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WAGE STABILIZATION*

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In the course of this discussion I do not feel it incumbent upon me to argue the case of wage stabilization. It is one of the facts of our war-time economy and whether we agree with its basic philosophy or not we must live with it. As I see it, the chief function of this discussion is to highlight the wage stabilization program so that your task as practicing attorneys who are frequently faced with wage stabilization problems will be made easier. In the measure which I can accomplish that result our task on the Twelfth Regional Board is also simplified. The public which understands the governmental regulations with which it must live will have fewer problems. It will therefore be my purpose to make this discussion as purely expository as possible in an effort to meet the daily problems which face the practicing attorney. Because of the limitations of time, it will be impossible for me to touch upon many of the phases of the War Labor Board's activities. Union maintenance of membership clauses, jurisdictional disputes in inter-state and intra-state commerce, the relationship between the War Labor Board and the National Labor Relations Board and many other related problems are matters in which the public has always expressed a great interest. The ratio between voluntary wage stabilization cases and dispute cases is thirty to one in favor of voluntary cases. Because of this fact; namely, that the average practitioner may never see a labor dispute case but will in all probability be called upon to participate in some phase of voluntary adjustments, this discussion will be confined to problems pertaining to the latter.

The War Labor Board was created by Executive Order 9017 on January 12, 1942. It came into existence as a result of the no strike, no lock-out pledge on the part of labor and industry. It is a tripartite body consisting of four representatives of labor, four representatives of industry and four representatives of the public. The War Labor Board was created for the purpose of handling labor disputes which interferred with the effective prosecution of the war. While wage stabilization was still a thing of the future the War Labor Board during this period immediately following its creation was forming its own wage policies. On July 16, 1942, the Little Steel decisions were announced and the now famous Little Steel Formula came into existence. In September of 1942, the President announced his seven-point anti-inflation program. This program was to the effect that to control inflation we must (1) increase taxation, (2) control commodity prices and rents, (3) control wages and salaries, (4) regulate the amounts

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paid farmers for the products of the soil, (5) encourage the buying of war bonds, (6) ration consumers' goods, (7) discourage credit buying and encourage savings. As a result of the President's announcement Congress on October 2, 1942, amended the Emergency Price Control Act directing the President to stabilize wages and salaries as nearly as possible on the level of September 15, 1942. In accordance with the directive contained in this legislation, the President on October 2, 1942, promulgated Executive Order 9250 placing the wage and salary stabilization program within the jurisdictions of the War Labor Board and the Commissioner of Internal Revenue. The Commissioner of Internal Revenue was given jurisdiction over all salaries in excess of $5,000 per year and of salaries paid to executive, administrative and professional employees who are not represented by a collective bargaining agent. The War Labor Board was given jurisdiction of all wages and of salaries under $5,000 per year not subject to the jurisdiction of the Commissioner of Internal Revenue. Wages are defined as all payments computed upon a hourly or daily basis. Salaries are those computed upon a weekly, monthly or annual basis. It is well to observe at the outset that when we refer to the wage stabilization program, we do not mean wage freezing. It is perhaps not readily apparent to one not thoroughly familiar with the program why we should not freeze all wages. It is perhaps difficult for the outsider to understand why when we are endeavoring to prevent inflation the War Labor Board is busily engaged in granting wage increases. A glance at the wage policies of the Board will, I believe, furnish the answer to this question. These will be discussed in detail later. Let us cite merely one illustration. During 1942, it became increasingly apparent that the production of Flying Fortresses at the Boeing Aircraft Company was being seriously impaired by a manpower shortage. The National War Labor Board in March of that year granted a wage adjustment. This adjustment was found to be entirely inadequate to channel into that industry the needed manpower. Upon the ground that the effective prosecution of the war required it, the National War Labor Board in September of 1942 reconsidered the Boeing case and granted wage increases which could not be justified on any other ground. Had we been committed to a rigid policy of wage freezing it would have been impossible to have effected this solution of the problem. The granting of the increase to Boeing Aircraft employees in Seattle was only the beginning of the problem however. The Twelfth Regional Board is still wrestling with the problems created by that decision of the National War Labor Board. Among these problems are the following:

> Should clerical and office employees be given increases commensurate with those given the production workers?
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> Should the Seattle rates be carried into Boeing plants in Bellingham, Everett, Tacoma, Chehalis and Aberdeen? If

they are, serious mal-adjustments in those communities would result necessitating wage adjustments in many occupations.

