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THE STEEL INDUSTRY AND THE NATIONAL RECOVERY ADMINISTRATION: AN EXPERIMENT IN INDUSTRIAL SELF-GOVERNMENT

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THE STEEL INDUSTRY AND THE NATIONAL RECOVERY ADMINISTRATION:

AN EXPERIMENT IN INDUSTRIAL SELF-GOVERNMENT

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TABLE OF CONTENTS

		Page
PREFACE		iii
Chapter		
I.	THE STEEL INDUSTRY ENTERS THE GREAT DEPRESSION	1
II.	THE INDUSTRY DRIVE FOR PLANNING	31
III.	THE BIRTH OF THE NRA	57
IV.	THE STEEL INDUSTRY JOINS THE NRA	92
V.	THE STEEL CODE AUTHORITY AND THE NRA	131
VI.	THE STEEL INDUSTRY ADMINISTERS ITS CODE	170
VII.	THE STEEL CODE LABOR PROVISIONS	210
VIII.	LABOR RELATIONS IN THE STEEL INDUSTRY	235
IX.	THE REVOLT OF THE "LITTLE FELLOW"	264
X.	THE DECLINE AND FALL OF THE NRA AND THE STEEL CODE	295
APPENDIX		328
BIBLIOGRAPHY		361

PREFACE

The Great Crash of 1929 and the ensuing depression found neither business leaders, government officials, nor political economists prepared to meet the exigencies of that economic holocaust. The major reason for the lack of public leadership was the absence of precedents for concerted action during the down-swing of the business cycle. Franklin Roosevelt emphasized during the 1932 campaign and immediately upon assuming office that he intended to provide active and experimental leadership. By 1933 many business leaders and economists had also arrived at the conclusion that the old laissez-faire policies of both government and industry would not restore the nation to economic health as it had in the past. Some type of planning was necessary, they said, although there was a wide divergence of opinion on what sort of planning could be carried on and still stay within the traditional American free enterprise system. The prevailing view which emerged called for some kind of government-industry cooperation designed to end the economic distress.

The National Industrial Recovery Act was the legislative result of this change in economic thought. Roosevelt deemed the act one of the most important and far-reaching laws ever passed by Congress, and the Blue Eagle became the symbol of the New Deal recovery efforts. With the volatile Hugh Johnson as NRA chief, a nationwide patriotic campaign was conducted to raise wages and reduce hours, and to increase employment and purchasing power. The law also provided for industries to submit codes of fair competition which would end the era of cut-

throat competition by outlawing unfair trade practices. Finally, the NIRA contained the famous Section 7a which established labor's right to organize and to bargain collectively.

The steel industry, dominated by two or three giant producers, had sought to end industrial warfare within its ranks ever since the turn of the century. And price stability was the key to industrial peace for that industry. The Recovery Act allowed the steel industry to govern itself without the restraints of the Sherman Antitrust Act. This always had been a threat to any previous project of steel executives in seeking industry-wide agreements to fix prices or limit production. The administration knew that steel was all-important to the nation's recovery and allowed the industry to write certain provisions into its code which were certain to cause a flurry of public condemnation and to create future troubles for the administration. On the other hand, the steel industry was willing to accept the collective bargaining provision in return for a code which would allow industrial self-government. The story of the Steel Code and the NRA is thus the account of perhaps the strongest industry in the United States being allowed almost unfettered power over its industrial and business practices which had long been recognized as illegal under existing law. Neither the NRA, organized labor, nor consumers were able to exercise much control over the steel industry during the life of the Blue Eagle.

There is a paucity of literature on the NRA. This is surprising not only because of its importance in contemporary history but also because of the great abundance of documentary records now available.

Perhaps the reason lies in a warning which Donald Richberg gave that "the story of the NRA must be written as one chapter in the big book of social history or it will be meaningless--or worse, it will appear to be a silly tragedy or an heroic folly." Recently, however, historians and economists have suggested that valid generalizations about the NRA cannot be made until there are studies available of the individual industry codes. The history of the Steel Code and the NRA should afford a further step in the final evaluation of the National Industrial Recovery Act.

While my interest in the NRA goes much further than its relationship with the steel industry, I am greatly indebted to Dr. Gilbert C. Fite who convinced me that a general history of industrial organization symbolized by the Blue Eagle was too large a subject for a doctoral dissertation if it were to be based primarily upon unpublished manuscript sources. Professor Fite has also given unstintingly of his time and his advice in the direction of this study. I am also grateful to Dr. Donald J. Berthrong for his criticisms. I received help and advice from Professors John S. Ezell, Alexander Kondonassis, and Brison D. Gooch, the other members of my committee. I also wish to acknowledge the aid of Mrs. Jane Smith, Chief of the Social and Economic Branch of the National Archives, and her able assistant, Mrs. Jeanne V. McDonald; the staff of the manuscripts division of the Library of Congress; and Miss Opal M. Carr and Jack D. Haley of the University of Oklahoma Library. Finally, it is nearly impossible to thank my wife, Carolyn, for her aid, patience and comfort in my long task.

THE STEEL INDUSTRY AND THE NATIONAL RECOVERY ADMINISTRATION: AN EXPERIMENT IN INDUSTRIAL SELF-GOVERNMENT

CHAPTER I

THE STEEL INDUSTRY ENTERS THE GREAT DEPRESSION

On Friday, May 24, 1929, the members of the American Iron and Steel Institute gathered in the Grand Ballroom of the Hotel Commodore in New York City for their thirty-fifth semi-annual meeting. Charles M. Schwab, president of the Institute and chairman of the board of the Bethlehem Steel Corporation, delivered the traditional opening presidential address. Schwab radiated his usual optimism and confidence over the general condition of the steel industry when he said:

> The steel industry meets today under conditions distinctly favorable to the continuance of general prosperity. Since we last met, Herbert Hoover has become President of the United States. Mr. Hoover has taken office at a moment of fundamental prosperity in our country that is unparalleled. As good citizens and as representatives of one of the greatest of industries, we pledge him our support and cooperation, feeling as we do that our country is singularly fortunate in having as its chief executive a man of such great ability and business experience under whose leadership I am sure nothing will be done to disturb the sound business structure upon which our present prosperity is founded.[1]

Following this optimistic assessment of the present and future condition of the industry, several other officials came to the rostrum to concur in Schwab's remarks. Again on October 25, 1929, Schwab told the Institute: "In my long association with the steel industry I have never known it to enjoy a greater stability or more promising outlook than it does today."[2]

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[1] American Iron and Steel Institute, Yearbook of the American Iron and Steel Institute, 1929 (New York, 1930), p. 28.

[2] Ibid., p. 295.

This optimism seemed justified. Steel mills were operating at an average of 88 percent of capacity--up 5 percent from 1928 and 50 percent above the postwar recession year of 1921.[3] A total of 56,433,473 long tons of steel ingots and castings were produced in 1929.[4] In addition 41,069,416 long tons of finished rolled products poured from the mills that same year.[5] This production, totaling $4,137,214,000 came from 591 establishments, employing 419,534 men with total yearly wages of $730,974,000.[6]

Schwab was no doubt echoing the sentiments of almost everyone connected with the steel industry, because 1929 was truly a profitable year. His own company, Bethlehem Steel Corporation, had shown a net profit for the first quarter of operations of $9,045,590, compared with $3,384,718 during the same period in 1928.[7] The giant of the industry, the United States Steel Corporation, reported net earnings of $60,105,381, equivalent to $5.04 a share on the company's 7,116,235 shares of common stock. These figures compared with $40,934,032 or $2.11 a share earned during the last quarter of 1928. U. S. Steel's 1929 earnings were close to a record high and were attributable to the high demand for steel and to a stable price situation. In fact the last time in which U. S.

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[3] Iron Age, CXXVII (January 22, 1931), p. 333.

[4] U. S., Department of Commerce, Statistical Abstract of the United States, 1930 (Washington, 1930), pp. 758 and 700.

[5] Ibid., p. 702.

[6] Ibid., p. 705.

[7] New York Times, May 19, 1929, p. 13.

Steel's earnings were greater was in 1918 when the total earnings were $86,354,000.[8] Most of the demand in 1929 came from the automobile industry, which was experiencing a record year in production.[9] Farm implements and railroads were using less steel than the automobile industry, but were still important customers. The high earnings were also due to advancing prices which, nevertheless, were considered "highly conservative price movements."[10] By May the business world saw no substantial signs of the usual summer recession in steel.[11] Leading steel companies stepped up their operations to an average of 101 percent of rated capacity, which was a new all-time record, while Bethlehem and U. S. Steel were operating at 103 percent.[12]

The success story of the steel industry formed merely one chapter in the marvelous epic of the "New Era." America's participation in World War I had led to a virtual managed economy, with full employment for labor and prosperity for agriculture. The ending of the war saw a sharp recession, with industrial unemployment, loss of farmers' gains and the use of war profits by capitalists to carry them through the depression and improve capital equipment. Although the farmers and certain industries, such as coal and textiles, never regained prosperity

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[8] Ibid., May 1, 1929, p. 1.

[9] Production of passenger cars totaled 4,587,400 in 1929, compared with 3,815,417 in 1928. There were 771,020 busses and trucks produced in 1929, compared with 543,342 in 1928. Statistical Abstract, 1932, p. 359.

[10] Steel prices advanced to $36 per ton in April, 1929, an increase over the previous quarter of two to three dollars. These prices compared with a low of $32 per ton in 1928, $35 in 1926, and a high of $45 in the early part of 1923. New York Times, May 2, 1929, p. 26.

[11] Ibid., May 20, 1929, p. 47. [12] Ibid., May 1, 1929, p. 1.

during the 1920's, America entered a period of almost unprecedented industrial prosperity and expansion. Employment was high and, although wages had been reduced, the drop in the cost of living meant increased purchasing power for workers and a higher standard of living.

The "New Era" of 1923-1929 was based on the great increase in efficiency of production. The scientific management theories of Frederick W. Taylor, the moving assembly line of Henry Ford, the greater use of mechanization and new research and sales techniques, all contributed to this efficiency. Using 1933-1939 as a base of 100, the industrial production index rose from 58 in 1921 to 110 in 1929, without any great expansion in the labor force.[13] In addition to greater efficiency in existing industries, a host of new industries appeared. Aluminum and magnesium, chemicals and synthetics, joined with automobiles, airplanes, movies and the radio in adding billions of dollars to the American economy. By 1929 consumers were buying 23 percent more products than in 1923, but, considering durable goods only, the increase was 33 percent. The most important element in this great prosperity, however, was construction, both private housing and commercial building. Cities added gigantic skyscrapers to their skylines, while individuals filled new housing developments in towns and suburbs.

These new economic developments benefited almost all segments of the national economy. Average hourly earnings in manufacturing rose 8

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[13]William E. Leuchtenburg, The Perils of Prosperity, 1914-1932, (Chicago, 1958), p. 179. Although population increased only 9 percent, the labor force increased approximately 11 percent; however, factory employment in 1929 was only .5 percent above that of 1923. George Soule, Prosperity Decade: From War to Depression, 1917-1929, (New York, 1947) pp. 317-325.

percent from 1923 to 1929, while the product per man-hour rose 32 percent. The gross national product rose to $91.1 billion, an increase of 23 percent. Corporate profits rose 62 percent, while general commodity prices fell 5 percent. There was no currency inflation, but bank deposits increased 33 percent. The federal budget showed a consistent surplus and the national debt was reduced 24 percent during this period. Private enterprise under a policy of laissez faire, not paternalism, was creating higher purchasing power, corporate profits and full employment, at least so the nation thought. Even the government was following a "business as usual" policy.

It is little wonder that the American people were willing to take at face value the statements of their national leaders regarding the promise of the "New Era." In his last message to Congress of December 4, 1928, Calvin Coolidge asserted:

> No Congress of the United States ever assembled, on surveying the state of the Union, has met with a more pleasing prospect than that which appears at the present time. . . . The great wealth created by our enterprise and industry, and saved by our economy, has had the widest distribution among our own people, and has gone out in a steady stream to serve the charity and the business of the world. The requirements of existence have passed beyond the standard of necessity into the region of luxury. . . . The country can regard the present with satisfaction and anticipate the future with optimism.[14]

In August, 1928, Coolidge's successor, Herbert Hoover, had said in accepting the Republican nomination, "We in America today are nearer to the final triumph over poverty than ever before in the history of any land."[15] This optimism was accepted by an American public which had

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[14]U. S., Congressional Record, 70th Cong., 2d Sess., 1928, LXX, Part 1, p. 20.

[15]New York Times, August 12, 1928, p. 1.

grown weary of the progressive crusades during the first two decades of the twentieth century. Too much energy and financial resources had been expended on "making the world safe for democracy." It was time to make America safe for Americans and traditional American ideals. Radical ideas which flourished during the war period were no longer to be tolerated. Trade unions were now somehow suspect as being anti-American, and actually began declining in numbers and strength. This was the age of the consumer, and there was much to be consumed. High wages, high profits, full employment, appeared to indicate that economic democracy had been realized in the United States.

This "economic democracy" played an important role in the great stock market speculation which swept the country in the 1920's. While the legend persists that almost everyone from the manicurist and the bootblack to the industrialist and the banker gambled on the rise in stock values, it appears that the extent of speculation on the part of lower income groups has been exaggerated. Only about one-fifth of stock shares were owned by persons with less than $5,000 a year income. Most stocks were owned by persons of more substantial means.[16] Yet, millions of persons did engage in speculation, and it was the general optimism which this speculation created that was the important factor in the continued health of the economy. The climate of opinion was that, with such great prosperity, anyone could invest his savings or borrowed capital in the market without any danger of loss.

Thus, from January 1, 1925, to January 1, 1929, the total number

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[16]Soule, Prosperity Decade, p. 294.

of shares outstanding on the New York Stock Exchange increased from 433,449,000 to 757,302,000, and the value of those shares increased from $27,072,522,000 to $67,472,053,000.[17] It is also interesting that there was little relationship between the earnings of a company and the sales and prices of its stock. Corporate profits and consumption were high, and this fact led investors to the conclusion that prosperity would continue and stock prices would soar indefinitely.

Yet, despite such optimism, everything was not well with the economy. Coal mining, textiles and agriculture were among the "sick industries," and no cure appeared in sight. In addition residential construction began a steady decline in 1926 and business construction hit a soft spot between 1926 and 1927. The production of passenger automobiles fell 22 percent in 1927, and the increase in 1928 did not match the average increases of the preceding two years. What had happened was that saturation had occurred in the market for homes and automobiles. Also consumer goods consumption declined when families reached the point where they felt they had incurred all of the installment debt which they could handle. New investment in producers' durable goods declined about $770 million by 1928.[18]

The situation in stock speculation was equally precarious. A slight recession in the market occurred in 1927, but was regarded as "merely a downward turn in the business cycle."[19] However, the Federal Reserve Board lowered its discount rates from 4 to 3½ percent and purchased $435 million worth of securities on the open market. These

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[17] Ibid., p. 295. [18] Ibid., pp. 277-288. [19] Ibid., p. 275.

policies added more money to the speculative boom, especially in commercial construction, and the market rose again in 1928. Some warnings began to be heard that stock prices were over-inflated, but these cries were drowned in the roar of the stock tickers. Corporate and bank profits were so large and were not being passed on to investors in proportionate amounts, that even these surpluses were being invested in the market. In 1929, when call loan rates were advanced from 12 to 20 percent in an effort to slow the speculative mania, stock buying continued from the belief that the great profits which could be realized from stock price advances would offset the interest charges. With the raising of the rediscount rate in England on September 26, 1929, a trigger was pulled which caused the debacle to begin in America.

When, in the fall of 1929, the bottom dropped out of the stock market, most leaders of the steel industry followed the general public through the myriad twists and turns of popular outcry which generally accompany the befalling of a national calamity. At first the reaction was one of determined optimism as to the quick cure of the illness and the continued good health of the economy. The Wall Street Journal stated:

> Conditions do not seem to foreshadow anything more formidable than an arrest of stock activity and business prosperity like that in 1923. Suggestions that the wiping out of paper profits will reduce the country's real purchasing power seem far-fetched.[20]

No mere dislocation of the speculative market could cause an equal dislocation of the firm rock on which had been built the greatest prosperity that the United States had ever known, said most business and government leaders. Since the Black Friday of 1869 there had been ten days of panic

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[20] Wall Street Journal, October 26, 1929, p. 1.

on the stock market, all preceded by major business failures. The Panic of October 24, 1929, had occurred during a period of great business prosperity. Nearly all observers were willing to continue believing the optimistic statements of President Hoover, the epitome of which was made the day following October 24--Black Thursday: "The fundamental business of the country, that is production and distribution of commodities, is on a sound and prosperous basis."[21] The public, therefore, was willing to "sit tight" and wait for the liquidation of inflated stock values to take place so that the fundamental business of America, which Calvin Coolidge said was business, could continue.

And there were encouraging developments in the business world which seemed to justify the "inflated securities" theory of the crash. After a meeting on October 24 which several of New York's leading bankers attended within public view at the offices of J. P. Morgan and Company, Thomas W. Lamont announced that the bankers would support the market. Lamont added that "the selling had been greatly overdone and that the market fundamentally was sound."[22] However, in spite of the view of the general public that businessmen in general, and the manipulators of large sums of money in particular, were omnisicient and omnipotent, the feeble gesture of the Wall Street bankers was too late.[23] One of those gestures took on a comic opera aspect. After the announcement of the bankers' support of the market, a broker dramatically strode

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[21]Edward Angly (ed.), Oh Yeah? (New York, 1931), p. 11. This volume contains highly amusing statements made by business and government leaders during the early days of the depression.

[22]New York Times, October 25, 1929, pp. 1-2.

[23]For a discussion of the public's adulation for businessmen and financiers during the 1920's, see Soule, Prosperity Decade, pp. 290-292; and John Kenneth Galbraith, The Great Crash, 1929 (Boston, 1961), pp. 48-70.

up to U. S. Steel's post on the floor of the New York Stock Exchange and shouted: "Two hundred and five for twenty-five thousand Steel!". The stock had been selling at 190.[24]

The building of false optimism could not hold for long, as even the large purchasers who were buoying the market were forced to unload the stocks held for collateral every time prices rose. Then too, a Federal Reserve Board release showed that third quarter industrial production was 10 percent above that same period in 1928, but that there had been a decrease in such important barometers as automobiles and steel production. October 29 saw new selling, and this wave of liquidations omniously saw the paper values of the giants of American industry declining--United States Steel, American Telephone and Telegraph, and General Electric. The bankers, who met again at J. P. Morgan's office, did not announce further support of the market.[25]

The further decline in October brought grief and gloom to countless American families. No only did many persons see their own invested savings wiped out, but the general uncertainty created a cautious attitude among consumers who began to postpone the purchase of non-essential goods. This situation caused the wheels of industry to slow their pace. And as the gloom gave way to despair the optimistic mood of the public turned to one of bitterness and even hatred. A "personal devil" had to be found to account for such a great catastrophe. Too many statements had been issued by economists, financiers and government leaders that business was

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[24]Soule, Prosperity Decade, p. 308.

[25]Ibid., p. 310.

fundamentally sound and that stock prices had fallen too low already. Business began to look less sound and stock prices continued to fall. The fault must lie with the professional speculator, the public began to suspect. That speculator was now selling short to the detriment of a public which had entrusted their life savings to this elite priesthood which had promised that every man could ensure a life of comfort living on earnings from speculative securities.

At the outset of the depression even Hoover was willing to charge that America's own economic recklessness was responsible for the crash. His first annual message to Congress on December 3, 1929, pointed out at least a part of the economic folly of the New Era when he said: "The long upward trend of fundamental progress . . . gave rise to over-optimism as to profits, which translated itself into a wave of uncontrolled speculation in securities, resulting in the diversion of capital from business to the stock market and the inevitable crash."[26] However, when the depressed conditions did not abate, either through the operation of Hoover's trusted "natural business cycle" or the policies which he pursued, he moved further and further to the view that the depression had not begun in the United States but in Europe and that America could only accept a small share of the blame for the economic disaster.[27]

As the year 1930 dawned the need for firm leadership for the country

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[26]U. S., Congressional Record, 71st Cong., 2d Sess., 1929, LXXII, Part I, p. 23.

[27]Broadus Mitchell, Depression Decade: From New Era through New Deal, 1929-1941, (New York, 1947), p. 56. Also see Hoover's later reflections on the causes of the depression in The Memoirs of Herbert Hoover: The Great Depression, 1929-1941 (New York, 1952), pp. 2-4.

and the world had seldom been greater. However, official statements publicly indicated that the economic crisis was to be fought, for the time being at least, with optimistic utterances and platitudinous statements. Secretary of the Treasury Andrew Mellon, vacationing on his yacht off Nassau, predicted to reporters that the nation would make steady progress during 1930. The "greatest secretary of the treasury since Alexander Hamilton" was not alone in his optimism. A spokesman for the American Federation of Labor also expected 1930 to prove to be "at least a fairly good year."[28]

Hoover also indulged in the "Pollyanna game," but he did not sit completely idle. From the outset of the debacle he initiated several steps which he felt would restore the normal workings of the economy. The Federal Reserve Board loosened credit by lowering the discount rate. The Federal Farm Board, through commodity stabilization corporations, attempted to keep declining wheat and cotton prices from falling still lower. Earlier conferences with business and labor leaders, which John Kenneth Galbraith called "no-business meetings," had been held at the White House, and Hoover emphasized the need for maintaining wages.[29] The industrialists agreed, providing labor would keep down its demands. Labor leaders were not in a mood to press any points. One steel executive, George Laughlin, who attended the White House meeting pledged the aid of his industry through large construction programs for replacement

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[28] New York Times, January 1, 1930.

[29] Galbraith, The Great Crash, p. 144.

of antiquated and obsolete plants.[30] On the day following this meeting, J. A. Campbell, president of Youngstown Sheet and Tube Company, commented that Hoover's policies were "absolutely sound and constructive and for the best interests of the nation. . . ."[31] Hoover also persuaded governors and mayors to expand public construction to all practical limits.[32]

Hoover did, despite his frequent utterances that "prosperity was just around the corner," work hard at the presidency in trying to aid recovery along a little faster. His failure lay with his very conception of the economy and the roles which the government and individuals played in that economy. It is well-known that Hoover represented the last hold of the old laissez faire philosophy on the White House. As Secretary of Commerce during the administrations of Harding and Coolidge, he had promoted the efficiency of American business. His election to the presidency in 1928 indicated that the American people desired to continue the "businessman's government" in Washington, and Hoover was only too willing to please the public. He felt that the greatness of the United States had been built on individualistic enterprise, with a minimum of government interference. Government paternalism, be it unemployment insurance or the direct dole, would weaken the tough moral fiber of the nation. The duty of the government, as he saw it, was to keep spending

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[30] New York Times, November 22, 1929, p. 2.

[31] Ibid., November 23, 1929, p. 4.

[32] For Hoover's depression policies see Harris G. Warren, Herbert Hoover and the Great Depression (New York, 1959), pp. 114 ff.; William S. Myers and Walter H. Newton, The Hoover Administration: A Documented Narrative (New York, 1936), p. 1 ff.; and Ray Lyman Wilbur and Arthur M. Hyde, The Hoover Policies (New York, 1937), p. 1 ff.

to a minimum and keep the budget balanced. In prosperity or depression this was the only "American" course.

But as 1930 wore on, the mounting unemployment, the appearance of apple sellers on the streets, and the business and bank failures belied the assurances that the depression had just about run its course. Commercial failures rose from 22,909 in 1929 to 26,355 in 1930, but bank closings during that same period almost doubled in number. At the same time liabilities of businesses rose from $483,250,000 in 1929 to $668,284,000, while bank liabilities jumped from $218,797,000 to $908,158,000.[33] Industrial production also experienced a severe decline. Comparing July 1929 with July 1930, and using the 1923-1925 average as 100, the general index dropped from 124 to 94.[34] The Bureau of the Census conducted a survey during April, asking each person who reported a gainful occupation if he had been at work on the preceding day. Out of a total figure of 48,829,900 gainful workers, it was found that 2,429,062 persons who were able to work and looking for a job were unemployed. An additional 758,585 workers had been laid off without pay.[35] While these figures

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[33] U. S., Department of Commerce, Commerce Yearbook, 1932, II (Washington, 1932), p. 27.

[34] H. B. Butler, Unemployment Problems in the United States, International Labour Organization, Studies and Reports, Series C, No. 17 (London, 1931), p. 10.

[35] U. S. Bureau of the Census, Fifteenth Census of the United States, 1930. Unemployment, II (Washington, 1932), p. 2. Butler, in Unemployment Problems in the United States (p. 5), warns that these figures cannot be taken at face value, as many persons would not admit to being unemployed, while many others who reported "being laid off without pay" were simply holding out hope that they would be recalled to work.

indicate a general unemployment rate of 6.6 percent for all occupations, manufacturing employees showed a 12.8 percent unemployment rate.[36] The general employment index for July 1930, using 1926 as 100, was 81.6, while the earnings index was 75.9.[37] A special census taken on the same basis in January 1931, in twenty-one selected urban areas containing 9,465,987 gainful workers, showed unemployment, due to no fault of the employee, at 2,298,251.[38] The depression clearly was beginning to have physical as well as mental effects on the nation.

But what was the condition of the steel industry, the cornerstone of American industrialism, during this gloomy period of United States economic history? Because of the extreme importance of steel to the industrial machine of the United States, the production statistics, prices and profits of the steel industry were regarded by Wall Street as the most sensitive barometer of the general business condition of the country. Therefore, when the production of steel took an upturn early in 1930, Wall Street rejoiced at what appeared to be a leveling off of bad times. Brokers concluded that since the market crash in October business had been bad only when compared with the abnormally good conditions of the latter part of 1928 and the early months of 1929. There was some cause for optimism when figures revealed that ingot production

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[36] Fifteenth Census. Unemployment, II, p. 11.

[37] U. S., Department of Labor, Monthly Labor Review, XXXI (September, 1930), pp. 178-179.

[38] Fifteenth Census, Unemployment, II, p. 366. A later figure of unemployment during 1930 set the average at 4,340,000 out of a labor force of 49,820,000. U. S., Department of Labor, Handbook of Labor Statistics, 1950 edition (Washington, 1950), p. 35.

in February 1930, exceeded that of February 1929.[39] In addition, during the first quarter of 1930, operations rose from 70.22 percent of capacity in January to 84.88 percent in February, then declined only slightly to 82.60 percent in March.[40] The generally favorable production trend continued into the summer of 1930.

All was not well with the steel industry, however, as the price structure was crumbling. By April it was reported that prices were holding on bars, plates and shapes, but not on other products.[41] But even on those most important products the prices were getting softer, and it was generally believed in the industry that a serious price war might develop between competing companies for the available business. A serious omen occurred when, on April 1, U. S. Steel slashed prices on pipe four dollars a ton. An independent manufacturer stated in response to the cut in price that the Steel Corporation was responding to price cutting below the official quotations. Independents always had been able to meet lean times by selling below official quotations, and U. S. Steel had more or less winked at such acts. Thus, the price situation was viewed with some concern by members of the industry. Such a policy of the Steel Corporation might have been explained by the fact that its earnings for the first quarter of 1930 were $3.44 a share, compared with $5.04 a share during the same quarter of 1929.[42] Nevertheless, at the

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[39] New York Times, March 9, 1930, II, p. 11. Ingot production in February, 1930, was 4,067,971 tons, compared to 3,812,018 tons that same month the previous year.

[40] Ibid., September 9, 1930, p. 37.

[41] Ibid., April 20, 1930, p. 31. [42] Ibid., April 30, 1930, p. 32.

May meeting of the American Iron and Steel Institute, the president of Bethlehem Steel, after reviewing the early 1930 upturn, could say:

> Therefore--and this is one of the favorable factors underlying the whole steel situation--prices today and for more than a year past have been prices on which we could firmly stand our ground. Notwithstanding the last year's record output and demand, no price inflation occurred and we have therefore no reason to expect prices to fluctuate downward simply because our rate of operations happens to be less than it was a year ago.[43]

A few minutes later, however, Schwab's rival, James A. Farrell, president of U. S. Steel, warned:

> But a decrease in prices that indicates an intensive effort to dispose of products in a saturated market; or that is an attempt of the producer to carry on at full speed in spite of diminished purchasing power in his field of distribution; or that points to a development of competition beyond the stage of due regard for production costs and ethics is practically certain to lead to disadvantageous results.[44]

The optimism of Schwab and the warning of Farrell would soon be transformed into open anger at the continued price cutting.

For as the year passed the upturn vanished, price competition became more cut-throat and uneasiness gripped the steel leaders. During the summer of 1930 capacity operation declined from 68.73 percent in June to 59.46 in August. In August 1929 production had stood at 93.28 percent of capacity. A steady decline in production continued through the end of the year, falling to 38.57 percent of capacity in December 1930.[45] Business experts noted the rather strange phenomenon of the decreases being

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[43] American Iron and Steel Institute, Yearbook of the American Iron and Steel Institute, 1930 (New York, 1931), p. 34.

[44] Ibid., p. 38.

[45] New York Times, September 8, 1930, p. 37.

almost uniform each month. The explanation, they decided, was that certain consumers of steel, such as freight car, farm implement, automobile, and rail manufacturers carried a holdover business from 1929 into 1930, making the first quarter a favorable one, but then falling at intervals during the year.[46] And as production declined, so did prices. The American Steel and Wire Company reduced prices on wire two to three dollars a ton in May.[47] In June average steel prices were two dollars a ton under the low point of 1927, and it was reported that even these prices were being shaded.[48]

James A. Farrell put the price issue squarely before the industry in October:

> We must rehabilitate ourselves. We must be fair in competition. I don't like to say that, but that is the situation in the steel industry today. . . . There is no reason that when bids are opened on structural steel, for example, and the lowest bidder is ten or eleven dollars lower than the next lowest bidder, that this sort of thing would be continued indefinitely regardless of cost.[49]

Farrell and Schwab wanted to end price cutting and reduced profits. When the American Institute of Steel Construction met at Pinehurst, North Carolina, in November, its members resolved to stick to the "last price first" when submitting bids on structural steel. This resolution came after Farrell had called some of the most prominent steel construction executives into private conference and warned them against continuing the unprofitable practice of underbidding each other.[50] Action followed

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[46] Ibid., November 10, 1930, p. 37. [47] Ibid., May 5, 1930, p. 39.

[48] Ibid., June 2, 1930, p. 36.

[49] Yearbook of the American Iron and Steel Institute, 1930, p. 264.

[50] New York Times, November 1, 1930, p. 28.

talk when on November 10, Carnegie Steel Company, a subsidiary of U. S. Steel, announced a minimum price on bars, plates and shapes of $1.60 per hundred pounds. This was not a higher price, but it was the first definite stand to maintain prices in over a year.[51] Finally, on December 4, came the long-awaited word that U. S. Steel and Bethlehem Steel had posted new prices, from two to four dollars a ton higher on principal steel products. Other companies soon followed the price leaders' move. Wall Street greeted the news by saying that this development was most needed to instill confidence in business and industry.[52] Charles F. Abbott, executive director of the American Institute of Steel Construction, observed: "Steel has definitely marked the turn of the depression. That alone is the meaning of the price advance. . . ."[53]

The news of the price increase in steel was not universally favored, however. Senator George Norris of Nebraska took the floor of the Senate and denounced the increase:

> In the face of this patriotic move [cooperation in combatting the depression], which everybody wishes to help and to push along, we are faced with the announcement that the great steel combinations, the great steel corporations, commencing with the United States Steel and running all the way down through the entire list, have agreed upon an increase that amounts to more than $1 a ton in the price of their products. On the face of it, it looks to me as though such an agreement is a violation of the anti-trust laws.[54]

The trade magazine, Steel, expressed amazement at this "senatorial outburst" and lectured Norris on his understanding of steel economics,

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[51] Ibid., November 11, 1930, p. 37. [52] Ibid., December 4, 1930, p. 1.

[53] Steel, LXXXVII (December 25, 1930), p. 23.

[54] U. S., Congressional Record, 71st Cong., 3d Sess., 1930, LXXIII, Part 1, p. 176.

pricing policy and the general welfare. The editor said that if Norris had been familiar with the history of the steel industry "he would know that an upturn in prices after a long decline is to be welcomed insteac of condemned," and that firm steel prices at the end of a depression were "a necessary concomitant of the approaching return to prosperity." A final blast was fired at the senator when the editorial concluded: "As a matter of cold fact, the improvement in operations of the steel industry that will follow a definite, positive upturn in steel quotations will do more toward relieving unemployment than can be done by Senators Norris and Walsh and all of their colleagues in the halls of Congress."[55] The estimate of the editor might have been accurate, but circumstances developing in the new year would not allow the hypothesis to be tested.

In spite of the usual optimism expressed at the October meeting of the Steel Institute, it was reported that steel men gossiping in the hotel corridors expressed less buoyant sentiments.[56] Many persons in the United States, however, would have found it somewhat difficult to have had too much sympathy with the steel magnates, attired in their black ties and tails, and their wives clad in jewels and furs, who attended this semi-annual meeting at the Hotel Commodore in New York City. These unsympathetic persons were the thousands of steel workers who were either unemployed, or were working shorter hours on Hoover's "share-the-work" plan. The average index of employment for 1930, using

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[55] Steel, LXXXVII (December 11, 1930), p. 34.

[56] Ibid. (October 30, 1930), p. 23.

1923 to 1925 as 100, was 87.1, but the payroll index was only 84.4.[57] The special urban census taken in Pittsburgh in January 1931, revealed that of 22,970 gainful workers regularly employed in blast furnace operations and rolling mills, 5,902 were unemployed and seeking a job and 5,260 had been laid off without pay.[58] Furthermore, while the wage rate was generally maintained, the average number of hours per week was declining from fifty-one in December 1929 to 44.8 in December 1930.[59]

Steel leaders did attempt to maintain wages and took a great deal of pride when they accomplished this for as long as they did. Charles Schwab told the Pennsylvania Society of New York in December 1930: "None of us has been obliged to reduce the daily wage and we're not going to. The steel industry will maintain the living scale of its men. We've modernized our ideas--and that's a modern idea."[60] That same month, a steel trade journal editorialized:

> For the first time on record industry almost as a unit recognized and publicly declared its responsibility for the welfare of its employees. Leaders in the steel industry were among the first to announce they would not reduce wages, that they would give employment to as many employees as possible--that "the steel industry will take care of its own."[61]

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[57] U. S., Department of Commerce, Commerce Yearbook, 1932, II (Washington, 1932), p. 54.

[58] Fifteenth Census, Unemployment, II, p. 395.

[59] National Industrial Conference Board, "Average Hours of Work per Week per Wage-Earner, Iron and Steel Industry," National Archives, National Recovery Administration Files, RG 9 (typescript). Hereafter cited as NRA files.

[60] Steel, LXXXVII (December 18, 1930), p. 23.

[61] Ibid. (December 25, 1930), p. 34.

James Farrell, president of U. S. Steel, later chided those who urged a reduction of wages corresponding to the drop in prices. "Apparently those who advocate this solution," said Farrell, "have not stopped to weigh implications that, instead of tending to increase consumption of industrial and agricultural products, such wage reductions would inevitably reduce the purchasing power of the wage earner and restrict consumption."[62] Other steel leaders publicly agreed with Schwab, Farrell, and the trade journals.

The next year, 1931, was such that those noble and economically wise sentiments expressed during a year of hope came back to plague the very men who uttered them. For instead of the long-awaited upturn, the economy continued to fall and the steel industry plummeted with it. In fact, 1931 was a repeat of 1930, except that the situation became worse. Lower levels in production, consumption, and foreign trade in iron and steel products were reached in 1931 than in any other year in the industry's history. The tonnage of iron ore produced was 47 percent less than it was in 1930, totalling only 31,132,000 tons; the production of pig iron fell 42 percent to 18,426,000 tons; and steel ingots and castings declined 36 percent to 25,946,000 tons.[63] By August 1931, the steel industry was producing at only 37 percent of capacity, with no indications of a pick-up in business.[64] Prices continued to fall somewhat, but the leading companies made every effort to keep prices up. Carnegie Steel

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[62] Iron Age, CXXVII (January 22, 1931), p. 357.

[63] Commerce Yearbook, 1932, p. 309.

[64] Iron Age, CXXVII (August 6, 1931), p. 384.

announced a price increase of $1.70 per hundred pounds on bars, shapes, and plates in March.[65] In June another subsidiary of U. S. Steel, the American Sheet and Tin Plate Company, posted a two-dollar a ton increase on galvanized sheets.[66] The average announced price on shapes and plates in 1931 was $1.62 per hundred pounds compared to $1.69 in 1930.[67] The fall in posted prices was actually more serious than it appeared as companies were forced to make price concessions to buyers to secure the meager business available.

As production and prices continued to fall corporate profits vanished. The aggregate net loss in 1931 of twenty-seven steel companies was $14,622,526, compared with profits of $168,300,646 in 1930. This was the poorest earnings record in two decades. Eighteen companies showed profits, and, with one exception, most of the losses were confined to the smaller companies. This picture, gloomy as it may seem, was even worse. U. S. Steel reported a special non-recurring income in 1931, and, ommitting this, the companies' net losses were actually $33,964,185. Such solid companies as American Rolling Mill and Republic Steel showed net losses for 1931 of $3,098,445 and $9,034,153 respectively.[68]

Charles Schwab, however, was still able to speak with some optimism to members of the Iron and Steel Institute in May 1931, even though he admitted that business conditions were rather hampering his usual outlook. "The point which is particularly encouraging today," Schwab said, "is that

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[65] New York Times, March 19, 1931, p. 35.

[66] Ibid., June 16, 1931, p. 45.

[67] Statistical Abstract of the United States, 1936, p. 707.

[68] Iron Age, CXXIX (March 24, 1932), p. 736.

we have met this situation with much less fear, less distress, and with much more organized intelligence than in any previous period of hard times."[69] He challenged executives to stabilize business, reduce overhead costs and get good prices for their products, and then concluded:

> Boys, we have done a real job. I know of no meeting of the Institute at which we have been able to point to the evidence of more constructive effort. We have come through a severe liquidation period, and have adjusted our affairs in an orderly and effective way. We shall feel our way through the slack summer season, and if necessary we can face a much longer siege without alarm.[70]

James Farrell, however, was not so charitable to the "boys" of the Institute. In fact, Farrell delivered an icy indictment of many steel men when he said:

> When it is said, Mr. President, that wages have been stabilized in the industry--they have not. We are living in a fool's paradise if we think that every steel manufacturer in the United States has maintained what is generally known as the current rates of wages. . . . There has been honeycombing and pinching and that sort of thing. And even among the most talked of companies, the so-called big companies, the companies in the headlines quite frequently do not pay the standard rate of wages when it comes to the rate per hour and hours paid for part time. I am not going to mention the names of all of the companies in this room that have cut wages; I do not want to embarass them; but I think it is a pretty cheap sort of business when the largest companies in our industry are trying to maintain wages, for men who are working three days a week, and then cut that three days a week another 10 per cent.[71]

This diatribe must have fallen on many deaf ears, for numerous companies were now cutting wages and some persons were openly advocating a further wage cut.

A correspondent to Iron Age wrote: "All this agitation about wage maintenance is pure economic rot. . . . Workmen in my own factory tell me

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[69] Yearbook of the American Iron and Steel Institute, 1931, p. 36.

[70] Ibid., p. 38. [71] Ibid., p. 41.

they can buy much more for their dollar today than they could a year ago. Maintaining wages under those conditions is economically unsound."[72] The president of a small steel company also wrote to Iron Age saying that " . . . we cannot agree with the current propaganda that labor should not absorb its proper share of the adjustment through which we are now passing. . . . We must all sink or swim together."[73] The president of the American Federation of Labor, William Green, however, visualized a situation in which there would be no wages. If wages were cut, workers could not consume as many products of the factories, and materials would pile up in unsold stock. "In the end," Green warned, "production has to cease and then it is no longer a question of no reduction of wages but rather of no work."[74]

In spite of the arguments for and against a wage cut, U. S. Steel continued its policy of keeping the wage rate at its present level. A meeting of the steel corporation's board of directors on July 28, 1931, was viewed beforehand by many persons as being the preliminary step to announcing a downward revision of wages. It probably came as a surprise to many persons that instead of cutting wages, the corporation reduced dividends and announced a forthcoming reduction in salaries. Iron Age editorialized that "a downward wage revision by the world's largest steel company would have removed the strongest support of the policy enunciated at the Washington conferences early in the depression."[75]

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[72] Iron Age, CXXVIII (July 9, 1931), p. 136.

[73] Ibid. (July 23, 1931), p. 277. [74] Ibid. (July 2, 1931), pp. 51-52.

[75] Ibid. (July 30, 1931), p. 338.

The editorial concluded in approval of the corporation's action:

> Wage rates have not advanced since 1923, whereas there have naturally been numerous salary increases since that time. Moreover, wage income has been on a reduced basis for months--ever since rotating of jobs became necessary, while the losses of salaried men have been confined to reductions in incentive payments. In a word, the wage earners suffered first and most severely, and it is only in line with principles of equity that salaried employees and stockholders should assume their share of the burden of the depression.[76]

The president of a small steel company declared that the action of U. S. Steel established a precedent and would lend smaller industries much needed moral support in maintaining wages while paying smaller dividends.[77]

Officials of the various subsidiaries of U. S. Steel met with the general corporation executives on September 15, and this meeting proved to be the preliminary step in a reduction of wages.[78] One week later the New York Times announced on page one that U. S. Steel was cutting wages ten percent on October 1. Bethlehem Steel announced that it would follow this example. The wage break-through had occurred at last, and General Motors and the United States Rubber Company followed suit.[79] Apparently U. S. Steel had had to yield on principles as it had done during the price wars. Profits were becoming non-existent, and too many competitors simply would not go along with a high wage policy. President Hoover declined to comment on the wage action but was reported to be shocked and disappointed, especially since the cut had come at a time when it appeared an upturn in the economy was coming.

Other persons, however, were willing to speak out on the ominous

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[76] Ibid. [77] Ibid. (August 6, 1931), p. 391.

[78] Ibid. (September 17, 1931), p. 772.

[79] New York Times, September 23, 1931, p. 1.

turn of events. William Green called the wage cuts morally wrong and economically unsound, saying that the corporations "had subjected themselves to the charge of having broken a solemn pledge to President Hoover to maintain wages and by their action have contributed to the development of social unrest and industrial discontent."[80] Another labor leader, Patrick Fagan, head of the United Mine Workers Union in Pittsburgh, said:

> I am trying to figure out how cutting 40 cents a day from the wages of a steel mill laborer who is making $4 a day, or taking a dollar a day from the tonnage man who may be averaging $10 a day, will help things. The lower you reduce wages, the less the average working man can buy. . . . It is impossible to understand the philosophy of steel makers in reducing wages to rejuvenate a business. Such methods have been tried for centuries and history shows they were futile.[81]

In Congress few voices, either Republican or Democrat, were raised in defense of the wage action. Some voices were openly hostile. Senator Thomas Walsh declared: "I have not observed that the announcement was accompanied by any announcement of reduction in the steel companies' prices, which means, I suppose that the reduction was for the benefit of the stockholders and not the consumers of steel products."[82] But in late 1931 and through all of 1932, steel prices, as well as the economy of the steel industry in general, had a long way down to go. At the October 1931 meeting of the Iron and Steel Institute, Schwab opened his customary address by telling the assembled steel leaders: "I think it was just 10 years ago that I addressed this assemblage as 'Fellow millionaires'. . . . It seems to me that there is no more appropriate time, after 10 years, than to say: my friends, former millionaires and steel magnates of the United States."[83] Schwab later said: "We all regret having to take

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[80] Ibid., September 24, 1931, p. 1. [81] Ibid. [82] Ibid.

[83] Yearbook of the American Iron and Steel Institute, 1931, p. 513.

the wage action which was general throughout the industry the early part of this month. We held to the old wage rates as long as our balance sheets would permit. But with the liquidation of prices and values in all directions it was necessary to yield to economic law."[84] Gone from this meeting of the "steel magnates of the United States" was the usual joking and bantering among the rival executives of the giants of the industry. In fact the speeches of industry leaders were so solemn that for once a professional journalist, noted for his wit, was brought in to entertain the assemblage.[85]

Down, down, down went the steel industry, caught up by the depression which no one seemed to be able to solve. By 1932 a total of 12,060,000 persons had lost their jobs.[86] In the iron and steel industry employment and payroll indices, using 1923-1925 as 100, fell to 56.5 and 30.4 respectively.[87] U. S. Steel cut salaries and wages of employees 15 percent in May.[88] Only 13,681,162 long tons of steel ingots were produced, compared with 40,699,483 long tons in the unfavorable year of 1930.[89] Prices of plates and shapes declined to $1.58 per hundred pounds, down four cents from the preceding year and eleven cents from 1930.[90]

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[84] Ibid., p. 342.

[85] That journalist was Strickland Gillian of Washington, famous for his "Off again, on again, gone again. Finnegan," who concluded the meeting with some fifteen minutes of jokes.

[86] Handbook of Labor Statistics, 1950 edition, p. 35.

[87] Statistical Abstract, 1936, p. 325.

[88] New York Times, May 24, 1932, p. 37.

[89] Statistical Abstract, 1936, p. 705. [90] Ibid., p. 707.

Deficits of steel companies continued to mount, and the leading industry member, U. S. Steel, reported a net deficit of $91,891,868 in 1932, while experiencing its lowest rate of operations since the corporation's formation. The output of the Steel Corporation for the year averaged a meager 18.3 percent of rated capacity.[91]

Seemingly the economy of the country, and certainly that of the steel industry, had sunk as low as it could go. However, the nation had been greeted at every downturn by a chorus of optimistic statements from governmental leaders, business executives, and professional economists. But the events following each further slump always belied those fantastic outpours. As the breadlines grew longer, the number of apple sellers and soup kitchens increased and the forces of despair and misery swept the country, people stopped listening to those whom it was thought were the ones responsible for the great national calamity. President Hoover, with his insistence that state and local aid, supplemented by private charity, could adequately take care of the unemployed clearly had been proved wrong. His gestures toward stepped-up public works were too little and too late. While he was anxious to aid drought-stricken farmers to feed hungry livestock, he continually preached against doles as being un-American. And his new-found policy of increasing prosperity by permitting money to trickle down through the Reconstruction Finance Corporation, seemed too much like a "millionaires' dole."

The public continued to search for a "personal devil" to blame for the disaster which had befallen them, and they found several "devils"

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[91] New York Times, March 15, 1933, p. 25.

disguised as stockbrokers, bankers, corporation executives and finally as Republican government officials themselves. Business leaders, on the other hand, began an expanded search for the causes of the depression and more especially for a cure to that depression. They slowly began to reach differing conclusions from those of the general public. The body of business thought which developed during the early 1930's had much to do with the conception and eventual adoption of the National Industrial Recovery Act.

CHAPTER II

THE INDUSTRY DRIVE TOWARD ECONOMIC PLANNING

The Great Depression not only proved to be an ecomonic catastrophe for the business of America, but it proved to be a traumatic experience for businessmen as well. To be sure, traditional business thought--both the practical and the ideological--continued to be expressed. The crushing experience of seeing the world's greatest industrial machine fail, however, and fail because of an overabundance of production rather than because of scarcity, was disheartening and perplexing. The fear that people might become so disenchanted with a system which had promised but did not deliver economic democracy that they would demand a fundamental change was frightening. And the fear that the fundamental change might lead to increased governmental regulation at best, or to some form of government ownership at worst, led to some new currents of thought in the business community. These ideas were not "new" in the sense that they had never before been suggested, but in the sense that discussion was more widespread and acceptance of those ideas came more readily. Out of this myriad interplay of ideas, most of them old but some new ones as well, came the National Industrial Recovery Act.

The continuing dialogue, which had many pragmatic effects, was participated in, and in some cases initiated, by members of the steel industry. Early in the depression steel executives followed the usually accepted ideas that the economic upheaval was only a natural consequence of the business cycle. Since this cycle operated according to natural economic laws, there was little which could be done, especially by government, to bring about recovery. If depression was a natural consequence

of a capitalist economic system, then recovery would also come naturally. Only time could provide a cure. Governmental interference would simply retard recovery.

A constant theme among the utterances of businessmen, at least through the first two years of the depression, was that the business crisis was only temporary and would be short-lived. Thus, Hoover and his fellow governmental officials found ready agreement when they continued to reassert the theme that "prosperity was just around the corner." Robert P. Lamont, secretary of commerce under Hoover and later president of the American Iron and Steel Institute, optimistically stated in March 1930, that "Business will be normal in two months."[1] However, when the following December arrived and prosperity had not been restored, he again asserted that, "We have already weathered the worst of the storm and signs of stability and recovery are already appearing."[2] Charles M. Schwab told the Steel Institute in mid-1930 that, "All present indications are that 1930, in broad perspective, will prove a year of normal business progress."[3]

In addition to viewing the depression as only a temporary phenomenon which could not last very long, many business spokesmen attempted to present the idea that there was, in spite of temporary hardships, something healthy and even beneficial about a "readjustment" in the economy. Henry Ford said simply, "The crash was a good thing. . . . You watch!"[4] Some

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[1] Angly, Oh Yeah?, p. 25. [2] Ibid.

[3] Yearbook of the American Iron and Steel Institute, 1930, p. 35.

[4] New York Times, October 3, 1930, p. 1.

business leaders felt that stock prices had gone too high and that the liquidation of inflated prices was healthy for the total economy. Schwab asserted that "business is a lot healthier today than it was six or nine months ago because of the inevitable house-cleaning which has taken place."[5] An editorial in Iron Age explained the beneficial aspect of a depression as "clearing the track of surpluses." The editor explained:

> Economic changes are controlled, to a large extent by the law of averages. Thus we have the cyclical swings which alternately carry business volume above and then below the so-called "normal" line. When a period of inflation of demand has built up a consumption-production surplus, or excess over normal, it requires a period of sub-normal activity to strike the average. That is why time is a great healer of depression ills.[6]

There were also those who saw the depression as "marking the transition from the development stage of our economic growth to the less spectacular and more settled ways of industrial maturity."[7] Thus, the economic crisis was seen as an educational period during which time businessmen could reorient their thinking in line with the principles of a "mature economy." That line of thought held that the market had become saturated, and future profits would have to come from replacement business and the smaller sales made to a more slowly increasing population.[8]

There were sporadic forays by industrialists into economic thought regarding more definite reasons for the crash's coming when it did. Practical businessmen, however, were more interested in how recovery could be achieved and how soon it would come, rather than why things

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[5] Yearbook of the American Iron and Steel Institute, 1930, p. 35.

[6] Iron Age, CXXVII (January 22, 1931), p. 293.

[7] Ibid., March 12, 1931, p. 880. [8] Ibid.

were as they were. In their willingness to propose cures for the economy's illness, many business leaders revealed that they were not entirely sold on the traditional view that the business cycle would right itself through natural means. Schwab himself commented that he had lived through the panics of 1893, 1907, and 1914, and that "People, who say that business learns nothing from the past, are simply too young to know what they are talking about."[9] But the leaders of the steel industry generally talked in terms of these policies which would aid their own industry. The maintenance of prices and wages usually received top priority in industry leaders' speeches, but there were even more immediately practical suggestions for keeping profits from disappearing. Trade journals carried more articles than usual during 1931 on how steel companies could reduce overhead and eliminate waste in their operations. Companies were urged to carry out major construction work, expand their market, and to adopt more efficient marketing techniques.

