and insignificant matter when viewed from the standpoint of the total operation problems, nevertheless, to the individual employee involved, it is a matter of major concern. It employees develop a feeling of dissatisfaction in regard to the handling of grievances sweeps through the unit. This negative attitude toward grievances spreads to other relations between the Company and its employees, with the consequence that morale is injured and maximum production affected detrimentally.

Based upon its observations and experience, it is the opinion of the Board that good industrial relations between management and labor require settlement of grievances without unnecessary delay. Hence, the Board has provided in the directive order in this case that if any grievance is not promptly resolved by negotiation between the parties within twenty-one days from the filing of the complaint, either party may request the Chairman of the National Labor Relations Board to appoint an arbitrator of the dispute, whose decision shall be final and binding on both parties.

With other aspects of grievance procedure, the question of time limits cannot be reduced to a standard formula. Where collective-bargaining relations are well established and harmonious, limitations may add a note of undesirable rigidity. Some cases are extremely complex and may require considerably more time than that allowed in the contract. On occasion, also, it may be advisable to delay settlement of grievances and time limits create complications. In some cases, it may be advisable to provide time limits only for certain types of grievances, such as discipline. Even where time limits for all grievances are necessary to prevent delay and deliberate “stalling,” the time limits may vary from plant to plant, depending upon particular conditions.

The following cases illustrate how the Board treated the question of time limits under varying circumstances. In *Norma-Hoff Hearings Corp. v. NLRB* (July 18, 1942) the panel amended reduction of the time limits which had been in effect in the previous contracts. The time limits had previously been five days in each step in the procedure. The panel was of the opinion that a limit of five days was suitable only for the lower steps and that the first step should be reduced to two days and the second and third to three days “inasmuch as the morale of employees will be bolstered by the knowledge that their attention will be paid to their needs and more of the foremen and supervisors will be released for the problems
of operating efficiency." The Board accepted the recommendation of the panel.

In *Mead Corporation Case No. 2486-D* (May 20, 1943), on the other hand, the Board ordered an extension of time limits for the previous contract between the parties had provided for the prompt disposition of discharge grievances within three days. The union contended that three days was not long enough because they had found that the grievance procedures were unduly slow and that grievances were often disposed of without adequate investigation. The Board adopted the panel's recommendation to extend the time limit to five days.

In *Detroit Steel Products Company Case No. 532* (February 24, 1943) the dispute involved a request by the company for a change in time limits in the proposal of the union for a period of 60 days after the filing of the grievance. The Board commenced a period of 60 days for the settlement of grievances within which, the Board held, the issue would arise in the process of determining what was a reasonable time. A time limit of five days for each step established.

**Written Versus Oral Presentation of Grievances:**

Another question which is frequently a matter of dispute is the establishment of grievance procedure is whether grievances should be presented orally or in writing. Often the parties agree that the grievance should be written at a later stage in the procedure but are in dispute over the precise stage at which a decision should be taken. Sometimes, the employers have been inclined to favor written grievances and the unions opposed.

Again there are numerous instances of management speaking into account. In a plant where there is a high degree of illiteracy, the written grievances by employees work a substantial hardship. In plants where there is considerable dirt and special clothes to be worn, it is often not practicable to write up grievances or work hours. On the other hand, oral grievances may create confusion and misunderstanding. The employer may have been cited if the complainant was required to put them in writing.

Most disputes over the writing of grievances were settled on a conciliation level. In one case which came to the National Labor Board, *Mack Manufacturing Corp. Case No. 2296* (September 14, 1943), the union demanded that grievances be presented in writing and the union based its demand on the fact that the point from the first step would provide the parties with a permanent record of the presentation of the grievance. In another case, *General Motors Case No. 527* (September 28, 1942) the company refused to write if they were not disposed of at the first step. Many petty grievances of an unjustifiable nature might be avoided if the employer was required to put them in writing.