Should the Boeing Seattle rates be given to sub-contractors engaged in the production of parts for Flying Fortresses?

The only test which the Regional Board can apply in answering these problems is that of endeavoring to determine whether the effective prosecution of the war and the production of the much needed Flying Fortresses will be advanced.

Let us proceed to a consideration of the specific problems confronting an employer who is endeavoring to keep his production up in the face of the most difficult manpower problems which face employers anywhere in this nation. That is no idle generalization. It is literally true that the manpower problems facing this Regional War Labor Board are the most difficult of any in this country. The first question which confronts an employer is that of determining whether he is subject to the wage stabilization program or whether he is in the class of those employers who are exempt.

Employers of eight or fewer employees are not subject to the regulation. This exemption is provided by General Order No. 4 of the National War Labor Board. It is subject to the qualifications, however, that if the wages, hours or working conditions of the employees are established or negotiated upon an industry or area basis, whether by a master contract or similar or identical contracts, the exemption does not apply. The General Order further provides that Regional Boards may recommend to the National Board that the exemption be removed as to certain industries where indicated. In this region, at the request of the Regional Board, dental technicians, employees in the seed industry and garage mechanics have been removed from the exemption. Realizing the injustice of forcing non-exempt employers to compete with exempt employers in this region 80 per cent of the industrial establishments employ eight or fewer, the Regional Board has recently requested the National Board to remove the exemption in certain enumerated occupations which request, if granted, would return to the jurisdiction of the Regional Board approximately 75 per cent of the employers now exempt.

Employees of state, county or municipal employers and employees of non-profit and charitable organizations are also exempt. In certain classifications this has created a most difficult problem. As an illustration, King County has several times increased salaries paid nurses in the King County hospitals. These increases have brought the compensation of these employees to a level far in excess of that which could be granted to employees in other hospitals.

Agricultural employees receiving less than $2,400 per year are also exempt from the jurisdiction of the National War Labor Board.

Railway employees are subject to the jurisdiction of the Railway Labor Panel.

Having considered thus briefly the question of exemptions, let us now turn our attention to the question of what wage adjustments may be made without War Labor Board approval. In general an employer will be wise to proceed upon the assumption that all wage adjustments require approval and will obtain an authoritative answer from the War Labor Board or the Wage and Hour Division of the Department of Labor before proceeding. As stated above, however, there are certain exceptions to this general rule. Under the General Orders of the National War Labor Board certain wage adjustments are authorized without Board approval.

Under General Order No. 30 increases in wage or salary rates which do not bring such rates above 40c per hour may be made without the approval of the National War Labor Board. This is on the basis that wages below 40c an hour are sub-standard.

Adjustments increasing wages or salaries to a point not in excess of 50c per hour in accordance with state minimum wage laws may be made without prior approval of the War Labor Board.

Under General Order No. 16 adjustments which equalize the wage or salary rates paid to females with the rates paid to males for comparable quality or quantity of work performed may be made without approval of the National War Labor Board subject to the qualifications set forth in that General Order; namely, that they be reported that such adjustments shall be subject to the Board's ultimate power of review and that they shall not furnish a basis to increase price ceilings or to resist otherwise justified reductions in price ceilings.

An employer who finds it necessary to establish a wage rate for a new job classification in an existing plant may do so under General Order No. 6 provided that the rate established bear the same relation to rates for similar classifications in the area as the existing rates in the plant bear to comparable rates in this area. This permission extends only to new job classifications in existing establishments. It does not apply to a new department in an existing establishment and the rates in such case would require approval of the War Labor Board.

Under General Order No. 31 an employer may make individual adjustments for the following reasons: promotions or reclassifications, merit increases within established rate ranges, the operation of an established plan of wage increases based upon length of service within established rate ranges, increased productivity under piece work or incentive plans, the operation of an apprentice or trainee system. General Order No. 31 divides employers into two classes, those having thirty or fewer employees and those having in excess of that number. As to employers of thirty or fewer, the Order permits the making of

increases without regard to whether the employer had established rate ranges in existence prior to October 2, 1942, or whether he had an established plan for making such increases. Such increases are limited to 10c per straight-time hour for any employee during any year beginning July 1, 1943 and the total amount expended on such increases during any such year shall not exceed an average of 5c per straight time hour for all the employees in the establishment. Such increases shall not, however, result in the payment to any employee of a rate in excess of the highest paid by the employer between July 1, 1942, and June 30, 1943, for jobs of similar skill, duties and responsibility.