All of this is not to imply, however, that businessmen did not engage in conversation on the long-range implications of the depression, general ways of curing economic distress and methods for perhaps insuring the nation against future economic breakdowns, especially of such duration and severity. As the depression became more severe this exchange of ideas increased. Naturally governmental policy received a major share of attention. The proper role of government was seen to be that of holding spending to a minimum and keeping the budget balanced. Yet, a prominent steel official commented favorably on public works' schemes and road construction undertaken by federal, state, and local governments. He

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[9] Yearbook of the American Iron and Steel Institute, 1931, p. 35.

warned, however, that "far-sighted industrial management recognizes that in the long run industry must of course rely for its recovery upon normal conditions; not outside aid."[10] A trade journal editorialized: "This country is in no predicament warranting the expenditure of the millions of dollars proposed by some members of congress. . . . Work created by the state, further than that actually required and as part of the function of the state, is but a step removed from Socialism."[11] Another journal warned in late 1931 that the upcoming session of Congress would be the occasion for raids or attempts to raid the national treasury for such things as veterans' bonuses and agricultural supports and that, "there is even the terrifying specter of a dole to all unemployed persons."[12] As an alternative to a dole, an employee of the city of Pittsburgh advocated local improvement projects carried out mainly through government loans.[13] Industrial leaders generally agreed with the principle of loans to business and openly supported the Reconstruction Finance Corporation established early in 1932.[14]

Such favorable comments on governmental aid to business, however, did not extend to proposals for direct aid to the unemployed industrial worker, the distressed consumer, or the hapless farmer. More suggestions of direct aid, especially from the government, to the unemployed

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[10] Ibid., 1930, p. 35.

[11] Steel, LXXXVII (December 18, 1930), p. 34.

[12] Iron Age, CXXVIII (August 20, 1931), p. 520.

[13] Ibid. (September 10, 1931), pp. 700-701.

[14] Ibid., CXXIX (January 21, 1932), p. 254 and (January 28, 1932) p. 297.

were branded as doles. Most businessmen agreed with Hoover in holding that the dole was un-American in that it destroyed initiative, self-reliance and personal incentive. Thus, almost anything was better than handing out public funds to the unemployed, especially when many of that group were suspected of simply malingering. However, it was only a minority which would have left the unfortunate to shift for themselves or suggested such unusual expedients as saving restaurant scraps to feed the needy. Most companies and their executives contributed to local relief funds. One firm sold fuel to employees at cost. Another matched employee contributions to relief agencies. A Wisconsin firm issued preferred stock to its employees to make up for a wage reduction.[15] The president of a New Jersey steel company contributed $10,000 of his own funds to his company for raising wages.[16] Several steel companies donated land for employees to use for growing their own gardens. Bethlehem Steel, for example, announced in the summer of 1932 that its employees had 22,427,960 square feet of land under cultivation with produce valued at $225,000.[17]

These private aids to the unemployed were sometimes offset, in the public's mind, however, by other company actions. Weirton Steel Company announced, for example, the establishment of an eighteen-hole golf course "for the benefit of the residents of Weirton, West Virginia," built on a rolling plateau overlooking the main works of the company.[18] Small

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[15] Ibid., CXXX (September 8, 1932), p. 382.

[16] Ibid. (August 25, 1932), p. 309.

[17] Ibid. (August 4, 1932), p. 188.

[18] Ibid., CXXIX (June 2, 1932), p. 1216.

comfort this announcement must have been to steel workers who were on short time or who were not working at all. The public image of the corporation was also unimproved when a group of Bethlehem stockholders filed suit against their company to stop the payment of large secret bonuses to Bethlehem executives. It was revealed that Eugene Grace alone received a bonus of $1,015,591 in 1930, and that from 1925 to 1928, when no dividends were paid by Bethlehem to its common stockholders, bonuses totaling $6,800,524 were paid to directors and executives of the corporation.[19]

As the depression extended into 1932 the optimistic prognostications of business executives gave way to statements indicating a mood of despair, fear and uncertainty. The usually redoubtable Eugene Grace of Bethlehem Steel announced in February that he would rather "pray than prophesy."[20] The panaceas of private charity, the attempt to keep wage rates intact and the share-the-work movement were not solving the problems created by the depression. Unemployment figures rose and more and more businesses closed their doors. The more severe the economic conditions became, the more unrest gripped the country. It was easy for a businessman to dismiss radical suggestions of departing from the traditional "free enterprise" system; however, when friends of the system, and even "captains of industry" themselves, became critical, many business leaders began to see that old shibboleths would not cure the ills of the nation.

President Nicholas Murray Butler of Columbia called that line of business thought which held that the nation would automatically recover

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[19] Ibid., CXXVII (March 26, 1931), p. 1062.

[20] Ibid., CXXIX (February 4, 1932), p. 353.

"easy diagnosis and smug prophecies."[21] In urging business planning Butler warned: "Gentlemen, if we wait too long, somebody will come forward with a solution that we may not like."[22] Even Wallace B. Donham, dean of the Harvard Business School, used the Soviet Union as an example of planning. Donham warned that, "The danger in our situation lies not in radical propaganda, but in lack of effective business leadership."[23] "Unemployment is a ghastly failure of industrial leadership," said Cardinal O'Connell of Boston. "What is the flaw in the capitalist system which has governed industry for a couple of centuries that it creates and cannot resolve this paradox," asked the eminent cleric.[24]

It was not that various ideas for concerted methods of doing business had never been suggested. Soon after the onset of the depression a number of suggestions were made as to the needs and ways of stabilizing prices and production. As early as December 1930, Charles F. Abbott, executive director of the American Institute of Steel Construction, told an assembled group of salesmen:

> Overproduction has seemingly made it necessary for some drastic experiments. As important as steel is to the national existence, the industry has consistently refrained from restricting output or depriving the public of its products. In the case of copper, sugar, coffee, rubber, wheat, cotton and other basic commodities,

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[21]Nicholas M. Butler, "A Planless World," in Charles A. Beard (ed.), America Faces the Future (Boston, 1932), p. 11.

[22]Ibid., p. 19.

[23]Wallace B. Donham, Business Adrift (Boston, 1931), pp. 33-36.

[24]Quoted in Arthur M. Schlesinger, Jr., The Crisis of the Old Order (Boston, 1957), p. 181.

> efforts which seemingly had their inspiration in price fixing seem to be the only practical remedy.[25]

Almost two years later Abbott told another group:

> Certainly no fair-minded business man wants to encourage any interference with the economic law of supply and demand during normal times. Price regulation or restraint of competition is not to be desired, but when business sinks to the low levels of the past two and a half years then there are grounds for exceptions. Public welfare becomes involved and it is far better to apply war-time measures of relief if in doing so our business interests can be saved and employment preserved.[26]

Another steel company executive said bluntly that his industry was "suffering from the natural consequences of our own stupidity. . . . Price stabilization means, first of all, that business men engaged in the same industry must substitute cooperation for cutthroat competition."[27]

It was felt by many observers, however, that the mere controlling of prices would not solve the problems facing the industry if productive capacity continued to expand faster than the ability of the market to consume. Just as the merger movement in the steel industry seemed to progress more rapidly during hard times, so too expansion was less expensive and swifter. For example in 1930 more new ingot capacity--3,830,550 tons--was added to the industry than at any time since the war boom year of 1915.[28] The next year saw thirty-eight new open hearth furnaces, with an estimated capacity of 4,075,000 tons, built by various members of the industry.[29] Many business leaders began to see this over-

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[25] Steel, LXXVII (December 25, 1930), p. 25.

[26] Iron Age, CXXX (July 7, 1932), p. 17.

[27] Ibid., CXXIX (March 10, 1932), p. 628.

[28] New York Times, April 12, 1931, II, p. 9.

[29] Iron Age, CXXIX (January 7, 1932), p. 58.

expansion as one of the major causes of the industry's distress. A correspondent of Iron Age commented: "The weak position of most mature businesses today is caused by over-expansion of plant capacity without due consideration of the fundamental question of whether or not the expansion of consumer demand has been in proportion."[30] An editorial in that journal itself stated: "One of steel's contributions to the unemployment crisis has been the building of open-hearth furnaces far beyond immediate needs."[31] The editorial concluded by asking if this were a wise policy.

Criticism that industry also had some responsibility for the security of its employees led to numerous suggestions that business itself furnish that security. In the spring of 1932 a group of railway union officials visited Hoover. In a mood of frankness they told the President:

> Mr. President we have come here to tell you that unless something is done to provide employment and relieve distress among the families of the unemployed. . . . we will refuse to take the responsibility for the disorder which is sure to arise. . . . There is a growing demand that the entire business and social structure be changed because of the general dissatisfaction with the present system.[32]

These apocalyptic words were not lost on some business leaders. For whatever its worth the steel industry had been a leader in the share-the-work movement since the onset of the depression.[33] This measure, however,

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[30] Ibid., CXXVIII (September 24, 1931), p. 815.

[31] Ibid., CXXVII (January 1, 1931), p. 110.

[32] New York Times, May 14, 1932, p. 1.

[33] U. S. Congress, Temporary National Economic Committee. Hearings on the Investigation of the Concentration of Economic Power. 76th Cong., 3d Sess., 1940, p. 14507. Hereafter cited as TNEC Hearings.

like so many others, only alleviated a portion of the total distress. Thus, James W. Hook, president of the Geometric Tool Company and a member of Hoover's Emergency Council, told industry that the maintenance of income of stable workers during depression was "the direct and pressing obligation of industry to the problem of mitigating the scourge of unemployment."[34] In proposing that industries create unemployment reserves Hook said:

> Society has already learned that saving a person from starving or freezing is not enough, and that, if such human effort destroys the person's self-respect and develops in him a permanent inferiority complex, it has made of him a continuing charge upon society and in some cases a menace as well. While solution of the unemployment problem is up to society as a whole, an important part of the solution is a definite responsibility of the industrial employer.[35]

The National Industrial Conference Board, with several industry leaders represented, proposed that a dismissal wage would be within the proper scope of good business practices. The Board used as an example a company which practiced the policy of giving severence pay to its employees when obliged to cut its work force or to close a plant entirely. The Board concluded that this policy's result was that, "instead of turning from their doors 2000 people with a grievance, bitter and ready to listen sympathetically to radical doctrine, this company by its liberal policy justified in the eyes of its former employees and those who came into contact with them not only the particular management, but the economic system under which it operated."[36] The NICB warned that if industry failed to provide "a constructive solution at least for the more pressing

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[34] Iron Age, CXXVIII (August 20, 1931), p. 511.

[35] Ibid. [36] Ibid., p. 517.

social problems that affect its employees, it may expect the decision to be taken out of its hands on matters that it should determine."[37] One businessman, however, expressed no faith in businesses' willingness to provide such social security measures. Ernest Du Brul, former manager of the National Machine Tool Builders' Association, told an Ohio audience: "Unemployment insurance would help to prevent unemployment as industrial compensation helps reduce accidents."[38] Du Brul, however, recommended that unemployment compensation costs to business be made compulsory, because, "Business will do nothing more after this depression than it has in the past, unless there is some compulsion."[39]

The stabilization of prices, the regulation of production and even the gathering of necessary data and the formulation of plans for various social security schemes presented what appeared to be a knotty problem to most businessmen who favored such schemes. The major hinderance, many reasoned, in developing concerted plans was the antitrust laws. Various industrialists had been recommending, almost since the passage of the Sherman Act, that that epochal law be either modified or repealed. The general reason usually given for this recommendation was that such a law was not realistic in an age where bigness had so much to contribute to the economic well-being of the nation. Those who favored the Sherman Act, however, held that it was the only method for preserving competition, and competition meant the preservation of free access to the productive market and the maintenance of lower prices to the consumer.

By the 1920's businessmen had decided that absolute free enterprise

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[37] Ibid. [38] Ibid., CXXIX (May 12, 1932), p. 1080. [39] Ibid.

meant wasteful cut-throat competition, unfair trade practices and business inefficiency. The Department of Commerce, under Secretary Herbert Hoover, encouraged businesses to organize into trade associations, to draw up codes of fair practice, and to share information on wages, production, construction and the like. Hoover even recommended the modification of the antitrust laws to allow an expansion of these activities.

The depression, and its effects on business, brought a renewed and heightened demand for modification of the antitrust laws. George M. Verity, chairman of the American Rolling Mill Company, told a Chicago conference of industrial leaders: "When the public at large comes to a full realization of the importance of greater stability in production, and how impossible it is for industry to do anything in a co-operative way to control that important factor, because of existing antiquated anti-trust laws, it will demand a sound modification of these laws."[40] In November 1930, the American Institute of Steel Construction at its annual meeting urged Hoover to appoint a commission to study how such a modification would benefit industry.[41] The following month Hoover recommended that Congress inquire into the working of the antitrust laws:

> I do not favor repeal of the Sherman Act. The prevention of monopolies is of most vital public importance. Competition is not only the basis of protection to the consumer but is the incentive to progress. However, the interpretation of these laws by the courts, the changes in business, especially in the economic effects upon those enterprises closely related to the use of the natural resources of the country, make such an inquiry advisable.[42]

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[40] Steel, LXXVII (October 30, 1930), p. 44.

[41] Ibid. (November 6, 1930), p. 58.

[42] U. S., Congressional Record, 71st Cong., 3d Sess., 1930, LXXIII, Part 1, p. 35.

Two days later, however, the announcement by steel companies of a price raise brought forth the wrath of such antitrust senators as George Norris and Thomas Walsh who suggested that the Department of Justic might well look into violations of the Sherman Act.[43]

In spite of Hoover's luke-warmness toward revision and the outright opposition of powerful political leaders, the demand for modification of the trust laws continued through 1931 and 1932. Virgil Jordan, an economist for Business Week, told a smaller industries' management conference that antitrust laws had become "pro-trust" laws because they were forcing small industries into mergers or bankruptcy, thus concentrating power in the hands of big units.[44] In January, 1932, Charles F. Abbott, recommended to President Hoover the suspension of the antitrust laws for at least two years as an "emergency reconstruction measure."[45] Some quarters, however, began to advise caution on the drive to get antitrust modification. The commissioner of the National Metal Trades Association wrote the editor of Iron Age:

> It is my belief that under present-day political psychology greater freedom for industrial combinations cannot possibly be secured without equivalent concessions in respect to governmental supervision of business. Political opinion will not at this stage of our development extend any power to the industrialists which might result in oppressing the public without surrounding that power with governmental restraint to protect the public.[46]

The commissioner warned that liberalizing the antitrust laws might aid labor unions and lead to governmental regulation of business.[47] The

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[43] Ibid., p. 176. [44] Iron Age, CXXVIII (August 20, 1931), p. 512.

[45] Ibid., CXXIX (January 28, 1932), p. 300.

[46] Ibid. (February 25, 1932), p. 518. [47] Ibid.

editor of Iron Age concluded:

> The belief appears to be growing, in industry and business, that it will be well to move slowly in the matter of anti-trust law revision. One reason is that conditions are not now propitious for legislative experiment in the field of economic policy. Another is that perhaps the administrative attitude toward these existing laws needs revision more than the laws themselves.[48]

The ideas contained in that editorial were answered by the annual report to Congress of Attorney General William D. Mitchell. The Attorney General recommended that Congress consider amending the antitrust laws but that until Congress did act the Department of Justice had to proceed under the existing laws irregardless of business conditions. Mitchell warned, however, that if the restrictions against combinations were withdrawn, the public would have to be furnished governmental protection against excessive prices.[49]

If the antitrust laws were revised to allow some sort of collective action, what form would that action take and how would it be accomplished? Industry leaders were in general agreement on these questions. Since most industries in similar lines were organized in some sort of trade association, it was thought that those associations could form the agency to promote business cooperation. A strengthened and more active trade association, in fact, became the concomitant panacea with modification of the antitrust laws in curing both the causes and effects of the depression. Charles Abbott asserted: "The only known relief from our present difficulties is through the activities of our industrial trade associations. Industrial

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[48] Ibid. (February 4, 1932), pp. 361-363.

[49] Ibid., CXXX (December 8, 1932), p. 889.

associations are not only essential in promoting progress, but they are a necessary benefit to members, to customers and to the public."[50]

A trade association was a "non-profit organization formed by independent business competitors to promote their common advantage." The trade association movement had its birth during the latter decades of the nineteenth century and became especially characteristic of United States business, as opposed to European cartelization. But like the cartel, the trade association grew up at a time when most businessmen began to look upon most competition as "cut-throat" in nature. This competition could be escaped either by mergers or by agreements to stop competing. Both methods were adopted from time to time and the trade association became a device to at least define the ground rules for competition.

Most writers on the trade association movement make a point of showing that after 1900 trade associations became, instead of pooling devices, simple service organizations. As such they performed such services as distribution to members of trade information, standardization and grading of products, interchange of prices on past transactions and price quotations, the establishment of uniform trade rules (usually in codes of fair trade practices), and many other similar projects. The United States Chamber of Commerce in 1933 listed sixty-eight separate functions of the trade associations along such lines. One writer on trade association activity, however, holds that these activities give "only a half picture of the trade association movement." Simon Whitney writes:

> Not nearly so much energy would have gone into this work if its only purpose had been to carry on the service activities mentioned. It is not general advice and assistance to the members, but the desire

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[50] Ibid. (July 7, 1932), p. 889.

> for industrial control, which is the driving force behind the whole movement. Legislative, statistical and technical aid may be helpful to business men, but the elimination of over-production and price cutting is vital. The real core of the trade association movement has lain in its attack on free competition--an attack in which it finally obtained support from the law when the National Industrial Recovery Act was passed.[51]

The effectiveness of industrial control by the trade associations, however, was restricted by the antitrust laws; hence the concurrent drive for more effective trade associations was coupled with the campaign for relaxed antitrust activity.

Beginning in 1919 the Federal Trade Commission began holding trade practices conferences. Members of a particular industry would meet with the Commission and adopt codes of fair practices. The FTC would then announce that it approved the code or certain provisions of the code, thus committing themselves to enforce those provisions. Other provisions could be accepted but did not carry the enforcement commitment. A final category of provisions could be disapproved, thus making them ineffective as far as the law was concerned. As the years passed more and more codes contained provisions which the FTC felt it could not enforce because of possible conflicts with the antitrust laws. Business became so enthusiastic over the possibilities of establishing such comprehensive codes, however, that in the late 1920's the trade conferences became more numerous, most of them being called by the trade associations themselves. The Commission decided in 1931 to call a halt to what they considered questionable activities of the trade associations. The FTC began a revision of the existing codes "to tighten up on the associations, which, it has been said, were leaning too heavily toward price fixing, more or less indirectly,

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[51]Simon N. Whitney, Trade Associations and Industrial Control (New York, 1934), p. 38.

and in the direction of a lessening of competition."[52] Even Hoover proved to be a disappointment to the trade associations' desire for expanded activity. During his presidency the Department of Justice launched eight dissolution suits against trade associations and was successful in five of those suits. Thus, the trade association conferences under FTC auspices slackened greatly in 1932, only seven such conferences being called.[53]

Business leaders thus took their demands on antitrust modification and trade association liberties into the public arena. Iron Age editorialized:

> American industry is facing a period when "concerted" action will be found indispensable. If we are to avoid a repetition of the bitter experience of the past 18 months of depression, some way must be found to avoid overproduction. . . . The one feasible American way of approaching this problem is through mutual planning and understanding among trade associations, which bring together, in related groups, nearly all of our present producing units.[54]

Very simply, stated C. H. Smith, vice president of the American Drop Forging Institute, "Price stabilization means, first of all, that business men engaged in the same industry must substitute cooperation for cutthroat competition."[55] Smith concluded that antitrust modification and greater trade associational activities would bring that cooperation.[56]

Industry's proposals for its own planning, however, could not be kept out of the general discussion of national economic planning. For as

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[52] Journal of Commerce, CXLVII (March 31, 1931), p. 1.

[53] Whitney, Trade Associations and Industrial Control, pp. 53-56.

[54] Iron Age, CXXVII (March 19, 1931), p. 952.

[55] Ibid., CXXIX (March 10, 1932), p. 628. [56] Ibid.

the depression wore on it seemed as if almost everyone had some sort of a plan, ranging from single uncomplicated palliatives to the more radical schemes along the lines of the Soviet Five-Year Plan. A large part of the public became amateur economists, interested in speculating on the direction which the economy should take and avidly reading the schemes put forth in periodicals and books by the professional economists and journalists. In 1931 the Book-of-the-Month Club issued I. I. Marshak's New Russia's Primer: The Story of the Five Year Plan. The Club's large audience was able to read:

> We have a plan.
> In America they work without a plan.
>
> We have a seeding campaign.
> In America they destroy crops.
>
> We increase production.
> In America they reduce production and increase unemployment.
>
> We make what is essential.
> In America hundreds of factories consume raw materials and energy in order to make what is altogether unnecessary.[57]

Nicholas Murray Butler, president of Columbia University, told an audience that, "the characteristic feature of the experiment in Russia . . . is not that it is communist, but that it is being carried on with a plan in the face of a planless opposition. The man with a plan, however much we dislike it, has a vast advantage over the group sauntering down the road of life complaining of the economic weather and wondering when the rain is going to stop."[58]

Most businessmen, however, were not buying a Soviet plan, nor indeed

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[57]Quoted in Joseph Dorfman, The Economic Mind in American Civilization, V (New York, 1959), p. 631.

[58]Ibid., p. 632.

any plan which projected the government's having a dominant position in the economy. James Hook, president of the Geometric Tool Company and chairman of the New England Council's industrial committee, called for planning, but cautioned:

> I most certainly do not mean a Soviet Russia type of planning, conceived by a central autocratic planning commission and forced upon industry by an all-powerful dictator. I mean rather a type of planning that stirs individual management to its highest efforts and that enables that management to check its actions and policies with successful methods used and proved elsewhere to have been possible and effective. I mean a kind of planning that will squarely face the evils of unbridled competition, destructive governmental restraint, absentee ownership and security-jobbing financial profiteering.[59]

Thus, it was competition that needed to be regulated, and the concerted action of industry itself, not governmental direction, could control competition. The editor of Iron Age wrote: "We pride ourselves sometimes that these are the days of law and order in which 'might' does not make 'right'! But when the big corporation uses its purchasing power and the lever of present conditions to squeeze its small suppliers' bids to the point where profits vanish, is it not analogous to the days of the hairy arm and the studded club?"[60] A few months later Iron Age commented on those who objected to planning on the grounds that it would destroy individualism. The editorial said: "The rugged individualism of the steel industry . . . and the insistence on sticking to the principle of 'get the business regardless of profit' has eaten away its earning power and dissipated its assets. . . . Less insistence on pure individualism and more effort toward cooperation instead of cut-throat competition seems to be indicated as profitably in order."[61]

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[59] Iron Age, CXXVIII (September 24, 1931), p. 835.

[60] Ibid., CXXIX (January 28, 1932), p. 305.

[61] Ibid. (March 3, 1932), p. 577.

Proposals for economic planning continued to fill the air and business interests, while still proposing their own programs, were kept busy combatting those which they thought inimical to their interests. The popular economist Stuart Chase proposed a Peace Industries Board, modeled on the old War Industries Board, to give government supervision over major industries. The labor leader Matthew Woll called for a Business Congress, sitting continuously under government supervision, with no limits on their planning powers, even to the extent of fixing prices or combines. Charles A. Beard proposed that a National Economic Council be established to develop a master plan for the economy, with each industry-grouping governed by subsidiary syndicates.[62] Iron Age deplored the "radical" suggestions being advanced and added:

> Greenbackism is dead and free silver is dead, but the psychology of these earlier depressions is plain to be seen in the reception now given to various proposals for social and economic legislation. . . . Most of the agitation against the present economic order will do more to retard than to help recovery from this depression. Some things have been wrong with business, but defects in the structure or in the way it is used are not going to be remedied by bombing the foundations.[63]

One business economist was wary of almost any proposal for a planned economy, saying that a planning board "would be turned over to practical administrators, chosen primarily with respect to their ability to get along with men, and with respect to their acceptibility to controlling political groups, and instead of economic planning we should get political compromise."[64]

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[62]Appendix in J. George Frederick (ed.), The Swope Plan: Details, Criticism, Analysis (New York, 1931), n.p.

[63]Iron Age, CXXVII (February 12, 1931), p. 526.

[64]Benjamin M. Anderson, "A Planned Economy and A Planned Price Level," Chase Economic Bulletin, XIII (June 9, 1933), p. 9.

The first comprehensive economic plan which met most of the conditions acceptable to the business community came from the president of General Electric, Gerard Swope. On September 16, 1931, Swope, who had been associated with Hull House and the War Industries Board, set forth his plan before the National Electrical Manufacturers Association. Prefacing remarks by stating concern for the plight of the unemployed worker, Swope proposed a comprehensive program for the self-regulation of business. He stressed that there was nothing new or original in his proposal but that he was only "bringing together well-considered propositions that have found support, including some that have been put into actual practice."[65] Swope stressed that legislation would be required to put the plan into operation. The Swope Plan provided that all industrial and commercial companies with fifty employees or more doing an interstate business could form a trade association. These associations would establish trade practices rules, coordinate production and consumption, and stabilize prices. Uniform accounting practices and access to company books would be necessary for such coordination. Provision was to be made for some agency of the federal government to supervise the activities of the trade associations. Workman's compensation, life insurance, pensions and unemployment and disability insurance were to be provided for employees through their own and company contributions. All companies that met the legal requirements could adopt the plan when it went into effect. However, they were forced to join before the expiration of three years.[66] Thus, Swope proposed the cartelization of the major part of American industry.

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[65] Frederick, The Swope Plan, p. 24. [66] Ibid., pp. 19-40.

The reaction to Swope's proposal was rather quick in coming and generally favorable. Bernard Baruch endorsed the plan at a reunion of former executives of the War Industries Board.[67] The steel industry was generally enthusiastic. Their organ of opinion, Iron Age, commented:

> Whatever comes of the Swope plan . . . the trade association movement has been helped measurably by it. Industries without such organizations may see a new purpose in them. . . . Many industries probably need the beneficient dictator, or the firm referee, one who points the path to be followed and does not have to consider what may be the decisions of the courts on any law involved.[68]

Charles F. Abbott said: "The Swope plan in its demand for compulsory membership in a trade association . . . and other similar movements are all indicative of public thinking."[69]

There were some observers, however, who had misgivings about the Swope Plan, either because of its limitations or because of its entire conception. The Outlook held that the advancement of this plan as a means of achieving security for the workmen seemed "like using an elephant gun to kill a wolf." The Outlook's writer said that he was amused to see such a plan receiving such sympathetic support from so many conservative leaders and publications, but added that "such support is but another illustration that conservatives can with perfect impunity advocate ideas which would get radicals shot at sunrise."[70] The Nation had grave misgivings about the cost to employees of the various social insurance

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[67] New York Herald Tribune, November 12, 1931, p. 1.

[68] Iron Age, CXXVIII (September 24, 1931), p. 840.

[69] Ibid., CXXX (July 7, 1932), p. 17.

[70] The Outlook, LIX (September 30, 1931), p. 139.

schemes provided by the plan, but greater doubts still as to the amount of control which the government would have over production control and price fixing.[71] The socialist leader, Norman Thomas, criticized the plan because it still emphasized the profit motive. "The plan is weak," said Thomas, "because Mr. Swope's underlying philosophy is still weaker."[72] And it was not only the "radicals" who criticized the plan. H. Parker Willis, the editor of the New York Journal of Commerce, found no use for any plan, saying that "almost everybody is waiting impatiently for some scheme or other to be evolved which will save him from himself."[73]

The issue had been drawn, however, and almost everyone seemed to favor some plan. Business in general, and the steel industry in particular, was now constantly chanting the word "co-operation" as a means of alleviating the economic distress and preventing such catastrophe in the future. "I would like to join any kind of society or a small group or a large group," explained Tom Girdler of Republic Steel, "and start out on a 100 per cent faith in each other basis and take off our coats and tackle this job and make a little profit out of the steel industry."[74] Price stabilization and production control were the keys to the demands for cooperation and planning and calls for "ethical business practices" mainly meant refraining from price cutting. Even the old free enterprise objective of competing for all the business one could get was giving way. A sales manager for a manufacturing company wrote to Iron Age: "After all, the most that any manufacturer can hope to do is to supply his share of the available demand."[75]

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[71] The Nation, CXXXII (September 30, 1931), p. 323.

[72] Quoted in Frederick, The Swope Plan, pp. 88-89. [73] Ibid., p. 100.

[74] Yearbook of the American Iron and Steel Institute, 1930, p. 170.

[75] Iron Age, CXXVIII (September 24, 1931), p. 815.

The steel industry moved forward in preparing for any eventuality which would give the trade association a greater role in economic planning. In August, 1932, the American Iron and Steel Institute chose Robert P. Lamont, secretary of commerce in the Hoover administration, as their new president. Iron Age called Lamont's appointment "the most significant step the industry has taken in the 24 years of Institute history."[76] Much of the daily press speculated that Lamont's appointment meant that the steel industry had chosen a "dictator" to enforce cooperation on the industry. Again Iron Age commented that even though the word dictator was not accurate, yet "that word probably describes in part the leadership for which the steel trade is ready, in view of its disastrous experiences of many months."[77] To assist Lamont, George H. Charls, who had been president of the National Association of Flat Rolled Steel Manufacturers, was chosen by the Institute.[78] At the only meeting of the Institute held in 1932, Charles Schwab announced that the board of directors of AISI had "determined to broaden the scope of this body." Schwab continued: "The Institute has done good work in the past, but in times when we have so many problems in common, it is important to have a more invigorated policy, to extend our facilities for presenting a united front for our industry. We have added to our personnel, added to departments and begun to organize programs of constructive work for the benefit of the industry."[79] The transition from private trade association to public code authority under the NRA was not difficult for the American

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[76] Ibid., CXXX (August 11, 1932), p. 231. [77] Ibid.

[78] Ibid. (October 6, 1932), p. 547.

[79] Yearbook of the American Iron and Steel Institute, 1932, p. 28.

Iron and Steel Institute.

CHAPTER III

BIRTH OF THE NRA

The misery and despair of an entire nation was capsuled into a few words uttered by the man who had tried to provide effective national leadership since the crash of 1929. On the day of his leaving office a weary Herbert Hoover said: "We are at the end of our rope. . . . There is nothing more we can do."[1] The President was a humane man and his spirit must have been at its lowest ebb, not only because the depression had grown worse in spite of his efforts, but also because the people had rejected his leadership by turning him out of office in the midst of the great crisis.

The results of the election of 1932 had never seemed to be in doubt. The old political aphorism that the Democratic party could nominate "a yellow dog or a rag baby" and still win was accepted by most Democrats as being a truism. But even though his election appeared to be a foregone conclusion Franklin D. Roosevelt campaigned as if he were fighting a tough, almost impossible battle. Besides being a consummate politician and well aware of the tribulations awaiting the man chosen to lead the nation during one of its most critical periods, Roosevelt remained calm, confident, and buoyant throughout the arduous campaign. Pledging himself to a "new deal" for the American people Roosevelt called for "bold, persistent experimentation" by the government.[2] Whether because

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[1]Quoted in Arthur M. Schlesinger, The Crisis of the Old Order (Boston, 1957), p. 1.

[2]Samuel I. Roseman (ed.), The Public Papers and Addresses of Franklin D. Roosevelt, Vol. I: The Genesis of the New Deal, 1928-1932 (New York, 1938), p. 646. Hereafter cited as Public Papers of Franklin D. Roosevelt.

of the disenchantment with Hoover's methods and policies or because of some responsive chord struck in the minds of the people Roosevelt was swept into office in a landslide.

It was a gray and dreary day on March 4, 1933, when Roosevelt took the oath which made him the 32nd President of the United States. The weather added only additional gloom to the mood of the people who had experienced three years of ever-mounting economic depression and decay. Nearly 13 million Americans were jobless and the national income was one-half what it had been four years before. Large numbers of factories had curtailed production, laid-off employees, and had finally closed their doors. Retail businesses began to slash prices as consumers ceased to purchase goods, either because they lacked the money or because they were saving funds for fear of eventual unemployment.

The condition of the steel industry was no exception to the general rule of economic distress. In February U. S. Steel reduced its regular quarterly dividend to one-half percent, or fifty cents a share. This was the first time in the company's history that dividends fell below an annual rate of seven percent. The justification for this reduction was not hard to find. The Steel Corporation had experienced a net operating deficit of $31,949,937 in 1932;[3] ingot production had fallen from 10,082,398 tons in 1931 to only 4,929,236 tons in 1932; and of a total working force of 158,032 persons only 18,938 had been employed full-time. U. S. Steel's total payroll in 1931 was $266,871,413, but it dropped in

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[3] Iron Age, CXXXI (February 2, 1933), p. 208.

1932 to $133,912,809.[4] These statistics concerning the world's largest steel company applied on a smaller scale to the rest of the industry. The twenty leading steel companies in the United States showed losses of $150 million in 1932 compared to deficits of a little over $16 million in 1931.[5] In January 1933, the steel industry was operating at 17.87 percent of capacity. By March operations had fallen to 15.8 percent.[6] On March 14, due to the banking crisis, Chevrolet closed its plants indefinitely, while Ford's River Rouge plant was operating only a few departments. Steel's biggest customers had ceased to operate.[7]

It is little wonder that the nation took heart to hear the new president assure them in his inaugural address that "the only thing we have to fear is fear itself. . . . "[8] Roosevelt made it very clear when he asserted, "This Nation asks for action, and action now," that he intended to provide that action.[9] The nation did not have long to wait. On the very day he took office Roosevelt issued two proclamations--the first declaring a nation-wide banking holiday and the second summoning Congress into special session. On March 9 Congress met in its first regular session, beginning what has been called the greatest barrage of presidential ideas and programs known to American history.[10] Roosevelt sent fifteen messages to Congress and guided fifteen major laws to enact-

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[4] Ibid. (March 16, 1933), p. 437. [5] Ibid., p. 8.

[6] Ibid. (April 13, 1933), p. 598. [7] Ibid., CXXIX (March 16, 1932), p. 441.

[8] U. S., Congress, House, Inaugural Addresses of the Presidents of the United States, 82nd Cong., 2d Sess., 1952, House Doc. 540, p. 225.

[9] Ibid., p. 226.

[10] Arthur M. Schlesinger, The Coming of the New Deal (Boston, 1959), p. 20.

ment from the first day of the session until June 15. Generally designed to produce relief, recovery, and reform, these laws ranged from the Emergency Banking Act to the Agricultural Adjustment Act, to the Federal Emergency Relief Act. One of these laws sought to fulfill all three functions and was characterized by Roosevelt himself as "the most important and far-reaching legislation ever enacted by the American Congress."[11] This law, of course, was the National Industrial Recovery Act.

It was only natural that the issue of recovery would have occupied much of Roosevelt's thoughts and planning, both during the campaign and in the early days of his new administration. Perhaps the address which most clearly outlined the philosophy of candidate Franklin Roosevelt and portended much of the later New Deal was that delivered before the San Francisco Commonwealth Club on September 23, 1932. Roosevelt asserted that every man had a right to make a comfortable living as part of the general rights of life, liberty, and property. Thus:

> The implication is, briefly, that the responsible heads of finance and industry instead of acting each for himself, must work together to achieve the common end. They must, where necessary, sacrifice this or that private advantage; and in reciprocal self-denial must seek a general advantage. It is here that formal Government--political Government, if you choose--comes in. Whenever in pursuit of this objective the lone wolf, the unethical competitor, the reckless promoter, the Ishmael or Insull whose hand is against every man's declines to join in achieving an end recognized as being for the public welfare, and threatens to drag the industry back to a state of anarchy, the Government may properly be asked to apply restraint. Likewise, should the group ever use its collective power contrary to the public welfare, the Government must be swift to enter and protect the public interest.[12]

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[11] Franklin D. Roosevelt, On Our Way (New York, 1934), p. 97.

[12] Public Papers of Franklin D. Roosevelt, I, pp. 754-755.

Other pre-election addresses amplified this theme. Speaking at a Jefferson Day dinner in St. Paul on April 18, Roosevelt denounced Hoover's methods of dealing with the depression as a "panic-stricken policy of delay and improvisation" and contrasted them with the "considered, relevant measures of constructive value" employed by Woodrow Wilson in meeting the World War I emergency. The War Industries Board, the Food and Fuel Administrations, the War Trade Board and other such economic planning and directing agencies were used as examples by the candidate to show what steps a democracy could take to meet a national crisis. Roosevelt concluded:

> I am not speaking of an economic life completely planned and regimented. I am speaking of the necessity, however, in those imperative interferences with the economic life of the nation that there be a real community of interest. . . . I plead not for class control but for a true concert of interests. The plans we may make for this emergency, if we plan wisely and rest our structure upon a base sufficiently broad, may show the way to a more permanent safe-guarding of our social and economic life to the end that we may in a large number avoid the terrible cycle of prosperity crumbling into depression. In this sense I favor economic planning, not for this period alone but for our needs for a long time to come.[13]

Thus, Roosevelt predicated a new direction for the government and business if he were elected.

This insistence on collective business responsibility to the public did not differ in spirit from that of Theodore Roosevelt or Woodrow Wilson, but Franklin Roosevelt had a more direct experience with a type of business cooperation than most of his predecessors. In the 1920's he had worked with Secretary of Commerce Herbert Hoover in forming the American Construction Council to bring some order and stability into the huge but chaotic

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[13] Ibid., p. 632.

construction industry. The Construction Council was in reality a huge trade association made up of 250 smaller trade associations. As president of the Council until 1928 Roosevelt saw his task as guiding the construction industry into working out its own salvation. Roosevelt said: "Muddling through has been the characteristic method employed by the construction industry for the last few years. There has been no system, no cooperation, no intensive, national planning."[14] Roosevelt proposed that the Council develop a code of ethics, stabilize production and gather statistics through cooperation among industry members. He recognized, of course, that "a good many difficulties stood in the way, including the United States Government and the Department of Justice."[15] Whether or not he made any lasting contributions to the construction industry or to trade association activities, the business of the Council greatly increased under Roosevelt's leadership.

To prepare for the 1932 campaign Roosevelt drew around him a group of specialized intellectuals who had one central thought in common--that the federal government had to take a more active role in economic life. Three of the four original members of this "brain trust", Raymond Moley, Adolph Berle, and Rexford Tugwell, were Columbia University professors. The fourth member was Samuel I. Roseman who gradually became more involved in political matters and was replaced by General Hugh S.

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[14] New York Times, June 4, 1922, p. 1.

[15] Quoted in Daniel R. Fusfeld, The Economic Thought of Franklin D. Roosevelt and the Origins of the New Deal (New York, 1956), p. 107. This valuable volume contains a good discussion of Roosevelt's trade association activities.

Johnson. One of Roosevelt's speech writers later told of the relationship of this unique group to the candidate:

> Mr. Roosevelt had developed his political philosophy long before the depression began and long before he met any member of his brains trust. The brilliant gentlemen in that group were among those who helped to apply Mr. Roosevelt's philosophy to the specific conditions of 1932-33. Mr. Roosevelt did not recruit his professional advisors to provide him with a point of view; he drew them to him because their point of view was akin to his own.[16]

Tugwell, in his Industry's Coming of Age, accepted the development of increased productivity and argued that large-scale operations should be encouraged by a watchful government. Trade associations had a role to play in the setting of higher standards for the industry involved. Above all industry should serve the general welfare.[17] His views on how to achieve this goal were contained in The Industrial Discipline and the Governmental Arts published in 1933. An effective system of planning, including governmental incorporation of business firms, would direct industry into the channel of greater productivity.[18] Berle cooperated with Gardner C. Means in writing The Modern Corporation and Private Property in which they discussed the economic ramifications of the separation of ownership from management in the modern corporate structure.[19] While Berle and Means did not anticipate the role of government in this

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[16]Ernest K. Lindley, The Roosevelt Revolution: First Phase (New York, 1933), p. 7.

[17]Rexford G. Tugwell, Industry's Coming of Age (New York, 1927), pp. 118 ff.

[18]Rexford G. Tugwell, The Industrial Discipline and the Governmental Arts (New York, 1933), pp. 200-216.

[19]Adolph A. Berle and Gardner C. Means, The Modern Corporation and Private Property (New York, 1933), p. 345.

condition, Tugwell's conclusions seemed to offer acceptable solutions.

The main source of the Brain Trust's philosophy on the relationship between government and business and the background ideas eventually expressed in the NRA legislation, was Charles Van Hise's Concentration and Control.[20] The brain trusters discussed Van Hise's ideas "endlessly" during the 1932 campaign and finally embodied that philosophy in a memorandum for Roosevelt's use which Samuel Roseman delivered to Roosevelt at Warm Springs, Georgia, on May 19, 1932. The memorandum stressed the belief that the federal government must play a more active regulatory role in the economy and develop controls to "stimulate and stabilize economic activity." The third point of the document rejected the Wilson-Brandeis philosophy of returning America to a nation of "small proprietors, of corner grocers and smithies under spreading chestnut trees." Moley wrote:

> We agreed that the heart of our difficulty was the anarchy of concentrated economic power. . . . We believed that any attempt to atomize big business must destroy America's greatest contribution to a higher standard of living for the body of its citizenry--the development of mass production. We agreed that equality of opportunity must be preserved. But we recognized that competition, as such, was not inherently virtuous; that competition . . . created as many abuses as it prevented.[21]

This memorandum became the standard for much of the economic philosophy and policy of the New Deal.

The reaction of the business world generally to the election of Roosevelt was not unfavorable. However, most industrialists reserved judgment until his policies emerged.[22] The stand to be taken on the

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[20]Raymond Moley, After Seven Years (New York, 1939), p. 184.

[21]Ibid., pp. 23-24.

[22]For example see Iron Age, CXXX (November 17, 1932), p. 772.

tariff and currency caused great apprehension, but the general relationship of government to business also caused anxiety. During the presidential campaign there had been a call for divorcing politics from economics. An Iron Age editorial stated:

> And politics must be divorced from economics if we are to win our battle with his non-partisan depression. Business this year is neither Republican nor Democratic. It is too hard pressed by conditions to be interested in party labels. It is no time for a tug of war; we must all pull together.[23]

There were occasional murmurs from the business community about some of the measures rushed through during the Hundred Days, but conditions had been bad for too long and at least there was movement.

Now that an administration was in office which called for experimentation, there was a flurry of activity among those who had been advancing economic planning since the depression began. The United States Chamber of Commerce had become very active in demanding self-government in industry. On May 5, 1932, the Chamber passed a resolution stating its credo on this matter:

> Those who are best equipped to solve the problem of industry are those who themselves are engaged in industry. For common action that is timely, our industries have trade associations through which they can act quickly or which they can adapt for action. Each trade association representative of its industry or branch, in accordance with its conditions and in conference with the appropriate agency of the government, should be permitted to promulgate fair rules for industrial production and distribution, to improve the status of labor, the industries of the nation and the public welfare.[24]

That, in essence, was what the National Industrial Recovery Act provided.

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[23] Ibid., CXXIX (June 16, 1932), p. 1315.

[24] New York Times, May 6, 1933, pp. 1 and 7.

The culmination of this line of business thought and its advocacy, however, could only come in the legislative halls and, during the first months of the New Deal, only with the approval of Roosevelt. It has often been pointed out that Roosevelt was no theorist and that the various New Deal programs came as day-to-day projects and improvisations.[25] The New Deal itself, however, had been foreshadowed by Roosevelt in his Commonwealth Club address, by the New Nationalism ideas of his Brain Trust and by FDR's own underlying concept of the public good. The first month of Roosevelt's administration, however, was directed toward banking relief and agricultural problems, with the industrial crisis being deferred until later. But then on April 6, 1933, the Senate passed the Black bill and the administration was forced to apply its industrial philosophy to a piece of concrete legislation.

The Black bill (S.B.158), introduced in the Senate by Hugo L. Black of Alabama, prohibited the interstate shipment of goods produced by labor working more than six hours per day and five days per week. Exceptions were made for those engaged in transportation, agriculture, and general office work. This bill was both in response to an old campaign of organized labor to shorten working hours, as well as to a desire to meet the depression emergency by shortening hours to provide more employment. Such a scheme had been endorsed by William Green, president of the American Federation of Labor, James J. Davis, secretary of labor under Hoover, Representative Fiorello H. La Guardia and even Hoover himself. Industry had been employing a shorter work-week scheme since

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[25] James M. Burns, Roosevelt: The Lion and the Fox (New York, 1956), p. 198.

the depression had become severe.[26]

Black defended his bill on the floor of the Senate and before committee hearings by arguing that purchasing power would be increased. Black commented: "Labor has been underpaid and capital overpaid. This is one of the chief contributing causes of the present depression. We need a return of purchasing power. You cannot starve men employed in industry and depend upon them to purchase."[27] In reply to criticisms that business would lower wages to meet increased labor costs, Black asserted that public opinion and organized labor pressure would keep wages up.[28]

The Black bill passed the Senate by a vote of fifty-three to thirty only three days after it was introduced, having first weathered a proposed amendment which would have increased the maximum hours to thirty-six. On April 3 the House Labor Committee had also reported favorably a companion bill sponsored by Representative William P. Connery of Massachusetts. Speaker of the House Henry T. Rainey, however, deferred action on the Connery bill until all of the administration's "reconstruction" legislation had passed. The implication was that the Black-Connery bill was not a part of the Roosevelt recovery program.[29]

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[26]Charles F. Roos, NRA Economic Planning (Bloomington, 1937), p. 29.

[27]Quoted in Ibid., p. 30.

[28]Ibid. See also U. S., Congress, Senate, Committee on the Judiciary, Hearings, Thirty Hour Work Week. 72nd Cong., 2d Sess., 1933; and U. S., Congress, House, Committee on Labor, Hearings, Six-Hour Day--Five Day Week. 72nd Cong., 2d Sess., 1933.

[29]Roos, NRA Economic Planning, p. 31.

It was indeed true that the Black bill came as a surprise to Roosevelt and caught him unready to recommend a plan of his own. Secretary of Labor Frances Perkins has said that when she talked with the President about the Black bill his mind was as "innocent as a child's" of any such program as NRA.[30] In addition to catching the administration off-guard, hearty protests arose from industrial circles. Business was generally favorable to a regulation of hours and wages but only as a part of a larger "plan" for industry-government cooperation. An editorial in Iron Age expressed fear of what the Black bill might mean to industry and the worker:

> Manufacturing industry in the United States is now on a basis of profitless operation, despite wage reductions. The exceptions are so few as merely to prove the rule. A 25 per cent curtailment in working hours, under these conditions, inevitably mean a similar reduction of income of those now employed. There being no profits, this dole must come from wages. It means lowering the employed workers' standards of living another 25 per cent.[31]

Robert P. Lamont, president of AISI, objected to the plan on the grounds that it would restrict American industrial sales abroad, would allow foreign goods to flood American markets and eventually cause the closing of more factories and more unemployment.[32]

These objections, plus the lack of endorsement by Roosevelt, did not deter the Senate from refusing to reconsider passage of the Black bill by a vote of fifty-two to thirty-one on April 17. Evidently, to forestall the passage of the bill in the House, Secretary Perkins sub-

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[30]Frances Perkins, The Roosevelt I Knew (New York, 1946), p. 197.

[31]Iron Age, CXXXI (April 13, 1933), p. 597.

[32]Ibid. (May 11, 1933), p. 746.

mitted a substitute measure on April 18 providing for governmental control of production, wages, and hours. At this point dissent came from other quarters. William Green objected to the power given to industrial boards to fix minimum wages because he feared they would become maximum wages.[33] Enough confusion had been injected into the picture to give the administration time to submit its own comprehensive program for industrial recovery.

Such a comprehensive program had been the subject of many conferences and much work before the Black bill passed the Senate. This activity, however, had proceeded without the advice, direction, and knowledge of the President. The origins and development of the NIRA is somewhat clouded because of subsequent conflicting statements and because of the number of persons actually involved in the planning stages. Essential agreement, however can be found in the recollections of those who were engaged directly or indirectly in the activities leading up to the submission of the NIRA to Congress.[34]

Throughout April a number of developments took place which led to the formation of the NIRA. Senator Robert Wagner had introduced a bill favoring larger RFC loans for public works. A former New York congress-

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[33]Roos, NRA Economic Planning, p. 32.

[34]For personal recollections on the origin of the NIRA see, Raymond Moley, After Seven Years, pp. 184-190; Hugh S. Johnson, The Blue Eagle from Egg to Earth (New York, 1935), pp. 193-204; Frances Perkins, The Roosevelt I Knew, pp. 197-200; Hugh S. Johnson, "Background of the NRA," Saturday Evening Post, CCVI (June 30, 1934), pp. 5-7, 87; and "Birth of the NRA," Unsigned Memorandum, NRA Papers, NA. For a contemporary synthesis based oninterviews with many of the principals see John T. Flynn, "Whose Child Is the NRA," Harper's, CXLIX (September, 1934), pp. 387-393.

man, Meyer Jacobstein, called on Wagner to explain his ideas on loans to industry which would be guaranteed by the government. Wagner was interested and suggested that Jacobstein join Harold Moulton of the Brookings Institution in exploring the idea and then make a recommendation. The Jacobstein-Moulton report to Wagner recommended that the government make loans to light industry, and Wagner added this feature to his pending bill. Wagner then went to Roosevelt with the bill, and Roosevelt suggested further study.

Wagner called a meeting soon after his conference with Roosevelt. Gathered in Wagner's office were Jacobstein and Moulton; David L. Podell, a trade association lawyer; Fred I. Kent, vice-president of the Bankers Trust Company; Jett Lauck, an economist with the Railway Brotherhood; James Rand, president of Remington-Rand; Colonel Malcolm C. Rorty; Representative M. Clyde Kelly of Pennsylvania; Virgil Jordan of McGraw-Hill Book Company and president of the National Industrial Conference Board; and Simon Rifkind, Wagner's secretary. There were about as many ideas presented as there were individuals in the group. Wagner was mainly interested in public works, while Podell wanted a relaxation of the antitrust laws. Moulton and Kent favored governmental aid to business, either in loans or guarantees of profits. Finally, after much discussion and the finding of a common meeting ground, a draft bill was prepared. This bill contained the essence of the later NIRA, minus the licensing clause and guarantees of labor rights. Provisions called for public works, trade association control of production and fair trade practices, shorter hours of labor, prohibitions against price-cutting, and approval of various agreements among business groups. The bill was sent to the

Labor Department for review, and when it came back it contained a clause guaranteeing labor the right to bargain collectively. Wagner, however, had many doubts about the bill and decided to hold more conferences.[35]

Another group in the meanwhile was working along the same lines as the Wagner group. John Dickinson, assistant secretary of commerce and a lawyer closely identified with big business interests, had a number of economic plans similar to those proposed by the Chamber of Commerce. Somehow he was able to get together with Jerome Frank, the general counsel of the Department of Agriculture, who was interested in ideas of national economic planning advanced by Soule, Beard, and Chase. Frank and Dickinson were invited to join the Wagner group. In addition the U. S. Chamber of Commerce, in the person of H. I. Harriman, its president, and John P. Frey, president of the Metal Trades Section of the AFL, joined in the discussions. Most of the drafting was left to Frank, Podell, Dickinson and Rifkind. By the end of April some six draft bills had been prepared, none of which satisfied everyone.[36]

By this time the Black bill was forcing Roosevelt to act. Shortly before, he had appointed Raymond Moley to direct the efforts toward an industrial recovery plan. Moley already had files of letters and plans which suggested methods of bringing about business recovery, but he had so many other responsibilities that he did not have much time to devote to these suggestions. He did, however, give the files to James Warburg and asked him to choose the best plans, to talk with their authors, and make a report on his findings. Warburg carried out the assignment and

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[35] Flynn, "Whose Child Is the NRA," p. 390; and Roos, NRA Economic Planning, pp. 38-39.