Most disputes over the writing of grievances were settled on a conciliation level. In one case which came to the National Labor Board, *Mack Manufacturing Corp. Case No. 2296* (September 14, 1943), the union demanded that grievances be presented in writing and the union based its demand on the fact that the point from the first step would provide the parties with a permanent record of: (a) the presentation of the grievance, (b) a date of disposition, (c) the nature of the dispute and the issue between the parties. The company claimed that such a requirement would prevent disputes from arising on the same issue and would not expedite the settlement of later grievances as precedent, the union also contended that the requirement of putting grievances into writing would stimulate responsibility in former grievance.
that a shop steward system would benefit both parties by facilitating the settlement of grievances. The Board did not permit many stewards as the union requested but allowed one steward for 500 employees.

The panel in this case justified the steward’s system with the following statement to the Board:

"... If grievances in the plant exist, it will not help matters there are inadequate methods of handling them. The growing practice of having stewards as well as grievance committees is a recognition of this fact. We believe that experience with the steward system will convince the company of its value to all parties."

**Payment for Time Spent Handling Grievances.**

In some plants, grievances are handled after work hours, during lunch or rest periods. In many plants, however, this is feasible for a variety of reasons—transportation and for plant, the desire of labor and management representatives to see the plant, direct involvement of stewards and grievance committees. The problem then arises as to which party—employer or the union—should be responsible for paying stewards and grievance committee members for the working time they spend handling grievances. There was considerable difference of opinion on this subject among labor unions and among employers. The labor board had to determine the issue on an individual basis. The varying results of this approach are clearly illustrated in the following discussion of Board actions.

The first case involving this provision was International vester Company Case No. 2004-CS-D et al (April 13, 1942) in which the Board provided that union representatives who were employees of the company should not lose pay during the time in an individual case. The company argued that the grievance clause was unenforceable. The Board rejected this argument, within two weeks of the date of the directive of the parties to negotiate, within two weeks of the date of the directive of the parties. The union representatives for time spent while handling grievances within the shop would not only be a measure which would usually mean a greater efficiency and higher morale, but it also further a better company-union relationship.

Since the union had previously reimbursed its members for time lost in handling grievances, the Board in J. J. Case Co. Case No. 2257-CS-D (July 22, 1942) denied the union’s demand that the company pay for such time. The company, after examining the grievance records, found that no undue hardship had been imposed upon the union by having to pay for such time. Furthermore, there were no extenuating circumstances which might have justified ordering the company to pay these union representatives. The union involved in Los Angeles Railway Corporation Case No. 2228-CS-D (July 22, 1943), did not customarily have a vision for compensation by the company to union representatives for adjusting grievances in any of its contracts. On the basis of fact, the Board held that the union should not receive any payment.

Not comprehensive treatment of the question of payment of grievances was made by the Board in McQuay-Norris Case No. 2225-CS-D (July 30, 1943). The union had one grievance committee meeting every two weeks and set its original demand, for payment for all time spent, to compensation for four hours at the average hourly rate of pay. The company tentatively agreed to meet the demands and expressed its willingness to pay employee representatives for a reasonable amount of time.

The Board ordered the parties to "continue their past practice of paying for union representatives" and to "describe that practice in writing and incorporate it into their contracts." More-
over, since the facts were not decisive as to what the past practice of the parties had been, the Board further ordered, "In this case the parties cannot determine as to their past practice, there will appoint an investigator to determine the facts."

The opinion of the Board, accompanying this directive, points out that there are two diametrically opposed theories concerning the payment of union representatives. One is that union representatives have an independent function to perform and should not be paid by management. The other is that the settlement of grievances is a personal responsibility of management for which the full expense should be borne by the employer.

However, the opinion of the Board noted that while these观点 should be considered by the Board in making its decision, the question of company payment for such time "cannot be squarely pursued as a right of the union and certainly not as a right to be enforced by the grievance procedure. It can only be properly considered a phase of the problem of making collective bargaining work effectively in the prompt and equitable handling of grievances and the interpretation and application of the terms of agreements."

Furthermore, the opinion stated, while the Board would change voluntary agreements providing for such payment, the event of a union request that the Board order such payment, the Board "intends to consider such requests only in relation to the circumstances why such a practice is essential for the functioning of a grievance procedure. Any such request should also be accompanied by suggestions to prevent possible abuse of such payment. Even if they are not likely to occur in a given case, the Board cannot be a party to setting up a procedure which can readily be abused."