As to employers of thirty-one or more employees the General Order requires that before individual increases may be made there shall have been established (a) job classification wage or salary rate ranges and (b) a plan for making individual adjustments within and between such wage or salary rate ranges. A job classification rate range exists where an employer pays for a given job classification, a number of rates varying from a clearly designated minimum rate to a clearly designated maximum rate. A plan is an orderly, definite procedure or a group of procedures for making adjustments within specified limits in wage or salary rates of individual employees (a) within particular job classifications and (b) when they move from one job classification to another. Such a plan ordinarily includes (a) tests and procedures for determining whether employees are to be given individual rate adjustments and (b) limits on the number of adjustments, the timing of adjustments, and the average or total amount of money to be granted in the adjustments over a given period of time. A plan properly in existence is one as defined above under which individual rate adjustments are made in conformity with the provisions of (a) a collective bargaining or other bona fide established agreement which was in effect on June 30, 1943 or (b) written statements, minutes, or memoranda of the employer which were in existence and effect on or before June 30, 1943 or (c) a plan approved by the National War Labor Board or by any of its authorized agents or agencies. If an employer has in existence a plan meeting the foregoing requirements he may continue to make wage adjustments in accordance with it notwithstanding that the plan may be much more liberal than that provided in General Order No. 31 or the one which would be authorized by the War Labor Board. Employers having established rate ranges but no plan may make individual wage adjustments within their established ranges in accordance with the limitations of General Order No. 31; namely, the 5c and 10c rule mentioned a moment ago. Employers having neither an established rate range or plan may obtain approval upon application to the War Labor Board.

We have now treated cases in which War Labor Board approval is

not required. An employer who is not fortunate enough to find his case included in those which we have discussed is faced with the necessity of applying to the Board for approval of proposed wage or salary adjustments. Let us consider the wage policies which the Board applies in processing applications for adjustments. These are set forth in Executive Orders Nos. 9250, 9328 and the policy directive of the Director of Economic Stabilization under date of May 12, 1943. In accordance with the limitations prescribed in those documents wage adjustments may only be made upon four grounds: namely, to correct mal-adjustments (the Little Steel Formula), to correct substandards, to correct gross inequities (the bracket method) and to aid in the effective prosecution of the war. Let us discuss each of these grounds briefly.

On July 16, 1942, when the National War Labor Board was confronted with the Little Steel cases, it found that the cost of living had increased 17 per cent since January 1, 1941. It held that employees who had received no wage increase since January 1, 1941, could receive an increase up to 15 per cent to correct this mal-adjustment. The Board has adhered to the policy, at least to the present date, that it will not exceed this 15 per cent figure. This has been done in spite of the insistent assertions on the part of labor organizations that the cost of living has risen far in excess of 15 per cent. It might be stated in passing that the fear on the part of some that the National War Labor Board will break the Little Steel Formula is entirely unwarranted at least so far as this region is concerned. Most workers in this region have already received wage increases far in excess of the 15 per cent limitation of the Little Steel Formula and were the formula changed to 25 per cent it would still have no appreciable effect in this region.

This Regional Board has established 50c an hour as a substandard wage. Upon application, increases up to that figure will be approved on the basis that wages lower than that are substandard.

In determining whether gross inequities exist, the Director of Economic Stabilization has prescribed the bracket approach. The bracket methods consists of a statistical survey on the part of the War Labor Board with the assistance of the Bureau of Labor Statistics of the Department of Labor to determine what wage rates are being paid in the area. The Board arranges these rates in order from the lowest to the highest. Proceeding from the lowest rates the Board is directed to fix its bracket at the first significant cluster. These are termed "sound and tested" going rates and employees receiving less may be increased to that figure. The following illustration will, I believe, clarify this method:

(Illustrative Tabulation for Establishment of Wage Stabilization Rate)
(Job) *Journeymen Tube Machine Operators*
(Industry) 23 Rubber Processing Manufacturers
(Labor Market) Blankville Metropolitan Area

No. of Firms Paying Rate	*No. of Employees Receiving Rate (a)*	*Straight Time Hourly Rates (b)*
1	1	$0.96
2	5	.95
1	11	.93
1	4	.91
6	20	.90
3	9	.88
12	45	.875
2	6	.85
9	33	.825
3	12	.80
1	2	.775
3	4	.75
TOTAL	152	

Weighted average by employees ..... $0.864 per hour
10 per cent less ..... .778 per hour
Significant minimum cluster rate ..... .825 per hour

(a) Data includes rates paid to both union and non-union employees, journeymen grade only, no leadmen nor apprentices being included.
(b) Exclusive of over-time premium payments and shift differentials.