[36] Ibid.

recommended that the government guarantee industry against losses for a stipulated period in return for a share in any profits. He also proposed that the government make every effort to stimulate the movement of producers' goods rather than concentrating on consumers' goods. Finally, Warburg added a draft message for the President's use in advancing these ideas and arguing for the "regimentation" of industry.[37]

Moley was not greatly impressed with these suggestions and thought that more time should be given for government and business sentiments to crystalize. He reported this decision to FDR on April 4 and the President agreed. However, on April 6 the Black bill passed the Senate and the administration was forced to act. The first tactic was to allow Perkins to recommend her own ideas as an amendment to the Black bill. When the amendment became public, however, there was such an outcry against it that a new direction had to be found. Roosevelt then directed Moley to get in touch with the various groups in Washington working on business-government cooperation plans, particularly the Chamber of Commerce and the Brookings Institution. Moley spent two days in conversations with the two groups but was so pressed with other work that he made little headway. On April 25 Moley ran into Hugh Johnson in the Carlton Hotel, an event which was to have a far-reaching effect on the NRA and the New Deal.[38]

Johnson, who had just returned from a hunting trip in South Carolina with his employer Bernard Baruch, had worked with the Brain Trust and then on the New Deal's farm bill. Moley poured out the story of the difficulty he was having on an industry bill and asked Johnson: "Will you, in

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[37]Moley, After Seven Years, pp. 185-186. [38]Ibid., pp. 187-188.

heaven's name, come over to my office and take all the material I've got and do this job for F. D. R.? Nobody can do it better than you. You're familiar with the only comparable thing that's ever been done--the work of the War Industries Board." Johnson immediately accepted and moved into Moley's office, using Bob Straus as an assistant.[39] As Johnson later wrote: "I never went back to New York from that day to the end of my service except to get my clothes and rarely even so much as saw my own family."[40]

Johnson was a logical choice for the task of drafting the recovery legislation. A West Point graduate and later an officer under John J. Pershing in the Mexican campaign against Pancho Villa, he had developed a sense of what regimentation implied. He had drafted the selective service legislation for World War I and had served on the War Industries Board. Following World War I he had been associated with George N. Peek in the Moline Plow Company and helped Peek develop the McNary-Haugen farm plan. Thereafter Johnson became an employee of Bernard Baruch, serving as an economic adviser, researcher, and confidante.

Johnson's experience on the WIB probably had a more profound effect on his ideas of business-government relations than any of his other experiences. As a member of the WIB Johnson became accustomed to issuing directives to trade associations which, according to Johnson, sometimes "involved an agreement to sell within certain price limits, sometimes to sell only under certain conditions and to certain classes of purchasers, sometimes they involved curtailment in production and sale

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[39] Ibid., p. 188. [40] Johnson, The Blue Eagle, p. 193.

throughout the industry, sometimes standardization of type, restrictions in the use of materials, and instructions as to shipping. In a few instances the Government actually directed a monopoly in a particular commodity."[41] Johnson also thought that in an emergency the government could require complete cooperation from business. Thus, he wrote: "Conservation, priority, curtailment, price-fixing, all required such co-operation and agreement within each industry that the Government was constantly exhibited as requiring in its hour of peril the very things which it had been for years denouncing as criminal."[42] The WIB experience, the military discipline and the experience with Peek and Baruch formed the basis of Johnson's work on the NIRA legislation and later as administrator of the National Recovery Administration.

Johnson had discussed his philosophy with Moley on March 9 on a train ride from New York to Washington. He told Moley that he was afraid that the farm bill would raise prices so fast that people in the cities would be met by a crushing burden. Therefore, there had to be a corresponding stimulation to industrial re-employment and such emergency action could provide the beginnings of business-government cooperation which would fit Roosevelt's long-range plans.[43] Johnson used these ideas, and those he had developed over a year in discussion with Alexander Sachs, in the work he did in feverish haste in his Treasury Department office. Douglas told Johnson that Roosevelt wanted a short bill drawn up in the broadest terms. Johnson therefore put his ideas on two pages of foolscap.

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[41]Quoted in Roos, NRA Economic Planning, p. 13. [42]Ibid.

[43]Moley, After Seven Years, p. 185.

At this point Johnson found out that he was not the only person working on such a plan. Johnson later wrote that neither he nor Moley had known of other efforts when they met at the Carlton Hotel.[44] Moley put Johnson in touch with Dickinson, then listened to their wrangling over the relative merits of their two bills.[45] A couple of days later Johnson joined the Wagner group and promptly became the dominating figure. Johnson and Dickinson were soon given the responsibility for developing the final draft and Donald Richberg, an attorney for various labor organizations, was brought in to write a labor section for the act. A second, and longer, bill was drawn. In this measure the President was granted authority to organize industry, to allow trade associations to regulate prices, production, and trade practices, and to set wages and hours. The Sherman Act would naturally have to be suspended, but more revolutionary was the power given to the President to license industry.[46]

While this activity was taking place, Roosevelt's cabinet became involved. Jim Farley, Harold Ickes, and Frances Perkins were pressing Roosevelt for a public works bill but were constantly opposed by Lewis Douglas, Director of the Budget. At a cabinet meeting Douglas said: "Mr. President, I have heard in the last few days of a plan being worked out here in Washington. It is so far-reaching, so compelling, so thoughtful, that it takes in every economic factor. I am positive that if it can be developed, that it will do for our economic system in a very short time

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[44]Johnson, Blue Eagle, p. 193. [45]Moley, After Seven Years, p. 188.

[46]Flynn, "Whose Child Is the NRA," p. 392.

what could never be done by the public works scheme."[47] Douglas, however, would not elaborate on the plan. Perkins later learned from Isador Lubin, commissioner of labor statistics, that a plan was being worked out in Wagner's office. Two or three days later Henry Wallace told Roosevelt at a cabinet meeting that he had learned of the work on such a plan and asked the President to look into it before endorsing the Black bill. Roosevelt answered laughingly, "The Secretary of Labor is going to testify on the Black bill, but not wholeheartedly." Perkins persuaded Roosevelt that if such a plan was being developed that a cabinet officer should be included. Roosevelt contacted Rexford Tugwell and Perkins was invited to sit in with him and Johnson. Johnson was not too happy to have Perkins around but eventually showed her his plan. It was at this point that Perkins called William Green, and the labor provision was added to the draft.

Roosevelt waited patiently for the result of these meetings. In his second fireside chat, on May 7, he talked of "a partnership between government and industry . . . not partnership in profits . . . but rather a partnership in planning and a partnership to see that plans are carried out." Moley, who assisted Roosevelt in drafting this address, said to Roosevelt: "You realize, then, that you're taking an enormous step away from the philosophy of equalitarianism and laissez-faire?" After a few minutes silence, Roosevelt answered gravely: "If that philosophy hadn't proved to be bankrupt, Herbert Hoover would be sitting here right now. I never felt surer of anything in my life than I do of the soundness of of this passage."[48] Three days later Roosevelt called those who were

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[47]Perkins, The Roosevelt I Knew, pp. 197-198.

[48]Moley, After Seven Years, p. 189.

drafting the recovery legislation to the White House and told them to lock themselves into a room until they could come up with a bill generally acceptable to all.

Johnson, Wagner, Dickinson, Richberg, and Perkins hammered out the final version of NIRA in Douglas' office. Occasionally, Tugwell, Rorty, Baruch, and Henry Harriman dropped by for consultation. After a few sessions officials of the departments of Labor, Agriculture, and Commerce stopped participating because of their other duties. A great amount of fireworks punctuated the meetings. Douglas tried to knock out public works; Dickinson was discourteous to Johnson; but Tugwell sided with Johnson and the bill was finally completed on May 15.[49]

The NIRA was a product of years of business thought and months of direct work on the specific bill. It was later charged that NIRA was the product of left-wing intellectuals. Johnson said, however, that there was not a "practicing professor in the lot." Even though Johnson asked Tugwell to assist in drafting the measure, he refused. The Recovery Act contained specific suggestions made by the AFL, the U. S. Chamber of Commerce, and the American Manufacturers Association. Commenting on the final bill Johnson said, "If I were asked to produce the sinister group that dictated it, I would have to name as part of it some of the ruggedest industrial individuals in the United States."[50]

The National Industrial Recovery Act was divided into three

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[49]Donald Richberg, My Hero (New York, 1954), pp. 164-165.

[50]Johnson, "Background of the NRA," p. 87.

parts.[51] Title III contained only some technical language concerning the Reconstruction Finance Corporation and does not concern this study. Title II on public works may be regarded as a separate act and likewise has no real interest for a study of government-business cooperation. Thus, "Title I - Industrial Recovery" was the heart of the law which brought together the many "plans"which had been advanced since the onset of the depression. The original draft of the act was passed, with some modification, on June 13, 1933.

Section 1 of the NIRA declared that a national emergency existed which had produced "widespread unemployment and disorganization of industry," thereby burdening interstate and foreign commerce, affecting the public welfare, and undermining the standards of living of the American people. The policy of Congress was therefore declared:

(1) to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and

(2) to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups,

(3) to induce and maintain united action of labor and management under adequate governmental sanctions and supervision,

(4) to eliminate unfair competitive practices,

(5) to promote the fullest possible utilization of the present productive capacity of industries,

(6) to avoid undue restriction of production (except as may be temporarily required),

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[51]The text of the National Industrial Recovery Act used in this study is H.R. 5755 in Lewis Mayers (ed.), A Handbook of NRA: Laws, Regulations and Codes (Washington, 1933), pp. 4-26. This volume also contains other basic documents pertaining to the NIRA. Various supplements were issued containing executive orders, amendments and court decisions under Title I as The NRA Reporter (Washington, 1933-1934).

(7) to increase the consumption of industrial and agricultural products by increasing purchasing power,

(8) to reduce and relieve unemployment,

(9) to improve standards of labor, and

(10) otherwise to rehabilitate industry and to conserve natural resources.[52]

Section 2 empowered the President to establish the required agencies, appoint personnel and delegate any of his functions and powers to those officials. Finally, Section 2 permitted the President or Congress to end the act before its two-year expiration date if either decided that the emergency declared by Section 1 had ended.[53]

Section 3 provided for codes of fair competition and set certain standards and procedures for the code making. A trade association or an industry group could present a code which the President would approve if he were satisfied that the trade group was truly representative of the trade or industry for which it purported to speak and if there were no inequitable restrictions to membership in the group. Furthermore, the codes submitted had to satisfy the President that they were not designed to permit "monopolies or monopolistic practices," nor to "oppress small enterprises." The right to be heard was granted for "persons engaged in other steps of the economic process" if they belonged to a code group and felt that their welfare stood to be affected by the operation of such code. The President was empowered to approve a code subject to certain modifications which he believed necessary for the protection of consumers, competitors, and employees, and he could make exceptions to, and exemptions

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[52] Handbook of NRA, p. 4. [53] Ibid., pp. 4-5.

from, the codes when he thought it necessary. Once a code had been approved it became legally binding on the trade or industry concerned and violators could be proceeded against by the Federal Trade Commission. United States District Attorneys were empowered to institute equity proceedings in district courts to restrain violations of the codes, and fines up to $500 for each day of violation could be imposed. Section 3d empowered the President to impose a code on an industry after hearings if an industry group did not submit its own code. Finally, Section 3 gave the President control over imports if a Tariff Commission investigation revealed that such actions were necessary to make the codes effective.[54]

Section 4 allowed the President to enter into agreements with, and approve agreements among or between, persons engaged in trade or industry, labor organizations and trade organizations which he felt would effectuate the purposes of the law.[55] Section 4b was limited to one year's duration and greatly expanded the President's power. It authorized him, whenever he found "that destructive wage or price cutting or other activities contrary to the policy of this title" were being practiced, and after a public hearing, to license business enterprises. As one economist stated: "The licensing provision, giving the President the power of life or death over business enterprises, was the ultimate weapon of enforcement and the

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[54] Ibid., pp. 5-7.

[55] Roosevelt later used this provision in promulgating the President's Reemployment Agreement, popularly called the "blanket code."

capstone of the powers granted to the President."[56]

Section 5 exempted any code, agreement, or license and any action complying with the provisions thereunder from the provisions of the antitrust laws. This section also provided that nothing in the act could prevent an individual from pursuing manual labor or selling the products therefrom, or prevent anyone from selling or trading the produce of his farm. Section 6 allowed the President to require certain information from trade associations and to employ the Federal Trade Commission to make investigations to enable him to carry out the provisions of the law.[57]

(1) that employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in the self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;

(2) that no employee or no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and

(3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.[58]

The remainder of Section 7 allowed the President to approve agreements on wages, hours, and conditions of work mutually agreed upon by employers and employees but to impose a limited code containing provisions for those conditions if a voluntary one was not reached.[59]

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[56]Leverett S. Lyon and Others, The National Recovery Administration: An Analysis and Appraisal (Washington, 1935), p. 12.

[57]Handbook of NRA, pp. 7-8. [58]Ibid., p. 9. [59]Ibid., pp. 9-10.

Section 8 defined the relationship of the Agricultural Adjustment Act to the NIRA. Section 9 was a special provision for the regulation of the oil industry. Section 10, the final provision, authorized the President "from time to time [to] cancel or modify any order, approval, license, rule, or regulation," and provided that every code had to contain an express provision to that effect. Violation of any rule or regulation issued by the President to effectuate the NIRA could be punished by a fine up to $500 and/or imprisonment not exceeding six months.[60]

On May 17 Roosevelt sent a special message to Congress accompanying this piece of legislation. The President wrote:

> My first request is that the Congress provide for the machinery necessary for a great cooperative movement throughout all industry in order to obtain wide reemployment, to shorten the working week, to pay a decent wage for the shorter week, and to prevent unfair competition and disastrous overproduction. . . . One of the great restrictions upon such cooperative efforts up to this time has been our antitrust laws. They were properly designed as the means to cure the great evils of monopolistic price fixing. They should certainly be retained as a permanent assurance that the old evils of unfair competition shall never return. But the public interest will be served if, with the authority and under the guidance of Government, private industries are permitted to make agreements and codes insuring fair competition. However, it is necessary, if we thus limit the operation of antitrust laws to their original purpose, to provide a rigorous licensing power in order to meet rare cases of noncooperation and abuse.[61]

The National Industrial Recovery Act was introduced into the House of Representatives (H.R.5755) and the Senate (S.1712) that same day.

The recovery bill went almost immediately to the House Ways and Means Committee. There the major activity concerned Section 7a. While the drafting committee had worked on the bill for some time, no one had

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[60] Ibid., pp. 10-11.

[61] U. S., Congressional Record, 73d Cong., 1st Sess., 1933, LXXVII, Pt. 4, p. 3549.

given much thought to such a guarantee to labor. Frances Perkins had seen this important omission and called in William Green, president of the American Federation of Labor, for consultation. He thought that the bill as written could be used "as a method for putting the labor unions out of business" and suggested a guarantee of labor's right to organize and bargain collectively.[62] Hugh Johnson thought that he was not sufficiently aware of the ramifications of such a task and at this point called in Donald Richberg to aid in drafting the provision. When the bill reached the Ways and Means Committee there was danger that even the rather general provision concerning labor would be weakened.

Green came before the committee, however, and made suggestions which he felt would plug the loopholes. The original bill's language did guarantee workers the right to organize and bargain collectively, but Green insisted that the words be added: "And shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." He also insisted that the words "company union" replace the general term "organization" so that the clause would read: "That no employee and no one seeking employment shall be required as a condition of employment to join a 'company union' or refrain from joining a labor organization of his own choosing." The House committee incorporated these changes and brought the bill to the

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[62]Perkins, The Roosevelt I Knew, p. 199.

floor of the House on May 24.[63]

The chairman of the Ways and Means Committee, Representative Edward Pou of North Carolina, introduced a resolution on May 25 calling for the House to resolve itself into a committee of the whole to consider the bill. The resolution further provided that debate on the bill would last only six hours and no amendments except those suggested by the Ways and Means Committee would be entertained. Pou announced that this was the procedure which Roosevelt wanted and that amendments would imperil the bill. With the "gag rule" thus imposed, congressmen began to discuss the measure. Pou led off by stating: "It is very true that under this bill . . . the President of the United States is made a dictator over industry for the time being, but it is a benign dictatorship; it is a dictatorship dedicated to the welfare of all the American people."[64]

This opening gave opponents of the bill ample room for their assault. Representative Harry Ransley of Pennsylvania cried that the recovery act "Russianizes the business of America." He continued: "It makes orders from Washington final as to your business. There is no appeal, not even to the courts. It imposes penalties for disobedience of orders that will emanate from Washington. And still we call this the land of the free!"[65] Republican Congressman Carl Mapes of Michigan compared the legislation with that which made Hitler dictator of Germany, and concluded: "This legislation spells Government interference with

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[63] U. S., House, Committee on Ways and Means, Hearings on H.R. 5755. National Industrial Recovery, 73d Cong., 1st Sess., 1933, pp. 95-122.

[64] U. S., Congressional Record. 73d Cong., 1st Sess., 1933, LXXVII, Pt. 4, p. 4188.

[65] Ibid.

business with a vengeance."[66] It was left, however, to Representative James Beck of Pennsylvania to deliver a vituperative attack on the bill as one "which the 'brain trust' has spun in its spiderlike web." Beck charged that Congress would be substituting a new constitution for the old and:

> In this construction of a new form of government in progress--Professor Moley takes the work of George Washington, and Professor Tugwell that of Hamilton, and Professor Berle that of James Wilson, and the old architects must yield to these new architects, who, fresh from the academic cloisters of Columbia University, and with the added inspiration of all they have learned in Moscow, are now intent upon rebuilding upon the ruins of the old Constitution a new Constitution, in which, as in the old German Reichstag, this Congress will be merely a debating society, and the Executive will be master of the destinies of the American people.[67]

The adherents of the bill, however, refused to be frightened by such visions of the death of the democracy and, even though some congressmen deplored the "gag rule" imposed, accepted the committee's amendments, defeated a last attempt to send the bill back to committee, and passed the measure by a 325 to 76 vote.[68]

The Senate Finance Committee and the Senate gave the recovery bill a much more difficult time. Both the National Association of Manufacturers and the Chamber of Commerce assailed Section 7a. James A. Emery, representing the NAM, wanted an amendment guaranteeing the company union and the open shop. Charles R. Hook of the American Rolling Mill Company stated that he feared Section 7a would disturb the satisfactory relationship existing between employers and employees. The American Iron and Steel Institute, speaking through its president, Robert P. Lamont,

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[66] Ibid., p. 4190. [67] Ibid., pp. 4212-4213. [68] Ibid., pp. 4293-4373.

declared itself unequivocally in favor of the open shop. Senator Bennett C. Clark of Missouri offered an amendment to the bill with the words "nothing in this title shall be construed to compel a change in existing satisfactory relationships between the employees and employers of any particular plant, firm or corporation."[69]

The major discussion, however, centered on the meaning of Title I as a cooperative device for business to escape the restrictions of the antitrust laws. Utah Senator William H. King asked Wagner: "Is your bill drawn largely from the philosophy of the old German cartel system?" Wagner replied in the negative, at first calling the bill a measure for a "nationally planned economy," but quickly limited his response to mean "a rationalization of competition" based on the elimination of "the exploitation of labor."[70] Later, Wagner stated that he anticipated no price fixing.[71] A revolt among Senators on the Finance Committee occurred on June 2 when they struck from the recovery bill that provision giving the President the power to license business firms. The next day the NAM endorsed this amendment. However, by June 5 the administration had shown its political power, and the licensing provision was restored.

The Senate as a whole began debate on the NIRA on June 7. Wagner presented the bill to the Senate very simply: "Mr. President, the national industrial recovery bill is an employment measure. Its single

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[69]Philip Taft, The A.F. of L. from the Death of Gompers to the Merger (New York, 1959), pp. 43-44.

[70]U. S., Senate, Committee on Finance, Hearings on S.1712, National Industrial Recovery, 73d Cong., 1st Sess., 1933, p. 6.

[71]Ibid., p. 19.

objective is to speed the restoration of normal conditions of employment at wage scales sufficient to provide a comfort and decency level of living."[72] Knowing that attacks on the cooperative features of Title I would quickly ensue, Wagner attempted to lessen the impact. He told the Senate:

> Title I of the present bill is intended to return to the objectives of the antitrust laws. The first step taken by the bill is to make competition constructive rather than ruinous, and to permit cooperation whenever a wise policy so dictates. . . . This bill gives general recognition to economic realities which the Court, operating even under the antitrust laws, has been constrained to admit in specific instances. When viewed in this light it is clear that the bill is not a measure designed to curtail production or to lessen the volume of trade. It is a measure to expand trade and commerce by removing the barriers which have caused factories to close and men to walk the streets in idleness.[73]

This was the line of thought used by proponents throughout the Senate debate.

The assault on Title I was led by the long-time arch-enemy of monopolies, William E. Borah of Idaho. Borah opened his attack by saying: "As I understand the first subdivision of the bill, it presents a question of a change of policy of the Government toward the question of trusts and monopolies. . . . As I understand the measure, we are to have trusts and combines and monopolies, but we are not to call them such. . . . My contention is that whatever may be the Senator's [Wagner] contention, he is giving monopoly something it has been fighting for these 25 years--the death of the antitrust laws. . . . It is perfectly evident, then, that the provisions of the code are going to be combinations or

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[72] U. S. Congressional Record, 73d Cong., 1st Sess., 1933, Vol. LXXVII, Pt. 5, p. 5152.

[73] Ibid., p. 5153.

contracts in restraint of trade, or it would not be necessary to suspend the antitrust laws."[74] Borah then quoted a speech of Charles Schwab before AISI saying that such measures were needed to bring the "selfish interests" into line. Schwab wanted this provision, Borah asserted, to bring the few remaining independents into the steel combines. When Wagner argued that all members of the industry would participate in drafting the code, Borah answered:

> When the time comes when the large interests in an industry, gathered together for the purpose of making a code, do not dominate the situation, but permit the small independent to write the code for the large industry, the millennium will have been here for many years. But until that time we are to have the same old world, with its appetite for gain and economic power still ruthless for profits.[75]

On June 8 Borah proposed an amendment, "Provided, that such code or codes shall not permit combinations in restraint of trade, price fixing, or other monopolistic practices." Wagner asked Borah if he meant that a code could not provide in general terms for a uniform price, prohibit selling below cost or abolish cut-throat competition. When Borah answered in the negative Wagner agreed to the amendment minus the price fixing provision.[76] The debate continued, marked by a brief filibuster staged by Huey Long in which the Louisiana Senator assailed Bernard Baruch and Hugh Johnson. A number of amendments were proposed, most were turned down and the Senate version of NIRA passed on June 10. The conference committee of the House and Senate resolved the major differences, and the bill passed the Senate on June 13 by a vote of 46 to 39.[77]

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[74] Ibid., p. 5162. [75] Ibid., pp. 5164-5165.

[76] Ibid., p. 5247. [77] Ibid., pp. 5835-5861.

The National Industrial Recovery Act was rushed to the President who signed the bill into law on June 16, 1933. Roosevelt stated the goal of this measure was "assurance of a reasonable profit to industry and living wages for labor with the elimination of the piratical methods and practices which have not only harassed honest business but also contributed to the ills of labor." Calling the NIRA probably "the most important and far-reaching legislation ever enacted by the American Congress," Roosevelt stressed that its success would depend on the "wholehearted cooperation of industry, labor and every citizen of the Nation."[78]

Thus, a movement which began in the late 19th century, which achieved experience during World War I in the War Industries Board, and made gigantic strides during the 1920's when Herbert Hoover was Secretary of Commerce, reached its fruition in the confusion which marked the early days of the New Deal efforts to relieve the effects of the depression. The NIRA was a piece of enabling legislation--a grant of power to the President to fashion what he would under broad guidelines. Those guidelines were the sum product of individual citizens, businesses and business organizations, labor leaders and government officials. Perhaps because of the origin of this epochal legislation, confusion was destined to plague the short life of the NRA. Yet, at the time few voices were raised in opposition to the attempt to bring some order into the chaotic national economy. Thus, one contemporary author wrote:

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[78] Public Papers of Franklin D. Roosevelt, II, pp. 246-247.

> The National Industrial Recovery Act embodies a new American industrial policy. It extends into the domain of private business, legal and economic concepts which before its passage were restricted to public utilities and business affected with public interest. It clothes with a public interest, during the period of national emergency, enterprises which formerly were protected from governmental interference.[79]

Business in general was not unhappy to ascribe to that conclusion. Simon Whitney shrewdly analyzed the situation:

> One element . . . which should not be overlooked is that free competition is the "second choice" of almost every one. Organized business prefers competition to government control, and the advocates of government control prefer competition to private combination. It is not known in history for a compromise, itself desired by no one, to carry the day. Otherwise, there is probably no logical stopping-place short of socialism.[80]

Certain business leaders had spoken out against the labor provision of the NIRA, as well as the licensing provision.[81] This feeling, however, did not stop business from generally supporting the plan. George M. Verity, chairman of American Rolling Mill Company, said:

> If . . . industry is now going to be permitted to intelligently plan its own progress under a governmental supervision, which will not be dictation or domination but which represents a new sort of helpful partnership between government and business, which will encourage and not throttle its initiative, and which will not destroy its productive power, better days are surely ahead and the seeming losses of the past can prove to be our most permanent investment.[82]

Iron Age rejoiced in comparing Franklin with Theodore Roosevelt that

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[79]Benjamin S. Kirsh, The National Industrial Recovery Act (New York, 1933), p. 11.

[80]Whitney, Trade Associations and Industrial Control, p. 204.

[81]See Iron Age, CXXXI (June 1, 1933), p. 875 and (June 8, 1933), p. 917.

[82]Ibid. (May 25, 1933), p. 836.

"familiar big stick has been dusted off by a distinguished fifth cousin."[83] Robert L. Lund, president of the National Association of Manufacturers, said his organization approved of the NIRA "entirely."[84] Perhaps some businessmen, and certainly most of the public, agreed with America's clown-prince, Will Rogers, who said: "This whole NRA system has got to work, or else. Or else what? Or else nothing, because if it don't work, there won't be anything else."[85]

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[83] Ibid., p. 825. [84] Ibid., p. 832.

[85] Quoted from the television series "Biography."

CHAPTER IV

THE STEEL INDUSTRY JOINS THE NRA

Roosevelt lost little time in implementing the powers granted to him by the National Industrial Recovery Act. He had asked the United States Chamber of Commerce before the passage of the act not to cut wages and then raise them as commodity prices advanced, and to cooperate in eliminating unfair methods of competition. The Chamber responded by passing a resolution proposing trade association self-regulation under government supervision.[1] Business thus had what it wanted, with the exception of the labor provisions and restrictions on imports. Labor had once again hailed a law as the "magna carta of labor." Government planners were joyous that they were at last going to be allowed to test their theories. The President acted quickly to please this diverse support.

Roosevelt issued Executive Order No. 6173 on the day he signed the NIRA into law. This order appointed the irascible General Hugh (Ironpants) Johnson as administrator of the National Recovery Administration under Title I, giving him authority to appoint personnel, conduct code hearings, and generally operate the NRA. A special watchdog committee, the Special Industrial Recovery Board, was appointed by the President to give general approval to Johnson's actions. This board was composed of Secretary of Commerce Roper, Attorney-General Woodin, Secretary of Interior Ickes, Secretary of Agriculture Wallace, Secretary of Labor Perkins, Director of the Budget Douglas, the chairman of the FTC, and General Johnson.[2]

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[1] Iron Age, CXXI (May 11, 1933), p. 750.

[2] Public Papers of Franklin D. Roosevelt, II, p. 247.

The selection of Johnson to head the NRA was not unexpected in most quarters. While the bill was being debated in the Senate it had been rumored many times that Johnson was Roosevelt's choice. This discussion even led Senator Huey Long to launch a vitriolic attack on Johnson as being a hireling of Bernard Baruch. Baruch later wrote that Johnson was the obvious choice for the post and that he was never consulted about the appointment.[3] Frances Perkins has said, however, that Baruch did have some reservations about Johnson. Baruch was visiting in Perkins' home when he said of Johnson: "He's been my number-three man for years. I think he's a good number-three man, maybe a number-two man, but he's not a number-one man. He's dangerous and unstable. He gets nervous and sometimes goes away for days without notice. I'm fond of him, but do tell the President to be careful. Hugh needs a firm hand." By the time Perkins reported this conversation to Roosevelt the decision to appoint Johnson had been made.[4]

As early as June 6 the cabinet discussed Johnson. Two or three members opposed the selection of the General, but Roosevelt was adamant. When the President was told, however, that Johnson was already inviting persons to join the NRA staff, Roosevelt sent word to him not to make any more commitments without consulting the President. At the same time Roosevelt decided on the cabinet committee as a watchdog agency rather than accepting Ickes suggestion that Johnson be attached to the Commerce

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[3]Bernard M. Baruch, Baruch: The Public Years (New York, 1960), p. 249.

[4]Perkins, The Roosevelt I Knew, pp. 201-202.

Department.[5] Ickes conferred with Daniel Roper and Jim Farley two days later complaining that Johnson was acting in a "highhanded" manner by continuing to "leak" news of his personnel commitments to the press and stating that Roosevelt would make a terrible mistake if he appointed Johnson.[6] Nevertheless, Roosevelt appointed Johnson administrator of Title I following a cabinet meeting on June 16. Johnson had decided that the industrial control provision and the public works section were inseparable as means of bringing about industrial recovery. When Roosevelt told Johnson that Ickes would administer Title II, Johnson ceased to smile and his face became flushed in anger. The President gave Frances Perkins the task of taking Johnson for a ride along the Potomac to keep him from exploding.[7]

Johnson's appointment as NRA administrator proved to be a mixed blessing. He combined a penchant for military organization and a genius for getting others to do the work for him with a demagogue's flair for haranguing the nation to enlist in the great patriotic movement to end the depression. As a former member of the War Industries Board and later as an industrial researcher for Baruch, he had gained an intimate knowledge of industrial economics and of key men in American industry. He

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[5]Harold L. Ickes, The Secret Diary of Harold L. Ickes: The First Thousand Days, 1933-1936. (New York, 1953), p. 48.

[6]Ibid., p. 52. Donald Richberg, who later became general counsel of NRA, wrote that he thought Johnson was responsible for the leaks to the press concerning his impending appointment as NRA administrator. Richberg also felt that the reason Roosevelt appointed Johnson instead of Baruch was because FDR did not want as "strong-minded" an individual as Baruch. My Hero (New York, 1954), p. 165.

[7]Perkins, The Roosevelt I Knew, p. 202.

also had the benefit of Baruch's advice at a time when it seemed that Roosevelt had no use for the elder statesman.[8] Steel leaders were pleased with Johnson's appointment. Even before Roosevelt appointed Johnson to his post a prominent steel executive whom Johnson had met on a tour of steel plants in 1930 wrote the General: "As we are undoubtedly entering into a new era of industrial affairs, we are inspired with confidence to know that a man of your experience and authority will be appointed to such a responsible post." An appointment was made through this letter for Tom Girdler and Benjamin Fairless, executives of Republic Steel, to meet in Washington with Johnson.[9] Another steel executive wrote more to the point: "As your experience along these lines during the war period, where it became necessary to fix maximum prices, should be particularly helpful during the present emergency where it would seem advisable to, in some manner, fix minimum prices figured above the average cost of production."[10] Johnson, however, took a realistic view of the situation when he commented: "It will be red fire at first and dead cats afterward. This is just like mounting the guillotine on the infinitesimal gamble that the ax won't work."[11]

Donald Richberg, the number-two man in the NRA and former attorney for railway unions, was chosen by Johnson because he was supposedly liberal

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[8]Margaret Coit, Mr. Baruch (Boston, 1957), p. 440.

[9]R. J. Wysor, vice president in charge of operations for Republic Steel Corporation to Hugh S. Johnson, May 22, 1933. NRA Papers.

[10]Frank R. Frost, president of Superior Steel Corporation to Hugh S. Johnson, June 17, 1933. NRA Papers.

[11]Quoted in Schlesinger, Coming of the New Deal, p. 105.

and had labor connections. Richberg had been a legislative representative for the old Theodore Roosevelt Progressive Party and, as portents for things to come, engaged in conspiratorial activities against other Progressive staff members.[12] Richberg's official title was General Counsel, but his activities more nearly corresponded to those of an assistant administrator. He never accepted the fact that Johnson was his "boss" and insisted that he only accepted his position "at the direct request of President Roosevelt as an opportunity to serve him and his administration."[13] At first an able exponent of the NRA who worried businessmen by his "tough" speeches, Richberg later became conservative in his utterances and consequently more accepted by business executives.

By June 20 Johnson announced that the National Recovery Administration had been established. Roosevelt's two important administrative decisions at the outset had been to create the cabinet committee to establish overall policy (although because its members were so busy with their regular duties this committee never functioned very effectively), and the choice of a single administrator who had direct access to the President. The administrative organization of the NRA generally followed that of other governmental agencies. Assisting Johnson were assistant administrators for labor and industry, a general executive officer, and a public relations officer. The only real direction given to the administrative setup by Roosevelt was his prescription for three advisory boards

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[12]See Richberg Papers for Richberg's Progressive activities, Library of Congress.

[13]Richberg, My Hero, pp. 162-163.

representing industry, labor and consumer interests. Three important divisions dealt with legal problems, the analysis of codes and research and planning. An entire organization of state and local recovery and compliance boards was also established.[14] Finally, a number of deputy administrators were appointed to handle various codes. Organized into divisions these administrators represented the government at code hearings and continued to administer the NRA end of code operations. Thus, Division I dealt with public utilities, mining, shipping, iron and steel, automobile manufacturing and rubber; Division IV with trades and services, textiles and clothing; and Division VII with publications and graphic arts.[15]

A number of administrative changes ensued before Johnson left the NRA. The President delegated almost all of his powers to the administrator on July 15, 1933, except those of approving codes, making agreements and issuing licenses.[16] On November 17, 1933, Roosevelt created the National Emergency Council, transferring to it the functions of the Special Industrial Recovery Board. This new board was still essentially a cabinet committee which was supposed to bring coordination to all recovery measures, including the NIRA, the AAA, and the FERA. The function of the board was not clearly defined and as a result Johnson's power over the NRA became almost unhampered except by the President.[17] The

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[14]See organization chart in Lyon, et al., National Recovery Administration, p. 49.

[15]Ibid., p. 51.

[16]Executive Order No. 6205-A in Mayers (ed.), Handbook of NRA, p. 43.

[17]See Executive Order Nos. 6433-A and 6513 in NRA Reporter, I (December 30, 1933), pp. 238-241.

major supplementary grant of power came on December 30, 1933, when Roosevelt granted Johnson the authority to approve all codes except those of major industries employing 50,000 persons or more, and to approve all modifications and exemptions from codes.[18]

The administrative organization of the NRA was traditional, but the great congressional delegation of power to the President, and by him to Johnson, was thought to be revolutionary. Indeed an official statement asserted:

> Its trial by the American people is a great adventure. The economic theories underlying it may be wrong. But that will be hard to prove. The mechanism provided for in the law and set up by the Recovery Administration may prove to be inadequate or impractical. The sponsors and administrators of the law claim neither genius nor divine inspiration.[19]

Indeed, Johnson later told an assembled NRA staff: "This devoted cause is greater than one man or any other group of men. It is a myth that any man on earth is indispensable to any cause or thing."[20] The General's actions, however, did not indicate that he really believed his own words.

Johnson was forced to modify his philosophy on the direction which the NRA was going to take almost from the beginning. He had had experience with the almost dictatorial War Industries Board and believed its efficiency had resulted from its powers. Moreover, he had envisioned the self-government of industry concept as a twin movement with the Public Works law. The PWA was to have been used as a bludgeon to bring industry into line with Title I and to pour money into the economy so that antici-

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[18]Lyon, et al., National Recovery Administration, p. 44.

[19]NRA Release No. 628, September 6, 1933, NRA Papers.

[20]Johnson, Blue Eagle, p. 405.

pated increased prices could have been met with a greater redistribution of income.[21] Johnson was also plagued with doubts over the constitutionality of his powers under NIRA. Alexander Sachs, an economist who had engaged in planning with Johnson, wrote the General on May 20, 1933, his belief that the law was unconstitutional.[22]

Due to these developments and his doubts Johnson was forced to pursue an initial policy of persuasion rather than dictatorship. Administration of PWA was not given to him. He was also worried that the NIRA might not stand a court test. Furthermore, Roosevelt had stressed the cooperative nature of the NRA movement and the importance of an aroused public opinion to assist in getting compliance.[23] Thus, Johnson told a news conference in June, 1933, that code hearings would be held in a "goldfish bowl." The duty of the NRA was to accept codes presented by industry, not to impose codes on industry, "I want to avoid any czaristic appearances," said Johnson. "There is a difference between the National Recovery Administration and the War Industries Board. There our problem was largely administrative. It came to be a centralized administration of American business. This will be different."[24] Johnson stressed that industry organizations would bring their own codes to a public hearing where minority members could be heard. These hearings would be conducted by a deputy administrator with no interest in that industry. The code had to satisfy the industry itself, labor in that

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[21] Ibid., p. 210. [22] Roos, NRA Economic Planning, p. 531.

[23] Public Papers of Franklin D. Roosevelt, II, pp. 251-256.

[24] Johnson, Blue Eagle, pp. 221 and 223.

industry, and the consuming public. When asked if he planned to use the licensing provision, Johnson answered that he would not if he could avoid it.[25] The NRA was always able to avoid that ultimate weapon.

Johnson planned from the beginning to bring the ten big industries employing the majority of workers into the fold before the rest of business. He had, therefore, conferred with the leaders of the textiles, iron and steel, lumber and bituminous coal industries even before the NIRA was sent to Congress, urging each to prepare codes for submission immediately upon creation of NRA.[26] Roosevelt had stressed the priority of putting people back to work at decent wages, and in order to achieve this purpose concessions had to be made to industries in their codes. Inflation was in the air, costs were rising and business activity was increasing in anticipation of even higher costs once NRA began operation. Therefore, the industry drive was for price and production controls, and they used their acceptance of wages and hours provisions and the collective bargaining feature as a "blackmail" device to reach their objectives.[27]

The cotton textile industry was the first to submit and have a code approved. This was mainly due to the long trade associational drive in that industry to bring some order out of the chaos which existed in pricing and production, and the horrible working conditions in textiles. The textile code contained the necessary wages, hours, and collective bargaining provisions, but Johnson further insisted on the abolition of

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[25] Ibid., pp. 224-225. [26] Roos, NRA Economic Planning, p. 83.

[27] Ibid., pp. 83-88.

child labor. Although the industry argued that the minimum wage provision would end child labor, Johnson's demand for a stated provision on child labor was finally agreed upon by the industry. The specter of increased costs of textiles, however, caused the NRA to approve production controls which set a dangerous precedent for codes which were to follow. The textile code, nevertheless, achieved what years of reform agitation had failed to accomplish and gave promise to the possibilities of what NRA could mean to a socially better America. Johnson himself said of the abolition of child labor in the textile mills: "That makes me personally happier than any other one thing with which I have been connected since I came to Washington."[28]

The textile code, however, was the only "big ten" industry code to come in immediately. And as Johnson sat in his little cubicle on the fourth floor of the Commerce Department building, surrounded by the litter of Old Gold cigarette butts and waste paper, his clothing askew, and his bloodshot eyes becoming puffier for lack of sleep, he became more irritable and tense. Excited businessmen, as many as a hundred a day, poured steadily into his office. Johnson flattered them, joked with them, bullied them, roared at them and, when all else failed, threatened them. He barked into the telephone at one unidentified caller: "I've been listening to that line of bunk from you fellows long enough. You'd better change your tune. Good-bye."[29] He flew to New York, visited industrial groups gathered in almost every available room in Washington

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[28] Schlesinger, Coming of the New Deal, p. 111. Also see Cotton Textile Code in Mayers (ed.), Handbook of NRA, pp. 95-106.

[29] Time, XXII (July 3, 1933), p. 14.

trying to get the code process moving. Johnson's associates in NRA almost matched his energy. To many of them Johnson was a great man. As one said: "Had he not been the hero of the 1917 draft? And had he not now, as Cincinnatus, left his Moline Plow to save his country anew, this time for an internal enemy more insidious than the Hun?"[30] As the veteran Commerce Department employees left for home at 4:30 o'clock, full of distain for the brash young crusaders who jammed the elevators and the coffeeshop, the NRA-ers prepared to work until two o'clock in the morning for a great patriotic movement.

There was good reason for this frenzied activity. Industry was not cooperating as it had promised. Production and employment showed an increase from March to July, but much of this activity came from stepped-up buying and manufacturing in anticipation of the increased costs under NRA wages, hours, and regulated prices. Then too, there was a speculative spurt due to impending monetary inflation. Johnson took to the air crying: "American industry has got to save itself," and warned: "This danger of runaway prices is a deadly serious matter. This is no time to get rich quick."[31]

Johnson was beset by problems which he called "pineapples." What will the NRA do for labor? He answered: "The Administration is required by the Act to obtain a fair deal for labor in any unorganized industry." What was his idea on a living wage? "The cost of living," he again answered generally, "differs in different regions. . . . The question

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[30]Malcolm Ross, Death of A Yale Man (New York, 1939), p. 109.

[31]Time, XXII (July 3, 1933), p. 14.

cannot be answered by any single inflexible rule." What about price fixing. Johnson announced: "In these codes it will be proper for an industry to say it will not sell below cost of production. But if they use the code to fix extortionate prices, I should have to step in."[32] With all of his efforts to answer the myriad questions put to him, Johnson's frenzy to bring industry under codes was achieving meager results.

By mid-July Johnson decided that what the NRA needed for success was a mass patriotic campaign to bring public opinion to bear on those who were not cooperating. Moreover, those industries that signed codes earlier felt that they would be placed in a bad competitive position with industries which had not signed codes. Therefore, it was imperative for the recovery program to get all American business under a "blanket code," pledging themselves to maintain a $12 to $13 minimum wage for forty hours a week. This way, prices would not outrun purchasing power. The General had problems selling this idea to the Special Industrial Recovery Board. Some members were afraid to involve Roosevelt in such a massive program which could easily fail and tarnish his image.[33] John Dickinson felt that the big industries should come first and "the corner groceries and barber shops could wait."[34] But Johnson persuaded FDR of the urgency of such a program and on July 21 launched the attack.[35] In a few days

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[32] Ibid.

[33] Donald Richberg, The Rainbow (Garden City, 1936), pp. 160-161.

[34] Schlesinger, Coming of the New Deal, p. 113.

[35] See President's Re-employment Agreement in Public Papers of Franklin D. Roosevelt, II, pp. 308-311.

the Government Printing Office had rushed the "partnership agreements" to mail carriers throughout the nation. The agreement blanks were to be delivered to every employer of three or more persons along the carriers' routes to be signed and returned to Washington. The cooperating employer was then allowed to fly the Blue Eagle emblem of compliance containing the motto: "WE DO OUR PART."

The President's Reemployment Agreement drive was an instantaneous success. Veterans of the World War I Public Information Committee rushed to Washington to aid in arousing public opinion behind the crusade. Citizens were asked to sign cards pledging to patronize only those merchants flying the Blue Eagle. Boy Scouts, clubwomen, society girls, and ward-heelers distributed the cards door-to-door, delivering little prepared speeches on the necessity of patriotic cooperation. "Four-Minute Men" made talks in theatres, exhortations appeared in newspapers and magazines, on billboards and movie screens, and ministers delivered sermons on cooperating to put men back to work. The climax to the drive came in a series of parades held throughout the country. From Boston to Tulsa citizens turned out to see stockbrokers, plumbers and teachers march down avenues to the tune of martial music. Johnson's mother told the Tulsa crowd: "People had better obey the NRA because my son will enforce it like lightning, and you never can tell where lightning will strike." The grand climax came in New York City, where two million persons watched a quarter million dressmakers, stockbrokers, Chinese waitresses, CCC workers, and dancing Indians file past a reviewing stand containing Johnson, Governor Herbert Lehman, and Mayor O'Brien. When the parade finally ended at midnight,

street cleaners began to sweep up the tickertape and signs bearing the legends "WE DO OUR PART," the messy aftermath of the largest parade in the nation's history.[36]

Johnson, now more confident, exclaimed: "When every American housewife understands that the Blue Eagle on everything she permits to come into her home is a symbol of its restoration to security, may God have mercy on the man or group of men who attempt to trifle with this bird."[37] By July 29 some 500 draft codes were reported to be in Johnson's hands. The PRA drive had generated a climate that made non-cooperation with the NRA seem almost traitorous. Johnson was also pulling the iron-hand out of the velvet glove, with Roosevelt's aid. Trade groups saw that the administration meant business when FDR announced that codes for the silk and rayon dyeing and the printing industries would go into effect without public hearings. Four unreconciled committees dealing with the oil code were stunned when told by Johnson to lock themselves in a room until they came up with a code.[38] The dam was finally breaking and the codes began to flood Washington.

The steel industry was considered by the administration to be one of the, if not the, most important industries to bring under a code. It has already been pointed out that many leaders of this key industry joined with other business leaders from the early months of the depression in the

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[36] Time, XXII (July 31, 1933), p. 11; September 18, 1933, p. 11; and September 25, 1933, p. 12.

[37] Schlesinger, Coming of the New Deal, p. 114.

[38] Business Week, July 29, 1933, p. 6.

drive for self-government of industry under suspended or repealed anti-trust laws. After Roosevelt became President the industry generally supported the early measures of the New Deal. The stockholders of U. S. Steel, for example, voted a resolution supporting the various economic measures taken by the Roosevelt administration. Myron Taylor, chairman of the board, commenting on that resolution, said: "I have great hope, and believe with you . . . that we are on our way to better things. We should rally under this banner without regard to party to save this country of ours."[39] By May 1933, the industry was pushing for an industrial control bill. Iron Age carried a front-page editorial calling for the repeal of the Sherman and Clayton acts and the substitution of co-operative law.[40] Thirty large steel company executives responded to that editorial with praise for its stand.[41] When the NIRA reached the planning stages, Charles R. Hook of American Rolling Mills, one of the leaders of the drive for industrial self-government, became a member of the NAM advisory committee on the act.[42]

The passage of the Industrial Recovery Act was publicly greeted by the steel industry with caution, but there was no doubt that most leaders were delighted with the results of their campaign. Charles M. Schwab greeted assembled steel leaders at the AISI general meeting on May 25, 1933, saying: "I think this morning I may greet you with more confidence in the future than I have in three or four years."[43] Schwab

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[39] Iron Age, CXXXI (April 20, 1933), p. 636.

[40] Ibid. (May 18, 1933), p. 793. [41] Ibid. (June 1, 1933), pp. 871-874.

[42] Ibid. (May 18, 1933), p. 795.

[43] Yearbook of the American Iron and Steel Institute, 1933, p. 27.

went on to say:

> The President will have strong support for his plan to assist the nation's business machine through the easing of laws that are unduly restrictive and through substitution of cooperation instead of ruinous trade practices and price cutting. Speaking for the steel industry, I say that we gladly accept this offer of partnership, because with this kind of support and through our revitalized Institute we should speedily and effectively be able to see brought into line those selfish interests who persist in unfair practices that are contrary to sound public policy and ruinous to industry.[44]

The recently elected president of the Institute, Robert P. Lamont, was more cautious than Schwab. Lamont told the steel group:

> The success of this plan is accomplishing its stated purpose will be determined almost entirely by the character of its administration and by the spirit and manner in which industry itself carries out the provisions of the law. The bill possesses such vast potentialities for good or evil, such great possibilities of success or failure in attempting self-government in industry, that it challenges all our practical experience and intelligence.[45]

Lamont expressed concern for the labor provisions of the bill and thought a serious omission was the lack of a provision to offset competition from cheaper foreign goods.[46]

Nevertheless, Lamont issued a call for a meeting the next day of all steel company representatives to get opinion on whether AISI should pursue the matter of the NIRA. He expressed particular concern for the opinion of small manufacturers "with respect to what they shall do and what they shall not do, so that we may properly handle the matter with the Administrator when the bill finally becomes a law."[47] Lamont's fears as to the response of the industry were dispelled the next day when the chief

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[44] Ibid., p. 32. [45] Ibid., p. 72.

[46] Ibid., pp. 70-71.

[47] Ibid., p. 74.

executives of all the steel producing companies in attendance authorized the executive committee of AISI to consult with NRA officials and to proceed to develop a plan of action to be taken by the industry. Meetings of the executive committee were called for the following week to begin the code-making process. It was reliably reported that while the formal speeches at the AISI meeting might not have indicated the industry's inclination to fully support the NRA, an "overwhelming unanimity of sentiment" was expressed privately by the members.[48]

Almost six weeks elapsed, however, before the first draft code was submitted to the NRA by AISI. Johnson had expected the steel code almost as soon as the textile code and had held several preliminary discussions with representatives of the steel industry toward that end.[49] Something was holding the code back and that turned out to be the vocal stand taken by organized labor, particularly the AF of L. On June 6 and 7, 1933, a conference of national and international union leaders met in Washington and adopted a bill of principles to guide both unions and the NRA in implementing the labor provisions of the codes. They recommended a joint labor board consisting of industry and union representatives and, if industry delayed in establishing such codes, a limited code of fair competition was to be imposed on the industry. Finally, national and regional industrial adjustment boards were suggested to adjust industrial disputes.[50]

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[48] Iron Age, CXXXI (June 1, 1933), p. 867.

[49] Johnson, Blue Eagle, pp. 207 and 235.

[50] American Federationist, XL (July, 1933), p. 695.

Industry in general had paid scant attention to the inclusion of Section 7a in NIRA, especially when the labor provision was added to the bill in the House Ways and Means Committee. The reason for this unusual occurance was that the Chamber of Commerce and the AF of L had privately agreed that labor would accept the trade association features in return for business support of the labor provisions. The National Association of Manufacturers, however, refused to give its assent. When the bill went to the Senate Finance Committee, therefore, the NAM, and particularly representatives of the steel industry, led the assault on Section 7a.[51] Charles R. Hook of ARMCO was supported by Robert P. Lamont when he told the Senate Finance Committee:

> The industry stands positively for the open shop; it is unalterably opposed to the closed shop. . . . The industry accordingly most strongly objects to the inclusion in the pending bill of any provisions which will be in conflict with this position of the industry, or of any language which implies that such is the intent of the legislation. If this position is not protected in the bill, the industry is positive in the belief that the intent and purpose of the bill cannot be accomplished.[52]

After all attempts to include an open shop provision in the NIRA had failed, industry continued to champion the business aspects of the code while denouncing the labor provisions. Thus, in the same issue, Iron Age denounced "the obvious subserviency of some of our congressmen and senators to the wishes of an organized minority," and then praised the good which could come from such a measure in terms of the regulation of

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[51] Irvin Bernstein, The New Deal Collective Bargaining Policy (Berkley, 1950), p. 34.