The opinion concluded: 

"The experience of the National War Labor Board indicates that the proper functioning of the grievance procedure can be seen to go by steps other than requiring management to pay union representatives. When requests are made of the Board to order the institution of such a practice, information should be submitted as to the position of the union concerning certain methods of operating under a grievance procedure. The following two points seem to be of particular importance:"

1. **Taking up grievances during working hours.** —Especially during war-time, there should be no unnecessary interruption of work. Recognizing that there are certain grievances which can best be discussed at the machine, experience has shown that there are cases in which discussions are sometimes held on the spot over grievances that should be negotiated in the office without interruption to work. Such a practice may cause an unnecessary loss of output, time of supervisory staff, and union representatives from the production of goods, resulting in compensating results.

2. **Provision for final determination of grievances.** —Grievances in the plant may be long drawn out when no provision is made for final determination by an impartial, impartially appointed chairman, there may be interminable negotiations of those grievances upon which the management positions are taken. The result of a final step in which an impartial chairman makes a decision.

The Board further stated that the use of a grievance procedure to settle minor disputes would tend to increase the number of such cases without providing adequate protection for the employer or the union. A grievance procedure is not functioning properly. Under such circumstances, the Board should be provided with (1) the evidence upon which the grievance is based, (2) information as to whether or not the grievance procedure has otherwise been properly developed and (3) the part which the payment to union representatives is to play in the proper functioning of the grievance procedure.

On February 14, 1944, because of the failure of the parties to the agreement, the Board decided that 75 percent of the cost of the payment by union representatives on the first and second steps of the grievance procedure should be compensated for by the companies involved in these two steps involved grievance negotiations with the union and with the plant superintendent.

In the case decided about the same time as McQuay-Norris, the Detroit Motor Company case No. 2529-28-D (July 30, 1943), the Board decided that union committee members should not receive the expenses of the union claimed that all other locals in the organization had paid their members in their contracts for such payment by the employers. But the panel had recommended that the union and the companies pay the expense, the Board, after an investigation of the union, so denied the request.

In subsequent cases the Board appears to have placed comparative emphasis upon the criteria discussed in the last paragraph of the McQuay-Norris opinion cited above. Past practice in the area or industry practice was often given reasonable weight.

In the United States Cartridge Company Case No. 111-1445-D et al. (November 30, 1943) the Board sustained a regional board decision that the stewards should be paid for time spent in handling grievances. But the Board stressed that such time should not exceed three hours a week. The union had insisted that payment be made for the proper functioning of the grievance procedure while the company charged that such a plan would result in an abuse by the stewards and, since the stewards were assembling work and asserting rights against the company, they should be denied the union.

Similarly in the Frank Foundries Corporation Case No. 111-91-D (December 2, 1944) the board specifically restricted members of the union to the expression of opinions which can be directed at the machine, experiences have shown that there are cases in which discussions are sometimes held on the spot over grievances, the union representative should be considered in the office without interruption to work. Such a practice may cause an unnecessary loss of output, time of supervisory staff, and union representatives from the production of goods, resulting in compensating results.

"In order to minimize unnecessary interruption to work, provision should be made for regular grievance committees which are appointed by the company. Grievances should be negotiated at such regular meetings of the grievance committee members with the union representatives. If such machinery exists, there may be interminable negotiations of those grievances upon which the management positions are taken. The result of a final step in which an impartial chairman makes a decision."

"In the Martin Company Case No. 111-796-D (October 21, 1944) the union had maintained that, since the company in 1942 entered into a unilateral agreement setting forth its policies, all individual grievances should now be ordered to include a pay provision in the grievance procedure. On the other hand, the company
cited the McQuay-Norris case and pointed out that under grievance procedure it had agreed to take up only minor matters requiring relatively short discussion while major matters were to be taken up before or after working hours by appointment. The National Airframe Panel in its report had stated that the present grievance procedure is functioning properly and Board's policy clearly is against granting the union's request, respect what the practice may be elsewhere. The company has proved, at the satisfaction of the public members of the panel, that the present grievance procedure meets all the criteria of fairness and adequacy mentioned in Board's decision in the McQuay-Norris case.\footnote{\textsuperscript{9}}

The Board referred the issue back to collective bargaining stipulated that if the parties were not able to reach an agreement within thirty days, the issue was to be referred to the Board for final disposition.