SOURCE: Bureau of Labor Statistics survey, and data submitted by Synthetic Rubber Manufacturers Association and the report by Local 4250, Synthetic Rubber Workers Union.

On the basis of the foregoing statistical information the War Labor Board is directed to establish its bracket proceeding from the bottom where the first significant cluster of rates is found to exist. In the foregoing illustration it is at the point where we find nine firms with thirty-three employees receiving 82½c per hour. The rate of 82½c then becomes the minimum of the bracket and employees receiving less than this figure may be increased.

In connection with our discussion with wage adjustments we cannot entirely ignore what we term the "fringe cases" and I believe it will be heldful to cover Board policies pertaining to these situations.

Vacations. The policy of this Board is to grant one week's vacation after one year of employment, two weeks after five years employment. Consideration is also given to the practice of the industry in the area.

Shift Premiums. The Board is governed by the practice of the industry in the area. Consideration is also given to the special problems of night work for certain classifications.

Rate Ranges. Consideration is again given to the practice of industry in the area. The Board also requires that the weighted average of employees' wages shall not exceed the mid-point of the range.

Bonuses. The employer is quite rigidly limited to his practice of the preceding year if legal, unless very special circumstances exist. Attendance bonuses and work recruiting bonuses are not allowed.

Incentive Plans. In general, these must be by the joint agreement of labor and management and must not increase per unit costs.

Overtime, Sick Leave and Meals and Laundry. The practice of the industry in the area is again the governing consideration.

Equal Pay. The policy of the Board is to permit equal pay for equal work, proportional pay for proportional work as based on findings of fact.

Permit me to discuss briefly the mechanics of applications to the War Labor Board. All jurisdictional matters; namely, consideration on the part of an employer as to whether particular wage adjustments require Board approval, are handled through what is known as a Form 1. This is simply a form devised for the purpose of permitting an employer to state his particular problem and obtain an answer which is authoritative and which will protect him against a future charge of violation. Such a form is filed at the Wage and Hour office of the Department of Labor. Ruling is made by that office and it is sent to the Regional Attorney for review and possible reversal.

If the ruling on the Form 1 is to the effect that the particular wage adjustment may not be made without Board approval then it is necessary for the employer to file a Form 10 which is an application for approval of a voluntary wage adjustment. This again is filed with the Wage and Hour office which office will assist in its preparation, will collect the necessary information and transmit the application to the War Labor Board for processing by the Wage Stabilization Division.

As attorneys, it is most probable that your contact with the wage stabilization program may come through an employer who has been charged with a violation. The law provides and I quote from the regulations of the Director of Economic Stabilization:

TITLE 32—NATIONAL DEFENSE
CHAPTER XVII—OFFICE OF ECONOMIC STABILIZATION
SUBCHAPTER A—OFFICE OF DIRECTOR OF ECONOMIC STABILIZATION
PART 4001—WAGES AND SALARIES

"Sec. 4001.10. *Effect of unlawful payments*—(a) If any wage or salary payment is made in contravention of the Act or the regulations, rulings or orders promulgated thereunder, as determined by the Board or the Commissioner, as the case may be, the entire amount of such payment shall be disregarded by the Executive Departments and all other agencies of the Government in determining the costs or expenses of

> any employer for the purpose of any law or regulation, including the Emergency Price Control Act of 1942, or any maximum price regulation thereof, or for the purpose of calculating deductions under the revenue laws of the United States, or for the purpose of determining costs or expenses of any contract made by or on behalf of the United States. The term "law or regulations" as used herein includes any law or regulation hereafter enacted or promulgated. In the case of wages or salaries decreased in contravention of the Act or regulations, rulings or orders promulgated thereunder, the amount to be disregarded is the amount of the wage or salary paid or accrued and not merely an amount representing an increase in such wage or salary.
>
> (b) Payments made or received in violation of any regulations, rulings or orders promulgated under the authority of the Act are subject to the penal provisions of the Act."