[52] Iron Age, CXXXI (June 8, 1933), p. 917.

business.[53]

Meanwhile, Johnson recognized the rocky shoals of labor-management disputes on which the whole recovery program could crash. He continually stated that the NRA was not going to be used to unionize any industry and that labor agreed with him. "If men organize," said Johnson, "that is all right. My job is to sit here in an impartial way. I have no initiative in this thing. The law has given men the right to bargain collectively. There is no argument. I have a law to execute and I am going to execute it."[54] The steel industry, however, was not willing to accept Johnson purely at his word. The American Foundrymen's Association suggested that its members "take direct action slowly but keep on the job recognizing that union labor is working fast and already has definite ideas on hours and wages."[55] The NAM suggested that since the legality of the labor provisions was not established, every industry should consider including an open shop clause in its code.[56]

This delay in the submission of a code for the steel industry was utilized by both labor and industry in pursuing their own goals. The AF of L did not waver in its insistence that "under the present act it is unethical and illegal for employers to prevent employees from carrying out their responsibilities under the law--that is, organization of workers into unions."[57] The Amalgamated Association of Iron, Steel, and Tin Workers

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[53] Ibid. (June 29, 1933), pp. 1019 and 1038-A.

[54] Ibid., p. 1047. [55] Ibid., p. 1038. [56] Ibid.

[57] American Federationist, XL (July, 1933), p. 679.

lost little time in putting their organizers to work in the mills. Handbills were circulated among steelworkers containing the following:

> Under the Industrial Recovery Act, the workers of the Steel Mills are CHALLENGED BY THE PRESIDENT OF THE UNITED STATES TO BECOME MEMBERS OF A LABOR ORGANIZATION. WILL YOU BE A SLACKER, or are you going to help him bring back the economic security of the steel workers? You can do this by complying with Section 7 of the Industrial Recovery Act.[58]

Many workers, however, were confused as to what Washington really expected of them.

Steel leaders were creating that confusion by their own organizational drives. Charles R. Hook of ARMCO enclosed one of the Amalgamated Association's circulars to Johnson saying that it was "certainly not in accord with the spirit of good sportsmanship which ought to govern all our acts in these very trying times." Hook added that "such a misleading statement with respect to the President's position I believe should be checked promptly."[59] The "spirit of good sportsmanship," however, involved a hurried drive on the part of the steel executives to bring workers under an employee representation plan, or company union. On June 7 Lamont Hughes, president of Carnegie Steel, circulated a letter among his employees announcing the formation of an employee representation plan and adding: "We would suggest that arrangements be made promptly to have this plan become effective by nomination and election of representatives, as provided

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[58]Handbill in Department of Labor Main Numerical Series, 167/2283, Box 158, NA.

[59]Charles R. Hook to Hugh S. Johnson, June 23, 1933, NRA Papers, NA.

under the Plan."[60] The steel companies were thus using Section 7, interpreted in their own interests, to organize workers under company plans. With both labor unions and the companies offering organizations, some workers felt it necessary to write Washington to ask what they should do.[61]

While this labor conflict was to plague the NRA throughout its short life, the steel industry was determined to get its code into effect and deal with organized labor later. Actual negotiations with industry representatives were begun late in June by Johnson and the deputy administrator for steel, K. M. Simpson. Early in July the counsels for AISI and the NRA began their negotiations as to the legal requirements of the code. Numerous other conferences were held between industry members and the NRA administrative, legal and advisory divisions.[62] On July 11 Johnson announced that he expected the steel code to be submitted to him the next day, but that he did not know whether it would be acceptable to him until the public hearings had been held. He warned that he was thinking of establishing a time limit for filing codes.[63] Actually, the steel industry had filed a draft code on July 6 which had not been acceptable to the administration.[64]

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[60]Mimeographed letter from I. Lamont Hughes to Employees of Carnegie Steel Co., June 7, 1933, Department of Labor Main Numerical Series, 167/2283, Box 158, NA.

[61]C. C. Frazier to Frances Perkins, July 25, 1933, Department of Labor Main Numerical Series, 167/2283, Box 158, NA.

[62]"History of the Code of Fair Competition for the Iron and Steel Industry." Exhibit A, NRA Papers. Hereafter cited as "Code History."

[63]Iron Age, CXXXII (July 13, 1933), p. 46.

[64]"Code History," n.p.

The second draft code was submitted by AISI on July 12. By this time more interest was being taken in the steel code by those outside the negotiating rooms. There was a pre-code upturn in the steel industry which saw June ingot production reach 2,597,517 tons, the largest output since April, 1931. The industry as a whole was operating at 45.96 percent of capacity, up from 15.50 percent in March. In addition prices on plates, shapes, and bars were holding firm and advances were made in nails, hot and cold rolled strips, sheets, and train spikes. Observers acknowledged that these prices would mean more than indicated on the surface, as companies were no longer giving secret discounts.[65]

The rise in steel prices caused many letters and telegrams to Johnson urging haste in the consideration of the steel code to bring about a corresponding rise in wages and employment.[66] Concern was also shown by businesses expected to be directly affected by a code for the steel industry. A representative of the steel construction industry was anxious to talk with Johnson about the code's effect on his business.[67] An executive of a small steel manufacturing concern, while approving of the NRA, wanted to insure representation of small business in Washington. He wrote: "The steel business is dominated by three or four corporations. They regard the small manufacturer as unnecessary. Therefore, the only

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[65] Iron Age, CXXXII (July 6, 1933), pp. 49-51.

[66] See as an example the telegram from Employees Representatives of Wheeling Steel Corporation to Hugh S. Johnson, July 12, 1933. NRA Papers.

[67] V. G. Iden, director of public relations for American Institute of Steel Construction to Robert K. Straus, administrative assistant to Hugh S. Johnson, July 7, 1933. NRA Papers.

hope of the little fellow rests in having a voice in Washington in the working out of this recovery plan."[68]

Johnson revealed some of the difficulties he was having with the steel industry, and problems the members of that industry were having among themselves in writing a code, when he told the press: "These codes constitute the preparation of a constitution for self-government of an industry and it takes some time to do it. They have to compose differences within their family, and in each of these great families. I happen to know in the steel industry they have been working almost continuously to try to get something that they can all agree to."[69]

A particular difficulty in securing agreement of the entire steel industry was that leaders of AISI wanted a lengthy comprehensive code covering all aspects of the steel business. There was general agreement on the open shop, but production and capacity controls, pricing policies, and wages and hours provisions caused disagreement.[70] Then, too, NRA divisions would not agree on many of the compromise labor provisions submitted by the industry. Particularly disagreeable to the NRA was an open shop declaration submitted with each and every draft.[71]

After negotiations between the industry and the administration a draft code was submitted on July 15 which was to become the basis of the

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[68]Calvin E. Broadhead, president of Scranton Bolt and Nut Corporation, to Hugh S. Johnson, July 10, 1933. NRA Papers.

[69]Iron Age, CXXXII (July 13, 1933), p. 9.

[70]Business Week, July 15, 1933, p. 9.

[71]Memorandum from NRA Legal Division to Leo Wolman, chairman of the Labor Advisory Board, July 13, 1933. NRA Papers.

approved code. The Steel Institute had summoned a meeting of steel executives representing over 90 percent of the industry in New York on Thursday, July 13, to approve in principle the final draft to be submitted. This draft, which came close to satisfying administration demands, was hastened by backstage negotiations the previous Tuesday between Myron C. Taylor of U. S. Steel and Roosevelt. The President may have threatened Taylor with the imposition of a thirty-five hour week and a fourteen dollar weekly minimum wage. Johnson, however, quietly contacted industry leaders and gave them assurances that the administration was disposed to be cooperative.[72] This policy of threatening and appeasing steel leaders did bring results, and on July 20 the call went out for public hearings on the steel code to take place on July 31.[73]

There was a feeling in business circles that the steel code was different from other codes already submitted. Calling it a "realist's code," Business Week thought that the steel code reflected a "deep-seated realization that the 'new deal' involves every phase of industrial activity" and consequently tried to cover all activities by code provisions.[74] Business also regarded the steel code hearings as a "showdown" between the AF of L and industry on the open shop, with a precedent being established if steel was able to ram through its labor proviso.[75] The industry warned that "the result, as dictated by the administration's

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[72] Steel, XCIII (July 17, 1933), pp. 12-13.

[73] Notice of Hearing No. 11, July 20, 1933, NRA Papers.

[74] Business Week, July 22, 1933, p. 6.

[75] Iron Age, CXXXII (July 27, 1933), p. 37.

decisions, will determine whether industry will enter fully into the spirit of the act or abide by the letter of the law."[76] Johnson made clear, however, that if any open shop declaration "qualified the law," it would be struck from the code.[77]

It was the labor situation which had continued to cause the most difficulty in the codification of the steel industry. Union organizers had begun working in the mills, attempting to implement Section 7a as the unions interpreted it. An AF of L local was started in U. S. Steel's Gary plant the week before the code hearings were held. There was labor trouble in the Detroit plant of National Steel. Workers at the Gary tin mills threatened that unless there were a thirty percent increase in wages there would be a walkout. NRA officials were as anxious as steel executives to quiet this labor discontent, at least until a code could be approved, and suggested that trouble in the tin mills could be averted by the companies' slowing down the work. An NRA official suggested: "The tin plate companies have this power in their hands merely by delaying shipments on some pretext."[78] The steel companies did grant a fifteen percent wage increase the week before the code hearings in an effort to quiet the labor opposition.[79]

The NRA also worked to modify specific code provisions. Production control and pricing policies were grave concerns to the administration. As one NRA official wrote: "The question will remain whether production

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[76] Ibid., p. 7. [77] Ibid., p. 37.

[78] Memorandum of a telephone conversation between K. M. Simpson and John V. W. Reynders, July 14, 1933. NRA Papers.

[79] Steel, XCIII (July 24, 1933), p. 12.

and price control, even if subject to effective limitations, is not prohibited by the Anti-Trust laws, even as modified by the National Industrial Recovery Act."[80] Nevertheless, it was Johnson who insisted that the production control sections be retained in the code.[81] There was still a question as to the overall control which the NRA would have over production and prices. It was suggested by one staff member that NRA representatives serve on the code authority with power to delay decisions on such matters until it received NRA approval.[82]

The much-disputed basing point system was not challenged by the NRA during the code-making period, but some of the industry's practices which brought criticism of that pricing policy were questioned. Thus, the method of charging only on the basis of all-rail transportation brought the following comment:

> The denial of cheaper than all-rail transportation rates, except with the Board's approval, permits uneconomic methods, emphasizes basing point weaknesses, and should be abolished in spite of the fact that water and truck rates are not uniform. Basing points serve a useful purpose for the members by simplying price structures. Yet they are economically unsound from a purely price standpoint. A complete change to the f.o.b. now would be too disturbing to the existing order of things. Ultimately competition would have created the new basing points. The removal or minimizing of price competition may require governmental pressure later to establish more basing points. So far as present action on this code is concerned, however, the time is too short to permit any proper judgment on the establishment of a large number of new basing points.[83]

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[80] Memorandum, "The Proposed Steel Code and the Law," n.a., n.d. NRA Papers.

[81] Memorandum from John V. W. Reynders to K. M. Simpson, July 12, 1933. NRA Papers.

[82] Memorandum from R. W. Shannon to K. M. Simpson, n.d. NRA Papers.

[83] Ibid.

The NRA thus accepted the oft criticized basing point system, with its taint of the old Pittsburgh-Plus controversy, to be enacted into law. The only concession from the industry was the addition of a few extra basing point locations. Like many other provisions which the administration accepted, the basing point system was agreed to even though NRA officials realized that there was danger in accepting it. The way which the industry would now implement various provisions of the code and the public criticism which might result were risks which the NRA felt it had to take in order to get the code adopted. It is also certain that many code provisions which were accepted came from the urgency to get the industry under a code quickly and, to a certain extent, the lack of technical knowledge on the part of the NRA staff.

The steel code hearings began on Monday morning, July 31, in the auditorium of the Department of Commerce building. Washington was sweltering in the summer heat, but the interest in the proceedings was so intense that no one seemed to show much discomfort.[84] Johnson had chosen K. M. Simpson as the deputy administrator to handle the steel code and he was in charge of the hearings.[85] Johnson opened the hearing, praising the industry for its long work in developing the code and for its cooperation with the NRA. Donald Richberg then laid down the pro-

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[84] Iron Age, CXXXII (August 3, 1933), pp. 41-44.

[85] Johnson had earlier picked a number of aides whom he called "industrial adepts." Although he insisted that they have no connection with the industry, Johnson demanded they be familiar with the industry in question so as to "not have his pants traded off him in that hearing." Simpson was a mining engineer and metallurgist by profession, a friend of Johnson's and acceptable to the steel industry. Iron Age, (July 27, 1933), pp. 38-39.

cedure for the hearing. He made it clear that no oral arguments would be permitted and that statements could be filed in written briefs. Testimony was to be limited to objections, modifications and additions to the draft code and then, only after a written brief had been previously filed. No cross examination by opposing witnesses was to be allowed because, as Richberg stated, "this is an administrative inquiry and not a judicial investigation.[86]

Robert P. Lamont, president of AISI, then introduced the steel code. Tall, austere and slightly nervous, Lamont began his presentation by reciting a short history of the steel industry and the effect of the depression on that industry. On the drafting of the code the Institute president stated:

> Necessarily the Code is the result of a reconciliation and accommodation of views of 130 members of the industry who have formally assented to it. I think I may fairly say that the result represents a great accomplishment in the history of business generally, and evidences a genuine spirit of cooperation to perpetuate the policy announced in the National Industrial Recovery Act.[87]

Lamont concentrated on only three provisions of the code which represented the major issues at point between the industry and the NRA. Section 3 provided that "none of the members of the Code shall call or permit any employee to work on an average of more than 40 hours per week in any six-month period." He insisted that this represented what "the industry believes is the very lowest that can be fixed, and yet do the work that is required of it to do." Lamont claimed that since much of the work in the

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[86]Typescript of Steel Code Hearings, July 31, 1933. NRA Papers, pp. A 1-4. Hereafter cited as "Code Hearings."

[87]"Code Hearings," p. B 3.

steel industry required skilled labor which was in short supply, shorter hours could not spread work to unskilled labor. He then turned to Section 5 which provided for wage differentials ranging from forty cents an hour in most eastern districts to twenty-five cents in the southern district. Lamont defended the forty cent minimum wage as being equal to the fifty-three cent average rate paid in 1929 because of the drop in the cost of living. He justified the differentials between various regions on the ground of sectional differences in the cost of living.[88]

Lamont then turned to the most explosive issue before the hearings. The draft code contained the mandatory Section 7a of the NIRA, but the drafters of the code had inserted the following provision following that section:

> The plants of the Industry are open to capable workmen, without regard to their membership or non-membership in any labor organization. The Industry firmly believes that the unqualified maintenance of that principle is in the interest of its employees. For many years the members of the Industry have been and now are prepared to deal directly with the employees of such members collectively on all matters relating to their employment. The principles of collective bargaining under which certain members of the Industry have dealt with their employees are embodied in Employee Representation Plans, which are now in force at plants of members of the Industry generally. . . . It is the belief of the Industry that the manner of collective bargaining set forth in such plans . . . should be maintained; and the right of the employees and members of the Industry to bargain collectively through representatives elected or appointed and acting in accordance with such plans without interference, restraint or coercion of any sort should be preserved and protected.[89]

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[88] Ibid., pp. C 1-E 4.

[89] Typescript of Code of Fair Competition of the Iron and Steel Industry, Submitted by the American Iron and Steel Institute to the National Recovery Administration, p. 7 B. NRA Papers. Hereafter cited as Draft Code.

Johnson rose to the floor after this section had been introduced and stated that, although established procedure did not require changes in the code until after the hearings when further study had been made, he was required to determine if any provision in the code "may or may not seem to us to shade or qualify the statute." The administrator said of the open shop provision that "while probably it is a border-line case, it seems to me that that matter is inappropriate in that particular section of this Code, which contains the mandatory provisions of sub-section A of Section VII of the National Industrial Recovery Act."[90]

Lamont answered that in view of statements made in the press he had been expecting this objection. He then read a prepared statement which held that the open shop proviso had been inserted in the code to state frankly the position of the industry "in order to avoid the possibility of any misunderstanding regarding it by anyone." Lamont then said that he was willing to recommend to leaders of AISI that the section be omitted from the code and asked for a short recess to present it to them. Before the recess was granted, however, Lamont made the industry's position clear:

> It should be distinctly understood, however, that the omission of this section does not imply any change in the attitude of the industry on the parts therein referred to; that the industry believes that the employee representation plans now in effect in its plants are desired by its employees; that the members of the industry will naturally do everything in their power to preserve a [sic] satisfactory relationships now existing with their employees, and that the section will be omitted for the sole purpose of avoiding the necessity of considering at this hearing any questions that are not fundamental to the code.[91]

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[90] "Code Hearings," pp. F 4-5.

[91] Ibid., pp. F 4-6.

Following the recess Lamont announced that the board of directors of AISI had unanimously agreed to drop the open shop statement. Applause rang out from those in the audience. Actually, leaders of the industry had been told as early as July 12 by Leo Wolman that, although Johnson had no objection to the inclusion of that statement in their code for the public hearings, the General would expect to cut it out at the hearings.[92]

The leaders of the industry had thus gained a two-fold victory. They had been able to present to the business world generally, and to their employees, the picture of a last-ditch stand on their historic labor position. Secondly, they were able to serve notice to everyone, but to the government in particular, that they intended to continue to pursue the open shop policy through company unions. An immediate victory was also won by the steel industry. The hostile witnesses at the hearing representing labor interests saw their chief point of attack on the code vanish in the air.

Thus, Frances Perkins and William Green were forced to confine themselves to other code provisions. Perkins demanded a flat maximum of forty hours a week for workers, not averaged out over a period of time as the code provided. Green wanted a limit of thirty hours a week. Perkins wanted a smaller wage differential, while Green demanded minimum hourly wages of sixty cents or eighteen dollars a week. The president of the AF of L further demanded an advisory council on industrial relations to settle labor-management disputes. He suggested representatives of labor, management and the public be appointed to such a board by the

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[92]Memorandum from John V. W. Reynders to K. M. Simpson, July 12, 1933. NRA Papers.

President. Green's only parting shot at the industry was to denounce Lamont's statement which withdrew the open shop proviso, while asserting the determination of the industry to follow that policy. He concluded by asserting that the New Deal meant that "the workers must be free; free to organize as they wish; free to designate their own representatives, to represent them in collective bargaining."[93]

The remainder of the hearings was given over to labor representatives who generally supported the statements of Green and Perkins, to minor objections from business leaders and to the gentle questioning of Lamont by Richberg. Richberg asked if the price provisions were not in reality administered prices. Lamont answered that he thought the code authority could only recommend proper prices, not compel them. Lamont also answered other queries to the point that the power to limit new producing capacity would not limit technological advances and that the basing point locations represented the judgment of the majority of industry leaders. But when asked if he did not think there should be some representation of the public on the code authority to protect the consumer, Lamont answered that no one had thought it necessary. In a statement that was to be used by critics of the industry for months to come, the Institute official concluded: "The general theory is the business is to be conducted just as it always has been. Each industry is going to carry on its business in just exactly the same way it has been carrying it on for twenty or thirty years."[94] Many people wondered, if

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[93]"Code Hearings," pp. G 3-K 5 and N 1-O 2. Lamont announced later in the hearings that southern leaders had agreed to raise the minimum wage rate to thirty cents an hour.

[94]Ibid., pp. K 5-L 2.

this were true, why the administration and the industry had been so anxious to get the steel code.

The steel code hearing was adjourned at 5:36 o'clock on Monday afternoon, but only the first great hurdle had been crossed. The long, tedious process of refining the specific content of the code and reaching the compromises necessary for the administration to accept the draft submitted by the industry, now began. The code-making process called for a study of the draft code by the NRA staff directed by deputy administrator Simpson, with a view toward making final reports to Johnson on what he should recommend to Roosevelt. As a staff member later wrote, the code required meticulous study due "to the completeness with which it provides for its [steel industry] operation in all respects."[95]

This interim between the hearings and the final submission of the code to the President saw a great deal of public discussion and activity. Some persons were openly hostile to the code as presented by the industry. One correspondent thought that Lamont's statements at the hearings should not be "allowed to stand unchallenged and uncensored" by the administration.[96] A Cincinnati veteran's organization contrasted a willingness to serve the nation in time of war with that of the steel industry in an economic crisis. "The Steel Industry takes the place of the soldiers of yesterday," wrote the veterans' leader, "and though their compliance with N.R.A. does not endanger their lives, as compliance with the Government's order did when the veterans were ordered to the front,

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[95]"Code History."

[96]Telegram from Henry Rodman to Franklin D. Roosevelt, August 8, 1933. NRA Papers.

still these 'slackers,' these persons who made most out of that war at the expense of the life blood of the veterans, stand out today as the obstructionists of the N.R.A."[97]

Commenting on the code hearing, the trade organ of the steel industry reflected the attitude of steel executives when it said:

> The code hearings at Washington, essential as they are under the terms and purposes of the Recovery Act, provide a striking example of the futility of attempting to take industry apart and put it together again through a public forum. . . . The organized labor leaders, social minds, uplifters, downpushers and communists who testified, evidently believed implicitly that their ideas were superior to the collective experience of the management of the great industry of which none of them had a part. . . . Fortunately, codes are not settled in these public hearings which provide an "open season" for pot-shotting industry.[98]

This editorial was at least correct in stating that the public hearings had not "settled" the code.

After several meetings of the executive committee of AISI had been held steel executives including W. A, Irvin, Eugene Grace, E. T. Weir, and Thomas Girdler, met in the offices of Frances Perkins on August 15 to attempt to compromise on the hours and wages provisions of the code. Representing the NRA were Simpson, Alexander Sachs, Isador Lubin of the Labor Department, Richberg and Johnson, and R. W. Shannon, who was later to be deputy administrator in charge of the steel code administration. During the course of this meeting, William Green walked into the room, and the steel leaders walked out en masse and did not return until Green left. Although Green explained that he had only come as a member of the Labor Advisory Board

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[97]Raymond A. Alsance to Hugh S. Johnson, August 15, 1933. NRA Papers.

[98]Iron Age, CXXXII (August 10, 1933), p. 9.

and not as the president of the AF of L, E. T. Weir said that if the steel leaders had talked with Green, labor leaders would have used the event to argue that the industry recognized the AF of L.[99] The steel leaders had won only a shallow victory, however, as Johnson kept them in session for twelve hours, with only a brief intermission for dinner. They emerged at the end of the evening looking glum and "shaking their heads grievously."[100]

Johnson had presented the demands of the government to the industry on wages and hours. A special committee was appointed from the assembled group to study wages and hours provisions in the code.[101] This committee met continuously until the night of August 17. NRA representatives insisted that the thirty-five cent minimum wage in the northeast district was too low and that the wide wage differential should be justified by statistics supplied by the industry. The steel representatives, however, replied that they could not furnish such data. NRA members of this committee reported that the industry leaders followed a policy of non-cooperation throughout most of these meetings. Further conferences were held between the deputy administrator and other NRA officials and the steel representatives, but it seemed as if little progress was being made.[102]

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[99] Ibid., August 17, 1933, p. 38 and August 24, 1933, p. 36. The Labor Advisory Board of the NRA protested the steel executives' conduct to Johnson but he publicly announced that he had nothing to do with Green's being at the meeting: Memorandum from Leo Wolman to Hugh S. Johnson, August 19, 1933. NRA Papers.

[100] Time, XXII (August 28, 1933), p. 9.

[101] This committee consisted of Sachs, Lubin, W. J. Filbert and A. W. Voght of U. S. Steel, Professor Bradley Stoughton of Lehigh University, R. E. McMath, J. W. Larkin and F. H. Brugler of Bethlehem Steel, Shannon, and Victor S. von Szeliski of the Research and Planning Division of NRA. "Code History."

[102] "Code History." Also memorandum signed by Victor von Szeliski, August 19, 1933. NRA Papers.

The turning point in the negotiations probably came, however, on August 16 when Roosevelt summoned Myron Taylor of U. S. Steel and Charles Schwab of Bethlehem Steel to the White House. The industry had already been threatened with the loss of government steel orders unless the code came quickly.[103] Roosevelt now used his powers to get an agreement from the leaders of the two giants of the industry. When Schwab said that he could not accept the code because of his obligation to his stockholders, Roosevelt reminded him of the stockholders' interest in the million dollar bonus paid to Eugene Grace of Bethlehem, while his miners lived in coke ovens. Roosevelt told another visitor: "I scared them the way they never have been frightened before and I told Schwab he better not pay any more million dollar bonuses."[104] Schwab and Taylor emerged from this meeting visibly shaken and refused to talk with reporters gathered outside.[105]

The steel industry was now ready to capitulate and on the night of August 18 Johnson got an agreement on the issues which had caused the deadlock. Minimum wages and maximum hours represented a compromise. The NRA was victorious in the agreement to allow administration representatives to attend all code authority meetings and on presidential control over capacity control. Above all, it was decided to make the code effective for only ninety days to see how it worked out.[106] At one o'clock in the morning Johnson emerged from the meeting waving a

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[103] Iron Age, CXXXII (August 17, 1933), pp. 36-37.

[104] Schlesinger, Coming of the New Deal, p. 117.

[105] Time, XXII (August 28, 1933), p. 9. [106] "Code History."

sheet of paper on which the agreement was written in front of the reporters. The steel leaders, whom Johnson called a "den of lions," filed slowly out of the room, refusing to answer any of the reporters' questions.[107]

The next day Johnson received the formal approval of the code from the labor, industrial, and consumers' advisory board heads. Leo Wolman, chairman of the labor board, was not satisfied with the labor standards but approved the code because of the eight-hour day proviso and also because "of the great desirability of having the steel industry come under a code of fair practices immediately."[108] The industrial and consumers' boards heads gave their approval without comment. Roosevelt signed the code that same day.[109]

The steel code was greeted from most quarters with approval, although there were varying interpretations as to its meaning and implications.[110] Official statements from the industry tried to picture the results as a complete victory for the industry. They pointed out that except for agreeing earlier to strike the open shop provision and the later agreement to reduce hours to a flat eight hour day when production reached sixty percent of capacity, the final code was almost identical to the one submitted by

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[107] Pittsburgh Press, August 19, 1933, p. 1.

[108] Memorandum from Leo Wolman to Hugh S. Johnson, August 19, 1933. NRA Papers.

[109] See Executive Order in Handbook of NRA, p. 127.

[110] The steel code may be found in its entirety in the Appendix. Specific provisions will be discussed in the course of later chapters and all references in the text refer to the code as contained in the Appendix.

AISI. The industry was especially happy that even though it had agreed to accept NRA representation on the code authority, it had written the provision so as to exclude any member connected with organized labor.[111]

It was left to a steel company employee to sound a note of gloom. He wrote on the day after the code was signed: "This is a sad day for me and hundred of thousands of the 'Forgotten Men' that you have preached about. Our idol of gold turns out to be but an idol of common clay." Saying that the code's provisions had loopholes which would not bring adequate wages and shorter hours, the steelworker concluded: "The Administration at Washington having betrayed our trust, we can but call on God to help us. He, at least, should be beyond the reach of high finance."[112]

The steel industry, however, was now under the Blue Eagle. In spite of certain concessions which the industry had made, it had gained most of what industry leaders had wanted. Wages and hours were standardized, along with prices. Leaders in the industry had fought a long battle for these controls in order to bring the "chiselers" in the industry into line. All manner of "fair trade" practices had been written into law. Production and capacity controls were now possible if it became necessary to use them. All of these industry controls, which required close consultation and cooperation among industry members, could now be effected without reverting to such practices as the once-used "Gary dinners." NRA officials optimistically believed that by allowing

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[111] Iron Age, CXXXII (August 24, 1933), p. 35.

[112] W. E. Morgan to Franklin D. Roosevelt, August 20, 1933. NRA Papers.

industry self-government the old chaotic cut-throat competition would be eliminated. To those so inclined it seemed as if a giant step toward economic planning had been taken. Above all else NRA officials felt that they were going to be able to have their say in the way the code operated. This optimism was to be sorely tested in the ensuing months of the steel code's operation.

CHAPTER V

THE STEEL CODE AUTHORITY AND THE NRA

Early in January 1934, the American Iron and Steel Institute moved from its suite of offices on the eighteenth floor of the Empire State Building to much larger quarters on the thirty-third floor.[1] The movement upward was more than symbolic, for the Institute had suddenly been transformed from a voluntary association of steel makers who were constantly aware of the prohibitions of the antitrust laws, into the Steel Code Authority empowered to enforce the provisions of the Steel Code with little regard to the antitrust laws. The Code Authority in this new role was clothed with quasi-legislative, executive and judicial powers, strong enough to allow the Institute to direct almost every activity of the most basic industry in the American economy.

This great concentration of power naturally raised a serious question of public policy. Who was protecting the public interests? While there was a division of the NRA vested with administrative powers over the Steel Code Authority, its use of those powers effectively, and in the public interest, was minimal. Even though NRA representatives sat in on Code Authority meetings, their activities were mainly confined to making the position of the NRA known to industry leaders. Throughout the life of the Industrial Recovery Act the relationship of the NRA and the Steel Code Authority was a most tenuous one.[2]

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[1] Iron Age, CXXXIII (January 4, 1934), p. 146.

[2] My study of the relationship of the NRA and the Steel Code Authority must be somewhat limited by the inaccessibility of the Steel Institute records. Of the 757 code authorities, only 18 turned over their records to the NRA. Steel was not among that small group. Repeated letters from the

The story of the Steel Institute is inextricably bound in the history of the iron and steel industry as a whole. Before 1898 competition in the industry had been keen, at times even deserving the often mentioned epithet, "cut throat." It was true that pools and gentlemen's agreements were introduced from time to time in an effort to bring some order out of chaos, but they generally failed because of the inherent weakness of such devices. From 1898 to 1900 a great consolidation movement took place in the industry, financed by capital interests dominated by three Captains of Industry--J. P. Morgan, Andrew Carnegie, and W. H. Moore. Such large companies as Federal Steel, National Steel, American Bridge, National Tube, and American Sheet Steel were organized. This move toward concentration was prompted by a desire to integrate production facilities so that every step in the production process, from the raw material to the finished product, could be controlled by each of the three combines.[3]

The consolidation movement, however, laid the basis for a truly ruinous industrial war between the three giants of the industry. Therefore, to head-off any such internecine warfare, the principals agreed to the formation of the "combination of combinations"--United States Steel Corporation of New Jersey, which controlled 65 percent of the nation's steel

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author to the Institute asking for permission to examine the Code Authority files finally elicited the reply that the records were confidential and not open to research. These are presumably public records as are those of other government agencies and departments, but the attitude of the Institute toward scholars is much the same as it was toward officials of the NRA. It is fortunate, however, that there is an abundance of correspondence and reports in the NRA records in the National Archives covering the activities of the Code Authority.

[3]Walter Adams, "The Steel Industry," in Walter Adams, (ed.), The Structure of American Industry (New York, 1950), pp. 147-148.

capacity and was the first billion dollar corporation in history. There was no doubt that the Corporation wanted complete integration for the economies such organization afforded, but it soon became more evident that the combine was attempting to gain an effective monopoly of the entire industry.[4] The industrial depression of 1907, which brought active price competition, modified the Corporation's drive toward monopoly into a project for getting competitors to accept U. S. Steel's price leadership. This objective was achieved when Judge Elbert H. Gary, president of the Corporation, inaugurated his famous periodic dinners, usually attended by executives representing 90 percent of the steel capacity in the country. Gary exhorted his guests "like a Methodist preacher at a camp meeting" and persuaded them that cooperation with U. S. Steel would be more profitable than competition.[5]

The Gary Dinners continued until 1911 when the federal government filed an antitrust suit against the Steel Corporation. World War I delayed a decision on the case but in 1920 the Supreme Court by a 4 to 3 decision ruled that, although U. S. Steel had attempted to monopolize the industry, it had not succeeded. Perhaps more than any other factor which saved the Corporation from the dissolution order was Gary's policy--which had often irritated his own executives--of "live and let live" as long as competitors followed his price leadership. During the 1920's, although the Steel Corporation's sales slipped in percentage to such strong independents as

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[4]H. R. Seager and C. A. Gulick, Trust and Corporation Problems (New York, 1929), pp. 229-230.

[5]Adams, Structure of American Industry, p. 150.

Bethlehem Steel, Youngstown Sheet and Tube, Republic and National--the Corporation still managed to furnish effective price leadership and "friendly competition . . . endured as the basic characteristic of the industry."[6]

As early as 1855 members of the iron industry had joined together to promote their common interests. The American Iron Association was organized in that year, but was soon succeeded by the American Iron and Steel Association. In 1857 the Association issued a monumental report on iron production in the United States. Excellent statistical analyses and surveys became a hallmark of the trade association. During the 1850's and 1860's the Steel Association concentrated its work largely in the fight for tariff protection. However, with world leadership in iron and steel passing into the hands of United States producers, the argument for protection of the "infant industry" became obsolete and the Association was forced to justify its stand on the tariff with arguments that the tariff afforded a higher level of employment and wages.[7]

The American Iron and Steel Institute was incorporated in New York on March 25, 1908, with fifteen directors headed by Judge Gary and including Charles M. Schwab and W. J. Filbert.[8] The number of directors was increased to thirty in 1928.[9] The discontinuance of the Gary Dinners in 1911

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[6]Ibid., pp. 151-152.

[7]George B. Galloway, (ed.), Industrial Planning Under Codes (New York, 1935), p. 149.

[8]Certificate of Incorporation of the American Iron and Steel Institute, NRA Papers.

[9]Notice of Increase of Directors of AISI to the State of New York. NRA Papers.

transferred the task of promoting cooperation in the steel industry to the Institute. This was not too difficult considering that Judge Gary was also president of AISI. The regular semi-annual dinner meetings of the Institute were now supplemented by formal programs in which technical papers were read by scientists and engineers. Thus, not only were industry executives gathered together twice a year at which time prices could be discussed, but also the fairly free exchange of technical data led to a high degree of uniformity in steel mill operations and an increasing decline of "trade secrets."[10]

The depression years of 1929 through 1933 saw the semi-annual Institute meetings providing a forum for the leaders of Big Steel, especially James Farrell of the U. S. Steel Corporation and Charles Schwab of Bethlehem, to exhort their fellow members to refrain from price-cutting, overproduction, and wage-reductions. Once again, in the wake of a serious economic dislocation, steel leaders were trying to head off intra-industry warfare. But, when it became apparent that mere evangelism was not going to eliminate cut-throat competition, most steel executives began to participate in the growing discussions of a "plan" for enforced industrial government. While most top industry officials took a wait-and-see attitude, there was no open hostility to such plans expressed. As early as August 1932 the Institute was reorganized to prepare for any expanded role which trade associations might play in economic planning.

When the Industrial Recovery Act became law, therefore, the Steel Institute was prepared to draft a code for its industry and then to perform as the Code Authority to administer that code. The Recovery Act provided

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[10]Galloway, Industrial Planning, p. 152.

that for such an association to perform these two functions it must be truly representative of the industry and could not impose any restrictions upon non-members joining. The AISI maintained that it represented over 90 percent of the capacity of the industry and throughout the life of the Steel Code this statement was never challenged.

The constitution and by-laws of the Institute provided for both individual and company members in active or associate status. Active memberships were limited to 2,000 and to those persons directly engaged in iron and steel production. A corporation was eligible for membership if it were engaged directly in producing iron and steel and if it had an employee who was an individual member. There was an entrance fee and yearly dues of $20. The Institute, up to the approval of the steel code, was managed by a board of directors of thirty men.[11] However, with the enormously increased functions of the board after it became the Code Authority, the organization was modified by establishing an executive committee elected by the Board. This committee not only was smaller and more efficient, but its members could meet more often as the new business of the Institute required. The executive committee consisted of the chairman of the board of directors, a president, one or more vice-presidents, a treasurer and a secretary, and an executive secretary.

The executive secretary had charge of all affairs of the Institute, particularly in seeing that orders and resolutions of the board were car-

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[11]Constitution of AISI, NRA Papers, NA, n.p. The board membership was increased to 32 in May 1934 to provide greater representation for smaller members of the Code. Certificate of Change of Number of Directors of AISI, Filed with Department of State, New York, May 11, 1934. NRA Papers.

ried out.[12] The first executive was Walter S. Tower, a Ph.D. in economics from the University of Pennsylvania. He had taught economics for about ten years and during Warld War I was associated with the U. S. Shipping Board as an expert on commercial matters. Following the war he was employed by the Consolidated Steel Corporation, one of the Webb-Pomerine Act export associations, and in 1921 Tower went to London as a commercial attache at the American Embassy. Tower joined Bethlehem Steel in 1925 and in June 1933 was placed at the disposal of the committee drafting the steel code.[13] As executive secretary Tower was the one man who was responsible for the daily practical implementation of the code. He was also almost exclusively the one Institute official who communicated with his counterpart in the NRA, Robert W. Shannon, deputy administrator for the steel code.

Although it is generally stated that the Steel Institute was the Steel Code Authority, in reality the board of directors of AISI was so designated. Articles VI through XI of the Code of Fair Competition set forth the extensive powers of the Authority. Those powers, in effect, made the trade association board a private arm of government. Without the approval of the federal government it could interpret code provisions to its own satisfaction. Commercial regulations could be issued which were, in reality, laws binding on each code member. New unfair practices could

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[12]Resolution by the Board of Directors of AISI, September 20, 1933. NRA Papers.

[13]National Recovery Review Board, Hearing, April 4, 1934. NRA Papers, pp. 63-65 (mimeographed). Hereafter cited as Darrow Board Hearings.

be added to those set forth in the code, and, as soon as notice had been given to the members and the President, they were legally binding on all members. Thus, the Code Authority had powerful legislative functions.

The administrative powers of the Code Authority were equally strong. Almost every sphere of a company's business was subject to control from the thirty-third floor of the Empire State Building. The board could define and regulate sales of steel to jobbers (wholesalers) and even determine the financial arrangements of those sales and resales. It could allow deductions below the base or delivered price, determine the classification of products, and set minimum freight and arbitrary switching charges. It could establish the rate of interest on all overdue accounts and authorize settlements of accounts other than those prescribed in the code. It was empowered to issue lists of unform extras (fixed charges for modifications of standard types of steel) and fix deductions and rebates on sales to manufacturers engaged in export trade. It had control over sales to Alaska, Puerto Rico, the Phillippines and the Canal Zone. The Code Authority was truly a powerful administrative agency with quasi-judicial powers.

The Authority also had the teeth to enforce its powers. It could require constituent companies to supply statistics concerning production, capacity, shipments, and sales of steel products. Figures on hours of labor, rates of pay and other employment conditions had to be furnished on forms issued on a monthly basis. Failure to supply these statistics constituted a violation of the code, and further power was given the Authority when it was allowed to conduct an independent audit of any company's re-

cords. Violations of the code could be punished by the assessment of liquidated damages in the amount of ten dollars a ton on all products sold in violation of the code. To insure adequate financing of Code Authority operations, the board could levy assessments on each member of the code in relation to its voting strength, and failure to pay the assessment was a violation of the code.

These powers were not absolute because they were always subject to the right of the President to modify or cancel any order, rule, or regulation issued under Title I of the Recovery Act. When the steel code was revised on June 11, 1934, the Recovery Administrator was given the right to suspend any action of the Code Authority which he deemed to constitute a modification of such board action until he had investigated and ruled on the action. One further check which the President had in reserve was that only he could approve any regulation designed to control production. These powers granted to the federal government were never exercised because, it appears, of the sincere wish of the government to allow an experiment in true industrial self-government and its desire not to raise the ire of the industry.

The individual members of the iron and steel industry actually had less control over the operation of the code than did the government. The code membership as a whole had the right to vote on only three issues: adoption of the code, amendments to the code, and termination of the code. Fifty percent of the voting strength of the membership could call a meeting but could then act on only one issue--termination of the code--for every amendment had to be proposed by the board of directors. After the

code had been adopted the only occasion on which the members were asked to cast a vote was at a meeting on May 29, 1934, when amendments were proposed to the original code.[14]

Even had the membership been permitted a larger share in the administration of the code, the more powerful members of the industry would have still dominated matters. Each member's voting strength was determined by dividing the total invoiced value of domestic sales of the previous year by 500,000, but each member was guaranteed at least one vote. This method of calculating votes meant a considerable concentration of voting power. In 1934 twenty companies had at least ten votes each and represented 75 percent of the total voting power. United States Steel Corporation alone had 25.7 percent of the total and Bethlehem Steel had 9.1 percent. Sales had so increased in 1934, however, that in 1935 some forty companies had as many as ten votes each, out of a total vote for all members of 2,297, and the largest number held by any one member was less than 10 percent of the total.[15]

The board of directors of AISI, or the Code Authority, showed the same concentration of voting power as did the total membership. At the outset there were thirty members of the board, but U. S. Steel had four members and Bethlehem, American Rolling Mill, and Youngstown Sheet and Tube had two members each. Of the thirty voting members on the Code Authority in June 1934, twenty-three were officials in seventeen of the large

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[14]Carroll R. Daugherty, et al., The Economics of the Iron and Steel Industry, Vol. I (New York, 1937), p. 218.

[15]Ibid.

integrated companies, while the nine largest steel companies controlled 52 percent of the vote on the Code Authority. In all, the thirty directors represented twenty-three companies which held about 75 percent of the total voting strength of code members.[16]

While the overall direction of the code was undertaken by the board of directors of the Steel Institute, the code empowered the board to delegate any and all of its functions to various committees. These committees showed the same general domination by the large units in the industry. The administrative committee, which performed the functions of the board in the interim between the regular monthly meetings of the board, consisted of W. A. Irvin, president of U. S. Steel, and his associate, W. J. Filbert; Eugene Grace, president of Bethlehem Steel; L. E. Block, president of Inland Steel; T. M. Girdler, president of Republic Steel; E. T. Weir, president of National Steel; and Hugh Morrow, president of Sloss-Sheffield Steel. The committee on commercial matters, a powerful group which promulgated the commercial regulations, was chairmaned by Samuel E. Hackett of Jones and Laughlin Steel. The chairman of the labor committee was Frank Purnell of Youngstown Sheet and Tube Company, and of the statistics committee, W. J. Filbert, vice-chairman of U. S. Steel's finance committee. Each chairman appointed the committee members, and out of a total of thirty-six men on these three committees, seven were from U. S. Steel, five from Bethlehem, four from Republic and three from Jones and Laughlin. Six other companies had two members each on one or more committees.[17]

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[16]Daugherty, Economics of the Iron and Steel Industry, I. p. 222.

[17]Steel, XCIII (September 11, 1933), p. 11.

The oligarchic nature of the Code Authority and its branches while fraught with grave implications, was never critized to any great extent from within the industry. One major reason was the nature of the industry itself, in which smaller producers had been accustomed to look toward the major producers for leadership before the code was signed. This system had generally kept industry warfare at a minimum and, after all, the NRA was supposed to usher in a period of great industry-wide cooperation. Moreover, voting strength in most other codes was allocated on much the same basis as that employed in the steel code.[18] All-in-all, the steel industry was and had been organized in a very general way. It wanted a stable price level, tariff protection, a low level of competition, and labor peace. A board of directors dominated by the large producers operated efficiently and was highly effective in promoting industry goals. Smaller industry members had been willing to risk occasional disciminations for the overall security they enjoyed. The history of the NRA does not reveal that the industry ever had substantial regrets for its bargain.

With industry members apparently satisfied with the organization and operation of the steel code it seems, perhaps, that industrial self-government would have been achieved. There were, however, much larger questions of public policy. What was the function of the federal government and the National Recovery Administration? What part was the NRA to play in seeing that the interests of consumers and labor were protected? The government's role was not only complicated by the absence of a coherent philosophy and program of participation in the operation of the codes, but

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[18]Lyon, The National Recovery Administration, pp. 210-214.

also by the philosophic differences within the government itself.[19] Even the most sanquine administrative supporter of true industrial self-government, however, did not advocate that the government had no role to pay whatever.

The National Industrial Recovery Act had established the principle that no code could be approved until the President was satisfied that the group submitting the code was truly representative of the industry and that it imposed no inequitable restrictions on membership in its group. Furthermore, the President had to be satisfied that such a code would not be monopolistic or oppress small enterprises. He could withhold his approval from any code until certain modifications in its provisions were made to satisfaction. Finally, he had the ultimate power of requiring the licensing of businesses whenever he found that destructive practices contrary to the Recovery Act were being employed. The President could also use the FTC to make investigations of business practices. Section 7 forced all code members to recognize the right of collective bargaining and established the principle of minimum wages and maximum hours.

Most of these provisions, however, applied to the code-making process. The desire of the administration to get the steel industry under a code had been so great that numerous compromises had to be made. Only reluctantly did the steel industry agree to allow any NRA representatives to participate in Code Authority meetings. Then, they were so wary of "unfriendly" persons, such as labor leaders or social radicals, taking part that they expressly wrote into the code that the Recovery Administrator and one or two other persons appointed by him could attend board meetings

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[19]Chapter 8 and 9 of this study will deal with the incongruities of the philosophy of such agencies as the Federal Trade Commission on the one hand and the NRA on the other.

as "long as they shall be persons not having or representing interests antagonistic to interests of member of the industry." This made General Hugh Johnson an administration member and he appointed Donald Richberg, head of NRA's legal division, and K. M. Simpson, a division administrator, to join him.[20] Actually, Simpson was the administration watchdog, as he attended all but one of the board's meetings, while Richberg attended one-half of them and Johnson only one.[21]

Simpson's appointment did not cause any anxiety among steel leaders. He was a Columbia University graduate in mining engineering and metallurgy. Most of his career had been spent as a private consultant, although he had been a technical adviser to the War Department during World War I. He was an intimate friend of General Johnson.[22] In his late forties, "Simmie," as he was called by his friends, was described as short, stocky, quiet, shy, stolid, and sleepy. He gave the impression of being in a daze from the time of his arrival in Washington and certainly possessing no brillance. He reminded one, as an observer wrote, "a little of Herbert Hoover."[23] Simpson resigned as division administrator on June 1, 1934, in order to resume his private engineering practice. However, he continued as NRA

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[20]NRA Administrative Orders No. 11-4 and 11-5, July 20 and 26, 1934. NRA Papers.

[21]Division of Review, Standard Work Sheet (Investigator - J. Davis), March 30, 1935. NRA Papers.

[22]Iron Age, CXXXII (July 27, 1933), p. 39.

[23]"Unofficial Observer" [John F. Carter], The New Dealers (New York, 1934), p. 45.

representative on the Code Authority.[24] Thus, Simpson was actually the only member of the NRA who was in direct contact with the Steel Code Authority. Even at that, his effectiveness was limited by what the board members were willing to discuss in his presence and by his own role, which was essentially to make known to the board the attitudes of the NRA in Washington.

A more structured part of the NRA's role in dealing with the steel industry was the office of the deputy administrator for the steel code in Washington. With a staff of two aides, one clerk and two secretaries, this was the only agency of the government which devoted full-time to the administration of the steel code. The deputy administrator was Randolf W. Shannon, who left Princeton in his junior year to enter the army. After seeing active service in France he returned to the United States, took a student's training course with the American Sheet and Tin Plate Company and then was engaged in sales work for the same firm. He spent two years studying production operations and metallurgy in steel mills and as a result wrote Sheet Steel and Tin Plate, a book intended to assist consumers in economical utilization of those products.[25] Shannon was not unfriendly to the industry but did try conscientiously to administer the code to the letter and spirit of the law. In spite of these attitudes, Shannon's patience and office were sorely tried in the months which marked the life of the code.

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[24] Iron Age, CXXCIII (May 31, 1934), p. 41. Simpson was succeeded as administrator of Division I by Charles E. Adams, president of the Air Reduction Company and director of some six other corporations. Ibid. (June 7, 1934), p. 37.

[25] Iron Age, CXXVIII (July 2, 1931), p. 46.

The board of directors of AISI met for the first time as the Code Authority for the Iron and Steel Code on August 29, 1933. On September 20 the board set its regular meetings for the second Tuesday of each month at 10:30 in the morning at the offices of the Institute.[26] At the first meeting, which Alexander Sachs, Simpson, and Richberg attended, the general committees were appointed and the multitude of new problems were discussed. Confusion during the first week in the life of the Code, especially on matters relating to price filing, was so great that on September 1 a general meeting of executives of the entire industry was held to explain what was going on.[27]

The original ninety day experimental period for the steel code was, as could be expected, a period of much confusion for industry members, the Code Authority, and NRA officials. By August 28 some 160 separate firms had filed a mass of price schedules to meet the August 29 deadline. This data came into New York in such a mass, that the secretary of the Institute, George H. Charls, was not able to compile a composite price list for several days. Even by the third week of code operations the board had issued several supplemental regulations which left steel firms still befuddled by the interpretations to be applied on prices and business regulations.[28] Some people were complaining that this situation led to uncertainty on the part of buyers and sellers and was a deterrent to business.[29] This confusion ultimately led to regional meetings at Pitts-

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[26]AISI Board Resolution, September 20, 1933. NRA Papers.

[27]Iron Age, CXXXII (August 31, 1933), p. 36, and Steel, XCIII (September 4, 1933), p. 11.

[28]Steel (September 4, 1933), p. 11.

[29]Iron Age, CXXXII (September 14, 1933), p. 48.

burgh, Philadelphia, Cleveland, and Birmingham conducted by Walter Tower for the purpose of explaining and interpreting the terms and provisions of the code.[30] There were also numbers of letters from New York to code members explaining individual provisions, such as one which warned members that the shipment of products under fourth quarter contracts could not be extended beyond December 31, 1933.[31]

Everything was not going too smoothly with the "monolithic" Steel Institute either. K. M. Simpson reported dissension on an important committee of the Code Authority and recommended that NRA attempt to eliminate it.[32] A more important public event, however, was the resignation of Robert P. Lamont as president of the Institute. In a letter written to the board just two days after the first meeting of the Code Authority, Lamont said that this action marked the beginning of government regulation of business. "No one knows," Lamont wrote, "how far it may go." Continuing his letter by stating that the major activities from that point on would be to carry out obligations under the Code and to report to the government, Lamont concluded:

> The opportunity for constructive, forward-looking studies and plans for the industry as a whole, that seemed possible a year ago, must give way to the present practical, immediate demands, which can best be met by men familiar with the vast details of the various branches of the industry. I can be of little help in this work.[33]

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[30] Iron Age, CXXXIII (January 18, 1934), p. 29, and (March 33, 1934), p. 42.