Subsequently, when the parties failed to reach an agreement on the issue, the Board decided on April 18, 1945 that, since the company had unilaterally established the practice of paying employees for time taken in handling grievances at the first step, it was now pay union stewards for such time. However, the Board fixed this time as a weekly average of an hour daily. Furthermore, the Board stressed that the company was not required to pay the union steward and the employee if both were present at the presentation of the grievance.

In Big Four Meat Packing Companies Cases Nos. 111-\textsuperscript{9} and 111-\textsuperscript{9} the Board adopted the report of the panel and held that grievance representatives in the meat-packing industry were not entitled to compensation for time spent in processing grievances.

The panel report had stated that:

"It has not been established to our satisfaction that the presentation of union representatives for the handling of grievances has contributed to the functioning of the grievance procedure. Nor has the union or its stewards or any of its representatives been able to demonstrate that the grievance procedure has improved the working conditions of the employees. It is our conviction that the changes in the grievance procedure have not been sufficient to receive a fair trial before consideration of the imposition of a duty on management to pay for the time spent by union stewards in the presentation of grievances."

"The compensation to pay for time devoted to grievances would further deteriorate the relations between the union stewards and the employees. In any event, we are clear that the union has not brought itself in any manner or form into the company's policy, but rather that the company has paid the union stewards for their time spent in grievances."

On March 10, 1945, in Aluminum Company of America Case No. 111-8615-\textsuperscript{D} the Board denied a union proposal that union stewards and the aggrieved employees be paid for time spent for grievance conferences held during regular working hours. The company in its petition for review charged that the union had contravened Board policy as stated in the McQuay-Norris and Glen L. Martin cases. Furthermore, the company contended that such payment was neither area nor past contract practice and in addition that the panel had not recommended such payment.

On the other hand, the union pointed out that the evidence of the company itself clearly indicated that a high percentage of all grievances went to the final step and that about 55 per cent went through the third stage of the grievance procedure. Moreover, the brief contended, such payment was almost a universal practice in the electrical and machine industries.

The regional board, in a statement citing the basis for its action, pointed out that there was a finding of area practice, since the Board had frequently directed such payment. Besides, the criteria of policy as stated in McQuay-Norris were satisfied, since the Board had received the statistics submitted by both company and union that the existing grievance procedure was not working effectively, but also the regional board had guarded against abuses of the payment privilege by the protective clause it had included in its directive order.

\section*{Resolution of Grievances}

An aspect of grievance procedure which occasionally concerned the Board was whether outside union representatives be allowed to enter plants to investigate grievances. Employees sometimes objected to this practice on the ground that they have the right to decide who may enter their plant and under what circumstances. They sometimes also contended that required adherence to necessary military safeguards. An example found in the Board order in the Consolidated-Vultee Aircraft Corporation (Tucson, Arizona) case.\footnote{\textsuperscript{37}}

The Board of course recognized that adherence to necessary military safeguards. An example found in the Board order in the Consolidated-Vultee Aircraft Corporation (Tucson, Arizona) case.

The international or business representative of the union shall have to exercise the same degree of secrecy in the exercise of his functions. He shall obtain from the Company specific authority for each visit. Such visit shall be subject to such regulations as are made from time to time by the Company, the United States Army, etc. Cotton Mills Company Case No. 2766-\textsuperscript{D} (March 19, 1943) and 111-149-C. Other cases in which special investigations were made by the Board were: Bethlehem Steel Co. Case No. 3045-\textsuperscript{D} (Feb. 10, 1943); Massey-Ferguson Co. Case No. 4961-\textsuperscript{D} (June 18, 1943); Tidewater Mfg. Co. Case No. 2329-\textsuperscript{D} (May 5, 1943); Darr School of Aeronautics Case No. 111-2897-\textsuperscript{D} (Nov. 12, 1943), and 111-2114-\textsuperscript{D} (April 12, 1944).
the United States Navy, and the Federal Bureau of Investigation. The Company will not impose regulations which will exclude international business representatives from its plant without good cause.