In addition to the foregoing penalty the Emergency Price Control Act also provides:

> (Public Law 729—77th Congress)
> (Chapter 578—2nd Session)
> (H. R. 7675)
> AN ACT
>
> "Sec. 5. (a) No employer shall pay, and no employee shall receive, wages or salaries in contravention of the regulations promulgated by the President under this Act. The President shall also prescribe the extent to which any wage or salary payment made in contravention of such regulations shall be disregarded by the executive departments and other governmental agencies in determining the costs or expenses of any employer for the purposes of any other law or regulations.
>
> Section 11. Any individual, corporation, partnership, or association willfully violating any provision of this Act, or of any regulation promulgated thereunder, shall, upon conviction thereof, be subject to a fine of not more than $1,000, or to imprisonment for not more than one year, or to both such fine and imprisonment."

It will be observed that these penalties can be most severe. Although there is no direct provision in the law authorizing it, the War Labor Board has taken the position that it is authorized to diminish the penalty or in cases where it feels justified, notwithstanding a finding of violation, it may assess no penalty at all. It has been brought to my attention several times attorneys and accountants are advising their clients to do nothing about wage violations for the reason that upon the cessation of the war there will be so many employers who have violated that it will be impossible for the Government to assess penalties in all cases. While it is not improbable that this may occur, I seriously question the soundness of this advice. Inasmuch as violations are accumulating every day and, in the case of employers with a large number of employees, in prodigious amounts, and the possibility

of an investigation by the War Labor Board's agents is always present, it would appear to be an extremely risky procedure for an employer to continue his violations. Self-interest on his part would most certainly dictate an effort to put his house in order and to comply with the regulation. Furthermore, there has been much discussion by individuals connected with the War Labor Board in Washington to the effect that eventually the administration of the program as to violations would be delegated to the Commissioner of Internal Revenue. The current attitude of the Commissioner of Internal Revenue to the effect that 100 per cent of the penalty will be assessed in every case is an indication of what might be expected were this to occur. In fact there is discussion at the present time of the possibiliy of permitting the War Labor Board the power to determine the fact of violation only, the amount of the penalty to be later determined by the Commissioner of Internal Revenue or procurement agencies. Because of these factors I earnestly suggest to those of you who may have clients in the unfortunate position of having violated the wage stabilization regulations voluntarily disclosing to the Board the fact of violation. In processing the cases great consideration is given to the fact that an employer has voluntarily disclosed his violations and has made an effort to comply with the law.

A word as to procedure in processing violation cases. Cases are reported to us by competitors, by governmental agencies, as a result of Wage and Hour "test checks," or by voluntary disclosure on the part of the employer. Investigation is made on behalf of the War Labor Board by the Wage and Hour Division of the Department of Labor. A report is made to the Regional Attorney. His staff examines the report, makes its recommendations to the Regional Board. The employer is given an opportunity to present all the surrounding circumstances. This may be done informally in conference with the Regional Attorney's staff. If the employer wishes he may suggest what he feels is a proper penalty and if acceptable to the Board the Regional Attorney will be authorized to stipulate with the violator. Cases which cannot be disposed of in this manner will be set for formal hearing before a tripartite division or panel of the Regional Board. The employer may be represented by counsel and may present all facts bearing on the question at issue. The hearings are informal and the rules of evidence for administrative hearings apply. Within five days after the conclusion of the hearing the Regional Attorney presents proposed findings. A copy of these is mailed to the employer by registered mail and he has an opportunity to comment upon it. The panel thereafter prepares its findings. The findings are transmitted to the National Board in Washington, D. C. Within ten days after their receipt, the employer may appeal to the National Board. The

Regional Attorney also has the right of appeal. If no appeal is taken or if the penalty is affirmed, the findings are transmitted to the Collector of Internal Revenue who will assess the tax penalty provided for by the regulations. The National Board may also recommend to the Department of Justice that appropriate criminal action may be taken.

The foregoing discussion has necessarily omitted many phases of the work of the War Labor Board. It is my hope, however, that some of the matters herein discussed may be of assistance to you in meeting the problems of the everyday practice of the law.