[31] AISI to members of Steel Code, December 12, 1933 (mimeographed). NRA Papers.

[32] Agenda for AISI Board Meeting of October 12, 1933 (note penciled in margin). NRA Papers.

[33] Steel, XCIII (September 18, 1933), pp. 11-12.

Business sources reported that Lamont not only frankly disliked government in business, but that "he was weary of trying to maintain discipline among his pack of individualistic iron-masters." Other reports indicated that he was hard-pressed to obtain the necessary funds for the operation of the Institute and that his own salary of $100,000 a year had been cut in half, that he had been given one job at the start and then had been handed the steel code, and that in the fight for the open shop Charles Schwab and Myron Taylor had taken command.[34] A further resignation was that of George H. Charls who resigned on November 15 and was replaced as secretary of the Institute by L. V. Collings, a New York attorney.[35]

The steel code problems, however, were actually small in comparison to those which began to beset the NRA in general during the fall of 1933. The Blue Eagle drive had been highly successful, but it had exacted its price. The campaign had been conducted at the fever-pitch of an old-time revival meeting. There was a constant appeal to patriotism; anyone who did not go along was at least a "chiseler"--at worse a "traitor." "We haven't started to apply the heat of this thing yet," Johnson warned. "This isn't a campaign of a week or a month. It's a drive we're going to keep up until the last employer has signed up."[36] The heat began coming when Roosevelt issued an executive order from Hyde Park which permitted cancellation of all government contracts with non-NRA manufacturers. Jim Farley talked of prosecuting violators of the Recovery Act under mail fraud

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[34] Time, XXII (September 25, 1933), pp. 46-47.

[35] Iron Age, CXXXV (January 18, 1935), p. 27.

[36] Time, XXII (August 21, 1933), p. 10.

statutes. Harry Hopkins warned that relief funds would be spent on projects cooperating with the Blue Eagle. When a Baltimore power company claimed exemption from NRA provisions because it did no interstate business, Johnson retorted that the Blue Eagle "can't see a State line." He then warned all code violators: "The time is coming when somebody is going to take one of these Blue Eagles off someone's window and that's going to be a sentence of economic death."[37]

Many persons began to warn the General, however, that the mass emotion engendered by popular rallies and public exhortations was beginning to boomerang as more emphasis was put on "cracking down" rather than voluntary cooperation. The NRA had become the symbol of the entire recovery effort of the government and Johnson was the symbol of the NRA. Frances Perkins has written that Johnson's energy, imagination, and drive were invaluable to the early success of the NRA and that "there was hardly anyone else in the United States who could and would have done just what he had to do at the time to stir frightened, lethargic people into action."[38] Another observer said:

> It was the job /administrator of NRA/ which called for the services, not of a statesman nor of an economist, but of a lion-tamer and a breaker of wild horses. . . . The need of the moment was for a combined punitive expedition, hog-calling contest, and a torch-light parade. The answer to that need was the combined riot-squad, ballyhoo and crusade led by the N.R.A., under the totem of the Blue Eagle and the leadership of Hugh Samuel Johnson and his merry men.[39]

Johnson had become overextended and the NRA overpromised.

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[37] Ibid. [38] Perkins, The Roosevelt I Knew, p. 205.

[39] Carter, The New Dealers, p. 31. Carter called his chapter on the NRA, "The Industrial OGPU."

One of the greatest problems which had developed for the NRA was Johnson's inclination to be a one-man show, not only in the public view, but in the administration of the Recovery Act. He did not like the advisory committee which had been appointed to keep NRA within bounds and most members stopped coming to meetings because it seemed useless. The General worried Frances Perkins when he gave her a copy of Raffaello Viglione's The Corporate State, which glowingly described the Italian dictatorship, and further, when he proposed that instead of having advisory boards a labor man should sit at his right and a businessman at his left to whom he would explain the codes.[40] Donald Richberg, however, thought that what the administration needed from the start was a division of responsibility between a policy-making board and an executive organization.[41]

A struggle therefore broke out within the ranks of the NRA during its early months between those who wanted less of an administrative dictatorship and those who were loyal to Johnson. There was also increasing concern that the NRA--again many said this was Johnson's doing--was taking on more than it could handle. There were too many codes coming in too quickly. There was no time to study them carefully, to understand them or to administer them. Even his old boss, Baruch, told Johnson on more than one occasion that he was trying to do too much and repeated Woodrow Wilson's admonition when Baruch was appointed chairman of the WIB: "Let alone what is being successfully done and interfere as little as possible with. . . . normal processes."[42]

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[40]Perkins, The Roosevelt I Knew, pp. 205-206.

[41]Richberg, The Rainbow, p. 113. [42]Baruch, Public Years, p. 253.

Johnson seemed driven, however, toward the goal of whipping the depression as he had reportedly fractured the jaw of a drunken private in a bar-room brawl in the Philippines. Some people were amused, others were frightened, when newspapers and magazines carried pictures of Johnson greeting a crowd in a Mussolini-like salute. Some persons began to speculate that Johnson was "the man on horse-back" for whom the New Deal was preparing the way.[43] But Johnson thought he had the people with him. For a while he had even silenced the voices of opposition. He wired Patrick J. Hurley, former secretary of war under Hoover, on September 1 and asked him to make a national radio address advocating a "Buy Now" campaign and supporting the NRA.[44] Hurley obliged and on the night of September 27 told the nation:

> Many honest men have misgivings as to the effect of the Act on our system of government. . . . But under the N.R.A. program, wages and profits do not go to the state. The N.R.A. plan is not Bolshevism; it is not socialism; it is not fascism; it is not collectivism; it is Americanism.[45]

With such support Johnson was ready to end the voluntary code-making period and enter the enforcement period. A reporter asked Johnson what would happen to those persons who refused to go along with the code, and Johnson replied: "They'll get a sock right on the nose."[46]

Still, for all the loud and confident noises being made by Johnson,

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[43]Carter, The New Dealers, p. 31.

[44]Telegram from Hugh Johnson to Patrick J. Hurley, September 1, 1933. Hurley Papers. University of Oklahoma Library.

[45]"The National Industrial Recovery Act," Radio Address by Patrick J. Hurley, Hurley Papers. University of Oklahoma Library.

[46]Schlesinger, Coming of the New Deal, p. 119.

it was evident that enthusiasm for the NRA effort was waning in the fall of 1933. Complaints from both businessmen and workers were pouring into Washington. Business was not getting the profits it wanted. Workers were not receiving a "living wage" nor hours which they considered suitable. On Labor Day Johnson admitted that instead of the reemployment of six million men which he had anticipated by that date, only some two million men had been put back to work.[47] Local enforcement boards were not really enforcing anything. Henry Ford continued to defy the Auto Code and although Johnson threatened to crack-down, he did nothing.[48] William Randolph Hearst condemned the NRA as "absolute state socialism," and Walter Lippmann stated: "The excessive centralization and the dictatorial spirit are producing a revulsion of feeling against bureaucratic control of American economic life." Even Henry I. Harriman, one of the early supporters of the scheme, referred to the NRA as "the bedlam that they have over there," and remarked that, although business had been 100 percent behind NRA in the beginning, he knew of "no representative group of businessmen today in which some do not question the whole program."[49]

The leaders of the steel industry, however, were not ready to denounce the NRA experiment--at least not the steel code. Their code had originally been approved for a ninety day trial period and on November

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[47] Time, XXII (September 11, 1933), p. 15. Roosevelt told the nation in the fourth "fireside chat" on October 22, 1933, that 4 million persons had been reemployed, or 40 percent of those seeking work. Public Papers of Franklin D. Roosevelt, II, p. 421.

[48] Time, XXII (September 18, 1933), pp. 10-11.

[49] Schlesinger, Coming of the New Deal, pp. 120-121.

15 the board of directors of AISI forwarded a resolution it had just passed expressing satisfaction with the operation of the code and asking for an extension to May 31, 1934.[50] The following day Johnson wrote the President reporting that the steel industry had met the wages and hours conditions of the Recovery Act, that a minimum of complaints against the code had been received and that they could be adjusted under the code. He, therefore, recommended an extension of the code in order that a longer time period could be allowed to more effectively judge the effects of the code.[51] On November 17 Johnson telegraphed AISI, congratulating them for their "generous cooperation" and the "substantial public benefits" resulting from that cooperation, and notifying them that Roosevelt had agreed to extend the code.[52]

According to the steel industry the ninety-day test period had mainly benefited the employees. The AISI did announce that composite prices had increased from 1.979 to 2.015 cents per pound for finished steel, and from $15.94 to $16.61 per gross ton for pig iron, but that the volume of business had declined ten percent and operations at ingot capacity had dropped from 46 to 41 percent. Nevertheless, the number of employees rose by 73,000, or 22 percent, and wages increased approximately $6½ million, or 21 percent. Working hours dropped from an average of 39.2 to 32.8 hours per week, but average earnings increased from 52.8 to 63.6

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[50]Resolution of the Board of Directors of the American Iron and Steel Institute, November 15, 1933. NRA Papers.

[51]Johnson to Roosevelt, November 16, 1933. NRA Papers.

[52]NRA Release No. 1789, November 17, 1933. NRA Papers.

cents an hour.[53] Leo Wolman, chairman of the Labor Advisory Board, reported even higher figures of reemployment. He believed that 100,000 additional persons had been hired and that payroll increases amounted to more than $9 million. Wolman praised the industry for increased employment because he said that it resulted from the voluntary adoption of the eight-hour day, which under the code was not mandatory until the industry was working at 60 percent of capacity.[54]

Such figures as these, however, would not have brought such wholehearted acceptance of the code by leaders of the steel industry. With production figures still down and profits non-existent, steel officials had not become such simple dispensers of charity as willingly to follow the wages and hours provisions of the code without some idea that it would eventually bring the profits they wanted. These leaders, in fact, were willing to accept temporary increased costs for the privilege of ordering their business, under law, as they had long practiced in other ways. There would probably have been much greater hostility toward NRA on the part of the industry if it had not been allowed such great latitude and independence in the operation of its code. The industry subscribed wholeheartedly to the statement issued by the Business Advisory and Planning Council, set up by the Department of Commerce to assist the NRA. "Business should remain free of governmental interference and control and must be permitted to exercise the initiative and the agressiveness that have charac-

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[53] Business Week, November 25, 1933, p. 10.

[54] Statement of Leo Wolman, n.d. NRA Papers.

terized its remarkable development in the past."[55] The Steel Code Authority was certainly aggressive.

The formal recognition of the Code Authority system was not actually begun until January 1934. In a form letter sent to all Code Authorities the NRA stated that it "was committed to the deliberate exploration of the possibilities of, and encouragement to self-government; and to a policy of strengthening the permanent association establishment of American industry."[56] Two days later the Code Authority Organization Committee recommended to Simpson that the board of the Steel Institute be authorized temporarily to administer its code, with the exception of labor complaints.[57] On February 1 this authorization was transmitted to AISI.[58] A more detailed communication was sent to Tower on February 5 setting forth the necessary steps for adjusting trade practices complaints and stating that AISI would also be granted the right to adjust labor complaints when, and if, it created the necessary machinery.[59]

The Code Authority Organization Committee set forth the Recovery Act qualifications for Code Authorities in a list of minimum standards. Among those qualifications it required that Code Authorities must promptly file a copy of the minutes of each meeting and a summary of all other important actions taken. It was further required to transmit to the NRA for review, before releasing to the industry, all Code interpretations,

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[55] New York Times, November 3, 1933, p. 13.

[56] NRA Code Authority Organization Committee, "Information for Code Authorities, First Release," January 22, 1934, p. 1. NRA Papers.

[57] Wilson Compton to K. M. Simpson, January 24, 1934. NRA Papers.

[58] R. W. Shannon to AISI, February 1, 1934. NRA Papers.

[59] NRA to Walter S. Tower, February 5, 1934. NRA Papers.

regulations, bulletins, manuals, and other operational data.[60] This regulation was disregarded by the Steel Code Authority, and the NRA in Washington was unable, or at least unwilling, to enforce compliance. This situation illustrates as well as any factor the nature of the relationship between the administration and the Steel Code Authority.

The Code Authority itself had a very elaborate system set up for gathering statistics. A thirty-one page manual was prepared, with the aid of the NRA research and Planning Division, giving instructions and sample forms for reporting data dealing with labor conditions, production and capacity, and income and balance-sheet information.[61] Most of the reports were due from member firms monthly and failure to provide them was a violation of the code. Naturally, much of the data gathered involved trade secrets, therefore, most were released in general summaries with no individual firms mentioned by name.

Deputy administrator Shannon was most conscious of the value of such statistics in any scheme of industrial self-government or economic planning. For example, he gently prodded Walter Tower because the form AISI was using to gather production data was a quarterly, rather than a monthly report. Shannon wrote Tower that while he realized the difficulty of determining monthly production, even estimates were better than no data at all "as a better basis for planned action."[62] AISI went

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[60] NRA Code Authority Organization Committee, "Information for Code Authorities, First Release," January 22, 1934, p. 11. NRA Papers.

[61] AISI Committee on Reports and Statistics, "Instructions for Compiling Data . . . and Statistics. . . ," September 6, 1933. NRA Papers.

[62] R. W. Shannon to Walter S. Tower, January 3, 1934. NRA Papers.

ahead with its quarterly report but Shannon persisted. A month later Shannon wrote that he agreed with the omission of some figures on the quarterly form but "from the standpoint of planning for the Industry it would be desirable to have a separate compilation of this information."[63] Generally, the summaries of data gathered by the Institute came to NRA without much delay, and Shannon wrote to Tower complimenting him on the job being done.[64]

When Shannon thought that he did not have all the information required, however, he was quick to ask for it. For example, in April 1934, he wrote Tower, congratulating him on wage increases in the industry announced in the public press and asking for statistics on the wage increases. Shannon must have been surprised and disappointed when Tower replied that AISI only knew what it read in the papers.[65] At another time when the newspapers carried monthly code statistics before they had reached NRA, Shannon quickly telegraphed Tower requesting an explanation.[66] This was not simple bureaucratic insistence on a lot of paperwork, but a recognition that only by placing the statistics in the hands of NRA officials could the operation of the code be fairly judged.

If there were only infrequent, though important, difficulties facing NRA in obtaining statistical data, such was not the case in regard to the

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[63] R. W. Shannon to Walter S. Tower, February 8, 1934. NRA Papers.

[64] R. W. Shannon to Walter S. Tower, April 28, 1934. NRA Papers.

[65] R. W. Shannon to Walter S. Tower, April 3, 1934; and Walter S. Tower to R. W. Shannon, April 10, 1934. NRA Papers.

[66] Telegram from R. W. Shannon to Walter S. Tower, May 2, 1934. NRA Papers.

actions of the Code Authority and its numerous committees. The NRA was so lacking in knowledge of the organization chosen to administer the steel code that it initially had to write to the Institute requesting a list of the members of the Code Authority.[67] Throughout the first year of code operation not one copy of the minutes of a Code Authority meeting was submitted to Washington as required. On December 6, 1934, Shannon finally wrote to Tower requesting complete copies of the minutes of all board meetings "on advice of legal advisor."[68] Tower replied that much of the minutes was taken up with the commercial resolutions which had been printed and sent to NRA. He went on to say that he was preparing a memorandum summarizing the other action taken by the board which was not contained in advance agendas.[69] Shannon replied, after receiving the memorandum, that certain actions taken by the board had not been included and once again requested that he begin receiving the verbatim minutes.[70]

Several more letters passed between the two officials, requesting and denying information, until Tower wrote in March 1935, that such a compilation of information as requested took a great amount of time out of that necessary for the administration of the code.[71] Shannon, with great restraint, replied that as long as he knew they were working on

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[67]K. M. Simpson to R. P. Lamont, September 8, 1933. NRA Papers.

[68]Shannon to Tower, December 6, 1934. NRA Papers.

[69]Tower to Shannon, January 8, 1935. NRA Papers.

[70]Shannon to Tower, January 24, 1935. NRA Papers.

[71]Tower to Shannon, March 23, 1935. NRA Papers.

the information he was temporarily satisfied.[72] On April 3 Tower finally sent Shannon the information requested covering board meetings through March 14, 1935.[73] The deputy administrator accepted the memoranda, but at this point became more demanding:

> In respect to the March 14, 1935, meeting and all future meetings of such Board, however, the summary form which you have used as a matter of convenience in respect to past records will not be adequate. The necessity for the summary form of minutes adopted previously as an expedient to avoid the copying of your records for the past months no longer exists and it is requested that you furnish me with a complete copy of the minutes of the meetings from March 14, 1935, and thereafter as they are compiled.[74]

Tower, with his usual equivocation and rather high-handed manner, answered that he would "try to see that your request is complied with so far as may be practicable."[75] Once again, in a warning and somewhat sarcastic tone, Shannon wrote: "I trust that your attempt to see that my request is complied with so far as may be practicable will result in substantial compliance with my request."[76]

In what must have been an exasperating and monotonous communication, however, Tower wrote on May 2 that AISI had not prepared copies of the minutes of the board meeting on March 14 and that he would simply submit a memorandum as he had in the past.[77] Whether from despair or from an

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[72]Shannon to Tower, March 27, 1935. NRA Papers.

[73]Tower to Shannon, April 3, 1935. NRA Papers.

[74]Shannon to Tower, April 18, 1935. NRA Papers.

[75]Tower to Shannon, April 19, 1935. NRA Papers.

[76]Shannon to Tower, April 23, 1935. NRA Papers.

[77]Tower to Shannon, May 2, 1935. NRA Papers.

unwillingness to press the issue any further, Shannon accepted the situation.[78] The recital of this rather juvenile exchange between two officials is important because it illustrates so amply the essential relationship between the Steel Code Authority and officials of the NRA. In most matters AISI either ignored, treated contemptously, or refused requests from Washington. More important, in this affair, AISI defied the regulations under which it was supposedly operating.

Other examples could be cited of the failure of the Steel Code Authority to keep NRA informed. Sometimes copies of commercial resolutions were not forwarded to Washington, even though they were essentially industrial laws which were binding on the industry and which, in many cases, involved the public interest.[79] This is not to say that there were not adjustments to be made which took time and planning. Early in the life of the steel code, Tower wrote K. M. Simpson requesting that AISI be placed on a mailing list for "bulletins, reports and other literature which may be sent out from time to time by the Administration."[80] The point is that AISI did not have to ask again!

Another matter which caused dissension between the NRA and the Code Authority involved membership under the code. The code itself had been specific on what constituted a member of the steel industry. Section 5 of Article I stated: "The term 'member of the Industry' means and includes

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[78]Shannon to Tower, May 3, 1935. NRA Papers.

[79]Shannon to L. V. Collings, August 20, 1934; and Collings to Shannon, August 23, 1934. NRA Papers.

[80]Tower to Kenneth M. Simpson, November 1, 1933. NRA Papers.

any person, firm, association or corporation operating a plant or plants for the production of products, or any of them." Products referred to pig iron, iron or steel ingots and rolled, drawn iron or steel products. Article III stated that any member of the industry was eligible for membership in the code and could become a member of signing a letter of assent by which it agreed "with every person, firm, association and corporation who shall then be or thereafter become a member of the Code that the Code shall constitute a valid and binding contract between the undersigned and all such other members."

The board of directors of AISI reported in November 1933, that forty-three companies which were eligible for membership had not assented to the code. Ten of those companies eventually signed the code. It is difficult, however, to determine exactly how many companies were eligible for membership and did not join the steel code. In January 1935 the NRA reported that there were 294 members of the industry, of which 239 had signed the code agreement.[81] These figures differ from those released by AISI on January 18, 1935, which stated that 228 companies were members of the steel code, while 55 additional ones were believed eligible but had not joined.[82] On April 2, 1935, however, Walter Tower informed the NRA that 69 companies believed to be eligible for membership in the code had been sent letters of invitation to sign letters of assent.[83]

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[81] Daugherty, et al., Economics of the Iron and Steel Industry, I, pp. 230-231.

[82] Ibid., p. 10.

[83] Tower to Shannon, April 2, 1935. NRA Papers.

The NRA was plagued with the problem of non-code industry members from the beginning. In August 1933, for example, a steel firm executive notified K. M. Simpson that he was not signing the code until he received a response to a brief requesting a minimum wage of twenty-five cents an hour.[84] Simpson replied that not signing the code did not exclude a company from compliance with "the labor and various other provisions."[85] That same month the NRA notified another company that it was the intent of the code that members of the industry file prices with the Code Authority whether signatory to the code or not.[86]

The attitude of the NRA was thus very clear as to their conception of what the code required of industry members. At the outset of code operation they told AISI that it must enforce observance of the labor provisions of the code for the entire industry, regardless of whether some had not signed the code.[87] In November 1933, Hoyt A. Moore, associated with Cravath, DeGersdorff, Swaine and Wood, the legal firm representing the Institute, wrote Shannon that it was the desire of AISI to have all eligible members come under the code. He stated that "it goes without saying that they [AISI] are willing to do everything they can to force under the Code the recalcitrant or negligent members of the Industry, but

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[84]Frank V. Kasel to K. M. Simpson, August 24, 1933. NRA Papers.

[85]Simpson to Kasel, August 28, 1933. NRA Papers.

[86]R. S. Shannon to M. P. Simpson, August 24, 1933. NRA Papers.

[87]Shannon to Charls, October 5, 1933. NRA Papers.

I do not see how they can do more than they have done." What Moore proposed was that AISI determine the eligibility of firms for membership, urge them to join and, if they refused, turn over to NRA the pertinent facts.[88]

The NRA did exercise a note of caution, however, when it chided the Code Authority for not using its full powers to force compliance from a non-code member. It added, however, that AISI might "want to be a little more cautious in exercise of a power against a non-Code member than would otherwise be the case."[89] Nevertheless, the NRA continued to insist that non-members be forced to observe the code. When the secretary of the labor committee of AISI told Shannon that the Steel Code Authority was not requiring non-code members to submit labor statistics, Shannon insisted that they must and added: "I guess we will have to talk that out a little and get our procedure straightened out."[90]

Whether or not that talk was ever held, there is no record. The correspondence, however, continued throughout the life of the code, the NRA insisting that the Code Authority administer the code for all members of the industry and the Code Authority insisting that it had no power to do so. Finally, on March 7, 1935, AISI sent a letter to industry members who had not signed the code, inviting them to do so. In those letters, Tower implied that insistence on compliance of non-members with the code

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[88]Moore to Shannon, November 25, 1933. NRA Papers.

[89]Shannon to Tower, January 15, 1934. NRA Papers.

[90]Memorandum of a telephone conversation between Grover C. Brown and R. W. Shannon, October 5, 1934. NRA Papers.

was a recent position of the NRA.[91] Shannon quickly reminded Tower that this was a position which the NRA had taken from the beginning, and to another person expressed his feeling about the affair by stating: "The writing of one letter after 18 months of apparent inactivity does not constitute the fulfillment of the duties of the Board of Directors in this respect."[92] Just before the NRA was declared invalid Shannon was making another attempt to get the cooperation of the Code Authority in securing compliance with the code from non-members.[93] It does appear, however, that companies which refused to assent to the steel code either followed its strictures or found themselves not getting a share of available business.

Thus, there was a studied disregard, and sometimes implied contempt, of the NRA by the Steel Code Authority and by many steel firms which refused to join the NRA. That implied contempt is best illustrated by a form letter sent to all members of the steel code by Walter Tower in which he referred to cases where a member of the steel industry desired to exempt itself from certain provisions of other codes. Tower advised:

> It is suggested to members of the Code that, in any case in which they may be having difficulty due to overlapping provisions of other Codes, they should, before making direct application to the National Recovery Administration, consult with this office, in order that we may first have an opportunity to render any possible assistance in the matter, and also in order to avoid, insofar as

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[91]Form Letter from AISI, March 7, 1935. NRA Papers.

[92]Shannon to Tower, March 25, 1935; and Shannon to F. A. Lewis, April 29, 1935. NRA Papers.

[93]Shannon to Tower, May 1, 1935. NRA Papers.

> possible, any confusion which might arise in the administration of the Steel Code by reason of any action which the National Recovery Administration might take on any such application.[94]

Shannon naturally protested the implication that the NRA would produce confusion and also stated that this question had nothing to do with the jurisdiction of the Code Authority.[95] Nevertheless, the Institute had clearly expressed its attitude toward the NRA, not only to the agency but to members of the industry as well.

The administration of the steel code by AISI exemplified "industrial self-government in practically unfettered form."[96] The Code Authority, even though it sprang from the industry's private trade association, was intended to exercise a public, not a private trust. Yet, one observer wrote that "the board's activities . . . have been generally characterized by efficient administration of the Code as a private contract with emphasis upon the benefits to industry . . . but with little sense of responsibility for the general public interest." He went on to say that the Code Authority also showed "an apparent reluctance . . . to cooperate with governmental agencies when to do so might involve conceding any seeming immediate benefit to industry, irrespective of any possible ultimate benefits to industry which might be involved."[97]

There were several reasons for this absence of public control over

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[94] W. S. Tower to Members of Steel Code, February 8, 1935. NRA Papers.

[95] Shannon to Tower, February 11, 1935; and Shannon to Burr T. Ansell, February 11, 1935. NRA Papers.

[96] Daugherty, et al., Economics of the Iron and Steel Industry, I, p. 250.

[97] "Code History," p. 13.

the operation of the steel code. In the first place, since the NIRA was enacted during time of unparalleled economic crisis, greater powers were given to the steel industry to regulate its own affairs than would have otherwise been given during normal times. Secondly, because the steel code was in effect for a period of a little more than twenty-one months and the NRA for only two years, there was not time for the administration, in view of the emergency problems created by the depression, to take any action which might be described as long-range planning. Then, too, there was no clearly stated relationship in either the Recovery Act or steel code between the NRA and Code Authorities.

The NRA apparently was hampered by these factors and also a desire to give industrial self-government a chance to succeed. In March 1934, the Industrial Advisory Board informed the Code Authority Organization Committee that it approved the organizational set-up of the Steel Code Authority because the Board was following the principle "that industry should be encouraged to operate by itself as quickly as possible." The memorandum went on to say that the Board did not even think that Code Authorities should be required to conform too closely with the requirements set forth in the few instruction bulletins issued for their guidance.[98] Such a policy, which seemed general during the life of the NRA, is revealed in a memorandum which the assistant counsel assigned to the steel code wrote on being transferred to another code. "In connection with this Code [steel]," he wrote, "our policy is to some extent different from that with respect to

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[98]Memo from W. J. Barrett to E. C. Meyer, March 22, 1934. NRA Papers.

other codes and whoever is to handle it should get a general line-up on this policy from Mr. Richberg so that no conflict will arise." Candidly the counsel concluded: "Frankly I have not been sure as to just what our policy regarding the code was to be."[99]

In effect there was no body outside, or even inside, the steel industry to which the Code Authority had to justify its actions. The NRA made no analysis of the effects of commercial regulations on the public and did not attempt to get consumer or labor representation on the board. The NRA representatives on the Code Authority only observed formal proceedings, but did not know what the all-important special committees of the Authority were discussing and deciding. The NRA did not have access to the complaints and results of investigations which came into AISI offices. Even the statistical data supplied to NRA by the Institute has been deemed by an economist who specialized in the steel industry, "either through design, oversight, or lack of interest . . . to be so noncomparable, so lacking in essential elements, and so meager at vital points, that they provide a very blunt tool for economic analysis."[100]

The policy of the NRA deputy administrator for iron and steel seemed to have been a reliance on complaints from parties who claimed to have been injured by actions of the Code Authority. Such complaints, however, were relatively few in regard to the steel code. On the surface this fact seems difficult to understand. Although before the code tacit agreements,

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[99]Memo from John M. Keating to John McClusky, November 27, 1933. NRA Papers.

[100]Daugherty, et al., Economics of the Iron and Steel Industry, I, p. 256.

price leadership and fear of retaliation had maintained a great degree of stability in the industry, an individual firm could legally make price, quality, and delivery concessions to secure a greater share of available business. The code, however, made the old informal uniformity compulsory under the law. Every act of the Code Authority had the possibility of a disruption of the relative competitive status of individual producers and a bias prejudicial to a majority of those companies.

Any prejudicial policies were possible because of the voting power of the members of AISI and the consequent composition of the Code Authority. Since the number of votes any member of the Institute enjoyed was determined by dividing the dollar value of the company's previous year's sales by 500,000, it was natural that the large companies would exercise a greater degree of control of the Institute's affairs. The increase in steel production from month to month naturally increased the votes of the smaller companies and decreased that of the larger ones. Even at that, in March 1935, 214 members, excluding affiliates, had 1987 votes. The eighteen members having the greatest sales, including affiliant members, had twenty-two representatives on the Code Authority; the forty-three members in the next rank had eight representatives; and the 153 remaining members were unrepresented. More important, however, the five largest members, including affiliates, could outvote the remaining 209 members of the code.[101]

While it seems that there would have been more protests from the smaller members of the industry, it should be remembered that this likelihood was reduced when over 90 percent of the steel producers accepted

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[101]Memo from Burr T. Ansell to L. M. C. Smith, March 5, 1935. NRA Papers.

the code in the first place. Moreover, the advantages to the members of the code more than offset any single discrimination perpetrated by the Code Authority. So far as complaints coming from consumers of steel products, it should be remembered that they, too, were operating under codes which permitted them to pass on price increases of raw materials without danger of price competition. It is to this extraordinary control of the steel industry by the industry itself, that this study now turns.

CHAPTER VI

THE STEEL INDUSTRY ADMINISTERS ITS CODE

A survey taken of 245 manufacturers of steel products early in 1934 revealed that only one of every three companies had been able to offset its increased costs under the NRA regulations by higher prices. There was even general agreement among the respondents that price chiseling, except in basic materials, had not been eliminated.[1] Moreover, AISI reported that the steel industry was operating at only 21 percent of capacity, but was still giving employment to 90 percent of its employees at higher wages and shorter hours per week.[2]

The continued acceptance of the steel code on the part of these producers was not based on a philanthropic attitude to continue the benefits to workers while their businesses operated at a loss. A great majority of those producers in the above mentioned survey expected the NRA eventually to benefit them through better trade practices and higher prices.[3] Eugene Grace, president of Bethlehem Steel, spoke for much of his industry when he said that "a sounder basis has been developed for industry out of these hard times than it has enjoyed at any time during the post-war period." He particularly referred to the NRA's freeing industry from the "shackles of anti-trust," and the creation of a price filing system which ended the old method of selling steel. Grace characterized that method as having had all "the confusion of the selling of rugs in a

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[1] Iron Age, CXXXIII (January 4, 1934), pp. 30-31.

[2] Ibid. (January 18, 1934), p. 29. [3] Ibid. (January 4, 1934), p. 30.

Turkish street fair."[4] It was the introduction of open and legal private government in the steel industry which held out the promise of higher profits through the elimination of most traditional competition. This was what made industry members willing to incur higher labor costs without immediate production and sales gains.

It was generally conceded in the code-making days of 1933 and 1934 that the steel code was the pioneer code in length, detail, and complexity. Its attempt to deal with every major problem of the industry cannot be understood without some attention to the industry itself. In 1929 the steel industry ranked second among America's industries in the value created by manufacturing and third in the number of employees.[5] Because of steel's essential importance to the entire economy, that industry was known as the cornerstone of American industry. Its health or ills became a barometer of the American economy. Such a large and important industry was naturally complex.

Iron and steel concerns can generally be grouped under three headings. The integrated company mines its ore and coal, produces pig iron and steel ingots and most of the finished rolled products. The semi-integrated concern buys pig iron but carries on the rest of the processes. The non-integrated companies operate only rolling mills. Over one-half the steel producing capacity in the United States in 1929 was owned by U. S. Steel and Bethlehem Steel, while the five largest companies owned 68.2 percent.[6] Nevertheless, there were 294 individual companies eligible

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[4] Literary Digest, CXVII (February 3, 1934), p. 38.

[5] Daugherty, et al., Economics of the Iron and Steel Industry, I, p. 20.

[6] Maxwell S. Stewart, Steel - Problems of A Great Industry (New York, 1937), p. 1.

for membership in the NRA, and they did offer some competition. It is true that, while they were frequently absorbed by the integrated concerns, they were able to survive because many concentrated on production of specialized goods, such as high-carbon tool and special alloy steels; but, more importantly, because they followed the leadership of the large integrated companies.

Another important characteristic of the steel industry was its concentration in a few regions: more than one-half of its plants were in Pennsylvania and Ohio, and most of the remainder were in Indiana, Illinois, New York, and Alabama. The reason for this concentration was the high costs of transporting the heavy raw materials required and the necessity of being near large purchasers of steel products. Only Alabama was relatively far from large consuming areas but was located economically in relation to its raw materials.[7]

A final major characteristic of the industry has to do with its costs, sales, and earnings. Compared with most industries, the overhead costs tended to be high. The investment in ore and coal properties, transportation facilities, blast furnaces, steel works, rolling mills, the new continuous hot-strip mills and sales organizations represented staggering sums of money. It was most important to steel producers that they operate nearly as possible to capacity, because many expenses were as large when the equipment was idle as when it was going full blast. It was generally difficult for producers to cut overhead costs greatly. Customers for steel showed seasonal and irregular demand, and there were shifts from time to time in the demand for different kinds of steel. These factors

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[7] Ibid., pp. 2-3.

tended to unbalance the productive process. Thus, a company was under so much pressure to operate as fully at capacity as possible, that it often engaged in price cutting and other competitive devices to gain more business.

Steel producers usually sold their products directly through their own sales organizations. Pig iron, however, was consumed mainly by the plant which produced it, and the remainder was distributed to small foundries by jobbers and brokers. For rolled steel products the jobber's function was mainly limited to fill-in orders for immediate delivery. The "big three" customers of steel in 1929 were automobiles, railroads, and builders, taking about one-half of all the steel produced; however, almost every industry in the nation used some steel products. Steel consumers, like the producers, also tended to be concentrated to a large degree in New York, Pennsylvania, Ohio, Michigan, and Illinois.[8]

Compared with other industries, the earnings of steel companies were not unusually high. Between 1924 and 1929 the average profits of the larger steel producers were only 6.37 percent annually invested capital, and from 1931 to 1934 they showed an average net loss of 1.82 percent. While in some cases steel companies overvalued their assets and were able to claim lower profits, there is no conclusive evidance to show a great distortion of these figures. Wages constituted only a small part of the expenses of the industry, accounting for little more than one out of every twenty dollars received for pig iron sales in 1929. Labor costs in the other stages of steel production, however, accounted for 26 percent of the total value of production. Raw materials and fuel accounted for 44 percent and overhead took 30 percent.[9]

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[8] Ibid., pp. 4-6. [9] Ibid., pp. 6-7.

Some industry leaders thought that the economic difficulties of the early thirties were caused by unfair practices which could not be prevented by voluntary policing which had always failed. One steel executive also pointed to the probable reaction of industrialists to government enforcement of rules as one of business striving against the government being more important than responsibility to its fellow man. The solution then was industrial supervision of fair business practices backed by the power of law. "When a man knows that he will be judged by the members of his own group while the misdemeanors are still fresh in their minds," wrote Thomas Foster, "he will realize that he cannot get away with unethical practices."[10] Thus, a Code Authority with great powers was established to administer a set of trade practices designed with a view toward the special complexity of the steel industry to bring stabilization to the industry.

The steel code itself placed a rather narrow definition on unfair practices. In Schedule H of the code such practices as bribing or promising rebates to a buyer, procuring trade secrets, copying trade marks, using inferior materials in production and circulating false information about a competitor, were branded as unfair. Also prohibited were attempts to induce a potential buyer to violate a contract with a competitor, postdating an invoice, using product descriptions in sales not customarily used in the industry and rendering free services to customers not usually performed. Moreover, the Code Authority was empowered to designate other acts as unfair trade practices when it so desired.

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[10] Iron Age, CXXXII (August 10, 1933), p. 30.

The steel code, formally called a "code of fair competition," was designated to regulate all forms of competition both within and outside the industry. Most of the so-called "unfair practices" were designated as such "not because they necessarily conflicted with public policy, but simply because they were disliked by those members who sponsored the controls."[11] These unfair practices characterized a type of competition aimed at "futile and costly struggles for available business under conditions of diminishing opportunities."[12] Most of the controls were directed at price competition. Production and capacity controls actually served as substitutes and supplements for price controls in numerous codes.[13] It is thus the "fair trade practices" other than those listed under Schedule H that are of greatest interest in a study of code control.

The steel code did not specifically place restrictions on output or provide for allocation of production among its members as was done in some codes. It did, however, provide in Article V that if it appeared that the purposes of the Recovery Act were not being achieved without production control, that subject to the approval of the President, the Code Authority was empowered to "make, modify, or rescind such rules and regulations for the purpose of controlling and regulating production in the Industry." Production controls, however, were never instituted in the steel industry during the life of the code. According to the code,

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[11]Charles A. Pearce, NRA Trade Practice Programs (New York, 1939), p. 191.

[12]Ibid. [13]Ibid., p. 193.

the reason why regulation of output was not instituted from the beginning was because it was thought that "the elimination of unfair practices . . . /would/ eliminate any overproduction . . . and any inequities in the distribution of production and sales among its members." The Code Authority, however, did attempt some limitation of production when it found that some steel companies were exceeding the hours of labor provided in the code and claiming that it was necessary for emergency operations. The Steel Institute notified members of the code that it questioned the necessity of these extra work hours since the demand in relation to capacity was so low. No concrete enforcement steps were taken, however.[14]

Definite restrictions on the erection of new capacity were placed in the steel code. Article V provided that "until such time as the demand for /its/ products cannot adequately be met by the fullest possible use of existing capacities for producing pig iron and steel ingots. . . . none of the members of the code shall initiate the construction of any new blast furnace or open hearth or Bessemer Steel capacity." No restrictions were placed on the addition of rolling-mill capacity or electric furnaces. Also, nothing in the code prevented the erection of new production facilities providing that old ones of equivalent capacity were dismantled, or of modernization through reconstruction of old facilities. The new capacity restrictions did prevent new enterprises from entering the industry unless they did so by acquiring existing furnace equipment.

While the steel code was among only three codes which prohibited

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[14]AISI to Members of Steel Code, March 13, 1939. NRA Papers.

the creation of new capacity it appears that the prohibition had only a limited restrictive effect.[15] A steel wire company petitioned the NRA in March 1935 for permission to construct an open-hearth furnace to "overcome the monopolistic practices of the Code which legislates a concern approximately sixty years old out of business when we have to buy Wire Rods at Code prices and sell Common Products on Code Prices."[16] Walter Tower informed Shannon that members of the industry had stated that the wire company was operating at a high rate and had made a profit in 1934.[17] A Dun and Bradstreet report indicated that the applicant had shown an increase in capital and surplus of $426,500 in 1934, an increase over the preceding year of 23 percent.[18] The Code Authority notified Shannon in April that it would not recommend an increase in capacity and discussion of the matter dragged on until the Schechter decision ended any code restrictions.[19] This was the only request received by the NRA for an exemption from the capacity prohibition in the steel code. This is not difficult to understand, however, as the average rate of operations in the industry during 1933 and 1934 ranged from 25 to 38 percent.[20]

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[15] U. S., NRA Division of Research and Planning, Administration and Effects of Production and Capacity Control Provisions in NRA Codes, prepared by Horace B. Drury (Washington, 1935), pp. 113-116.

[16] Paul W. Dillon, president of Northwest Barb Wire Co., to Shannon, March 5, 1935. NRA Papers.

[17] Tower to Shannon, March 14, 1935. NRA Papers.

[18] Dun and Bradstreet Report on Northwest Barb Wire Co., April 22, 1935. NRA Papers.

[19] Tower to Shannon, April 24, 1935; and Shannon to Paul W. Dillon, May 31, 1935. NRA Papers.

[20] Galloway, Industrial Planning, p. 158.

The more sweeping regulation of the steel industry was in the nature of provisions concerning transportation, fabrication, middlemen, sales, and uniform extras. The steel code as approved contained only five trade practices, with all but two subject to modification by the Code Authority. One which remained unmodified by the board was Section 4 of Schedule E. It required that before a seller could grant a deduction to a jobber, a contract had to be secured in which the jobber agreed not to resell the products at a lower price than that at which a code member could sell to the same buyer. The jobber was subject to the same liquidated damages as a code member--ten dollars per ton on products sold illegally--in case he violated the agreement. A second unmodified code provision in Schedule E of Section 8 prohibited consignment sales of any product except pipe or products shipped to affiliated companies.

Three other original code commercial practices were later modified by the Code Authority. Section 4 of Schedule E provided that in the sale of plates, shapes, or bars for use in an identified structure, the place of delivery was to be the freight station nearest the place of erection, not the shop of the fabricator. Section 9 of the same Schedule required that except for products required by a purchaser for a definite contract with a third party at a specified price, no contract could be made under which shipment was not required before the expiration of four months. Finally, Schedule G set maximum rates of discount at one-half percent of invoiced value, excluding all transportation charges. The discount could be allowed on payments within 25 days if invoiced and shipped from plants east of the Mississippi River to Pacific Coast ports or within ten days

for all other invoices. Free credit could be extended for a period of 45 days on shipments to the West Coast and for 30 days for all other shipments.

These latter three commercial provisions of the code were not only modified by the Code Authority, but it also promulgated many commercial regulations and resolutions which had the force of law. It had been observed that the effect of the trade practice provisions of the code was "to consolidate and make explicit the pre-existing modes of behavior in the industry, with sanctions for enforcement to be administered by the Code Authority, under authority of law."[21] This is not exactly correct, as many new commercial regulations established modes of behavior which, while they might have been desired before the code, were not in effect. Furthermore, the lack of evidence on pre-code trade practices and the mystery of the deliberations of the commercial committee of the Steel Institute limit a study of commercial practices to a description of what practices were instituted and the complaints raised against them. The NRA suggested to the Code Authority that commercial regulations cover only "the strategic essentials" and at the same time provide "a high degree of flexibility in less important factors of commercial procedure."[22] Nevertheless, the commercial regulations were highly technical and complicated. Between August 31, 1933, and May 17, 1934, fifty-nine commercial regulations were issued by the Code Authority. Ten of these expired or were rescinded and eleven were embodied in the revised code. The remainder

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[21] Ibid., p. 160.

[22] Memo from K. M. Simpson to Hugh S. Johnson, September 14, 1934. NRA Papers.

were reissued, either in their original or modified form, under new serial numbers.

One of the most controversial bodies of commercial regulations involved transportation. The objective of all transportation provisions was to secure uniformity in delivered prices so as to eliminate "unfair" competitive advantages based on location. Using a detailed freight tariff book first issued on March 1, 1935, and periodically maintained, reductions were permitted in the delivered price where continuous water, rail-water, or rail-water-rail transportation was used on the Pacific Coast or through any port on the Mississippi River to place of delivery in any of the South Atlantic, Gulf, or Pacific Coast states. Such allowances were equally applicable to shipments from any plants located in those states even though there was no available water route.[23]

Purchasers of steel products who wished to take deliveries in their own trucks were allowed a deduction of 65 percent of the applicable all-water freight rate. This only applied if they bought in carload quantities at one time and completed the loading of the trucks with the full amount during the next working day after loading had begun. At less than carload lots delivered to a purchaser's trucks at the warehouse, the seller could charge an arbitrary five cents per hundred pounds. Other charges were established for truck deliveries if a purchaser could not be reached by rail. These regulations varied with the product and with the circumstances, but in all cases arbitrary charges were designed to discourage any but all-

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[23]Code Authority Regulation No. 4 and Code Authority Commercial Resolution No. 8. NRA Papers.

rail delivery and to maintain prices at a uniform level.[24] It should be noted that most mills had geared their operations to huge tonnage movements by rail, and they claimed that they did not have adequate handling and loading facilities for trucks. Almost the only complaints made against these regulations came from buyers who owned trucks and generally it was more for convenience than price consideration which caused such protests. Nevertheless, steel companies could deliver products by truck to buyers even if the customer could be reached by rail. The all-rail freight rate was still charged, however. It appears that during the life of the code, mill deliveries by company truck increased, while shipments by customers' trucks declined.[25]

The transportation regulations which received the greatest numbers of complaints involved the use of all-rail freight rates to the exclusion of any concessions to inland water-way rates. The failure of the Code Authority to make any such price concession was perhaps the most blatantly unfair of the so-called "fair practices." Where water transportation was available for delivery of steel products there was naturally a cheaper freight rate. Since the Code Authority would not allow it, however, the mill simply absorbed the difference between the all-rail freight and the water freight as extra profit. Thus, customers located on rivers were having their competitive advantage destroyed while steel mills were able to use the government's investment in waterways to their own advantage.[26]

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[24]Commercial Resolutions Nos. 35, A19, 16, A3, and A41. NRA Papers.

[25]Daugherty, Economics of Iron and Steel, I, p. 463.

[26]Ibid., p. 464.

Some 107 compalints from carriers, fabricators, manufacturers, and jobbers were filed against the board's refusal to make a rate concession. This was the largest body of complaints against any single operational feature of the code. The Code Authority itself experienced greater internal differences on this matter than on any other, and almost every meeting was concerned with the question of some concession to inland water rates. On April 13, 1934, a special committee on inland waterways reported to the Code Authority that the committee had split by a four to four vote on a resolution authorizing a series of arbitrary deductions from all-rail rates ranging from $1.60 to $6 a ton. The split occurred between those representatives of mills located on inland waterways and those who had more off-river mills. When the resolution was put to a vote of the whole board, it was overwhelmingly defeated. Only National Steel, Jones and Laughlin, and Inland Steel voted in favor of the resolution. K. M. Simpson told the board after the resolution was defeated that unless they took some action on the complaints, the NRA would do it for them.[27]

Meanwhile, the Consumers Advisory Board had been watching developments on the transportation controversy but had hesitated to press the matter because of the technicalities of the issue. The CAB on April 6, 1934, however, wrote Shannon that whatever the merits of equalizing prices through the basing point system, it must not "be allowed to become the excuse for collection from the consumer of freight charges never paid by the shipper." The memo concluded: "The Consumers Advisory Board

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[27]Memo from Simpson to Shannon, April 13, 1934. NRA Papers.

regards the adjustment of such matters as an indispensable condition for the continuance of basing point systems."[28] The deputy administrator's office was not, however, avoiding the issue, and it continued to press the Code Authority for concessions.

Three days after the CAB memorandum, Simpson reported no change in the deadlock on the transportation issue, and that it appeared for the first time that the Code Authority was intentionally avoiding the matter.[29] The following month Shannon wrote that he did not think the Board would take any action without government insistence and that he was considering what steps to take.[30] In December the legal adviser on the Steel Code notified the section counsel that over 75 complaints from consumers, congressmen, and federal officials had been received in regard to the freight rate controversy and that the refusal of the Code Authority to make any adjustments amounted to "a clear case of nonfeasance."[31] The Code Authority, however, was clearly not going to take any action and just days before the Schechter decision, the NRA was still looking for a solution to the problem.[32]

Transportation controversies also affected the sale of steel to the United States government. Because of the landgrants made to the railroads in the nineteenth century the government had been given certain

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[28]Memo from Corwin D. Edwards to Shannon, August 6, 1934. NRA Papers.

[29]Memo from Simpson to Shannon, August 9, 1934. NRA Papers.

[30]Unsigned memo to R. W. Shannon, September 17, 1934. NRA Papers.

[31]Memo from Burr T. Ansell to J. C. Latimer, December 29, 1934. NRA Papers.

[32]Memo by R. W. Shannon, May 5, 1935. NRA Papers.

preferential rates on its shipments. Only three weeks after the steel code had been signed the Department of Interior inquired of the NRA if Section 4, Schedule E of the code prevented the use of land grant freight rates.[33] Once again the NRA pressured the Code Authority for a modification of its rules, but the Code Authority seemed unwilling to act. The complaints on this issue were so great, however, coming from the government itself, that the Code Authority issued a commercial resulution allowing freight deductions on bids to the government.[34] Nevertheless, the pricing result was the same, as the resolution allowed mills to absorb the difference between actual freight charge of any steel company bidding on the contract. This resulted, barring any computation error, in identical bids being submitted on all government contracts.

Another attempt of the Code Authority to establish a "fair trade practice" which met with great opposition was concerned with the sale of plates, shapes, and bars to be fabricated for identified structures. Schedule E. Section 4 of the Code provided that "in the case of plates, shapes, or bars intended for fabrication for an identified structure, for the purpose of establishing the delivered price thereof, the place of delivery shall be deemed to be the freight station at or nearest to the place at which such structure is to be erected, and not the shop of the fabricator." This meant that a fabricator who had a contract to manufacture specific structural steel pieces for a bridge or a building was quoted a base-price plus freight charges to the location of the job, not to his shop. From 1908 until the advent of the Steel Codes, railroads had been allowing fabrication-in-transit freight rates which gave fabri-

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[34]Commercial Resolution A14. NRA Papers.

cators up to $6 per ton rebates on freight charges when they presented waybills, no matter whether for steel simply purchased for stock or for an identified structure. "The essence of an F.I.T. rate," states one economist, "is that goods which move from their source to a place of fabrication, where they are stopped, fabricated, and then moved on to the place of final destination, are quoted a through rate from source to final destination, which is often much less than the sum of the rates for the two local hauls."[35] Though complicated in description, the F.I.T. rates allowed fabricators located either far away from steel suppliers or from the ultimate location of the structure to compete on a more even footing with those located at or near such points.

About nine months before the code was formulated a system of quoting delivered prices was instituted to modify the F.I.T. system to the advantage of eastern manufacturers. This new system was strenuously opposed by middle-western fabricators. The Code Authority was determined to eliminate price competition on structural shapes, and on March 15, 1934, two commercial resolutions were issued. One required that steel could not be directed or reconsigned unless the delivered price at actual destination was identical with that at the original destination.[36] The second defined an identified structure as anything which when erected in place had a fixed location at the point of erection. Ships and barges were arbitrarily included in this definition.[37] On October 10, 1934, these resolutions and

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[35] Daugherty, Economics of Iron and Steel, II, p. 1091.

[36] Commercial Resolution No. 49. NRA Papers.

[37] Commercial Resolution No. 51. NRA Papers.

other detailed controls were embodied in Regulation Number 9, which was amended the following March. These regulations have been called the Code Authority's "most ambitious attempt to force a set of new trade practices on a recalcitrant industry."[38]

The protests against the code's handling of structural steel began to pour in before the code hearings were even held. One manufacturer wrote General Johnson protesting Schedule E, Section 4 because many mills had subsidiary fabricating companies or preferred customers who were fabricators, and for him to reveal the location of a structure on which he proposed to bid would be inviting an underbid. He also stated that much steel was bought for stock when final destinations were not known.[39] Other fabricators wrote almost identical letters, indicating an organized protest on the part of independent fabricators. At the code hearings a representative of the Central Fabricators Association also objected to the proposed code provision.[40]

The root of the opposition to Regulation 9 is found in steel mill domination of the fabricating industry. The president of a large independent fabricating company wrote Simpson pointing out that more than 50 percent of fabricated steel was manufactured by subsidiaries of U. S. Steel (American Bridge Company), Jones and Laughlin Steel (Jones and Laughlin Fabricating Company), Bethlehem Steel (McClintic-Marshall Company), and Phoenix Iron Company (Phoenix Bridge Company). He asked the NRA to bear in mind "that this Code is to be distributed and governed

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[38]Daugherty, Economics of Iron and Steel, I, p. 480.