In Aluminum Company Case No. 111-18-D (November 1945) the Board's opinion stated:

"The master agreement contains no provision permitting Internal Representatives of the Union to visit the Company's plant. The Regional Board's Order authorizes such representatives to visit the plant at reasonable times after first giving the Company notice and obtaining consent. The Company contended that a clause of this type should be incorporated in a collective-bargaining agreement, particularly when it is noted that there are certain safety regulations which have to be obeyed and company trade secrets which are entitled to protection. The Company suggested that it was willing, whenever necessary, to permit the Internal Representative or any other representative of the Union to come up to inspect.

"The tripartite panel and the Regional Board were unanimous in their opinions as to the issue of the right to visit. Accordingly, upon the principles hereinbefore mentioned, the National Labor Board finds that the Company's restrictions do not disturb this particular award. The interests of war production must be protected adequately by the clause of the Regional Board's Order. The Board recognizes the right to visit "shall be subject to any regulations by the United States Army, Navy, or Federal Bureau of Investigation.""

Although it did not apply directly to routine grievances, the decision of the special board agent in General Motors Corporation Case No. 2255-CS-D is also pertinent. The question raised in this case was whether international union officials should be permitted to visit plants together with War Labor Board representatives in connection with certain arbitration proceedings and investigations. In granting the union's request, the Board placed a number of restrictions upon the union officials:

1. The activities and itinerary of such a group should be limited to operations for which they are qualified.
2. The group should not engage in any argument on the floor.
3. Any necessary or proper restrictions imposed by the Army or Navy should be respected.

The issue of outside union representatives was particularly prominent in the Maritime Industry. Employers frequently objected to permitting union officials to board their vessels. In State Steamship Company Case No. 2404-D, the National Board ordered the company to issue passes to designated union officials to board vessels for a specified period of time. In another case, the Board held that the union had no right to an unlimited number of such passes, and that the union was not entitled to visit vessels in the harbor in advance of the time specified in the agreement.

In General Petroleum and Richfield Oil Corporation Case No. 111-316-C, the National Board upheld the company's contention that the hazardous nature of the plant's operation was a valid reason for not permitting such visits.

"The company shall distribute passes to authorized representatives of the union who may request company vessels for the purpose of examining or inspecting vessels or transacting union business. The union agrees it will comply with the rules and regulations at the time of entry. Such passes shall be issued at the company's expense."

Problems Relating to the Arbitration Stage.

The first step of the grievance procedure—arbitration—raised a number of special problems which, in the Board's opinion, are important. These included the scope of arbitration, the use of permanent or ad hoc arbitrators, and the manner of selecting the arbitrator.

The Scope of Arbitration of Grievances. In an article on the procedure and arbitration, William H. Davis cited as an illustration of the Board's provision that the parties have broad powers, others have limited authority, and some have no power over wage matters. In a few cases the Board attempted to encourage "voluntary arbitration" by directing the parties to include in the contract a provision for a "mutually satisfactory forum of arbitration." In general, however, the Board found it necessary to spell out the arbitration clause. It usually defined the arbitrator's jurisdiction to cover all grievances or disputes concerning the application of the contract. In a few instances a provision was added specifically excluding disputes over new agreements.

Dispute cases where special conditions existed, the Board was permitted to specify in detail the scope of arbitration. For example, in Woods Case No. 2287-D (August 1, 1942) the arbitrator was given the authority to determine whether changes in work standards should be subject to re-determination, but the actual determination of new standards was to be referred to a special committee of qualified engineers, one to be designated by the company, one by the union, and one by the United States Department of Labor. In Atlas Powder Case No. 2639-D (December 4, 1942) the Board upheld the company's contention that disputes over wages and transfers should be referred to the arbitrator because the hazardous nature of the plant's operation.