[39]D. L. Aeskey to Hugh S. Johnson, July 8, 1933. NRA Papers.

[40]Code Hearings, pp. W10-11. NRA Papers.

by votes in thousand ton units, the same combination of mill fabricators comes into the making up of a so-called 'Fair Practice' section." The fabricator concluded: "This means that I will have to turn over to my chief competitors every private part of my books and what trade secrets I have."[41] An attorney for a group of independent fabricators petitioned the NRA to amend the Recovery Act to either divorce mills from fabrication or to institute rules which would put the independents on an equal footing with mill-owned fabricators.[42]

The complaints continued to beseige the NRA, but the Code Authority refused to move from its position of having corrected certain competitive "abuses" of the pre-code period. The NRA did not make strong representations for a change to the Code Authority in any case. In a letter to a midwestern fabricator Shannon stated that he thought Regulation 9 was designed to enforce provisions of Schedule E of the Steel Code and created conditions of fair competition among steel mills as well as fabricators.[43] A similar reply went to another fabricator who protested that he was not receiving many contracts for structural work because the mill-owned fabricators were disregarding either the rolling or fabricating profits in their bids and were thus underbidding independent concerns. This situation, wrote the executive, was forcing small concerns out of business. His solution, which appeared to be very logical, advocated

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[41] W. H. Phillipps to K. M. Simpson, September 12, 1933. NRA Papers.

[42] John Welsh to K. M. Simpson, September 18, 1933. NRA Papers.

[43] Shannon to H. A. Fitch, October 11, 1934. NRA Papers.

that mill-owned fabricators be required to bid as if they were paying the same prices to their parent companies as independents did.[44] Neither the NRA nor the Code Authority, however, ever took any action to solve this conflict.

The effort to eliminate all price competition in the steel industry also resulted in the regulation of sales to middlemen, or jobbers as they were called. The original code had required that jobbers sign a contract pledging not to resell steel at lower prices than the mill could sell to the same buyer. The code also ended the consignment sale of all products except pipe. Subsequent commercial resolutions extended the control of the Code Authority over jobbers. A jobber had to be a purchaser for resale only within the United States without fabricating or processing. He also had to purchase in carload lots and maintain a sufficient stock to enable him to meet ordinary demands of customers. At least 75 percent of his yearly sales were required to be made to certain enumerated classes of buyers, in none of which the jobber could have a financial interest. Finally, a jobber had to employ at least two full-time salesmen, excluding members of his family, who regularly called upon one or more of these classes of customers.[45]

Steel product jobbers generally launched no vigorous attacks on the jobber provisions, mainly because it enabled them to deal with mills on a

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[44]Tilghman H. Burr to Franklin D. Roosevelt, October 22, 1934. NRA Papers.

[45]Commercial Regulations Nos. 1, 3, 5, 6, 7 and 8 and Commercial Resolutions Nos. A17, A26 and A37. NRA Papers.

legal basis as a group rather than on the basis of individual bargaining.[46] There were, however, long and loud protests from some quarters. A Minnesota hardware dealer informed the Retail Hardware Association that the base price of nails purchased from jobbers had risen from $2.60 in late 1933 to $2.90 early in 1934. Although the hardware dealer claimed he had been competitive with chain catalogue houses when the price had been $2.25, the higher price had put him out of the market. Jobbers had told the dealer that this was the best price they were allowed to offer.[47] Another hardwareman told the Association:

> I can see the reason why the steel trust wishes to put us out of business legally by getting the code adopted as they did, as it is a fact that a good many stockholders in the steel trust are also stockholders in the big chain stores and some have the same directors. If something is not done quickly the harm that will be done to the retail merchants is so large under these trying conditions that a good many will not be able to stand the strain until the end of this year.[48]

Complaints from retailers regarding alleged discriminations caused by the jobber regulations did not receive much attention from the Code Authority or the NRA.

Jobbers themselves received more concern from the administration. Occasionally a jobber won a government contract, and the NRA was careful in certifying the jobber's eligibility that he met the code requirements.[49]

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[46] Daugherty, Economics of Iron and Steel, I, pp. 504-505.

[47] Bruscke and Son to the Minnesota Hardware Association, February 3, 1934. NRA Papers.

[48] Henry J. Blenker to Minnesota Retail Hardware Association, February 7, 1934. NRA Papers.

[49] R. W. Shannon to South Chester Tube Company, September 29, 1934; and Shannon to T. W. O'Hara, October 5, 1934. NRA Papers.

The bulk of complaints from jobbers, however, came from two concerns. One company claimed that they had lost a good sale to the government because the Code Authority had refused to allow the jobber to pay a commission to an agent to solicit the business. The correspondence between the jobber, the NRA, and AISI consumed several months and many sheets of paper, but apparently never solved the controversy, at least to the satisfaction of the jobber.[50] The other company, which claimed to be the second or third oldest jobber selling reinforcing bars in the country, complained that the Code Authority would not recognize him as a jobber because he had no warehouse, and never had, and could not maintain the required stocks. This jobber could not get any steel producers to sell to him and said he was going out of business, but no visible action was taken by either the Code Authority or the NRA to aid him.[51]

The failure of the NRA to take strong action was again apparent and not quite understandable. As an example, when a jobber who had been in business since 1889 reported to the NRA that he was losing his jobber standing because he did not employ two full-time salesmen, Shannon told other NRA officials that he considered the regulation faulty but that he did not feel "in a position to press for its revision." When these officials told Shannon that the case should be sent to the Industrial Appeals Board, Shannon said that he did not think that was desirable and that perhaps Donald Richberg might "reason" with Walter Tower on that matter.[52]

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[50]Correspondence file in regard to the Darbyshire-Harvie Iron and Machine Company, December 4, 1933, to April 11, 1934. NRA Papers.

[51]Correspondence file in regard to the Day and Coater Company, December 5, 1933 to March 9, 1934. NRA Papers.

[52]James Cope to Wayne P. Ellis, November 21, 1934. NRA Papers.

This is a very significant episode in the relationship of the NRA and the Steel Code Authority regarding the Code Authority's almost complete and unfettered control of so-called "fair trade practices."

A final regulatory control of the Code Authority which was directly related to price maintenance was the board's authority to determine the specifications for steel products sold at the filed base price. This meant that the board could fix uniform extra charges or deductions to be made for specifications which departed from normal shapes of steel and quantities ordered which departed from standard base characteristics. Once the requirements on extras had been issued by the board, they became binding on all code members.[53] Before the code period the price of extras was never figured on a cost basis but by arbitrary figure, and were sources of price concessions to buyers. It does appear that by standardizing extras, costs were increased to steel consumers and profits to steel mills were higher on such transactions.[54]

The NRA expressed its views concerning extras to the Code Authority from time to time. In general the NRA thought that power over extras should be exercised with extreme caution, with as few changes as possible and, when changes were made, to allow the greatest degree of democratic action on the part of code members. By October 1934, Tower informed NRA that although there had been no strict procedure followed in determining uniform extras, he believed few changes would be made in the future and most would

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[53] Iron and Steel Code, Schedule E, Section 7.

[54] Daugherty, Economics of Iron and Steel, I, pp. 523-531.

be downward revisions.[55] Nevertheless, by December, forty-one complaints had been received from fabricators against the action of the board establishing certain quantity extras on plates and shapes. At this point Shannon informed the board that if it did not rescind the action he would recommend that the Administration nullify the regulation. This is one of few times in which the Code Authority yielded to pressure and suspended its own action. Forty-five additional complaints were received on other extras schedules. The Code Authority itself adjusted twenty-four complaints by an upward revision that certain extras established were not high enough.[56] Just before the end of the code period the NRA had decided that the board's power had to be curtailed on this matter.[57]

Thus, the fair trade practices, production and capacity controls, and commercial regulations were all designed and administered as concomitants to the pricing policy of the steel industry. Article VII of the steel code forbade any member of the code to sell any product not in accordance with the requirements of Schedule E of the code. Section 2 of Schedule E provided that each member of the code had to file a base price for each product it produced with the secretary of the Code Authority. Those prices, which could be whatever the company desired, would not become effective before ten days had expired. Any company desiring to change its prices had to file a new list which again would not become effective until ten days had expired.

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[55]Memo by R. W. Shannon, October 17, 1934. NRA Papers.

[56]Burr T. Ansell to J. G. Latimer, December 29, 1934. NRA Papers.

[57]Memo by R. W. Shannon, May 9, 1935. NRA Papers.

Section 4 provided that prices quoted by code members to prospective buyers were to be not less than the current published base price which the member had filed, plus the all-rail published tariff freight rate from the basing point, on which the base price had been established, to the buyer's place of delivery. If a customer was located at a basing point the base price together with a published switching charge would be quoted. Schedule F of the Code listed over 200 basing points for some thirty-six iron and steel products. The Code Authority exercised ultimate control over base prices, although it never used this particular power.[58] Section 5 of Schedule E gave the board authority, if it considered a firm's filed prices lower than the cost of production, to investigate production costs and require that firm to file a new price list. If the firm refused, the board could impose new prices equal to the lowest prices filed by the other members.

Any discussion of the pricing policy of the steel industry under the code is only meaningful in the context of the history of the basing point system. The origin of the system, although frequently treated in economic literature, is uncertain.[59] Elbert H. Gary stated that the basing point was first fixed at Philadelphia in the 1870's and then moved to Pittsburgh

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[58]The revised Steel Code of May, 1934, dropped this provision altogether.

[59]See for example Fritz Machlup, The Basing Point System (Philadelphia, 1949); United States Steel Corporation, T.N.E.C. Papers, 3 vols. (New York, 1940); Frank A. Fetter, The Masquerade of Monopoly (New York, 1931); William Simon, Geographic Pricing Policies (Chicago, 1950), and George H. Sage, Basing Point Pricing Systems and the Federal Antitrust Laws (St. Louis, 1951).

when that city became the main center of production.[60] Whether this is accurate or not, the FTC has established that before 1880 the general practice was to sell steel f.o.b. mill, with each mill naming its own base price.[61] In 1880 four structural steel manufacturers allocated production among themselves and began to quote prices at the Pittsburgh base plus freight from Pittsburgh.

The next twenty years saw many pools, gentlemen's agreements, price zoning systems and the like which often used a Pittsburgh base price, but the so-called "Pittsburgh Plus" did not become firmly established on principal rolled-steel products until after 1903. Beginning about his time U. S. Steel began to dominate the industry and the pricing policy and its location around Pittsburgh is ample reason for the maintenance of Pittsburgh Plus. It became standard practice for executives of the leading producers of rolled-steel to meet together, and after 1906 presidents of various companies gathered in the offices of the Steel Corporation for discussion. From 1906 to 1921 there were formal agreements but price maintenance was upheld by the leadership of U. S. Steel. Until 1911 the Gary Dinners performed this function. From 1921 until the advent of the code period, price cutting by independents led to the establishment of a number of basing points, Chicago being the first. The Federal Trade Commission issued a cease and desist order against the Pittsburgh Plus system in 1924 and the multiple basing point system became firmly established

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[60] New York Times, July 24, 1924, p. 21.

[61] Federal Trade Commission, Practices of the Steel Industry Under the Code, 73rd Cong., 2d Sess., 1934, Senate Doc. 159, p. 60. Hereafter cited as FTC Report on Steel Industry.

and was continued under the code.[62]

The operation of Pittsburgh Plus pricing was simple indeed. Under this system a seller quoted the Pittsburgh base price, plus freight charges to the purchasers location, along with standard charges and deductions for extras. As an example, in 1920 the Pittsburgh price for steel was $40 a ton, and the freight charge to Chicago was $7.60. Thus $47.60 a ton for steel was the delivered price of steel no matter from what mill it was shipped. A Chicago buyer would pay that amount for steel even from a Chicago mill a few blocks away, and the mill would collect "phantom freight" of $7.60. On the other hand, if the Chicago mill shipped a ton of steel to a Pittsburgh buyer he could only get the base price, and the $7.60 transportation charge would have to be absorbed by the seller. Thus, the mill net would only be $32.40, compared with $40 which a Pittsburgh mill would receive from supplying the same customer. After 1924 the new system established a number of other basing points, but the system worked essentially the same way.[63]

The basing point system has had a very spirited defense, both in company propaganda and scholarly economic studies. U. S. Steel has borne the brunt of the attack on the pricing system, fighting the F.T.C. cease and desist order until 1948 when it abandoned the multiple basing point system.[64] Robert P. Lamont reported on the proposed Steel Code in July 1933, that "it was the accepted view of the members of the Code that the

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[62] Daugherty, Economics of Iron and Steel, I, pp. 534-541.

[63] Adams, Structure of American Industry, pp. 163-164.

[64] Machlup, The Basing-Point System, p. 72.

practice of establishing prices for products in the Industry upon basing points was a sound economic practice and should be continued without substantial change."[65] That "sound economic practice" was defined by U. S. Steel in a brief filed with the Temporary National Economic Committee in 1940. The report began:

> The basing point practice in the steel industry is a simple method of quoting delivered prices, which results in the competition of many geographically separated steel producers at the markets for each of the diversified products of modern steel mills. It is not a price-fixing medium nor does it result in high prices. It does not stifle competition but rather extends the benefits of such competition to all consumers.[66]

The secretary of AISI told the TNEC that the system actually brought perfect competition to the industry, for "competition is at its perfection of expression when all of the sellers are on the same level."[67] Occasionally, when pressed, a steel executive argued that the basing point system did not really operate abolutely.[68] An official of U. S. Steel testified, however, that "the records will show that our average price over a long period of time, with the exception of the code period, was lower than our published price."[69]

These arguments are, in reality, either false or irrelevant. Economic arguments have been advanced, however, which attempt to justify the basing point system. It was often argued that such a pricing policy allowed producers to compete equally for distant markets and that f.o.b. mill pricing would create a danger of local mill monopoly. It has also

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[65] Memorandum submitted by Robert P. Lamont to the NRA, July 31, 1933. NRA Papers.

[66] TNEC Hearings, Part 26, p. 13820. [67] Ibid., Part 5, p. 1882.

[68] Ibid., Part 27, p. 14172. [69] Ibid., p. 14165.

been argued that because of the high capital outlay and the high overhead costs, full capacity operation is necessary for reasonable profits. In times of low demand the tendency is to cut prices, and the industry cannot stand such cut-throat competition. A corresponding argument is that since the demand for steel is rather inelastic, lower prices will not result in a higher consumption of steel. Finally, it is argued, price competition would not put steel producers at the mercy of "monopsonistic or oligopsonistic" steel consuming interests, such as auto, farm implements, and railroads.[70]

The arguments used against the basing point system are equally varied. The most natural and oft-stated objection is the reduction of competition which such a system causes. The economist, Frank Fetter, testifying at the steel code hearing said of the basing point system: "This is an artificial practice, which did not prevail in the early industries, before monopolistic control arose along in the 80's and 90's, along in that era of monopolies." The author of Masquerade of Monopoly concluded: "If that is not in fact a monopoly, I do not know anything about the meaning of the word 'monopoly.'"[71] Under the steel code price stabilization was "probably more adequately provided for . . . than any other time in the history of the steel industry."[72] The FTC reported that in 1935, in response to a call for bids on three big WPA projects, U. S. Steel, Bethlehem Steel, Inland Steel, and Jones and Laughlin quoted prices identical to the fourth deci-

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[70]Adams, Structure of American Industry, pp. 164-172; Galloway, Industrial Planning, p. 161; and Daugherty, Economics of Iron and Steel, II, p. 1106.

[71]"Code Hearings," pp. AA5-6.

[72]Daugherty, Economics of Iron and Steel, II, pp. 1079-1080.

mal point.[73] Almost identical illustrations could be repeated over and over again.

Other arguments against the basing point system include those dealing with plant locations, transportation charges and wastefulness. It is argued that both steel producers and consumers tend to retain uneconomic plant locations because of the pricing policy of the industry. Then there is the waste of cross-hauling. Charles M. Schwab wrote in 1928: "It is manifestly uneconomic for a steel manufacturer in Chicago to ship 100,000 tons of steel to Pittsburgh at a time when a Pittsburgh manufacturer is shipping a like quantity of like material from Pittsburgh to Chicago."[74] Yet, this practice was what the basing point system often encouraged. A final argument maintains that such a pricing policy allows an industry to maintain excess capacity, because inefficient producers are protected from price competition.[75] It was the specific complaints against the basing point system during the NRA, however, which is of most concern to this study.

At the time the steel industry had been negotiating with the government for its code of fair competition a number of representations were made in regard to proposed price controls. A major source or complaints came from interests in locations which had not been designated as basing points. Both public officials and businessmen of Johnstown, Pennsylvania,

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[73]TNEC Hearings, Part 5, 1897.

[74]Quoted in C. D. Edwards, "Basing Point Decisions and Business Practices," American Economic Review, XXXVIII (December, 1948), p. 840.

[75]Adams, Structure of American Industry, pp. 176-177.

protested that their city, the location of large blast furnaces which produced four percent of the steel manufactured in the United States, had not been so named.[76] Both the General Motors Corporation and the Chrysler Corporation challenged the entire basing point system. W. P. Chrysler wrote: "The Steel Code provides against charging the customers too little or giving them any favors, but does not seem to contain anything against charging them too much if the members of the Steel Code agree to do so, or file high rates." He continued that he purchased large amounts of steel from Detroit manufacturers and only had to pay a switching charge of sixty cents a ton. Under the Code provisions, however, he would have to pay the freight rates from Pittsburgh which was $5.60 a ton. In recommending f.o.b. mill pricing, Chrysler concluded: "The case therefore falls within the Pittsburgh Plus method which was condemned by the Federal Trade Commission in the Pittsburgh Plus Case."[77]

Robert Lamont answered this complaint by charging that the auto makers wanted an unfair competitive advantage and desired to evade the payment of just steel prices. He did say he resented the charge by the auto executive that members of the steel code would charge whatever they agreed to charge, such an accusation being "somewhat veiled, to the effect that the members of the Steel Code propose to violate the anti-trust laws."[78] Another protestant made no "veiled" charge, but wrote: "It is

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[76]"Code Hearings," pp. Y3-4 and Z2; and E. H. Morrell to K. M. Simpson, August 5, 1933. NRA Papers.

[77]W. P. Chrysler to K. M. Simpson, August 1, 1933. NRA Papers.

[78]R. P. Lamont To Hugh Johnson, August 12, 1933. NRA Papers.

notorious that for years steel prices have been fixed by agreement between the producing companies." This executive suggested that a fact finding body be appointed to determine the cost of steel production so the public could be protected.[79]

The deputy administrator's office in NRA faced the same frustrations in attempting to exercise any control over the pricing policies of the Code Authority as it did in other administrative matters. Nevertheless, such officials as Shannon and Simpson were not unsympathetic to the basing point system or price-filing. Shannon thought that basing points served a useful purpose because they simplified the price structure, yet he thought that system "economically unsound from a purely price standpoint." The deputy administrator wrote that a complete change to the f.o.b. mill system at that time would be too disturbing to the existing order of things, but that the removal of price competition might require government pressure to get more basing points established.[80] Shannon did react to repeated statements by steel executives in which they claimed that they would not receive equal compensation under the code for their increased labor costs because prices would not increase that much. Shannon wrote that published code prices would be enforced, whereas there had been secret price-cuts before the code.[81] Donald Richberg, however, raised serious objections to the price fixing and basing point provisions before the code was approved. He wrote Johnson that the steel industry had not produced any evidence to

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[79]W. J. Hanna to Franklin D. Roosevelt, August 3, 1933. NRA Papers.

[80]Memo from Shannon to Simpson, [July, 1933?]. NRA Papers.

[81]Shannon to Simpson, August 18, 1933. NRA Papers.

support its proposed pricing policies and that the NRA could not ignore information in possession of the Justice Department and the Federal Trade Commission.[82]

The NRA insisted, as it had regarding other provisions of the code, that even steel companies which had not signed letters of assent to the code must file base prices.[83] The Code Authority, however, by the early part of 1935 had not been sending the regular notices of filed base prices to non-code members, nor had it been including any base prices which non-members may have filed. Shannon informed the Steel Institute after he learned of this practice that it must perform both functions.[84] Just two months before the NRA was declared invalid, Tower informed all non-code industry members that unless they began filing prices within ten days, the NRA would deem them guilty of a violation of the Recovery Act and any sales made subsequently would be in violation of the Law.[85] There is little evidence, however, that the government was contemplating such action or would have dared raise such a controversy in any case.

The steel industry was among only three industries which established basing points in their codes.[86] The price filing provision in the code

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[82]Memo from Donald Richberg to Hugh S. Johnson, August 2, 1933. NRA Papers.

[83]Shannon to Tower, August 30, 1934. NRA Papers.

[84]Tower to Shannon, February 1, 1935; and Shannon to Tower, February 4, 1935. NRA Papers.

[85]AISI to Steel Industry Members, March 7, 1935. NRA Papers.

[86]The other two industries were reinforcing fabricating materials and the steel joist industries. Daniel S. Gerig, Jr., and Beatrice Strasburger, Trade Practice Provisions in the Codes, U. S., NRA Division of Review, Work Materials No. 35. Part C (Washington, 1936), p. 41.

seemed to have established price stability and generally higher prices which was the major objective of the steel industry. The composite price for finished steel showed a rather consistent rise during the code period but never equaled the high annaul average of 4.191 cents a pound in 1917 or even the 2.297 cents in 1929. This is not surprising considering depression conditions. From the advent of the code in September 1933, until the NRA was invalidated in May 1935, the composite price of finished steel rose from 1.97 to 1.124 cents a pound. The stability of steel prices was also evident, with the composite price at 1.124 cents a pound for finished steel holding from August 1934 to September 1935.[87] During the code period steel ingot production rose from 25,949,000 tons in 1934 to 33,333,000 tons in 1935.[88]

Carroll R. Daugherty, in his indispensable economic study of the steel industry during the code period, found that price uniformity at individual basing points "was the rule rather than the exception," and that when price changes were filed simultaneously by groups of independent companies at one or even several basing points, "not a single discrepency marred uniformity."[89] He concluded that these facts "in the face of simultaneous and identical action among groups of independents establishes a presumption that prices were altered under the Code by predetermined agreement."[90] The NRA Division of Review concluded that:

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[87] Iron Age, CXXXVII (January 2, 1936), pp. 116-117.

[88] Ibid., p. 112.

[89] Economics of Iron and Steel, II, p. 670.

[90] Ibid., p. 671.

> Price filing served as an automatic impersonal mechanism to record and to perfect the process of price leadership, already dominant in the iron and steel industry. It contributed to the efficiency and smooth operation of the basing point control by preventing secret price cutting and local rebates, which had been in part induced by the basing point practice which tends to discriminate against purchasers located near a non-basing-point mill. By requiring adherence to base prices, the price filing provisions prevented open as well as secret departures from the basing point structure . . . price filing served largely as a mechanism for facilitating orderly changes in uniform prices, already well established by price leadership and by the basing point structure.[91]

Thus, the pricing policy established by the code not only retained practices established in the steel industry during the pre-code era, but continued those practices and made them more effective.

All of the so-called fair trade practices were administered and enforced by the Steel Code Authority, with a minimum of supervision and interference by the NRA's deputy administrator's office. A number of complaints in regard to the operation of the Steel Code did come directly to NRA but these were usually from non-industry members affected by the code or in a few cases, smaller industry members who thought they had or could not receive fair treatment at the hands of the Code Authority.[92] Most complaints from code members, however came directly to the Code Authority and only in the rarest cases was the NRA notified either of an alleged violation of the code or of the disposition of the case. Therefore, there is little data or evidence available to determine enforcement policy on the part of the Code Authority.

Rather elaborate compliance and enforcement machinery was established

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[91]Enid Baird, Price Filing Under NRA Codes, U. S., NRA Division of Review, Work Materials No. 76 (Washington, 1936), p. 258.

[92]This does not take into consideration complaints from steel workers which will be considered in Chapter VII.

by the NRA. Late in 1933 a National Compliance Board was created with various regional and local sub-divisions. This board replaced the Blue Eagle Division and the local adjustment boards which had sought voluntary compliance with the President's Reemployment Plan. As General Johnson emphasized so much during the early days of the NRA, the Code Authorities were to be given maximum freedom to enforce their own codes. A shift from this policy became evident in March 1934 when a Litigation Division was established with responsibility to the General Counsel.

This new division's task was to coordinate all NRA litigation, renew all cases turned over to the courts and prepare and carry through court cases in the name of the Department of Justice. De-centralization was also begun, and state compliance directors were empowered to turn over cases directly to United States district attorneys, rather than referring them to the National Compliance Board at Washington. Finally, in October 1934, a single Director of Compliance and Enforcement was appointed with nine regional officers to assist him. At the same time a special assistant to the Attorney General was designed to handle all NRA litigation from start to finish.[93] This continual revamping of compliance procedure and organization kept both NRA division administrators and Code Authorities confused and had much to do with the ineffectiveness of NRA control over Code Authorities.

Early in 1934 the NRA Compliance and Enforcement Division notified the Steel Code Authority that a staff had been organized in Division I of the NRA for expediting complaint procedure. The Compliance Division emphasized that it was mainly established to aid Code Authorities and did

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[93] Lyons, National Recovery Administration, pp. 58-61 and 74; and NRA News Release No. 1847, November 22, 1933. NRA Papers.

not want to overemphasize its own enforcement powers. It suggested that the Code Authority forward data on all unadjusted complaints to Washington.[94] Tower acknowledged this letter by informing the NRA that it had not been necessary to refer alleged violations of the steel code to Washington and that the Code Authority's own compliance organization was quite effective.[95] The compliance organization set up by the Code Authority was the first time such a step had been taken. The board of directors of AISI announced in December that Alexander Baxter and George Satterwhite had been appointed as special investigators to "assist the Administrative Committee in seeing that the members of the Code perform their obligations thereunder, including the investigation of all alleged violations of the provisions of the Code which may be reported."[96]

On February 2 the Code Authority adopted a resolution regarding procedure for handling complaints under the steel code. Every alleged violation of the code was to be reported to the Code Authority's enforcement division after which an investigation would be made. If the investigators decided that a violation had indeed been committed, it would notify the executive secretary of AISI together with a recommendation for any damages. The executive secretary would then notify the offending company of the facts and the company had fifteen days to affirm or deny the allegations. A denial accompanied by some defense entitled the alleged offender to a

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[94] M. J. Dodge to Walter Tower, n.d. NRA Papers.

[95] Walter Tower to M. J. Dodge, June 4, 1934. NRA Papers.

[96] Memo from R. W. Shannon to NRA Compliance Division, January 11, 1934. NRA Papers. Baxter was formerly with a firm of certified public accountants and Satterwhite had been with an independent steel firm.

hearing before the board of directors.[97]

Such an organization and procedure for handling complaints might have been efficient but it did not strictly conform to NRA compliance procedures. Three days after the board's resolution, Shannon wrote Tower that the Steel Code Authority had been authorized to administer fair trade practices complaints, but that such complaints should be filed with the state director of the National Emergency Council who would then refer them to the Code Authority. The Code Authority would be expected to keep the state director informed of progress and if the complaint was not handled within a reasonable time, the state director would take over.[98]

Tower turned this regulation over to AISI's attorney for reply. Once again this reply illustrates the attitude of AISI toward officials of the NRA. The counsel of AISI wrote:

> As I said to you last Friday, I believe that we are all trying to accomplish the same purpose. I know that the Board of Directors of American Iron and Steel Institute, which is charged with the duty of administering the Steel Code, and the machinery which it has set up to help it in the work are working hard and, I believe, effectively. If complaints are made, the Board desires to know of them, to the end that it may do whatever should be done to see that the causes of them shall be eliminated, if the complaints shall have real merit. Nothing can be accomplished, however, by any attempt to take away from the Board of Directors the authority which the Code, and, therefore, the law, has given to it, or by attempting to divide the responsibility which the Code makes only that of the Board of Directors.[99]

Thus, the Code Authority took the position that it should be the sole agency which handled complaints on the steel code and that it did not

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[97]Code Authority Resolution of February 2, 1934. NRA Papers.

[98]Shannon to Tower, February 5, 1934. NRA Papers.

[99]Hoyt A. Moore to William J. Hoff, February 14, 1934. NRA Papers.

have to answer to the NRA for its disposition of them. Such a position was no doubt communicated to industry members, for an attorney for a large steel company which had been notified of a violation charge called on a local NRA compliance office not to answer the complaint but to tell the adjuster that he had no authority or jurisdiction in the matter.[100]

In April, 1934, General Johnson addressed a letter to all Code Authorities commenting that up until that time very few cases of non-compliance warranting court action had been received by the NRA. "This has caused," Johnson wrote, "an uncertainty and a wide-spread feeling that the government is not backing up the Code Authorities. . . . This uncertainty must stop." Then, very bluntly, Johnson stated: "In order to move forward on a wide front, we are looking for good cases in each trade and industry supported by facts on which we may begin litigation immediately."[101] The General had just wasted his time and the paper on which the letter was written as far as the Steel Code Authority was concerned. As late as March 1935, not one single case had been referred to the NRA Litigation Division by the Code Authority regarding the steel code.[102]

This is not to imply that there were not numerous complaints made both against the code itself and against violations of the code's provisions. NRA deputy administrator Shannon reported that 903 complaints were received by his office against the code during the life of the

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[100]Ansel R. Cleary to John Swope, January 4, 1935. NRA Papers.

[101]Hugh S. Johnson to All Code Authorities, April 6, 1934. NRA Papers.

[102]J. M. Gutride to R. W. Shannon, March 6, 1935. NRA Papers.

NRA. Of this number 290 were adjusted, 205 were rejected as being without foundation, 57 were not pressed by the complaintants and 351 were unadjusted.[103] This was perhaps a fair average of adjustment of a rather low number of complaints.[104] The deputy administrator's office, which was committed to a policy of industrial self-government, generally could only proceed as fast as, and to the extent that, the Code Authority was willing to go. Division administrators were also occasionally warned about compliance procedures. In Febrary 1934, they were told that only in the rarest of cases should members of industry divisions even communicate with Code Authorities or members of the industry regarding compliance.[105] Thus, the NRA member responsible for the steel code could only work quietly, nearly always with his counterpart at the Steel Institute, and hope for voluntary agreement.

The Code Authority, on the other hand, was not so hamstrung. Definite enforcement powers were contained in the steel code, and it had an enforcement division to gather evidence of violations. On March 1, 1935, the board's enforcement division consisted of two supervising investigators with twelve assistants, a lawyer, and two clerks. This division spent almost $66,000 on enforcement from January 1 to December 31, 1934.[106] There is no available evidence to indicate the number or nature

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[103]"Analysis of Complaints," n.d. NRA Papers.

[104]The 903 complaints against the Steel Code can be compared with such large numbers as 15,795 in retail food; 16,681 in restaurants; 10,410 in retail trade; and 3,704 in lumber and timber. Unsigned Memo, May 27, 1925. NRA Papers.

[105]Memo from Donald M. Nelson to Division Administrators, February 13, 1934. NRA Papers.

[106]Steel Code Authority Budget, March 1, 1935. NRA Papers.

of complaints received by the Code Authority. Once a violation had been determined, however, the guilty company was assessed liquidated damages of $10 for each ton of steel sold in violation of the code. A total of $44,999.75 was assessed against thirty-five separate companies.[107]

Altogether the Steel Code Authority administered, legislated, and enforced its own fair trade practices in the interest of members of the steel industry. There is no appreciable evidence that the Code Authority unduly discriminated against the smaller members of the industry. This was not true in regard to independent steel fabricators, jobbers, and the consuming public. The NRA generally followed a hands-off policy on code administration, but when it did attempt to assert itself it found that it was either ignored or challenged by the Code Authority. The operation of the steel code can truly be designated as industrial self-government in the sense which many industrialists had talked of in the early days of the depression. The major area of the Recovery Act which the Steel Code Authority left to the NRA was the labor provisions. The Code Authority did not try to enforce collective bargaining. Indeed, it was totally opposed to unionization, except in company unions, and it left any attempts to enforce Section 7a to the NRA. The twenty-one months' life of the steel code witnessed a continual struggle between the steel industry, organized labor and at least some segments of the government.

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[107]Unsigned Memo to R. W. Shannon, May 20, 1935. NRA Papers.

CHAPTER VII

THE STEEL CODE LABOR PROVISIONS

The American Federationist expressed the hopes of many of its members when it carried the following lines in its October 1933 edition:

> Now swells the glad voice of the nation,
> Now breaks the bright dawn of new day;
> Black hopelessness yields to elation,
> Exultant thy cry, NRA!
>
> Lo, labor again rolls its thunder,
> Lifts choral in vast roundelay;
> Lo, powers of greed fall asunder,
> By blue eagle rent, NRA![1]

Three months earlier Iron Age had editorialized:

> Organized labor is but a small fraction of our working population and a still smaller fraction of our public. . . . It is a little fellow with a loud voice. This little fellow is now trying to increase his stature by climbing on the load that Uncle Sam with the help of capital and real labor is struggling to lift from the backs of the public. . . . Industry cannot be expected to enthusiastically strain its back in order to give an agressive and unpopular minority a free ride.[2]

The gauntlet was thus thrown down by the steel industry, and it remained there confronting union leaders throughout the life of the NRA. The third "countervailing power," the government, seemed to have had almost no consistent policy at all, thus adding a great amount of confusion to the industry-labor struggle.

There were two objectives of labor provisions of the National Industrial Recovery Act and the various codes. The first consideration arose from the exegiencies of the national economic emergency and was concerned with getting people back to work and trying to get wages up

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[1] American Federationist, XL (October, 1933), pp. 1076-1077.

[2] Iron Age, CXXXII (July 6, 1933), pp. 13-14.

to provide a decent standard of living and to create more purchasing power. The steel industry had been among the leaders in cutting hours to spread available employment, but it nevertheless opposed the Black Thirty Hour bill as being impractical. Even with the spread-the-work movement, from 1929 to 1934 steel workers enjoyed fewer hours of work and a greatly lowered standard of living.

At the peak of prosperity in 1929 there were about 440,000 persons employed in the steel industry; by 1933 there were only 330,700.[3] In 1929 wages for unskilled workers averaged about 40 cents an hour, but wage cuts during 1931 and 1932 reduced the average to 30½ cents. The average hourly wage for skilled and unskilled workers was 63½ cents in 1929 and 48½ cents in 1933.[4] The average annual wage of employees in the steel industry was $1,620 in 1929 exceeded only by the chemical industry among the major industrial groups. During the low point of the depression, average annual earnings dropped to $560, lower than that for any comparable industry. Using estimates of family earnings required for a minimum decency standard of living, it appears that steelworkers with smaller families were achieving that standard in 1929 but fell much below that level in 1933. For a level designated "comfort" they did not achieve such a standard in either year.[5]

Naturally, individual complaints and pleas for aid poured into Washington even before the steel code became effective. A young daughter of a steelworker who had a family of six told how her father had not

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[3]Daugherty, Economics of Iron and Steel, I, p. 113.

[4]Stewart, Problems of A Great Industry, p. 14. [5]Ibid., p. 15.

worked in ten months. She charged that he had been given a grocery credit of five dollars which he had to work off at the mill, but that the mill superintendent was in league with the grocer so that the credit would only really buy two dollars worth of groceries. When the family asked for a credit on a cheaper store, the superintendent reportedly told them: "I don't care if you hunky's [sic] live or die." The young girl concluded by telling how a local doctor found the whole family in bed starving to death.[6] A southern steelworker's wife told how her husband worked ten hours a day, six or seven days a week at 26 cents an hour. Yet, rents on company houses were advanced a dollar a month, and flour prices increased 30 cents for a 24 pound sack at the company store. "We are not tramps," she wrote, "but we are slowly being demoralized and losing all personal pride."[7] A Carnegie Steel employee whose wages had been cut wrote: "Living expenses are soaring and life soon will be impossible. Where is the New Deal?"[8]

Then came the NRA and the President's Reemployment Agreement. The steel industry on July 15 voluntarily raised wages 15 percent generally, but still workers continued to suffer. One steel mill employee wrote that after the NRA had become law his hours were cut from seventy to forty a week and his hourly wage raised from 30 cents to 40 cents an hour. The mill was considering, however, a shift to the piece work basis, and the worker averred that it would be impossible under that system to earn more than 30 cents an hour. "As I see it, this violates all the

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[6]Alice Manella to Hugh Johnson, July 6, 1933. NRA Papers.

[7]Ruth E. Maise to Hugh Johnson, July 15, 1933. NRA Papers.

[8]Charles J. Robson to Franklin D. Roosevelt, July 17, 1933. NRA Papers.

principles of the president's recovery plan," he stated. "We all worship President Roosevelt for the great fight he is making on our behalf. We don't wish to embarass him but when the steel company won't respect anything but force, what are we to do?"[9]

As the Recovery Act became a reality and the steel industry submitted its code of fair competition, workers continued to express their opinions. In July several hundred employees of the Wheeling Steel Corporation petitioned Johnson to bring about a code for the steel industry "with all possible speed," because of the abrupt advance in commodity prices. These employees called for a six hour day and a five day week with wage increases to equal the rise in the cost of living.[10] An employee representative in a company union protested that the 15 percent wage increase was insufficient because working hours had been cut 20 percent. The steelworker added:

> Trouble is brewing at this plant, meetings have been held, what the outcome will be is hard to tell. Only a match is needed to start things off which I dread to see come. I am too old to get into any labor troubles. We all want an eight hour day but with not only a living but a saving wage.[11]

The conditions which were "brewing the trouble" were graphically described by a Pennsylvania steelworker who reported that he and his fellow employees were working under sweatshop conditions." Wages had been advanced 11 percent but the reduction in hours left him $1.50 to $2.50 less pay per

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[9]Francis Cesario to Frances Perkins, August 16, 1933. Department of Labor Main Numerical Series 167/1183, Box 158, NA.

[10]Petition to Hugh S. Johnson, July 15, 1933. NRA Papers.

[11]O. H. Leidy to Hugh S. Johnson, August 3, 1933. NRA Papers.

day. "You can see for yourself we are not getting a fair deal," he concluded, "the men are only waiting for some kind of a code that will help them out of their troubles."[12]

The demand for shorter hours and higher wages from workers, however, was met by other voices of protest. A steel company stockholder, claiming to represent millions of stockholders of the "great, self-respecting middle class" who depended on dividends, protested the "uneconomic wage demanded by Miss Perkins." The female stockholder raged:

> We protest her callous disregard of the welfare of the company, its earning power, its power to pay dividends and would remind her that the capital investment of this company represents the careful saving of a multitude of people. . . . We, the taxpaying middle class, have had our lifetime savings wrenched from us during that time. These companies have employed millions of workmen at a loss of hundreds and millions of dollars. This money was our money, the stockholders. The loss was our loss. . . . It was right, but it is not now right to further confiscate our savings to pay an uneconomic wage to workmen.[13]

A steel manufacturer wrote Roosevelt that he had always supported higher wages and lower hours, but for him to sign the proposed code would be his "economic death warrant." The businessman told of paying $22 for a 44 hour week while many of his competitors bragged of cutting salaries 55 percent, but he said $22 for a 35 hour week would ruin him.[14]

When the steel code finally came to the public hearing on July 31 there had already been a great amount of bargaining between NRA representatives and steel leaders. The NRA Legal Division told Leo Wolman that although the steel industry boasted of having spread available work since

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[12]Marshall Criswell to Frances Perkins, August 15, 1933. Department of Labor Main Numerical Series 167/1183, Box 158. NA.

[13]Telegram from Alice McAdoo to Robert P. Lamont, July 31, 1933. NRA Papers.

[14]Charles G. Connors to Franklin D. Roosevelt, August 6, 1933. NRA Papers.

the onset of the depression, "the amount of actual income received by each worker was, in many instances insufficient to sustain life on a decent minimum basis." The legal advisor recommended against allowing a statement approving this policy to be inserted in the code.[15] The NRA was working for an eight-hour day provision for the code, however, but the steel industry was arguing that the forty-hour week should be averaged over a six-month period so that enough skilled workers would be available during active production periods. Steel leaders claimed that they had reached the limit of the share-the-work movement because unskilled men could not be readily shifted to semi-skilled or skilled tasks. Shannon thought that too much premium was being placed on prompt delivery of steel orders and that a delay in filling orders would be healthy for the industry. If buyers were forced to wait for delivery they would begin to plan their purchases more systematically which would level peak loads and encourage steel producers to institute more effective training programs for semi-skilled and skilled employees.[16] This was one of the few, conscious long-range effects of a limit in the number of working hours contemplated by NRA officials.

The NRA rather consistently bargained with the steel industry for a forty-hour week. Simpson calculated that with 272,000 steelworkers employed at an average of 43 hours a week in July, the number employed could be increased to 325,000 if hours were cut to forty.[17] Organized labor,

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[15]NRA Legal Division to Leo Wolman, July 13, 1933. NRA Papers.

[16]R. W. Shannon to K. M. Simpson, August 17, 1933. NRA Papers.

[17]K. M. Simpson to Hugh Johnson, August 25, 1933. NRA Papers.

however, held out for the old Black bill thirty-hour limitation, and William Green and other labor officials represented this viewpoint at the hearings.[18] Frances Perkins, while backing the unions on most demands, asked for a forty-hour limitation on weekly working hours. She wanted those hours to be the absolute maximum to encourage the use of extra shifts, and not averaged over a period of time as the steel industry was asking. If averaging were allowed, said Perkins, "these members of the Institute who have agreed upon this Code will find an infinite variation of ways in which their members translate the meaning of the average hours over the six-months period."[19] After much bargaining between the industry and the government, with final pressure exerted by Roosevelt, the code provision on hours finally represented a compromise. Hours of labor could not exceed forty in any six-month period or more than forty-eight in any six day week. The government was able to get the industry to agree, however, that whenever a member of the code was operating at 60 percent of capacity, the eight-hour day would be established for all employees.[20]

The struggle over the wage provisions was just heated. The industry proposed a scale of minimum wages ranging from 30 to 40 cents an hour, depending on the section of the country involved, as a substitute for their first proposal of 25 to 40 cents. This was an average hourly wage of 38.5 cents. On July 1, 1929, the average hourly wage had been 42.5 cents, and on July 1, 1932, it had been 31.8 cents. The economic advisor

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[18]"Code Hearings," pp. N2-3. [19]Ibid., p. G4.

[20]"Steel Code," Article IV, Section 2.

for the steel code found this proposal generally satisfactory, although with a reduction in hours the worker's average weekly wage would be only $17 as compared with $22.60 in 1929. The economist thought, however, that an average wage rate of 42.5 cents an hour would increase costs too much, and therefore recommended a 40 cent weighted minimum wage.[21]

William Green demanded a minimum wage rate of 60 cents an hour or $18 per 30 hour week, while Frances Perkins advocated a weekly minimum wage which would allow a worker to support his family with the same total purchasing power which he enjoyed in 1929.[22] The real compromises had to be made, however, on several minimum wage rates for the various regions of the nation. After much negotiation wage differentials were written into Schedule D of the code ranging from 25 cents an hour in the Southern District to 35 cents in Kansas City, Los Angeles, and Eastern Districts, to 40 cents in the Pittsburgh, Chicago, and various Ohio Districts. At the Code Hearing Secretary Perkins challenged the wage differentials as "simply perpetuating what has been an unfortunate practice, and there is not sufficient difference in the actual cost of living to the wage earners in the different parts of the United States to justify" such wage differentials.[23] Nevertheless, the steel industry defended such differentials as justified because of differences in the cost of living and necessary because of variations in costs in various areas. A southern steel executive, for example, wrote that his company frequently imported skilled laborers to his plant from northern cities and that "no difficulty has been experienced

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[21]"Labor Provisions of the Steel Code," Memorandum by Victor von Szeliski, August 19, 1933. NRA Papers.

[22]"Code Hearings," pp. N3 and H2. [23]Ibid., p. H1.

in bringing these men to the South, or having them remain at the wage differential that has always existed."[24]

Complaints regarding wage differentials still came into NRA headquarters irregardless of that view. A group of southern steel workers protested Schedule E of the code, stating that "the rates of pay for skilled workers, in this district, under the proposed code, will be only slightly above that for unskilled labor in other districts."[25] A southern steel mill employee was more specific in charging exploitation by mill owners. Claiming that southern steelworkers were living on the brink of poverty and constantly in debt to the company-owned commissary, he wrote of the steelworkers' homes:

> Bare walls, carpetless floors, no baths, outside toilets, in fact every condition that makes the South known for what it is today--the home of typhoid, tuberculosis, pallegra and other diseases associated with poverty and distress. These conditions are not the result of the depression. They have always existed and will continue to exist just so long as the southern capitalistic system is allowed to pursue its greedy, life-strangling course.[26]

Negro spokesmen also protested the low level of southern wage rates as discriminatory against members of their race, because four-fifths of all steel employees in the Birmingham District were Negroes.[27]

Protests against the wage rates also came from persons representing other points of view. A northern steelworker protested the low southern wage because he thought that U. S. Steel would then shift its production

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[24]Statement of L. E. Geohegan to the NRA, n.d. NRA Papers.

[25]A. E. Horn to Hugh Johnson, n.d. NRA Papers.

[26]Ralph C. Hudson to J. E. Addicks, December 12, 1933. NRA Papers.

[27]Alfred C. Bliss to Hugh Johnson, April 28, 1934; and John P. Davis to K. M. Simpson, November 16, 1933. NRA Papers.

to the southern mills to take advantage of lower labor costs.[28] One steel product manufacturer claimed that he should be allowed to pay a smaller wage because he had to pay more for his steel and should be allowed to make up the costs in labor savings.[29] Another steel manufacturer in Pennsylvania requested a 25 instead of 35 cent wage rate because his plant was old and inefficient making labor costs high.[30] The NRA generally replied to business requests for lower wage rates by quoting Roosevelt's statement that "no business which depends for existence on paying less than living wages to its workers has any right to continue in this country," and adding that to accomplish the aims of the Recovery Act "there cannot be avoided some individual cases of hardship owing to the readjustment required by Codes under the Recovery Act."[31]

The NRA was not satisfied with the minimum wages established by the code but believed that they were the best obtainable under the prevailing conditions.[32] There was also the consideration that the wage differentials which had been established were the highest possible which the steel industry would accept. When the ninety day observation period of the Steel Code was ending Secretary of Labor Perkins called upon R. W. Shannon to explicitly state that the NRA believed the southern wage rates

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[28] J. T. Murphy to NRA, July 31, 1933. NRA Papers.

[29] P. W. Dillon to Hugh Johnson, February 24, 1934. NRA Papers.

[30] Frank V. Kasel to K. M. Simpson, August 24, 1933. NRA Papers.

[31] K. M. Simpson to Frank V. Kasel, August 30, 1933. NRA Papers.

[32] R. W. Shannon to Ralph C. Hudson, November 9, 1933. NRA Papers.

inadequate and to make clear that they would not be permanent.[33] Shannon stated that although he, Johnson, and Richberg agreed with her, he hoped it would not be "necessary and advisable" to issue such a statement just as the code was being extended.[34] The Industrial Advisory Board of the NRA continued to maintain, however, if wages were all set at the same rate, northern labor could establish the fact that it was underpaid. This was because of the higher transportation and mining costs in the north and the relative unproductivity of labor because of prolonged high temperatures.[35]

Steelworkers continued to feel the press of economic conditions throughout the life of the code and hundreds voiced their complaints to administration officials. Invariably a steelworker in the course of his letter would ask what Roosevelt and Johnson meant by a "living wage" and the other objectives of the New Deal. One employee of Jones and Laughlin stated that he had been making $22.08 a week on July 1, 1933, had received a 15 percent wage increase on July 15, but on September 1 was receiving a weekly wage of only $21.20. He said that with the company store squeezing him for payment, how could he participate in the "Buy Now" program, or even support the other New Deal measures.[36] Another steelworker complained that since the code was established his wages had decreased 3.3 percent.[37] These

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[33]Frances Perkins to K. M. Simpson, November 24, 1933. NRA Papers.

[34]K. M. Simpson to Frances Perkins, November 27, 1933. NRA Papers.

[35]Leonard M. Thompson to Luther Becker, January 29, 1935. NRA Papers.

[36]Sylvester Young to Hugh Johnson, September 4, 1933. NRA Papers.

[37]J. C. McMurry to Hugh Johnson, September 9, 1933. NRA Papers.

hardships were caused not by reductions in wage rates but by reductions in working hours. But it was difficult to convince a worker that it was necessary to limit his hours so that unemployed workers could also be given some employment. It was almost impossible for a man, such as one who wrote that he received $14.80 a week in wages--but paid $4 for rent, $5 for groceries, $2 for medicine for his wife, $1.39 for electricity, and $1.02 for gasoline--to understand that part of what he once made by working longer hours now went to someone who had not had any income.[38]

Many workers who had looked to the steel code with hope for better pay became disillusioned when their conditions did not immediately take a turn for the better. A Carnegie Steel employee said he had worked less since the company joined the NRA than before. From what must have been the depths of despair this man wrote:

> I have always tried to be honest all my life. But if things keep going in this way and I can't get no clothes for my wife or son I think that I will just start stealing for what I need as I do not get enough work to pay rent, buy food and clothes. Do not think I am a Radical or Communist. But I would like to see the forgotten man get a chance.[39]

Or from another Pennsylvanian who told of having worked only four days in October and then being laid off. "I have a wife and two children," he wrote, "and have fifteen days until I will be asked to vacate by the landlord our only shelter. I would like to have you advise me what to do."[40] It was not much consolation to hear from the agency which represented the much-vaunted Blue Eagle that: "Unfortunately, steel making operations have declined. . . . We are hopeful, however, that this situa-

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[38]Otto Amsman to Hugh Johnson, September 27, 1933. NRA Papers.

[39]Dennis T. Shay to Franklin D. Roosevelt, October 30, 1933. NRA Papers.

[40]William McDonald to Hugh Johnson, October 30, 1933. NRA Papers.

tion will improve with the general return of more normal business conditions."[41] What comfort could be given to a young fourteen year old daughter of a steelworker whose mother was dead and whose father was attempting to support six children working one day a week at a Carnegie Steel mill.[42]

As conditions gradually improved, the volume of complaints declined. Everyone, however, was not benefited alike. Only two months before the Schechter decision, a steelworker wrote Donald Richberg:

> How in the Hell do you and this present Democratic Administration expect us men to keep our families on these hours imposed on us under the present wages paid in the Steel Industry. We are unable to buy proper clothing for our wives or children, unable to pay taxes on our homes. We must exist like cattle under these conditions. If your government has no power to raise wages you surely should not cut the hours beyond an existence. If you cannot force a raise in wages you should bring this NRA to a close for you are destroying the lives of these workers body and soul. . . . I wish to tell you and Mr. Roosevelt that if you keep up your present policy you are sure of defeat in 1936.[43]

One of the reasons why these sentiments were not more widespread among steelworkers was because many had had nowhere to go but upward in wages and hours.

Working conditions showed a distinct improvement during the life of the steel code. In June 1933, there were 305,239 wage earners in the steel industry working an average of 39.4 hours per week at an average hourly wage rate of 47.3 cents and an average weekly wage of $18.64. By April 1934, 392,069 persons were employed for 33.7 hours a week at 64.8 cents an hour, averaging $21.84 per week.[44] In June 1934, 415,547 persons had

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[41] K. M. Richards to William McDonald, November 2, 1933. NRA Papers.

[42] Anna Tiberio to Franklin D. Roosevelt, February 19, 1934. NRA Papers.

[43] Bernard Wittenauer to Donald Richberg, March 24, 1935. NRA Papers.

[44] NRA Release No. 5418, May 31, 1934. NRA Papers.

employment, were working 35.7 hours a week and taking home an average of $22.81.[45] A few months before the code was scrapped, hours had remained the same as those in June 1934, but hourly wages had risen so that the weekly wage was $23.42.[46] Thus, the wage and hour conditions in the steel industry, from whatever cause, had improved materially. More men were given work at lower hours and better wages. Steelworkers still had many causes of complaint, however, and the drive for organization of steelworkers benefited greatly from these long and deep-seated grievances.

The second branch of labor provisions in the steel code dealt with the right of employees to organize and bargain collectively. Section 7a of the Recovery Act had stated that this was the right of labor and once again labor had deemed a victory as its "Magna Carta." The legislative history of this section has been discussed in Chapter III. This labor legislation was called a victory for organized labor, especially for the American Federation of Labor, when Congress put its stamp of approval on collective bargaining under the codes.[47] Yet, the outstanding scholar on labor policy during the New Deal era has stated:

> Section 7(a), a short and seemingly clear declaration of policy in a statute otherwise marked by complexity, lifted the lid of Pandora's box. The haste and inexperience from which it was derived were breeding grounds of ambiguity; it raised more questions than it provided answers. Latent antagonisms between unions and employers gained a point of focus and a furious battle was to rage for two years over its interpretation. The President, his advisers, and Congress, to win the support of both management and labor for the

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[45] NRA Release No. 6998, August 5, 1934. NRA Papers.

[46] "Code History," Table I, p. 54.

[47] Lewis L. Lorwin and Arthur Wubnig, Labor Relations Boards (Washington, 1935), p. 47.

> recovery program, had committed themselves, probably without realizing it, to a broad policy of intervention in collective bargaining that was to lead far beyond 7 (a).[48]

Section 7a set forth the principle, but it did not define the methods of choosing labor representatives or of the responsibility of management in dealing with them. Moreover, there were no defined powers of enforcement of the labor section.

The weaknesses of Section 7a were only part of the difficulties which were to beset the NRA's role in labor relations. Industry leaders had vowed either not to recognize any union in their establishments or to inaugurate company unions which they pronounced as fulfilling the letter of the law. The steel industry was in the forefront of those making both avowals. As one labor historian has stated: "The United States Steel Corporation . . . emerged from the struggle [steel strike of 1919] as the recognized champion of the American conservative tradition as well as the primary industrial bulwark against unionism."[49] As the recognized leader of the steel industry, the position of U. S. Steel would certainly dominate the entire industry. While steel trade journals railed at the proposal for collective bargaining, steel leaders, such as Robert Lamont, reaffirmed the industry's refusal to deal with "outside organizations of labor or with individuals not its employees." Lamont added that "if this position is not protected, the industry is positive in its belief that the intent and purpose of the bill cannot be accomplished."[50]

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[48]Bernstein, New Deal Collective Bargaining Policy, pp. 38-39.

[49]Robert K. Murray, "Communism and the Great Steel Strike of 1919," Mississippi Valley Historical Review, XXXVIII (December, 1951), p. 464.

[50]Senate Hearings on National Industrial Recovery, p. 288.

Yet, the great desire of the steel industry to get its code of fair competition under force of law required it to make concessions "contrary to the deeply rooted traditions and habits of mind of the steel companies."[51] Coming into the code hearing with a provision written into the draft code openly calling for the company union, AISI leaders allowed an already-drawn statement of withdrawal of that provision be read by Lamont. Even at that, Lamont announced the industry's intention of maintaining the open shop and further developments indicated that at most the industry intended to maintain the employee representation plans. But, because Section 7a was written into the steel code with the government's insistence, the steel industry faced a long struggle with workers and unions over what that section meant.

The NRA itself was a signal for labor to begin its organizing campaign and its first target was deemed to be the steel industry, "that open shop fortress against which union labor had repeatedly smashed itself to bloody bits."[52] By July 1933, sporadic local strikes and labor disturbances had erupted in almost every section of the United States. Michael Tighe, president of the leading steelworkers' union, declared that Section 7a removed "the shackles of industrial dependence from the limbs of those who for years have been the subjects of a system that made servility, no capability, the merit for employment." But Tighe added: "Bear this well in mind: The movement that the Amalgamated Association of Iron, Steel and Tin Workers is now engaged in, to organize the workers in

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[51] Galloway, Industrial Planning, p. 154.

[52] Time, XXII (July 31, 1933), p. 12.

the iron and steel mills, is not a revolutionary action, nor can it be termed unusual on the part of the association."[53] But whether Tighe realized it or not, and his failure to realize this fact was one of the great weaknesses of the organizational drives in the steel industry, the movement was revolutionary. It was revolutionary because the steel industry had with one voice dedicated itself to a total hostility toward non-company unions and their activities. Yellow Dog contracts, blacklists, lockouts, company police, strikebreakers, labor spies, Pinkerton detectives, all the anti-union devices developed during the 19th century, were still used effectively in the steel industry in 1933. These methods were joined with the more sophisticated devices such as company welfare measures and company-sponsored employee representation plans, but they were all directed toward the goal of thwarting any attempt of "outsiders" to control steelworkers. Steel union leaders must have been aware of their problems, but the top leadership insisted on walking softly.

The disadvantage at which both workers and government officials found themselves is perhaps no better illustrated than Frances Perkins' tour of steel towns to gather information prior to her testimony at the Steel Code Hearings. Perkins cleared the trip with Roosevelt, and before she left, Myron Taylor and Eugene Grace promised that she would receive cooperation from local plant officials and have an opportunity to talk with company employees. In several towns the cooperation was extended but at Homestead, Pennsylvania, trouble erupted. The Burgess of Homestead allowed Perkins to hold a meeting in the Hall of Burgesses where a question

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[53] Amalgamated Journal, Undated Clipping in NRA Papers.

and answer session was held with steelworkers and newspapermen. At the conclusion of the meeting, however, Perkins heard a commotion in the street and learned that steelworkers deemed "radical" by the Burgess, had not been allowed into the hall. When Perkins expressed a desire to address them on the streets, she was told by the Burgess: "No, no, you've had enough. These men are not any good. They're undesirable Reds. I know them well. They just want to make trouble." The Labor Secretary then spied the American flag floating over a post office and adjourned the meeting to there, knowing that local officials could not prohibit her speaking on federal property. After a short meeting Perkins departed "with handshaking and expressions of rejoicing that the New Deal wasn't afraid of the steel trust."[54]

The condition of organized labor in general, and of steelworkers' unions in particular, was extremely weak in mid-1933. The membership of the American Federation of Labor had fallen to about two million. In the steel industry three labor organizations operated: the Amalgamated Association of Iron, Steel and Tin Workers of North America, the International Union of Mine, Mill, and Smelter Workers and the Steel and Metal Workers' Industrial Union. The first two organizations were affiliated with the AFL and the third, at first called the Metal Workers Industrial League when organized in 1929, was a part of the Trade Union Unity League, a Communist dominated organization. The Industrial Union claimed less than two percent of the steelworkers, both employed and unemployed. The Smelter Workers, who had concentrated on blast furnace employees among steelworkers but were at present concerned with western miners and smelters, had a

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[54]Perkins, Roosevelt I Knew, pp. 215-221.

negligible membership. Both these groups were more effective in organizing temporary protest movements for specific grievances.

The Amalgamated Association was the old-line steelworkers' union, but it reached its height and decline in the years immediately preceding and following the great steel strike of 1919. In that fateful year 200 lodges, embracing 29,786 steelworkers held agreements with 41 companies. By 1929 there were only 100 lodges with 8,605 members holding agreements with 25 companies.[55] The major explanation for this weakness, of course, was the implacable opposition of the steel companies, but an additional factor was the conservativism of the Association's president, Michael F. Tighe, called "Grandmother" by many of the workers. One of the new militant steelworkers told Tighe that he was "too damn conservative to be an Irishman."[56] To add confusion Tighe was plagued with hostility from both the AFL and the rank-and-file steelworkers during the steel code period and finally lost control of the entire union.[57] But even many of the Amalgamated members expressed the more conservative old-line Samuel Gompers' viewpoint. A member of the AA who had come into contact with organizers of the Industrial Workers' Union stated that steel companies should be willing to deal with the AA because the Industrial Union "is like the trust--they believe in direct action to gain their end. We as bonafide

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[55]Daugherty, Economics of Iron and Steel, II, p. 944.

[56]Robert R. R. Brooks, As Steel Goes (New Haven, 1940), p. 50.

[57]During the pre-code period two left-wing groups worked within the Amalgamated Association attempting to instill militancy into the workers and unseat the national leadership. One was the Conference for Progressive Labor Action, and the other called itself the American Federation of Labor Rank and File Committee.

union men, do not believe in what they call direct action. We believe in collective bargaining, where employee and employer, meet on common ground and settle their differences."[58]

The industry, realizing its strength and the weaknesses of the unions, had no intention of dealing with any labor union, conservative or radical. It intended to frustrate union organizational efforts and Section 7a by extending its employee representation plans, or company unions. The first of these was that inaugurated by John D. Rockefeller in his Colorado Fuel and Iron Company in 1915 and followed by those of Bethlehem Steel and Youngstrown Sheet and Tube in 1918-1919.[59] By 1932, however, there were only seven formal employee representation plans operating in the steel industry.[60] The Bureau of Labor Statistics wrote of such organizations:

> The great majority . . . were set up entirely by management. Management conceived the idea, developed the plan, and initiated the organization . . . . The existence of a company union was almost never the result of a choice by the employees in a secret election in which both a trade union and a company union appeared on the ballot.[61]

Usually company unions were initiated by the company which called a meeting of a small group of workers known to be friendly to management and explained the nature and purposes of such a plan. If the workers' group was agreeable to the plan it was asked to select election committees and to "sell" fellow-employees on the idea. Then a notice would be sent to employees telling them of the plan. A typical notice was one sent to

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[58] Amalgamated Journal, Undated Clipping in NRA Papers.

[59] Galloway, Industrial Planning, p. 153.

[60] Daugherty, Economics of Iron and Steel, II, p. 1005.

[61] Bernstein, New Deal Collective Bargaining Policy, p. 12.

employees of the Carnegie Steel Company on June 7, 1933, which read:

> It gives me great pleasure to announce that Carnegie Steel Company, adhering to the principles set forth in the National Recovery Act sponsored by the President of the United States, has inaugurated a plan of Employee Representation under the provision of which the employees of our various plants and operations will have a voice in matters pertaining to industrial relations. The wholehearted support of the plan by you and your fellow employees will be appreciated.[62]

Most plans were not submitted for approval to employees but were considered accepted when employees voted for representatives in an election.[63]

Many steel company unions were patterned closely after that of Bethlehem Steel. A typical plan was that of American Rolling Mill. It provided for one representative for each fifty employees to be nominated and elected each year in December. Elections were supposed to have been conducted by the employees, "with such assistance from the Management as the employees may request," and by secret ballot. Each department was to choose a chairman, and all chairmen formed the Employees Executive Committee which could appoint sub-committees for special purposes and acted as an overall executive branch. The management could also appoint representatives to work with the employee representatives. Meetings were scheduled periodically and workers were paid their usual hourly wage rates for time lost in attending such meetings. Any complaint which a worker had could be brought by the worker himself or his representative,

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[62]Notice from I. Lamont Hughes to All Employees of Carnegie Steel, June 7, 1933. Department of Labor Main Numerical Series 167/2283, Box 158, NA.

[63]Interviews conducted by Daugherty with various steel executives elicited the following replies as to why workers had not been asked to vote on the plan itself: "We were in a hurry," or "The bulk of the men were too damned dumb, and still are to know what it was all about," or "We couldn't afford to risk anything at that stage (Economics of Iron and Steel, II, p. 1012.).

going through a chain of command from the plant superintendent, to the management's representative and finally to top management. If a settlement was not effected, it could be submitted for arbitration. This particular plan was designated to remain in effect during the term of the Recovery Act and could be terminated thereafter by the management or majority of the workers upon three months' notice.[64]

Union leaders warned steelworkers "to beware of the snares and pitfalls that are being planned to entrap them."[65]

> Some companies that have utterly ignored workers' rights before are trying to placate workers by company unions--which are only an extension of the companies control. These and other industries which fail to cooperate were characterized by the President as slackers. On the other hand, workers owe it to their industries and to national welfare not to accept a fictitious organization when they have a right to a real labor union and rights which the government guarantees them. If they fail to join the union to which they are eligible or to form a union when necessary, they too are slackers.[66]

Steelworkers, too, were quick to complain to Washington of company organizations. Even before the steel code was approved some employees protested the rapidity with which company unions were being inaugurated.[67] Others complained that when the company did not obtain the results it wanted from one election, it simply called another.[68] Then there was the question of what group was to be recognized as the collective bargaining agent. An Indiana steelworker wrote Leo Wolman for advise when his plant split between those who wanted an AFL affiliated union, those who wanted a

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[64]"Middletown ARMCO Plan of Employee Representation," December, 1933, pp. 1 passim.

[65]Amalgamated Journal, Undated Clipping in NRA Papers.

[66]American Federationist, XL (July, 1933), p. 679.

[67]George Ellison to Frances Perkins, June 26, 1933. NRA Papers.

[68]James F. Malloy to Frances Perkins, June 23, 1933. NRA Papers.

company union, and the other third ("Mexicans, southern Negroes and foreigners") who did not know what it was all about.[69] Some workers thought that elections had been fairly conducted, but said: "It can hardly be expected that such employees representatives speak and act without being influenced by the fear of reprisals from the management."[70] Others were simply perplexed. A group of newly-elected employee representatives of the Illinois Steel Company wrote Johnson "to find out the proper procedure to voice the claims of our constituents for adjustment after all requests to the management have proved futile."[71]

Even with these complaints and the confusion which existed in many workers' minds, the company unions flourished in the steel industry. Twenty-eight such plans were established in June 1933; twelve in July; six in August; and from one to four each month through January 1934. By December 1934, ninety-three companies had inaugurated employee representation plans. These companies employed 337,414 employees who were eligible to vote under the plan, and 301,175 had exercised that privilege.[72] An Iron Age survey in October 1934 revealed that company unions in 35 leading companies had held 5,791 meetings, discussed 12,709 complaints from employees and had settled 71.1 percent in the employees' favor.[73] While it would be inaccurate to state that many employees were not satisfied with company unions and that many companies did not actually see company unions as valid

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[69] F. A. Nelson to Leo Wolman, June 25, 1933. NRA Papers.

[70] S. H. Foss to Hugh Johnson, August 11, 1933. NRA Papers.

[71] John E. Barton to Hugh Johnson, August 29, 1933. NRA Papers.

[72] Daugherty, Economics of Iron and Steel, II, p. 1006.

[73] Iron Age, CXXXIII (October 25, 1934), p. 46.

alternatives to "outside" unions, there is too much evidence not to conclude that company unions were hastily put into effect after Section 7a was enacted and that employers used a variety of devices to keep employee representatives "under their thumbs." As one representative wrote: "We didn't need a treasurer because we had no dues and no money." When he and fellow-representatives were told that the plan could be terminated at the will of the company, he said that "this was a hell of a union; and it reminded me of being at a funeral when the minister said, 'The Lord giveth and the Lord taketh away.'"[74]

The steel industry, even with its flourishing company unions, still had to fight a pitched battle with organized labor and reacted, at times with pleasure and at times in anger, to the government's labor policies. The Recovery Act, which seemingly was so all-inclusive in establishing directions for industry and labor, made no provision for machinery to handle labor disputes. There were several reasons for this ommission. First, the administration had a single-minded objective of codifying industry with all possible speed. Secondly, the period since 1925 had been one of industrial peace and the chances of labor strife in the midst of a depression seemed remote. Thirdly, the wages and hours provisions in the codes seemed to have removed most of the causes of strikes. And, finally, those persons connected with Section 7a did not fully realize the implications of their guaranty of the right of workers to organize and bargain collectively. When in July 1933, a wave of strikes swept the nation, however, most of them demanding employer recognition of unions, some type of conciliatory machinery

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[74]Brooks, As Steel Goes, pp. 4-5.

had to be established. Therefore, the Industrial and Labor Advisory Boards of the NRA recommended a National Labor Board to the President and on August 5, 1933, Roosevelt gave such a board his approval.[75]

The NLB was composed of William Green, John L. Lewis, and Leo Wolman from labor, Gerard Swope, Louis Kirstein, and Walter C. Teagle from industry, and Senator Robert Wagner as chairman. The President did not issue any executive order pertaining to the powers of the board until December when he declared that the NLB was limited to "differences and controversies" arising out of the President's Re-employment Agreement. The board, however, did not limit itself to the PRA disputes, but assumed jurisdiction in labor controversies arising out of the codes. In such a role the NLB acting in a quasi-judicial capacity established a body of precedents, as well as performing as a mediator and conciliator in a number of cases. From time to time Roosevelt issued further executive orders which attempted to clarify the role of the NLB, but the whole experiment was destined to failure because of the complexities of industrial-labor relations.[76]

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[75] Lorwin and Wubnig, Labor Relations Boards, pp. 87-91.

[76] Ibid., pp. 93-95.

CHAPTER VIII

LABOR RELATIONS IN THE STEEL INDUSTRY

Meanwhile, steelworkers were becoming active in their drive for unionizing the steel industry, although it appears that the international officers of the Amalgamated Association were not prepared for an all-out drive in the steel mills. Tighe replied to a telegram from William Green urging the Amalgamated to take advantage of the "wonderful opportunity" afforded by the Recovery Act that his finances were drained and he suggested that the AFL enter the drive in steel. A few days later Tighe asked Green for advice as to whether the Amalgamated should presume to protest to steel corporations over company union tactics when the Amalgamated had not organized many of those plants. Other communications from Tighe to Green concerned minor questions about what the Recovery Act and Section 7a meant.[1]

Tighe finally was forced to yield to pressure from both the workers and the AFL, and late in June two organizers were sent into the Chicago area. Their success was so great that other representatives were sent into the field and by September 106 men were working around steel mills. The expense of this organizational drive, however, was so great that in November twenty-five organizers were called in and by May 1934 only fifteen were left in the major steel centers.[2] A movement among the local workers themselves was growing in steel mills but it was meeting the usual company

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[1] Daugherty, Economics of Iron and Steel, II, pp. 950-952.

[2] Ibid., p. 953.

hostility. Some 350 employees of National Steel met in early July but reported that "attempts have been made in various ways to prevent this meeting, all by the management which is trying to place us under the sharp representative plan commonly known as the company union."[3] Other Amalgamated lodges reported that steel companies were simply refusing to recognize them.[4] Some workers who "talked union" were summarily dismissed by plant superintendents.[5] In some cases Amalgamated organizers could not come into contact with the rank-and-file. Two such organizers protested that when they went to Aliquippa, Pennsylvania, workers would not talk with them because they were constantly followed by two Jones and Laughlin company policemen. They further stated that the Burgess of Aliquippa would not let them distribute handbills containing the words of Section 7a.[6] With all of these problems, the Amalgamated made only modest membership gains. However, some 50,000 new members in 130 lodges were added by February 1934.[7]

Meanwhile, the administration was not acting coherently or decisively in formulating principles which could be used in solving labor-management problems. Johnson has written that "after the creation of the National Labor Board, NRA never had any duty--or even any business--to intervene in strikes."[8] However, Johnson did intervene from time to time in labor

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[3]T. I. Lewis to Frances Perkins, July 6, 1933. Department of Labor Main Numerical Series 167/2283, Box 158, NA.

[4]Earl E. Jones to Hugh Johnson, July 16, 1933. NRA Papers.

[5]Lucille Stevens to Hugh Johnson, August 3, 1933. NRA Papers.

[6]Notarized Affadavit of Frank Dobbin and Frank Dixon, n.d. NRA Papers.

[7]Daugherty, Economics of Iron and Steel, II, p. 949.

[8]Johnson, Blue Eagle, p. 311.

disputes, often times angering Perkins and other Labor Department officials.[9] The General had said from the beginning that his task was not to unionize any industry and that the Recovery Act provided that a man could not be discriminated against whether or not he belonged to a labor union.[10] When the controversy came up over the AISI draft of the steel code, however, Johnson declared that the words "open shop" and "closed shop" had been "erased from the dictionary of the N.R.A."[11] Johnson's military outlook would not permit him to look favorably on such disruptive factors as strikes and, according to Perkins, he thought that the Labor Advisory Board "ought to rush out and give orders that no one was to strike."[12] Johnson did think that workers should be free to choose their own collective bargaining agent and this position led his deputy administrator for industry to resign in September 1933.[13] The General's attitude toward workers' rights evidently did not extend to the employees of NRA because when one John Donovan attempted to meet with Johnson on a union of his employees, Johnson refused to keep the appointment. For a few days "Washington watched pickets marching around the Commerce Building with placards declaring General Johnson unfair to organized labor."[14]

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[9]Richberg, My Hero, p. 180; and Michelson, The Ghost Talks, p. 126.

[10]Iron Age, CXXXII (August 3, 1933), p. 40.

[11]Ibid. (August 31, 1933), p. 32.

[12]Perkins, Roosevelt I Knew, p. 237.

[13]Time, XXII (September 11, 1933), p. 16.

[14]Ross, Death of A Yale Man, pp. 150-151.

The real task of keeping the labor peace, however, rested with the NLB. It had enjoyed some success in mediating labor disputes in the fall of 1933 and out of one of these controversies emerged a clarification of Section 7a called the Reading Formula. This policy grew out of a strike in the hosiery mills in Berks County, Pennsylvania, and became an integral part of the policy of the NLB. The Reading Formula called for the strike to end, reinstated the striking workers, held an election in the mills for collective bargaining representatives and provided that all differences arising under the agreement would be submitted to the NLB.[15] In October and November the Board was able to settle several strikes in this manner, but hostility of employers and the National Association of Manufacturers toward the Board had been aroused. In December two cases of outright defiance of the Board occurred.

One of the acts of defiance came from Weirton Steel Company, a subsidiary of National Steel, and was to become a test case of Section 7a. In June 1933, an employee representation plan had been inaugurated in the Weirton plants. Weirton issued a notice to its employees in September stating that the company was living up to the NRA and the iron and steel code but that it would only adjust complaints in accordance with the constitution of the company union.[16] In the meantime Amalgamated organizers were active in the Weirton plants and complaints began to come into Washington in regard to Weirton's opposition. One organizer wrote that

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[15]Lorwin and Wubnig, Labor Relations Boards, pp. 96-99.

[16]Weirton Steel Company, Notice to Employees, September 13, 1933. NRA Papers.

"unless something is done at once serious trouble will occur."[17] Another correspondent wrote Roosevelt that Weirton officials were calling the NRA a "false low down thing."[18] On September 26 a strike was called because Ernest T. Weir, company president, refused to meet with Amalgamated representatives. The plants were closed for two weeks, and on October 16 the NLB got Weir's signature on an agreement based on the Reading Formula.[19] Weir had agreed that elections for representatives for collective bargaining would be held in December. However, on November 15 a group of employees filed an affidavit charging that the company was using the time to coerce them into voting for the company union.[20] Weir claimed that his interpretation of the October 16 agreement was that the NLB would simply conduct elections for the Weirton company union, while Earl Long, the Amalgamated representative, claimed that the election was to be a choice between his union and that of the company.[21]

The NLB sent two representatives to Weirton and they consulted with both the Amalgamated officers and with Weirton management. The NLB decided that a slate of candidates from both the Amalgamated union and the company union should appear on the ballot and that the election should be held outside the company's gates. Meanwhile, the employee representatives had made preparations to conduct their own election within the plant,

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[17]Joseph Bowen to Roosevelt, November 16, 1933. NRA Papers.

[18]Billy Pappas to Roosevelt, January 3, 1934. NRA Papers.

[19]NRA Release, October 16, 1933. NRA Papers.

[20]New York Times, November 16, 1933. p. 1.

[21]U. S. v. Weirton Steel Co., Del. 1060 U. S. (1935), p. 41. Hereafter cited as Weirton Decision.

ommitting the Almagamated slate. On December 6 the NLB notified representatives of the company union to appear in Washington the next day. At this meeting sharp exchanges occurred between Long and the employee representatives, and Wagner finally presented a set of rules for the election. Long accepted the regulations but the employees' committee did not.[22] When asked if they intended to flout the government the employee representatives answered "if that's the way you take it, yes."[23] On December 11 Weir wrote that he did not feel bound by the October 16 agreement and that the election would be held under employee representative direction. Wagner replied that the NLB intended to see that the agreement was carried out and on December 14 Johnson informed Weir that "in my opinion you are about to commit a deliberate violation of federal laws, and that if you do so, I shall request the Attorney General to proceed against you." That same day Wagner referred the case to the Justice Department and ordered Weir to postpone the election.[24]

The employee representative elections were held as scheduled on December 15 at the Weirton plants in Weirton, Clarksburg, and Steubenville. In this election 11,443 employees were listed as eligible voters and 9,336 went to the polls. The employee representative election committee accepted 6,818 ballots as valid and a government audit added only 187 to that number.[25] Even with this impressive turnout, NLB members charged that the company had used threats, intimidation, discharges, demotions and layoffs to get employ-

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[22] Ibid., pp. 46-47. [23] NRA Release No. 2149. NRA Papers.

[24] Lorwin and Wubnig, Labor Relations Boards, p. 104.

[25] Weirton Decision, pp. 48-49.

ee acceptance of the company union.[26] Early in January, therefore, a White House conference was held at which it was decided that the Weirton case would be taken to the courts.[27] Soon thereafter a delegation from the Amalgamated Association came to Washington to protest the administration's handling of the case and threatened a general walkout of steelworkers throughout the country unless the case was decided in favor of the union.[28] One unidentified person wrote Roosevelt that if the case were not settled the situation would result in "bloodshed which may be the forerunner of a Revolution."[29]

By March the NRA was considering depriving Weirton of its Blue Eagle but the case was being argued in the courts.[30] The NRA was not very certain of its case, however, and less sure of its handling. An NRA memorandum read:

> For your information in regard to the Weirton Case, I understand Newton, the district attorney, is not much of a lawyer, in fact pretty bad and is a republican. I understand that Judge Nils /sic/ is a former student of Layton of the firm of Richards and Layton, who are attorneys for the defendents. He is also a republican.[31]

Such doubt was justified, for on May 29, 1934, Judge Nields refused to grant a preliminary injunction on technical grounds. On February 27, 1935, he refused to grant the injunction on the merits of the case and the appeal

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[26] Ibid., p. 6. [27] Iron Age, CXXXIII (January 18, 1934), p. 32.

[28] Ibid. (February 1, 1934), p. 41.

[29] Anonymous Letter to Roosevelt, February 10, 1934. NRA Papers.

[30] William H. Davis, National Compliance Director, to Milton Handler, April 2, 1934. NRA Papers.

[31] L. M. C. Smith to John McKnight, April 15, 1934. NRA Papers.

of the so-called test case of Section 7a to the Supreme Court remained to be taken when the Schechter decision was rendered.[32]

This open act of definance by the steel company, together with other factors, was reducing the NLB to impotency. Industry was growing increasingly hostile toward the NRA's collective bargaining provisions by early 1934. Iron Age pointed out that the AFL had gained all the ground it had lost in the past fourteen years and deplored the strikes for union recognition which had occurred in late 1933.[33] Nevertheless, Wagner was aware of the crisis which the Weirton defiance would cause, and thus early in February Roosevelt issued two further executive orders empowering the NLB to conduct elections in plants under majority rule and providing that, if the employers refused to accept the results, cases could be turned over to the NRA Compliance Division or the Attorney General. The press release accompanying the orders stated that the new policy grew out of the growing tendency of management to build up company unions. "These unions are operated by employees' representatives chosen by the employer rather than by the employees themselves," concluded the statement.[34]

The Steel Institute immediately condemned the executive orders and the press release "as a direct threat against the peaceful industrial relations long prevailing in the Steel Industry" and as threatening "the whole national industrial recovery program." Such powers as granted to the NLB would allow a small minority of workers to create confusion in

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[32]Lorwin and Wubnig, Labor Relations Boards, p. 105.

[33]Iron Age, CXXXIII (January 4, 1934), p. 34.

[34]Ibid. (February 8, 1934), p. 41B.

labor-management relations, thought the Institute. The AISI statement concluded:

> We regard it as a violation of public trust for a government agency to issue such a statement to the public. It can indicate nothing other than an intention to accomplish a complete domination of all industry, affecting the lives of millions of people, by union organizations which represent less than 10 per cent of the industrial employees of the Nation.[35]

Senator Wagner, however, said that the executive order was a result of NLB's dispute with Weirton and of the AISI statement declared: "The Board heard all that argument last Autumn and went right on sticking to its work and will continue to do so."[36]

Wagner was playing a game of bluff, however, because events were rushing quickly over the NLB's position. Just two days after Wagner's statement, Johnson and Richberg issued a statement of their own repudiating the doctrine of majority representation in favor of multiple representation and adding that "in so far as the statement in the press release might be read as saying that employees' representatives in all company unions are chosen by employers it was not intended as there is no evidence of such a case."[37] On February 27 the Board referred the Weirton case to the Justice Department and two days later asserted the majority rule principle in the Denver Tramway case. The breach between the NRA and the NLB had become irreconcilable.[38]

In March 1934 the United Automobile Workers presented demands on behalf of its 50,000 members for elections and bargaining. The NLB and

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[35]AISI Press Release, February 2, 1934. NRA Papers.

[36]Iron Age, CXXXIII (February 8, 1934), p. 41C. [37]Ibid., p. 41B.

[38]Bernstein, New Deal Collective Bargaining Policy, pp. 59-60.

Johnson stepped in and tried to arrange a settlement but the automobile makers made it clear that they would not accept the principle of majority rule. Roosevelt now intervened in the controversy to prevent a strike which could not be permitted in such a vital industry. On March 25 Johnson worked out a settlement with Roosevelt's imprimatur, providing that employers would bargain with groups pro rata to their membership.[39] This ruling, of course, went directly counter to the NLB Denver Tramway decision and was so damaging to the prestige of the Board that it "lapsed into a lethargy and torpor from which it never emerged."[40]

Wagner had already become convinced, however, of the need to have the NLB policies written into a permanent statute outside the NRA structure, and the AFL concurred. Drafting of such a law began in Wagner's office in January 1934, and when it was finished in late February it had provided for a new labor board, majority rule and the legality of the closed shop. Wagner introduced his Labor Disputes bill (S.2926) into the Senate on March 1, 1934. It was not long before business opened up a barrage of criticisms against the bill. The NAM urged trade associations to combat the Wagner bill by sending employee representatives to Washington to testify against it and to issue press releases in opposition. On March 20 NAM representatives called upon Roosevelt to kill the bill and his office was flooded with telegrams to that effect.[41] Iron Age took its cue when it editorialized:

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[39]Sidney Fine, "President Roosevelt and the Automobile Code," Mississippi Valley Historical Review, XLV (June, 1958), pp. 28-36.

[40]Lorwin and Wubnig, Labor Relations Boards, p. 113.

[41]Bernstein, New Deal Collective Bargaining Policy, pp. 62-67.

> The Wagner bill is patently a political measure. It is a bid for the votes of a well organized minority group. Its defeat will not become certain until employers muster all their forces to achieve that end. It is not time for temporizing and no time for inter-industry dissention. United action, and forceful action, must be taken, not to gain special favor or privilege, but to win a square deal.[42]

While the bill was before the Senate Committee on Labor from mid-March through mid-April, some nine steel companies had employee committee of representatives to testify in opposition. AISI prepared a digest of this testimony and circulated it among its members for distribution to employees.[43] In addition the Steel Institute wrote to all members that they should contact their senators and representatives to express disapproval of what was "believed to be the most drastic, and, therefore, the most important, proposal from the point of view of the Iron and Steel Industry . . . as has ever been put forward in this country."[44]

Conditions at the time, however, were not such as to give the Labor Disputes bill much hope of passage. Perkins was ambivalent because she wanted any labor board put under her control. Johnson was equivocal when he declared in an open letter that "the government should not favor any particular form of organization." but also that "freedom of choice could not exist where management maintained dominance over employee organizations once established."[45] In addition Roosevelt knew that the slight

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[42] Iron Age, CXXXIII (April 5, 1934), p. 13.

[43] Walter Tower to Members of AISI, April 26, 1934. NRA Papers.

[44] L. V. Collings to Members of AISI, March 15, 1934. NRA Papers.

[45] Bernstein, New Deal Collective Bargaining Policy, pp. 68-69.

economic recovery depended on the cooperation of business and, further, his concessions to the automobile industry had already put a damper on the Wagner legislation. Nevertheless, the decline of the NLB had created an ominous strike situation, particularly in steel, and, therefore, Roosevelt approved Walsh's revising the bill. Walsh removed some of the more objectionable features of the Labor Disputes bill and provided for the creation of a National Industrial Adjustment Board within the Department of Labor. The Senate Committee reported the bill favorably and, for once, Roosevelt, Perkins, Wagner, and Johnson all approved. The opposition, however, including business, the press, and the AFL, attacked the bill until it appeared as if this measure might also be lost.[46] The situation in the steel industry dictated otherwise.

The 100,000 new members who had swelled the ranks of the Amalgamated Association since the enactment of the NIRA had become increasingly discouraged with the fumblings of Tighe. Such local leaders as Earl Forbeck of McKeesport, Bill Long of Weirton, and William Sprang of Duquesne began a program of opposition to their international leaders. These men called a meeting in Pittsburgh on March 25, 1934, which was attended by 257 delegates from fifty local lodges. Ostensibly called to discuss the effect of the NRA on steelworkers, this meeting organized the militant Association members for a frontal attack at the upcoming Amalgamated convention in April. The Pittsburgh meeting was the beginning of the Rank and File committee.[47] With Forbeck as chairman, a committee of ten was appointed to carry back to the lodges four questions to get an expression of membership feeling. The questions read:

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[46] Ibid., pp. 70-75. [47] Brooks, As Steel Goes, p. 51.

1. If the Labor Disputes Bill passes, will all new lodges ask for recognition at the same time?
2. If the Wagner Bill is defeated, what will the new lodges do to gain recognition
3. How much time should be given to the management of the steel industry to meet such demands . . . before the latter take definite offensive action to obtain such demands, otherwise unobtainable?
4. Will the steelworkers cooperate with the Auto Workers' Union, Mine Workers, and Railroad Workers in the event united action becomes necessary to gain collective bargaining for any one group?[48]

These questions were presented to the lodges, and the sentiment was generally for united action in securing recognition, and, if necessary, by striking.[49]

When the annual convention of the Amalgamated met in Pittsburgh on April 17 the Rank and File leaders were in control. The night before the meeting opened the militant leaders met in caucus, in violation of convention rules, and, with the aid of four men from outside Amalgamated ranks who "all had good liberal political connections in Pennsylvania and one, at least, had an inside track in Washington," the Rank and File formulated their plans. When the convention opened Tighe was ready to refuse seats to many local delegates and to expel other lodges for non-payment of dues, but the militants won over their president in a test vote. Then, although many of the Rank and File leaders knew they were not prepared for a strike, either organizationally or financially, the convention voted on May 1 a Seven-Point Program.[50] This plan provided:

Point 1. All New Lodges to ask for recognition at the same time.
Point 2. Our demands to be presented to our employers on May 21, 1934.

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[48]Daugherty, Economics of Iron and Steel, II, p. 960.

[49]Brooks, As Steel Goes, p. 51. [50]Ibid., pp. 52-54.

Point 3. If our demands are not met in accordance with Section 7(a) of the National Industrial Recovery Act, we will be forced by concerted action to declare a holiday during the middle of June, 1934.

Point 4. Secretary of the International Lodge is hereby instructed to send a letter to each sub-lodge outlining this program of action and also, to send a similar letter to President Roosevelt, Senator Wagner, and to General Hugh S. Johnson.

Point 5. It is also the sense of this Committee that our demands be popularized through the public press.

Point 6. That the Committee or group of men who conduct any offensive action, which may be necessary, should be included in any negotiations that may arise out of this program of concerted action.

Point 7. No lodge shall be allowed to sign an agreement for recognition until all lodges shall have assurance of recognition.[51]

As one of the Rank and File planners suggested after their victory, "we were like a good bunch of football players going into the biggest game of our lives with no plays, signals, quarterback, or captain."[52]

The next few weeks were spent by the Rank and File committee in trying to find ways and means of putting its program into effect. The international officers had to take a backseat. Tighe wrote bitterly to a friend that "for many years, I may say during my entire lifetime, I have been an apostle of peace in all lines of industry, in fact it has became /sic/ proverbial that M. F. Tighe is so conservative that he has lost his grip on what is known as the rank and file of his workers." Tighe continued:

> In our late convention which was controlled very largely by the new elements that have came /sic/ in to the organization since the NRA, was adopted, this was shown to be the sentiment, as they controlled the convention and passed all resolutions that appeared to them to be what is known as progressive. To add to the situation, there were outside parties who under assumed interests, but communistic,

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[51] Daugherty, Economics of Iron and Steel, II, p. 1059.

[52] Brooks, As Steel Goes, p. 54.

> were constantly guiding these new representatives, and all against the best interests of the present organization, as it was the plan to do so disrupt the old A.A. as to form it into the communistic class. However, as you know the officials of the organization really have no powers, and we will have to abide by the decision of the convpention [sic].[53]

Tighe stepped aside to let the young radicals have a go at it.

Late in May some 200 new Amalgamated lodges sent identical letters to steel companies requesting recognition and demanded replies by June 10. Then while waiting, the Rank and File Committee held a number of meetings. One meeting on May 20, was held with representatives of the Communist-led Steel and Metal Workers' Industrial Union to explore possibilities of informal concerted action. When the Industrial Union's representatives demanded a more formal arrangement, however, it was decided that the two groups would only cooperate on a local basis whenever practicable. At that same meeting it was decided that the strike would begin on June 16 if demands were not met. That night a committee was formed to present demands to Tighe and a telegram was sent to the Amalgamated president requesting a meeting with him and the executive board on May 22.[54]

On May 21 the steel companies flatly rejected the Amalgamated demands for recognition, returning the letters to the various lodges unopened. The next day the Rank and File Committee called on Tighe and demanded $100,000 to conduct the strike and the use of the Association's complete machinery. In addition Tighe was requested to demand that the NRA conduct an immediate hearing on the proposed revision of the steel code. After much shouting and name calling which lasted from nine

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[53]Tighe to Ralph Easley, June 12, 1934. NRA Papers.

[54]Brooks, As Steel Goes, pp. 54-55.

o'clock until two o'clock with Tighe refusing to acede to the Rank and File's demands, the militants left, convinced "that the officers were going to sabatoge the strike and that we were left on our own resources."[55] Tighe did, however, finally request that code hearings be held, but he was refused by Johnson.[56]

With the two Amalgamated factions at loggerheads and with the steel industry adamant in its stand, the scene of action switched Washington. On May 24 Forbeck wired the NRA protesting that U. S. Steel and its subsidiaries refused to even receive union representatives requesting recognition for collective bargaining, although the union represented 110,000 steelworkers.[57] That same day Forbeck addressed a meeting sponsored by the League for Social Justice and declared that "if we go out on strike or holiday there will be no letup until there is a complete breakdown of the Iron and Steel Institute." Forbeck also demanded a six-hour day, a "saving not merely a living wage" and the end of company unions.[58] The Philadelphia Record editorialized: "Once again U. S. Steel has defied U.S.A.," and called upon Roosevelt to compel the steel industry to obey the law.[59] One person wrote the President that "the workers of this country demand a true 'new deal'--or else!"[60] Feelings were running so

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[55] Ibid., p. 56.

[56] Tighe to Johnson, May 28, 1934; and K. M. Simpson to Tighe, May 28, 1934. NRA Papers. Tighe had earlier requested of the NRA a chance to be heard on the revised Steel Code (Tighe to Simpson, May 10, 1934).

[57] Forbeck to Simpson, May 24, 1934. NRA Papers.

[58] Pittsburgh Post Gazette, May 24, 1934, p. 1.

[59] Philadelphia Record, May 26, 1934.

[60] C. C. Aldrich-Ames to Roosevelt, May 26, 1934. NRA Papers.

high that Wagner telegraphed Tighe and Forbeck asking them to bring delegates to Washington for conferences with the NLB.

On May 29 both Forbeck and Tighe appeared before the Board and demanded that Roosevelt call a conference between the Amalgamated and the Steel Institute. Wagner promised he would comply. It was reported that Wagner went to the President with the union's demand and that Roosevelt told the NLB to handle the situation. The next day, however, Roosevelt approved the revised steel code and stated that he would promptly call for representation elections in the steel mills under government supervision. The Rank and File representatives immediately issued a press release saying that Roosevelt's promise of elections had already proven to be "just so much bunk" because he could not enforce such elections and that they did not guarantee recognition when held. Tighe repudiated the statement and said that the Rank and File members were on their own. The next day in a press conference Forbeck called Johnson a "big windbag" and later in the day Johnson called Tighe "yellow" and Forbeck "green." Thereupon, the Rank and File delegates went back to their lodges to sound out their members.[61]

The militants were back in Washington on June 4 and promptly issued a statement demanding a six-hour day, a five-day week and a dollar an hour minimum wage, and stating "there is no beating around the bush about it, steelworkers of this country are going to get what they want." Sprang said of Johnson: "We'd like to see him walk up to an open hearth furnace and get his pants scorched for $21.84 a week."[62] On June 5 Johnson had

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[61] Brooks, As Steel Goes, pp. 58-62.

[62] Iron Age, CXXXIII (June 7, 1934), p. 42D.

two conferences with W. A. Irvin of U. S. Steel and proposed a steel labor board such as the one used in the automobile industry. Other meetings were held that day involving both factions of the Amalgamated, Roosevelt, Wagner, and Johnson. The General stated that he did not think the steelworkers had laid the proper groundwork for the controversy.[63] June 6 and 7 were spent by the union representatives in meetings with Perkins and Johnson. They also demanded an audience with the President. On the second day they finally got as far as Roosevelt's inner office but a presidential assistant referred them to a special board which Roosevelt had created to deal with them, consisting of Johnson, Wagner, Perkins, and McGrady. The workers had gone to the White House in a fighting mood but were overawed to be in such an historic place that they left as did other tourists with matches from the President's desk in their pockets.[64]

The next day, Johnson offered the steelworkers a three-man Industrial Relations Board which would conduct elections but could not force recognition. He said that the Steel Institute had already accepted the proposal and that acceptance of it by the union would allow Amalgamated the opportunity to become a collective bargaining agent where it had a majority. The militants firmly rejected the proposal, declaring that they had "had nine months of stalling and we're not going to stand for any more." That night Johnson went on the radio and strongly hinted that the rank-and-filers were Communists. The next day the Amalgamated group left Washington. As representatives departed they gave the press an open letter to Roosevelt denouncing Johnson's charge that they were Communists as an "unvarnished

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[63] Ibid., pp. 42-44 and 63. [64] Brooks, As Steel Goes, pp. 63-64.

lie" and his strike settlement proposal as "an insult to every worker in this country." They concluded the news release by stating:

> Mr. President, the least you can do is to throw the Iron and Steel Institute's barren company union proposition into the waste basket. And if you really mean to abide by your own recovery law, the least you can do is to summon the steel manufacturers to Washington for a genuine collective bargaining with the steel workers.[65]

Thus, the Rank and File members had tried a bluff in the capital and had failed. Yet, the strike was still scheduled for June 16 and some solution had to be found by one of the parties to avert that strike.

It was from the camp of labor itself that the solution came. Tighe had issued a call for a convention of the Amalgamated on June 8 to meet in Pittsburgh on June 14, two days before the strike deadline. When the convention opened the militant spirit was evident, but on the second day William Green addressed the convention as an emmissary of Roosevelt.[66] Green told the Amalgamated delegates that they could not win such a strike until they were stronger and urged a postponement until July 1 to see what action might be taken in Washington. He then recommended a four point program to be submitted as an ultimatum to Roosevelt because it "would cause consternation to the steel corporations and mobilize public opinion behind you." That program called for an impartial board to receive complaints arising under Section 7a and to adjust and mediate disputes. The board would also conduct elections in plants for collective bargaining agents.

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[65] Daugherty, Economics of Iron and Steel, II, p. 1061; and Iron Age, CXXXIII (June 14, 1934), p. 40.

[66] Brooks, As Steel Goes, p. 67. Milton Derber and Edwin Young state that Green was given the task of settling the controversy by the code authorities (Labor and the New Deal, p. 53).

Green assured the delegates that the President would approve the proposal and the convention adopted the proposal almost unanimously.[67]

Roosevelt had already begun steps toward creating the machinery called for in the strike settlement. He was convinced of the need for a new agency because of the failure of the NLB, but what he wanted was "noncontroversial bill that would move through both houses quickly, preferably with Republican support."[68] On June 11 Richberg gave Roosevelt the draft of a bill which authorized the President to create a National Labor Relations Board in the Department of Labor, and on June 15 Public Resolution 44 was submitted to Congress. On June 16, with little debate, the bill was passed and was signed into law on June 19.[69] Roosevelt stated that under Section 7a, workers had the right to choose anyone to represent them, "whether their choice is the King of Siam, the National Geographic Society or any organization under the sun."[70] That same day Tighe and Green called on the President and immediately thereafter Perkins was appointed to begin negotiations to avert the strike.[71]

Roosevelt revealed the result of those negotiations when he issued an executive order on June 28 creating the National Steel Labor Relations Board. This three-man group, composed of Judge Walter P. Stacey, James A. Mullenbach, and Admiral Henry A. Wiley, was empowered to investigate and determine the validity of charges that employers were restraining,

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[67] Bernstein, New Deal Collective Bargaining Policy, p. 77; and Iron Age, CXXXIII (June 21, 1934), p. 70.

[68] Bernstein, New Deal Collective Bargaining Policy, p. 77.

[69] Ibid., pp. 78-81. [70] Iron Age, CXXXIII (June 21, 1934), p. 40.

[71] Ibid., p. 43.

interfering with, or coercing employees in exercise of their rights under Section 7a. The Board was to mediate any dispute between employers and employees and to arrange for collective bargaining conferences. If disputes were voluntarily submitted, the NSLRB would serve as an arbitration board. Section 3 of the order provided that the board could conduct elections in plants to choose collective bargaining agents for the majority "without thereby denying to any individual employee or group of employees the right to present grievances, to confer with their employers, or otherwise to associate themselves and act for mutual aid or protection." To carry out such elections the NSLRB could obtain from company payroll and other documents to certify lists of employees eligible to vote.[72] This plan and the board members had been approved by the Steel Institute in conference with Perkins, and the industry termed it a compromise marking "a new step in relations between the industry and organized labor, though it does not mean recognition."[73]

The members of the Steel Board had years of experience in mediatory activities and that is probably the reason they were chosen for their posts. The administration still could not afford a direct confrontation with so powerful a segment of the economy as the steel industry at a time when economic recovery was the keynote of the New Deal, and the Board seemed to have tried to avoid a direct confrontation. From July to the end of 1934 the NSLRB attempted to bring management and labor together

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[72]Executive Order No. 6751, June 28, 1934. NRA Papers.

[73]Iron Age, CXXXIV (July 5, 1934), p. 47.

for conferences to solve outstanding problems. One example of this activity was the Board's mediation of a dispute between Republic Steel and various lodges of the Amalgamated. Republic had had a contract with the union on wages for several years, but when it expired on June 13 the company refused to negotiate a new contract. The NSLRB was able to persuade Republic to agree to maintain the old contract, although Republic denied that the agreement implied recognition of the union.[74] In another mediatory activity the NSLRB persuaded a small steel producer to reinstate a union member after the company had discharged him for organizational activity.[75] In the only election held under Board auspices before the first of the year the Amalgamated Association was declared the bargaining agent for employees of the West Virginia Rail Company for one year.[76] The Board was also able to adjust disputes involving Apollo Steel, Clayton Mark and Company, and Bethlehem Steel.

Steel companies, however, had not had a change of heart. As an Iron Age editorial stated:

> Organized labor, be it observed, has not been primarily interested in reemployment. Its main aim has been to swell its power--to rise to a position of dominance where it can dictate, rather than bargain for, wages and working conditions. In its greed for power it has plunged the nation into a state of constant turmoil, punctuated by strike after strike.[77]

Nevertheless, Perkins was able to announce in October that the NSLRB had solved disputes directly involving 15,000 workers, and many more workers

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[74] Ibid. (August 2, 1934), p. 57; and (August 16, 1934), p. 41.

[75] Ibid. (September 6, 1934), p. 47.

[76] Ibid. (September 13, 1934), p. 72.

[77] Ibid. (August 16, 1934), p. 9.

indirectly, in its first three months of operation.[78] Events once again, however, were beginning to modify the few months of labor peace.

Operations in the steel industry had begun to turn upward in late Autumn and labor unrest began anew. On November 18 steel leaders announced that they were ready to deal with the Amalgamated representatives but still insisted on proportional representation. The Amalgamated demanded majority rule, however, probably at William Green's insistence. At a recent convention at San Francisco the AFL had denounced Amalgamated for its lack of aggressiveness and had authorized the creation of a new and separate vertical union in the steel industry. The union's rejection of the industry offer was condemned and some steel leaders suggested "that too much has been conceded in view of the manifest weakness of the Amalgamated union among iron and steel employees." The threat was voiced that if the industry's proposal were rejected, further efforts of the NSLRB "to intervene in the labor relations of the steel industry will be fought to the last courts."[79]

Once again the threatened breakdown of labor peace was referred to the White House. On December 18 Roosevelt called top steel executives, including Grace and Taylor, Perkins and McGrady, Stacey and Wiley, and Tighe to his office for a conference. Before the meeting convened Steve Early reported that the NSLRB had been working on a settlement formula for several months but that it was not "quite agreeable" to either industry or

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[78] Ibid. (October 4, 1934), p. 43.

[79] Ibid. (November 29, 1934), pp. 43-44.

Amalgamated.[80] The conference lasted about an hour, during which time the union representatives were urged to accept a plan by which the employers would bargain with all groups of employees and the NSLRB would act as an arbitration agency. Both sides were asked to agree to a six-months truce during which time no elections for labor representatives would be held. This proposal indicated that the administration was ready to abandon the June truce in favor of a new plan, but the AFL and the Amalgamated refused to agree.[81]

The NSLRB, therefore, entered a new phase of activity at this point--using its powers to order elections in steel plants. On December 31 the Board ordered elections in two plants of Carnegie Steel and requested payrolls to determine the list of eligible voters. Carnegie officials refused to produce the records and the Carnegie company union went into court asking that the election orders be set aside. On March 5 the court dismissed the company union's request after an agreement was reached between all parties. Three days later the Board dropped its election order because once again factional strife with Amalgamated had led Tighe to expel the lodges requesting the Carnegie elections. Other election orders were issued during 1935 but they were generally ignored or appealed to the courts. Several of these appeals were pending when the Schechter decision was handed down.[82]

Thus, the NSLRB, like the NLB before it, had failed to accomplish

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[80] Ibid. (December 20, 1934), p. 57.