The Board's opinion stated:

"The present case is important in indicating another characteristic of the Board as the final step in the grievance procedure. It indicates that the Board is willing to consider the questions of the parties, and to pass on matters of mutual interest to the parties, including the question of the adequacy of the grievance procedure. The Board is in a position to determine the scope of arbitration and the character of the arbitrator, and to pass on the adequacy of the grievance procedure. The Board is also in a position to pass on the adequacy of the grievance procedure, including the question of the adequacy of the grievance procedure. The Board is also in a position to pass on the adequacy of the grievance procedure, including the question of the adequacy of the grievance procedure. The Board is also in a position to pass on the adequacy of the grievance procedure, including the question of the adequacy of the grievance procedure. The Board is also in a position to pass on the adequacy of the grievance procedure, including the question of the adequacy of the grievance procedure. The Board is also in a position to pass on the adequacy of the grievance procedure, including the question of the adequacy of the grievance procedure. The Board is also in a position to pass on the adequacy of the grievance procedure, including the question of the adequacy of the grievance procedure. The Board is also in a position to pass on the adequacy of the grievance procedure, including the question of the adequacy of the grievance procedure. The Board is also in a position to pass on the adequacy of the grievance procedure, including the question of the adequacy of the grievance procedure. The Board is also in a position to pass on the adequacy of the grievance procedure, including the question of the adequacy of the grievance procedure. The Board is also in a position to pass on the adequacy of the grievance procedure, including the question of the adequacy of the grievance procedure. The Board is also in a position to pass on the adequacy of the grievance procedure, including the question of the adequacy of the grievance procedure. The Board is also in a position to pass on the adequacy of the grievance procedure, including the question of the adequacy of the grievance procedure. The Board is also in a position to pass on the adequacy of the grievance procedure, including the question of the adequacy of the grievance procedure. The Board is also in a position to pass on the adequacy of the grievance procedure, including the question of the adequacy of the grievance procedure. The Board is also in a position to pass on the adequacy of the grievance procedure, including the question of the adequacy of the grievance procedure. The Board is also in a position to pass on the adequacy of the grievance procedure, including the question of the adequacy of the grievance procedure. The Board is also in a position to pass on the adequacy of the grievance procedure, including the question of the adequacy of the grievance procedure. The Board is also in a position to pass on the adequacy of the grievance procedure, including the question of the adequacy of the grievance procedure. The Board is also in a position to pass on the adequacy of the grievance procedure, including the question of the adequacy of the grievance procedure. The Board is also in a position to pass on the ade
fused to order arbitration of new rates because it was reluctant to break new ground too quickly.  

The Board opinion stated:

"The above discussion indicates some of the reasons under which the Board's conviction that collective bargaining agreements should include "just cause" clause and also support arbitration arrangements. An analysis of the deep conviction held on this matter, the Board is of the belief that the contract provisions in main are most effective when they are voluntarily accepted by the parties."

The Board is thus in full accord and sympathy with the object of the panel in recommending final determination of disputes involving a continuing impartial umpire. On the other hand, the cognizance of the fact that in the development of the impartial arrangement in the mass production industries, the setting up of new relationships have been within the jurisdiction of the Umpire, and the Board, the interests of a voluntary acceptance by the parties to an impartial umpire arrangement with an impartial umpire would not be well served by the use of an umpire and by the development of such a process through the establishment of new rates."

The Board, however, did direct the arbitration of disputes regarding the equalization of rates for men and women doing parable work.

24. Permanent versus Ad Hoc Arbitration. Next to the arbitration as the most controversial issue regarding arbitration clauses was the issue as to whether the arbitrator should be "permanent" (i.e. for the duration of the agreement) or "ad hoc" (for each case as it arises). The Board indicated in a number of opinions that it normally preferred the permanent arbitrator. It ordered this type of arbitration only where the employers opposed the selection of an umpire or where exceptional circumstances warranted a permanent arbitrator despite management objection.  

The issue was most sharply presented in the second Chrysler Case (No. 3590-D). At a public hearing the company stated the need to direct questions from members of the Board.  

In a vigorous dissent the CIO members stated:

"The majority opinion makes a forceful and effective plea for including in agreements a provision for an impartial umpire. It is only a plea, however, because the majority declines to order it in this case over the objection of the Company. The proposition is that an arbitration provision is most effective when voluntarily accepted by the parties. The same thing is true of many other provisions usually included in agreements. If this argument is extended to its logical conclusion, namely, that the Board should sit upon the plea of the disputants, it would be impotent. Most of the orders of the Board are made against the more or less subtle and sometimes violent opposition of the parties. Some of the orders, union security directives, affect the prerogatives of the parties and their relationship quite as much as if not more than, arbitration of occasional wage disputes. This Board has already made too many inroads into the processes of free collective bargaining to become suddenly coy and squeamish about recurring parties to a collective to submit unsettled disputes about wage inequalities to an arbitrator."
in designating a private agency to appoint arbitrators in cases where the Board had imposed the arbitration provision. It is a policy declaration adopted shortly thereafter (September 1943) that the Board itself would appoint the arbitrator in such cases unless the parties agreed to a delegation of this authority to some other association, agency, or individual.

Where the Grievance Procedure Fails to Provide for the Break of a Deadlock Over Selection of an Arbitrator

Many labor agreements proved defective because no provision was made for breaking a deadlock over selection of an arbitrator. This issue was resolved by the Board in a case involyng the Cago Franklin Printers' Association and the Pressman's Union. The Board declared that the parties must agree on the selection of an arbitrator but presented no alternative if agreement could not be reached. The Board contended that the case should be treated as a regular dispute and be submitted to a War Labor Board panel. This delaying tactic was rejected by the Board which advised the regional board to appoint an arbitrator for the parties. On August 12, 1943 the National War Labor Board passed a resolution that the executive director should direct the regional boards in all such cases to appoint arbitrators for the parties when a deadlock develops. This was reaffirmed in the statements of September 1 and November 26.

Chapter 10

DISCHARGE

The usual procedure of the War Labor Board in disputes over layoffs and disciplinary suspensions was to refer back the parties for settlement under the grievance and arbitration procedure of the agreement or to order the parties to select a single arbitrator to decide the dispute. The arbitrator, in settling disputes, was expected to determine not only reinstatement of discharged or suspended workers but also the amount of pay to which the discharged workers were entitled. The Board declared that, "Such arbitrations, especially when union officials or other officials are involved, sometimes give rise to a feeling among the employees that management is attempting to undermine the collective bargaining status of the union. On the other hand, challenges to management's right of discipline may arise to a feeling on the part of management that the union is trying to undermine its function of maintaining necessary discipline. The situation is often aggravated by (1) lack of a contract procedure for speedy and final disposition of grievances, and (2) uncertainty as to the exact status of the discharged or suspended employees while the grievance is being processed."

The Board summarized its policy in handling disciplinary disputes as follows:

Disciplinary suspension or discharge alleged to be without just cause should be taken up as a grievance and finally determined under the grievance procedure as speedily as possible. If an existing multistep grievance procedure has been found to be not adapted to the speedy processing of grievances, a special shortened procedure should be established for the rapid disposition of grievances concerning disciplinary actions. Such grievances which cannot be settled by negotiation should be promptly referred to an arbitrator or umpire for final and binding decision, with reinstatement and back pay in appropriate cases. In accordance with previously announced general policy, when disciplinary cases are referred to the Board, the Board will ordinarily direct arbitration as a method of determining the grievance provided management has the right, in the absence of agreement to the contrary, to discipline or suspend an employee to remain away from work until the grievance has been finally determined. A reasonable opportunity should be provided for the employee, before leaving the premises, to report the grievance to the union official authorized to present it. The Board does not suggest, and will not direct, changes in procedures established by agreement or practice, which the parties regard as necessary to meet the problems under consideration. In the absence of procedures, however, the Board and its agencies will, as a rule, follow the procedures outlined above.

The National and the Regional War Labor Boards will make available to the parties lists of persons specially qualified to act as arbitrators or umpires in cases of this nature.\[10\]

\[10\] See 9 on grievance procedure.