[81] Lorwin and Wubnig, Labor Relations Boards, pp. 341-342.

[82] Ibid., pp. 342-347.

much in applying Section 7a to the iron and steel industry. One reason, as already stated, was the policy of expediency followed by the administration. The steel industry was an important key to industrial recovery and its cooperation was necessary to that goal. Then too, the condition of the strike threat in June 1934 through June 1935 the union steadily lost in both numbers of local lodges and total membership. While many of the old Rank and File members became more closely tied with Communist and other left-wing groups, Tighe carried out a systematic purge of those who had so successfully revolted against his authority in mid-1934. It would take the Wagner Act, the CIO, and the Steel Workers' Organizing Committee to finally bring the steel industry to its knees, but this was three or four years in the future.

The Steel Code Authority and the NRA deputy administrator had not been involved in Section 7a disputes to any great extent. For the deputy administrator's office at least, the entire matter was probably too big and besides was out of its hands. Shannon had formulated his own interpretation of the code's labor provisions early in his term. He believed that working time was to be limited to increase the number of jobs and that minimum wages had been set to prevent starvation. Shannon believed that collective bargaining according to Section 7a was necessary to adjust wage scales above the minimum. Shannon wrote of these principles:

> Departure from and amplification of the foregoing simple principles has resulted in confusion, both as to the aims of NRA and in the actual means of obtaining these, that is in the provisions of various codes. There is much diversity of method and of opinions among the different elements of NRA. The writer believes that adherence to the above-stated fundamental principles with the least possible amplification is essential to clarity of thought and purpose.[83]

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[83]Shannon to Simpson, September 28, 1933. NRA Papers.

Thus, Shannon had a clear and simple policy, but he had little opportunity to put it into practice.

Very early in the code period Shannon informed AISI that the Code Authority was to enforce observance of labor provisions of the steel code.[84] Thereupon, for several weeks Shannon referred wages and hours complaints to AISI requesting investigations of the facts.[85] The Steel Institute, however, generally declined jurisdiction or denied that any violations had occurred under the steel code.[86] Nevertheless, the secretary of the labor committee of the Institute wrote to a code member that wages and hours complaints should be referred to the Code Authority and not to an NRA compliance board. As to Section 7a, however, the AISI official stated that "the Iron and Steel Authority recognizes this provision but does not undertake to enforce it." Thus, the committee chairman concluded, "problems arising under this section are matters for independent adjustment between employers and employees and in some cases they involve dealings with the National Labor Board."[87]

Since AISI did not establish machinery to deal with Section 7a matters, it was only authorized by NRA to administer the code in respect to trade practices. The Institute was informed that if it set up labor administration machinery, it would be granted the authority to handle code labor provisions.[88] The Steel Institute regularly supplied statistics to

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[84]Shannon to George H. Charls, October 5, 1933. NRA Papers.

[85]Simpson to AISI, October 7, 1933; and Shannon to AISI, October 13, 1933. NRA Papers.

[86]Tower to Simpson, November 13, 1933. NRA Papers.

[87]Grover C. Brown to J. T. Hanley, January 11, 1934. NRA Papers.

[88]NRA to Walter Tower, February 5, 1934. NRA Papers.

the NRA on wages, hours, and working conditions but ignored requests for records of complaints made to the Institute by code members of alleged labor violations. "This is another of the numerous cases indicating that the Institute refuses to recognize any responsibility in the administration of the Code," wrote Shannon, "other than specifically included within the contractual agreement among those signatory to the code."[89] Tower, in fact, had already made it clear that the steel code carried no penalties for violation of code labor provisions and that "penalities must be found in NIRA."[90] Nevertheless, NRA representatives on the Code Authority insisted that closer liasion be established between the Authority and NRA regarding labor provision violations. Board officials reported to the NRA representatives, however, that they were receiving no labor complaints at all.[91]

The only real occasion when the deputy administrator's office tried to enforce an NRA regulation regarding Section 7a on the steel industry once again reveals the one-sided relationship of the two protagonists. When Roosevelt renewed the steel code during the strike threat in the summer of 1934, he issued a statement in which he promised to institute elections in steel plants to assure collective bargaining.[92] On June 29, 1934, William Green wrote to Johnson that he thought this statement should be included on posters being prepared for setting forth the provisions of

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[89]Memorandum by Shannon, "Steel Code, Active Problems and Questions," February 12, 1935. NRA Papers.

[90]Tower to Shannon, October 23, 1934. NRA Papers.

[91]Memorandum by K. M. Simpson, February 14, 1935. NRA Papers.

[92]Lorwin and Wubnig, Labor Relations Boards, p. 333.

Section 7a to be placed in steel plants.[93] On September 1, Johnson issued an executive order to this effect. Soon thereafter, Hoyt A. Moore, counsel for AISI, wrote Richberg stating that such a statement had nothing to do with the labor provisions of the steel code and that it "would be provocative of labor troubles."[94] Richberg recommended to Johnson that instead of Roosevelt's statement it would be more appropriate to call attention on the posters to the new Steel Labor Relations Board.[95] Some officials of the NRA were fearful that there was no way to force the steel industry to post the notices.[96]

The Labor Advisory Board asked Charlton Ogburn, counsel of the Amalgamated Association, his opinion on the advisability of forcing the industry to display the posters. He replied that he was reluctant to take such action because, since all provisions of the code were supposedly voluntary, forcing one point and not others would give the steel industry a good argument in a court fight.[97]

Well into 1935 all branches of the NRA argued whether the steel industry should be forced to accept the labor posters. The Labor Advisory Board was willing even to go into court to force compliance, but Richberg and the Industrial Advisory Board wanted to drop the President's statement. The Steel Institute simply remained silent and refused to accept the

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[93]Green to Johnson, June 29, 1934. NRA Papers.

[94]Moore to Richberg, September 14, 1934. NRA Papers.

[95]Richberg to Blackwell Smith, September 18, 1934. NRA Papers.

[96]Memorandum by Blackwell Smith, October 8, 1934. NRA Papers.

[97]Gustav Teck to Charlton Ogburn; and Ogburn to Teck, October 16, 1934. NRA Papers.

posters for distribution to its members. Finally, on March 25, 1935, Shannon notified Tower that the President's statement would be ommitted and that only the labor provisions contained in the code would appear on the new poster.[98]

Enforcement of the labor provisions of the Recovery Act and the steel code depended, therefore, as did the trade practice provisions, on the willingness of the steel industry to comply. Roosevelt, "wedded to NRA as his basic recovery policy," refused to take any decisive action which would alienate the steel magnates complete.[99] Johnson, although holding a personal affection for many labor leaders, could not tolerate strikes which might disrupt his patriotic Blue Eagle campaign. The unions themselves were too weakened by conservative leadership and internal strife to play a major role. Thus, a shift in the policies of both government and labor was necessary before the steelworkers could achieve what had been promised them by Section 7a of the National Recovery Act.

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[98]Shannon to Tower, March 25, 1935. NRA Papers.

[99]Bernstein, New Deal Collective Bargaining Policy, p. 82.

CHAPTER IX

THE REVOLT OF THE "LITTLE FELLOW"

The labor controversy was not the only difficulty which beset the NRA and the steel code from 1934 through the Schechter decision in May 1935. The patriotic Blue Eagle campaign and the fervent hope for recovery engendered by the frenzied condification period had kept criticisms of code provisions, the operation of Code Authorities, and the antics of Hugh Johnson at a minimum. By the fall of 1933, however, there was widespread discontent with the NRA. The much-promised recovery was not materializing, and there had been no real "crack-down" on code violators. The real crux of NRA's problem was price policy. Businessmen chafed at barriers erected by the administration against price rises, while consumer representatives charged that industry had been given too much control over prices and were raising them too high. Moreover, once the codification period had ended, the problems became those of enforcement and administration. But the organizing genius of Hugh Johnson seemed inadequate and his eccentricities intolerable. As protests poured into Washington from businessmen and consumers, their cause was taken up by congressmen, government agencies and even by some within the NRA. Clearly the NRA was going to have to make changes, or fall by its own weight.

Hugh Johnson has written that early in the life of NRA "two or three young politicians discovered the Little Fellow."[1] The NRA chief was referring to Senators William Borah and Gerald Nye as the "young politicians" and to the small independent businessman as "the Little Fellow." Johnson

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[1]Johnson, Blue Eagle, p. 271.

inferred that the discovery was simply a political issue for the two Progressives. This charge, however, was unfair, as both men, along with other congressmen, had been concerned from the start with possible monopolistic practices arising from the codes. Borah had said that the bill, as written, gave industry "the right to combine, to fix prices, to restrain trade, to lay on the American consumer every cent the traffic will bear." He also warned that the government could not approve a code for an industry and later go into court and charge that industry with monopolistic practices.[2] Both men probably were heartened in their attacks on the NRA by a mounting volume of protests coming into their offices. By December 1933, Nye had received 15,000 letters on the subject.[3] Borah reported that he had received "over fourteen thousand letters . . . from small businessmen all over the country, many of whom have been driven out of business and others struggling to hold on."[4]

Increasing criticism from Capitol Hill was reinforced by criticism from other quarters. While Johnson refused to acknowledge that NRA codes were oppressing small business, he was at least hearing the charges. A typical complaint charged that any code, such as for the steel industry, which allowed price fixing "will cause great monopoly thus helping the large concerns and oppressing the small ones."[5] Another writer protested

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[2]U. S. Congressional Record, 73d Cong., 1st Sess., 1933, LXXVII, p. 5842.

[3]Roos, NRA Economic Planning, pp. 375-376.

[4]Borah to J. Francis Merrell, March 1, 1934. Borah Papers, Library of Congress.

[5]Merrill and Usher Company to Johnson, January 23, 1934. NRA Papers.

that the Steel Code Authority's control of prices was going to force his company to suspend operations.[6] George Creel, the former head of Wilson's Committee on Public Information and California's state director of the National Emergency Council, wrote Johnson that the steel code's "logical result will be the elimination of independent steel fabricators."[7] The "deal cats were flying" as Johnson had predicted they would and the future of the NRA depended on the administration's response to the mounting complaints.

When the Recovery Act was enacted Roosevelt had emphasized that the law was designed to increase consuming power and that if prices increased as fast as wages the whole effort would be for naught. Johnson echoed these sentiments when he stated: "We are going to ask something in the nature of an armistice on increased capacity and prices until we get this thing started." Shortly thereafter, he warned: "This administration simply will not stand for that [increased prices]."[8] But the necessity for compromise forced Johnson to make price concessions. On June 23, 1933, he announced that codes could include agreements not to sell below cost of production and the steel code certainly contained all of the elements of price fixing. Within the NRA the Special Industrial Recovery Board opposed the drive toward fixed and higher prices. Rexford Tugwell, an outspoken advocate of planning, averred: "One test of the goodness of business is the lowness of its prices." He was continually

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[6] W. C. Downey to Johnson, February 22, 1934. NRA Papers.

[7] George Creel to Johnson, February 26, 1934. NRA Papers.

[8] Schlesinger, Coming of the New Deal, p. 122.

badgering Johnson about price policy and toward the end of 1933 suggested that if competition was not to keep prices down, "it would mean that the industries would logically be forced to accept full public control over their prices." Johnson was angered, but when SIRB proposed that it review codes before final approval, Johnson persuaded Roosevelt to end the board's life.[9]

The furor over prices began to have its effect on the administration. In early January, Roosevelt announced after a conference with Johnson, Borah, and Nye that he was planning a revision of the NIRA and that he wanted to establish closer contact between the NRA and the Congress.[10] A few weeks earlier a Committee on Small Industries had been established by Gerard Swope, chairman of the Business Advisory and Planning Council of the Department of Commerce, to study the effects of the Recovery Act on small industries.[11] These moves were still not sufficient for critics of NRA policies. The Consumers Advisory Board had taken the role of chief critic of NRA policy from the SIRB and through its pressure Johnson reluctantly agreed to allow the CAB to hold price hearings in Washington.

The CAB price hearings were held in Washington from January 9 through January 12. The board had been working for some time on a study of price movements in several important industries which revealed that private price control was leading to unfair price increases and uniformity.

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[9] Ibid., pp. 123-128.

[10] Iron Age, CXXXIII (January 4, 1933), p. 148.

[11] Ibid. (January 11, 1934), p. 45.

The CAB was shocked, however, when Johnson refused to allow them to release the report and that he had chosen division administrator Arthur D. Whiteside of Dun and Bradstreet, one of the most outspoken champions of price fixing in the country, to conduct the hearings. Nevertheless, the CAB presented a thirty-two page brief enumerating complaints it had received, and several state and municipal purchasing agents testified how codes were affecting their operations. The steel code was attacked for its basing point system and other trade practices. In his report on the hearings Whiteside told Johnson that additional hearings would be necessary to investigate specific complaints against price provisions in some codes.[12]

Although Whiteside had conducted the price hearings "on ground rules designed to keep the findings as obscure as possible," Nye and Borah were furnished additional material for their attacks on NRA.[13] On January 18 Nye rose on the floor of the Senate and opened a debate on price and production policies under NRA. Nye, not hostile to the general purposes of the Recovery Act, held that the program being developed by the administration would defeat those purposes. He said that the thousand pages of testimony taken at the price hearings revealed that small enterprises were dominated by the larger, that prices were being fixed by trade associations, that Code Authorities were intimidating hesitant members and that consumer prices had risen at a rapid rate, in many instances higher than those of 1929. Nye urged congressmen to study the hearing reports and added that

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[12]Persia Campbell, Consumer Representation in the New Deal (New York, 1940), pp. 70-71; and Iron Age, CXXXIII (January 18, 1934), p. 30.

[13]Schlesinger, Coming of the New Deal, p. 131.

he feared for the entire recovery program if the defects revealed were not corrected. Senator Borah followed Nye and proposed an amendment to the NIRA reimposing antitrust restrictions on industry whether under codes or not.[14] A few days later Borah intorduced Senate Resolution 166, which was passed, that directed the Federal Trade Commission to make a study of prices under the steel code and report back to the Senate.[15]

The NRA reply was the usual mixture of calm official pronouncement on the one hand, and the blustery denunciation by Johnson on the other. On January 21 Richberg announced that it was "an appropriate time to recall to the attention of the public and to those industries now operating under the codes the fact that the provisions of the anti-trust laws of the United States are still in full force and effect and that monopolistic practices are not permitted even under the provisions of codes."[16] Johnson, in his characteristic manner, denounced the antitrusters in a speech before the National Retail Dry Goods Association as having "really nothing to support them but the width of their mouths and the volumetric capacity of their lung power." He then stated:

> There will be a distinct movement to repeal this Act under the slogan of 'oppression of small enterprises.' It won't be a forthright and open motion for repeal. These gentlemen do not dare do that. Some of this will be done by a Senator whom I love for his intestinal fortitude perhaps more than any other Senator other than Carter Glass, but yet I shall oppose him on this paradox as long as breath within me lies. It will be an attempt to put in the act about three lines forbidding action by any industry and, in effect, substituting the Federal Trade Commission for the NRA.[17]

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[15] Typescript of Senate Resolution No. 166. NRA Papers.

[16] NRA Release No. 2850, January 21, 1934. NRA Papers.

[17] Iron Age, CXXXIII (January 25, 1934), p. 42.

Yet, Johnson quickly added: "If I had only nine words with which to address you, I would rise here and say: 'Keep prices down--for God's sake, keep prices down.'"[18]

A tense, under the surface feud had been developing between Johnson and the FTC for some time. Johnson and Federal Trade Commissioner March had been conferring on the basing point system in steel and the FTC had given a secret report on that subject to Roosevelt. The President had issued an executive order giving the FTC and the Justice Department jurisdiction to pass on complaints against code practices. In a statement accompanying the order Roosevelt had said: "Conceptions as to what practices are monopolistic and are beyond the allowable area of the National Industrial Recovery Act will thereby be enabled to rest upon realistic foundations of the place to be accorded to concentrated capital and cooperative effort in our modern economic civilization."[19] Johnson attacked the FTC almost immediately for a "dismal and complete failure" in improving industrial conditions and added:

> There was--and there is--about as much cooperation between the Federal Trade Commission and industry as there is between a lion tamer with a black-snake whip, a revolver and a strong-backed chair, standing in a cage with six great jungle cats snapping and snarling on six star spangled hassocks--that is their version of economic planning and industrial self-government. Yet that is the condition that these economic genii want to restore.[20]

Johnson added that if the NRA oppressed anyone, "it oppresses people who are not willing to accord decent wages and proper hours to human labor and I am willing to take any man to the hustings on that statement--including

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[18] Ibid. [19] Ibid., p. 41. [20] Ibid., p. 42.

those professional dialecticians."[21]

The steel industry found itself projected into the midst of the controversy between Johnson on the one hand and the antitrust Senators and the FTC on the other, because that industry was nearly always used as an example of monopoly and price fixing. Tower quickly issued a statement to justify the industry's price policy stating that "without the open price provision of the steel code, the industry would be practically helpless in making any effective contribution to the Administration's recovery effort." He did admit that when prices were known the natural tendency was "toward a uniformity in prices which comes about because each company is determined to meet the lowest offer of its competitor." This resulted, held Tower, in other factors, such as quality and service, becoming more important than price. "Thus, it will be seen that competition has not been lessened in the industry by the open price policy." wrote the AISI official, "but rather has been intensified and turned into new and more healthy and constructive channels."[22]

Eugene Grace also defended steel's pricing policy. Writing for Scribner's Magazine, Grace stated: "What the steel industry has done with the price structure is to put it on a basis similar to that of retail trade, with announced prices for its merchandise so that the public will know the rock-bottom figure, and will be sure that everyone else is buying at the same price from any one supplier."[23] The industry also paused to back Johnson in his struggle. Denouncing Borah and the FTC, Iron Age

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[21] Ibid. [22] Ibid., p. 36.

[23] Reprint of article by Eugene G. Grace, "Industry and the Recovery Act," Scribner's Magazine, XCV (February, 1934), n.p.

editorialized:

> We doubt if there is any other man who, under similar conditions could have made a better score to date. One of the reasons why industry should support General Johnson is that he has kept his organization so free from brain trusters and constitution busters. It is the most practically minded set-up of the entire alphabetical array.[24]

The NRA controversy was making strange bedfellows.

Yet, in spite of his blustery attacks on critics of NRA and defense of him by industry, Johnson was being forced to yield to pressure. Continued complaints against code provisions and the attacks by Borah and Nye caused Johnson to create an Industrial Appeals Board late in January 1934, to which appeals of NRA rulings could be taken by "the little men." Johnson also revealed that he had written the President's executive order allowing complaints to be taken to the FTC and the Department of Justice. He then appointed Whiteside as his special assistant on credit and finance to look after the needs of "smaller business where the difficulty of obtaining credit may be one of the severest handicaps in competing with larger enterprises."[25] The greatest concession Johnson made, however, was to announce that on March 5 a "field day for criticisms" would be held in Washington for all code authorities.[26]

The day before Johnson made his code conference announcement the Consumers Advisory Board submitted a memorandum to him requesting revisions of NRA codes which he had promised. The memorandum was accompanied by a request that it be released to the press for publication. Johnson knew, however, that the public was aroused over price increases and non-compliance

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[24] Iron Age, CXXXIII (February 1, 1934), p. 13.

[25] Ibid., p. 39. [26] Ibid. (February 22, 1934), p. 39.

with code provisions, and he therefore refused to release a report which would reveal that the administration was not united at a time when he was calling for people to come to Washington to offer criticisms on the operations of NRA. But the Research and Planning Division sided with the CAB, and Johnson, not wanting to produce an open break in his organization, released the report in time for it to make front page headlines the day the Code Conference opened in Washington.[27] The report recommended the elimination of the basing point system and the substitution of the f.o.b. mill price. It proposed the total elimination of price fixing, substituting price filing with the government instead of Code Authorities. Government supervision of cost accounting was called for to establish minimum prices and limitation of production was approved.[28] The Consumers Board appeared to at last have come into power.

Some 4200 representatives of Code Authorities converged on Washington for the opening day of March 5. Roosevelt opened the session with one of his longest speeches since taking office and said that since criticisms of the NRA had been concerned with details and not the basic law itself, "we should feel encouraged that we are on the right track and can go forward." The first object, said the President, was to create more consuming power by further reduction of hours and wage increases. He concluded by stating that although the NRA was created for the emergency, that it "must be permanent for all the rest of our lives." There did not seem to be much enthusiasm for the speech in the audience.[29]

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[27]Campbell, Consumer Representation, pp. 73-74.

[28]Iron Age, CXXXIII (March 8, 1934), p. 30.

[29]Literary Digest, CXVII (March 17, 1934), p. 7.

Johnson followed Roosevelt's lead by making twelve definite suggestions for code changes, most of them in answer to complaints which had been plaguing him for months. The General recommended a more uniform and equitable rule of national price stabilization and further measures against price rises occurring faster than an increase in purchasing power. He called for certainty of protection against monopoly control and oppression of small enterprises and for an improved method for prompt and effective compliance. For Code Authorities Johnson advocated adequate labor and consumer representation in advisory capacities and a uniformity of government representation.[30] Telling the delegates that the NRA intended to force compliance, Johnson added:

> Of course we can't succeed without public support of what we are trying to do, and I want to warn non-compliers that we are not only going out to revive public sentiment for the Blue Eagle but under specific orders from the President, we are reorganizing to enforce the penal sections of the act. Regardless of publicity, I have been too gentle. We deliberately delayed action because of misunderstandings but--if I may lapse into the vernacular--'You ain't seen nothin' yet'.[31]

Johnson concluded his speech by attacking "underhanded, tricky, dishonest" criticism and then turned the meeting over to the critics barring only "personal aspersions" and "attacks on the law itself."[32]

The number of Code Authority representatives attending the field day was so great that Johnson divided the group into five sections which met at the Department of Commerce auditorium and at various hotels. Johnson moved from location to location trying to get a sense of what the

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[30] Iron Age, CXXXIII (March 8, 1934), p. 301.

[31] Ibid. (March 15, 1934), p. 43B.

[32] Literary Digest, CXVII (March 10, 1934), p. 5.

complaints actually were and their sources. Yet, in spite of Johnson's initial admission of NRA imperfection and his warnings to critics and non-compliers, there was a veritable barrage of criticism. Complaints ranged from that of a Communist who said that he party was in "basic disagreement with the NRA" to those who suggested only minor code changes. One speaker grew so excited that he thrust a lighted cigar into his hip pocket and did not notice it until it began to burn. The only point on which all seemed to agree was that certain businesses were "chiseling" on Code operations. Summarized, the criticisms offered by Code Authority representatives indicated that certain provisions of codes, such as open price filing, clauses forbidding selling below cost and control of productions, were tending to keep prices high to the consumer, stifling competition and forcing all members of a code to conform to the stronger members' domination of Code Authorities.[33] Yet, Walter Tower, who represented AISI, defended the steel code by telling one group that his industry's price policy was established to protect the small producer and consumer.[34]

Johnson concluded the session with another of his famous speeches. He told the representatives that a year before they had been in "complete and utter disrepute" but that Roosevelt had given them a chance for rehabilitation. With an appeal to their vanity he said: "We have to plan our way out of this mud hole and that must be done by hard-boiled businessmen and not by academicians." He challenged them: "Nothing like it has ever happened in the history of the world. It is as important as the Council of Nicea or the Treaty of Verdun." Johnson concluded by exhorting his listeners

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[33] Ibid., p. 6. [34] Iron Age, CXXXIII (March 15, 1934), p. 37.

to "play the game."[35]

Yet, in spite of the Roosevelt and Johnson appeals, threats, and exhortations and their allowing NRA critics to vent their emotions in a public forum, prices continued to rise and complaints were not silenced. The Nation commented on the field day, saying that it raised "the question whether a planned recovery effort dominated by business interests does not multiply and intensify the contradictions of capitalism rather than resolve them. For the machinery improvised under the Recovery Act has done only one thing effectively: it has raised prices, or permitted manufacturers to raise prices." The Nation writer concluded: It is apparent that business has made rather a mess of it. A series of what are in effect cartels have been set up and, as in Germany, the wage gains of labor have been wiped out by the prices labor has to pay for consumers' goods."[36] Complaints also continued to come into Washington from those who claimed NRA codes were hurting them financially.

Meanwhile, the FTC was proceeding with its congressional mandate to investigate the operation of the steel code. An attorney for the Commission wrote Richberg on February 14 asking the cooperation of either Richberg or Shannon to furnish material for the study. Richberg replied that Shannon would cooperate in the investigation but emphasized that it was NRA policy to enforce the provisions of the codes itself and, failing that, it should recommend to the President the cancellation or modification of codes of

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[35]Schlesinger, Coming of the New Deal, p. 132.

[36]Nation, CXXXVIII (March 21, 1934), p. 318.

offending members.[37] The information supplied to the FTC by Shannon is not known, but the Commission had been carefully studying the steel industry pricing policies since the 1924 Pittsburgh Plus case. There was also public evidence given on the operation of the steel code, as in February when the Chevrolet Motor Company announced that it was reducing its steel allotments to major steel companies and placing orders among smaller producers in an effort to "spank" the leading concerns for the steel code price provisions. Chevrolet even threatened to buy the Corrigan-McKinney Steel Company in order to produce its own steel.[38] The FTC also used its power to go into AISI records and was certainly in contact with Nye and Borah. The latter senator received a number of complaints on the operation of the steel code. A hardware dealer called the code the "STEAL CODE" and protested against the basing point system by saying that the steel industry had "chiseled us and our customers out of millions of dollars."[39] A west coast manufacturer of sheet steel products charged that steel prices were maintained through an agreement between U. S. Steel and Bethlehem Steel.[40] And a steel construction corporation charged collusion between the steel industry and the NRA, stating that "the NRA was acquainted with the monopolistic clause in question even before it was formally placed in front of them by the American Iron and Steel Institute."[41]

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[37]Eugene W. Burr to Richberg, February 14, 1934; and Richberg to Burr, February 15, 1934. NRA Papers.

[38]Iron Age, CXXXIII (February 8, 1934), p. 38.

[39]Walter B. Richards to Borah, February 28, 1934. Borah Papers.

[40]W. J. Boyle to Borah, March 6, 1934. Borah Papers.

[41]Lackawanna Steel Construction Co. to Borah, March 21, 1934. Borah Papers.

The Federal Trade Commission transmitted its report to Roosevelt on March 19. It charged that the Steel Code Authority was absolutely controlled by Bethlehem and U. S. Steel and that prices had been greatly advanced soon after the code went into effect. Direct increases in base prices amounted to $2 to $3 a ton on capital goods and $2 to $5 a ton on consumer goods. But, it also found that "phantom" transportation charges added to the price, and uniform extras had been increased as much as 800 percent.[42] On the basing point system the commission held to its historic position:

> When an industry proceeds on the premise that it is unfair for competitive sellers to share the natural advantages of their locality with the buyers in that locality, it is in essense the monopolization by the sellers to the exclusion of the buyers of the natural advantages inherent in the natural resources of that locality. To monopolize the advantages inherent in natural resources is little different from monopolizing the physical resources themselves.[43]

The conclusion reached in the FTC report was:

> A distinct conflict of means and objectives exists between the provisions of the code and the Commission's order in the Pittsburgh Plus case. That conflict raises questions not only of legal import but of basic economic implication. Departure from hitherto accepted policies of governmental concern over the maintenance of fair competition is, however, evident. Nevertheless it has been assumed thus far that the departure has the sanction of a Congressional mandate embodied in the National Industrial Recovery Act.[44]

The FTC thus concluded that while only the courts could decide what the Congressional mandate actually was, the NRA could still use its powers under the act to refuse sanction and to modify monopolistic practices.[45]

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[42]"Federal Trade Commission Report on the Steel Code," March 19, 1934 (mimeographed), pp. 55-60.

[43]Ibid., p. 54. [44]Ibid., p. 69. [45]Ibid., p. 70.

An attack on the FTC report was not long in coming. Donald Richberg called the report incomplete and unrevealing of anything which the NRA did not already know and was trying to correct. He said the real choice before the American people between the policies of the FTC and the NRA was: "Shall the policy of NRA be continued and advanced, so that we may give an adequate trial to a program of government cooperation in fostering the improvement of business and a lasting improvement of economic conditions--or shall we return to the older policy of limiting governmental influence upon trade and industry to alternating sunshiny days of grants of special privilege and rainy days of prosecutions to compel a fair and free competition among business enterprises so endowned with power by law, that neither fair nor free competition can ever exist among them."[46] Richberg stated that the NRA had already recommended, or would recommend, four important changes in the steel code. One was that basing points for all products be established at, or very near, production points. Secondly, delivered prices should include only actual transportation charges. Third, that price policies were under study and that recommendations would be made prior to May 31. Finally, the constitution of the Steel Institute should be revised to make it conform more closely to the general principles of code administration which had been developed out of NRA experience.[47]

The American Iron and Steel Institute also issued a public statement of rebuttal. The AISI report held that the FTC had exceeded its mandate by presenting arguments instead of facts, and that even its evidence was

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[46]"Commentary on the Report of the Federal Trade Commission on the Steel Code" by Donald Richberg, n.d. (mimeographed), p. 138-A.

[47]Ibid., pp. 135-136.

incomplete. The Institute charged that the FTC, which was not in sympathy with the NRA anyway, had "given ear to a small minority of purchasers of steel products who have made complaints mainly seeking to continue against their competitors discriminatory advantages which they enjoyed prior to the effective date of the Code." Many products were still being manufactured and sold at a loss, said the AISI statement, and prices were still too low. The report concluded:

> Whether or not the system of quoting prices adopted in the Code conforms to certain theories of economics, it is the system under which the Industry has been built up in this country. It is the only system by which conditions of fair competition among members of the Industry and among the users of steel products can be established and maintained. The use by the Industry of any other system of quoting prices would result in grave dislocations of producing activities and of relations between producers and purchasers of steel products. It would increase rather than decrease unemployment and would defeat rather than accomplish the purpose of the National Industrial Recovery Act. The Steel Industry believes that it is particularly to be regretted that a Government body clothed with judicial or semi-judicial powers should make any report or recommendation which admittedly is based on incomplete investigation.[48]

Thus, the positions of the NRA and the steel industry seemed to have been close and in opposition to another arm of government. The Nation saw this battle in perspective when it said that the significance was to show that the government had two agencies attempting to function at the same time on theories which were diametrically opposed.[49]

The growing disaffections with the NRA caused Roosevelt to take two additional steps toward the Nye-Borah-FTC position in March. First, after reading a Brookings Institution study by George Terborgh entitled Price

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[48] "AISI Reply to FTC Steel Code Report," March 20, 1934 (typescript). NRA Papers.

[49] Nation, CXXXVIII (April 4, 1934), pp. 383-384.

Control Devices in NRA Codes,[50] Roosevelt appointed a cabinet committee with Frances Perkins as chairman to study the implications of price policy.[51] The second step was the creation of the National Recovery Review Board. Johnson later wrote that the Review Board was his idea because he was told "it would avoid a Senatorial investigation," and that he himself suggested in a "moment of total aberration" the name of Clarence Darrow for chairman.[52] Nye, however, had talked of the NRA with Darrow on a train the previous January and it has been said that he suggested Darrow.[53] Whoever selected Darrow, Roosevelt appointed him after Judge Samuel Seabury had declined the post. Johnson had been told by Roosevelt to make his peace with Nye and when the General went to the Senator's office an agreement was reached on the Board, its chairman, and the right of Nye to choose the other four members. Nye thereupon appointed four small businessmen from various parts of the country to the Review Board.[54]

Darrow and his wife moved to Washington in March. This great attorney for the "little fellow" had been connected with dozens of cases, a list of which read like an honor roll in the fight for civil liberties. The New York Times gave a vivid description of Darrow: "At 77 his face is lined and seamed with the scars of his battles, and the rebellious lock

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[50]Washington, 1934. [51]Schlesinger, Coming of the New Deal, p. 135.

[52]Johnson, Blue Eagle, p. 272.

[53]Irving Stone, Clarence Darrow for the Defense (New York, 1941), p. 508.

[54]U. S. Congressional Record, 73d Cong., 1st Sess., 1934, LXXVIII, p. 9236.

of hair that used to fall over his right eye has thinned to a wisp, but he still has the compressed lips and unflinching eyes of the fighter."[55] This was to be Darrow's last big crusade, and he joined it with vigor. He appointed Lowell B. Mason as his legal counsel and W. O. Thompson, his former Chicago law partner, as his assistant. The Darrow investigation of NRA has been called "the beginning of Johnson's decline." Yet, Johnson, who had never met Darrow but was a great admirer of him perhaps thought that if the attorney issued a report he did not like that it could be disposed of as had been the unfavorable recommendations of his own Consumers Advisory Board and the Division of Research and Planning.[56]

The entire board went to see Johnson in his Commerce Department office where Johnson told Darrow that he was providing him offices next to his own. Johnson then told Darrow to investigate the codes and let him know if they were "all right." When Darrow inquired what he was to do if he did not find the codes all right, Johnson answered: "Then you report to me. I am the big cheese here." Darrow replied that he did not care to operate that way and promptly led the board to the White House where Roosevelt promised them a free hand. The next day the President signed an executive order making the board responsible to him rather than to Johnson. To make his independence complete Darrow promptly set up headquarters in the Willard Hotel, where bedrooms became offices during the day and the hotel ballroom the hearing room, and went to work. To Darrow

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[55] New York Times, May 27, 1934, II, p. 2.

[56] Lowell Mason, "Darrow vs. Johnson" North American Review, CCXXXVIII (December, 1934), p. 525.

work meant exactly that. He would wake up at two o'clock in the morning with an idea and telephone an aide to transmit orders. He worked fourteen to sixteen hours a day, including Sundays, and at hearings often had to be reminded to adjourn for the sake of the witnesses and staff.[57]

As soon as it was learned that the Review Board had set up headquarters, complaints began to pour in by telephone, telegraph, and post office. The original two bedrooms grew to four and fourteen offices were rented in an uptown office building.[58] Johnson later wrote that members of the NRA, who ate in a Willard Hotel dining room next to one where Darrow's staff ate, reported to him that "a newspaper campaign to knock NRA into a cocked hat was to be started at once, based on any dirt the Darrow Board could dig up."[59] It was true that the activities of Darrow commanded front page news, but there is no evidence that any newspaper campaign was launched against the NRA, anymore than many newspapers had already been hostile.

A week after the board had been organized the first hearing was held in the hotel meeting room. The board sat a long table at one end and chairs were provided for witnesses and reporters. The first day's proceedings, however, were such a failure that before they ended most reporters had left the room. This first hearing proved unsuccessful because the complainants were small manufacturers of electric light bulbs who dwelt upon acts which had occurred before NRA codes even went into operation. With the exception of an occasional quip from Darrow, the

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[57]Stone, Darrow for the Defense, pp. 508-510.

[58]Mason, "Darrow vs. Johnson," p. 526. [59]Johnson, Blue Eagle, p. 272.

hearing developed into long, rambling speeches from witnesses, rehashes of testimony already brought out in hearings before NRA and bickering among the participants. At the end of the day Darrow called Mason into his room and instructed him that no other complainant would be allowed to testify until he had been interviewed in advance. This procedure was supposed to eliminate persons who had unjustified complaints and restrict them to facts once they got on the stand. From that day on the board members worked ten to fourteen hours a day, including Saturdays and most Sundays, but the proceedings ran smoothly and quickly.[60]

The Darrow Board held hearings for four months. During that time it received 3,375 complaints, reported on 34 codes and held 57 public hearings.[61] The steel code probably received more attention than any other. On April 4 Mason introduced the FTC Report on the steel code into evidence and then Otto Swanstrom, a Duluth steel product manufacturer was called to testify. He stated that he had been in business since 1908 and had been one of the original opponents of the Pittsburgh Plus system. Once the FTC ruling had been rendered, however, he claimed that the multiple basing point system had still forced him to pay $6.60 in phantom freight. In 1918 he went to see James Farrell of U. S. Steel who reduced his price for steel until the freight charge was eliminated, but once the steel code went into effect he was again assessed a phantom freight of five dollars a ton. Swanstrom then visited both Shannon and

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[60] Mason, "Darrow vs. Johnson," p. 526.

[61] U. S. Congress, Senate, Committee on Finance, Hearings, S. Res. 79, Investigation of the NRA, 74th Cong., 1st Sess., 1935, p. 1095. Hereafter cited as Senate Investigation of NRA.

AISI officials several times but said he could get no satisfaction.[62] Hoyt Moore, counsel for AISI, questioned Swanstrom briefly, but his real concern was with the FTC report. Moore asked for several months to prepare an answer to the report but he was refused by the Review Board.[63]

On April 19 the Darrow Board convened to hear the testimony of Hoyt Moore and Walter Tower. Mason knew little about the steel industry, so had hired Frank Fetter as his adviser. The Princeton economics professor sat in the audience during the first day of hearings and drilled questions into Mason during the night.[64] When Moore took the stand a long wrangle took place, with Moore strenuously objecting to the FTC report being accepted as fact and Darrow insisting that it would be accepted unless Moore could refute it. Without this controversy being settled, Moore put Tower on the stand. The afternoon session was given to routine discussions by Tower on how the code was written and the fair practices objective of the code, punctuated by pointed questions and oft-times sarcastic comments by Darrow and Mason. The next morning Darrow began the hearing by asking Moore how much time he needed to question Tower. Moore answered "about two days," and Darrow answered that he would be allowed half an hour to finish. Darrow said: "I do not care anything about his opinion on the code, and I do not care anything about his counting a million ties or rails or things of that sort. I really do not know much about how his long dreary story fits into this pic-

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[62]"Darrow Board Hearings," pp. 1-12.

[63]Mason, "Darrow vs. Johnson," p. 529. [64]Ibid., p. 529.

ture."[65] Much more time was spent on exchanges between Moore and Darrow about the time needed to finish the testimony until Darrow said Moore could have the rest of that day, a half day Saturday and all day Monday. After a stormy afternoon in discussing the basing point system the hearing was adjourned until the following Tuesday, with Moore stating that he was not certain what AISI's position on his returning would be, but that he would cooperate with Mason.[66]

Mason and Moore had had an argument about whether certain papers were available in AISI offices and over the weekend Mason sent two investigators to New York to find out. These agents were not allowed into AISI offices. As Mason later wrote: "We had then the unique situation of a code authority, having legislative and judicial power granted to it by the United States government, refusing to let another branch of the government examine its records."[67] The next day Mason received a letter telling him that Moore and Tower would not reappear in Washington. Mason contended that the steel industry was attempting to hold up the Review Board's report on the steel code because the original code expired within a month and they did not want an adverse report. Since Moore refused to cooperate in the hearings, however, Darrow drew up his report based on the FTC findings.[68]

After only two or three weeks of hearings Darrow received the first of an eventual total of three letters from Roosevelt asking the board to hurry its proceedings in order to issue its report. Already, however, one

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[65] "Darrow Board Hearings," pp. 38-159. [66] Ibid., pp. 161-287.

[67] Mason, "Darrow vs. Johnson," p. 530. [68] Ibid.

board member, John F. Sinclair, had written to Roosevelt telling him that in so short a time it was impossible to investigate all complaints and that any report he received from Darrow would necessarily be incomplete and largely inconclusive.[69] But the first report came anyway on May 3, signed by all members of the board but Sinclair.[70] Roosevelt said that he would study the document over the weekend and release it early in the week if it were not "too profane."[71] For seventeen days, however, there was no word on the report. The President did say at his news conference on May 9 that the report was so bulky that he had turned copies of it over to the FTC, the Justice Department, and NRA for analysis and summarization.[72]

On May 11 Johnson was forced to hold a news conference of his own. Certain senators were again putting pressure on him--this time by suggesting that he intended to have the report suppressed. Johnson denied this, saying that he was carrying out the President's request for an analysis and summary. But the General probably revealed the true reason for the delay when he said that since he had recommended the Review Board, he had the right to issue a reply at the same time the report was released. Nye must have been delighted when he commented: "If General Johnson wants to make an answer it will take him longer than a week to prepare it. If the administration had wished to make the Darrow report a best seller it

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[69] Senate Investigation of NRA, p. 2589.

[70] New York Times, May 4, 1934, p. 15. [71] Ibid., May 5, 1934, p. 2.

[72] Ibid., May 10, 1934, p. 4.

it could not have undertaken a better course than it has so far."[73]

The Darrow report was finally made public on May 20 after an armed guard had been stationed all night at the Commerce Department printing offices where the report was published to keep any copies of documents from "being smuggled out."[74] The report reviewed eight codes, one of which was that for steel. It condemned the failure of the AISI to cooperate with the Review Board and then generally followed the conclusions of the FTC on the code. Small enterprises were being oppressed "by the gross absurdities of what is called the 'basing point' system or phantom freight rates." It condemned the absolute control of the industry by larger companies through the Steel Institute as "harmful, monopolistic and oppressive." And it concluded its report on the steel code by recommending its revision toward a removal of the evils enumerated. The other seven codes received the same treatment and the Review Board concluded: "All competition is savage, wolfish and relentless; and can be nothing else. . . . Big business begins by making it impossible for the small men to survive; and, after he is eliminated, it turns upon the weakest of the common aggressors."[75]

To intensify this blast at the administration's philosophy and policy of recovery, Darrow and Thompson issued a supplementary report of their own, claiming that "the Federal Trade Commission is far superior to the NRA as an enforcing and fact-finding agency." The choice for the American

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[73] Ibid., May 12, 1934, p. 34. [74] Ibid., May 19, 1934, p. 1.

[75] "Report of the National Recovery Review Board," May 3, 1934 (mimeographed), pp. 10-24. NRA Papers.

people, according to Darrow and Thompson, was between "monopoly sustained by government" and "a planned economy, which demands socialized ownership and control." Then the two old radical lawyers presented their choice: "The hope for the American people, including the small business man, not to be overwhelmed by their abundance lies in the planned use of America's resources following socialization."[76] The main report had been enough to set off one of the most fantastic verbal wars Washington had ever witnessed, but the second was like waving a red flag.

Johnson immediately roared back at Darrow. Of the board's report he said: "A more superficial, intemperate and inaccurate document . . . I have never seen." He then asked Roosevelt to dismiss the board because it was not acting in good faith, it was promoting its own purposes, and if it continued it would "impair seriously the usefulness of the National Recovery Administration."[77] Johnson then turned to the supplementary report. He publicly commented: "Stripped of its shadowy verbiage, this means that the choice of the American people is between Fascism and Communism, neither of which can be espoused by anyone who believes in our democratic institutions of self-government; nor can any public official who has taken an oath to defend the Constitution of the United States adopt or officially advocate such a program."[78] Richberg also released a statement on the handling of the steel code by the Darrow board. He

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[76]"Supplementary Report of Clarence Darrow and William O. Thompson," May 3, 1934 (mimeographed), n.p. NRA Papers.

[77]Johnson to Roosevelt, May 15, 1934. NRA Papers.

[78]"Comment by General Johnson on the Darrow and Thompson Supplementary Report," May 17, 1934 (mimeographed), n.p. NRA Papers.

stated that "the Board in its ignorance of the complicated operations of this industry has produced a certain amount of misinformation which will not help in working out an intelligent revision of the Steel Code in the public interest." Richberg also castigated the board for not asking for NRA assistance in its investigation and concluded that the report "simply makes a mockery of public service."[79]

All was not well within the Review Board, either, for John Sinclair resigned soon after the report had been sent to Roosevelt, characterizing the board's work as "sloppy, one-sided" and showing an "utter disregard for fair play."[80] But Darrow also had something to say. He told the press that apparently Johnson and Richberg were "under the impression that the National Recovery Act is their personal property" because they "broke into shrieks of rage at the suggestion that operations are not perfect or susceptible of improvement." Darrow then warned Richberg to keep his "staff of expert evasionists" together for the next report because they would not have three weeks to prepare their reply. Johnson could not resist getting in the last word by saying that all the Review Board had done was "to render a conjectural opinion on insufficient and improper evidence, to emit a sociological essay, and to conclude that the only hope of the country is the socialism of Karl Marx and Soviet Russia."[81] The White House remained noncommittal but said the Darrow

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[79]"Richberg Comments on the Darrow Report," n.d. (mimeographed), n.p. NRA Papers.

[80]Senate Investigation of NRA, p. 2589.

[81]New York Times, May 22, 1934, p. 2.

Board would end its work on June 1. This date had not been specified in the executive order creating the board and caused one member of the board to express surprise.[82]

The Review Board did not quit business on June 1 and issued two more reports. In the meantime Nye and Huey Long had begun their attacks on the NRA and Johnson once again. Two days after the first Darrow report, Nye said that "under the N.R.A. monopolies and trusts have become more powerfully entrenched than ever they were entrenched before." Long charged that the NRA was "a universally disliked organization."[83] The next day Nye attacked Johnson. Referring to the impending trip of Roosevelt to Hawaii, he said: "For Heaven's sake take Mr. Johnson along to Hawaii with you. Let him create a code for the Sugar Trust."[84] In letters to constituents Borah was also sounding the clarion call. To one person he wrote: "I sincerely hope that we may so arouse public opinion so as to force a change in the program. So long as matters continue as they are now, I can see no chance for recovery."[85] And to another Borah wrote: "The people will realize someday that these combinations and monopolies are bleeding them white. All this hypocritical talk about bettering the conditions of the people while these monopolies are destroying small business and gourging consumers will some of these days have an end."[86]

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[82] Ibid., p. 1.

[83] U. S. Congressional Record, 73d Cong., 2d Sess., 1934, LXXVIII, pp. 9234 and 9236.

[84] Ibid., p. 9320.

[85] Borah to Anna L. Shepherd, August 2, 1934. Borah Papers.

[86] Borah to Herman J. Brown, November 14, 1934. Borah Papers.

By this time, however, a public opinion counterattack had begun. A Tulsa steel executive wrote Congressman Wesley Disney that the steel code had been the "salvation" of his small firm.[87] Another small company official stated that "if all the managers of small industries were consulted instead of demogogic politicians who are thinking more of their political interests than the business interests of the country we would in our opinion hear a story far different than that carried in the FTC Report."[88] Borah was also receiving numerous telegrams and letters protesting the stand he had taken on the NRA. The president of Lukens Steel Company wrote that the steel code had actually made competitive conditions so vigorous that small companies were able to continue in business.[89] The Labor Advisory Board unanimously joined Johnson in suggesting that the Darrow Board be terminated, charging that it had "pandered to the worst elements in our political and economic life."[90] A Literary Digest press survey showed that public opinion was much divided on the Darrow report.[91] Johnson again took to the attack, commenting to a national radio audience: "Just think of it--the greatest forward social movement of our day and age is to be sabotaged to advance the selfish interest of a handful of demagogues."[92]

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[87]Frank B. Lond to Wesley E. Disney, March 10, 1934. NRA Papers.

[88]Telegram from Kilby Car and Foundry Company to Simpson, March 21, 1934. NRA Papers.

[89]Robert W. Walcott to Borah, March 23, 1934. Borah Papers.

[90]New York Times, May 24, 1934. p. 1.

[91]Literary Digest, CXVII (June 2, 1934), p. 8; June 9, 1934, pp. 11-12.

[92]New York Times, June 1, 1934, p. 6.

The Review Board continued its work undaunted, however, issuing its second report--this time to Roosevelt and the press concurrently--on June 11. Again the report attacked various codes (steel was not included) and Johnson himself. The report accused the General of "sinister" action and stated that: "In our judgment, the rule of the military commander is totally unsuited to the genius, habits, traditions or psychology of the American people, and wholly ineffectual in meeting the present national crisis."[93] With this report William Thompson resigned from the Board, accusing it of going too easy on the NRA because the Darrow committee was trying to "reestablish itself in the good graces" of Johnson.[94] Johnson's reply to the second report was more temperate. He charged that the second report was "even more inaccurate and inconsequential than the first."[95]

The last Darrow report came on June 28. Once again the steel code was attacked, but by that time the revised code had been approved. Nevertheless, the Review Board found that the code's changes had been minor and some new provisions were "mere attempts to bolster the monopolistic system set up under the original code."[96] The final verbal barrage between the two antagonists came after the report was made public. Johnson was at his sarcastic best when he replied:

> But here we have dear old Clarence Darrow at his sweetest--at last. . . . Here, finally, is a flash of heat lightning in the sunset sky--scintillatingly brilliant but illuminating nothing. . . . I love Clarence Darrow for his flair for the underdog. He was the greatest jury lawyer of his time, and perhaps of all time. Nobody

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[93] Ibid., June 12, 1934, p. 1. [94] Ibid., June 14, 1934, p. 15.

[95] Ibid., June 28, 1934, p. 1.

[96] "Third Report of the National Recovery Review Board," June 28, 1934 (mimeographed), p. 69. NRA Papers.

> in the world was ever more adept in convincing twelve men that another man, who had bombed somebody, or poisoned somebody, or taken a Kanaka for a ride in the most approved gangster style, or, with some psychotic urge, taken a little boy out into the Michigan dunes and beaten the life out of him, hadn't either bombed, or poisoned, or ridden or beaten anybody.[97]

Johnson said that he would still rather spend an hour talking with Darrow than anyone but bid him goodbye with, "Dear Clarence, requiescat in pace."[98]

Roosevelt formally ended the life of the Darrow Board on June 30, but two weeks later Darrow fired the parting shot. He said in Duluth of the NRA that "the trouble with this method is that nobody has been in charge who is schooled in political economy--nothing but amateurs." He said somebody had simply suggested NRA to Roosevelt and he had taken it. "I won't mention the man he put at the head of it," Darrow quipped; "I heard he is a military man, not a statesman."[99]

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[98] Ibid. [99] Ibid., July 15, 1934, p. 5.

CHAPTER X

THE DECLINE AND FALL OF THE NRA AND THE STEEL CODE

While the Darrow-Johnson feud had been transpiring, the steel industry and the NRA had been working on the revision of the steel code. The original code was due to expire on May 31 and neither side wished to see it terminated. As early as January the Iron Age editorialized: "If the iron and steel industry is to profit by its investment in social progress, it must continue to operate under the provisions of its code of fair competition much longer than May 31. This fact is fully recognized by the leaders of the industry, and the progress made thus far in the administration of the Code is of far more importance to the future of the business than to the immediate present."[1] Many steel leaders did not envisage the NRA as a permanent situation, however, as Myron Taylor, chairman of U. S. Steel, stated emphatically in April.[2] But the next month Tower went on nationwide radio and warned that a return to pre-code conditions in the steel industry might be fatal to the whole recovery program.

Members of the NRA had no thought of the steel code not continuing, but they did know from experience and from the criticisms coming in that some changes would have to be made. Even before the original code had been approved, Richberg had written Johnson that "the Steel Code, as submitted, raises very serious legal questions and this Code cannot be

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[1] Iron Age, CXXXIII (January 4, 1934), p. 47.

[2] Literary Digest, CXVII (April 14, 1934), p. 9.

[3] Iron Age, CXXXIII (May 10, 1934), p. 35.

approved until these questions have been answered."[4] This attitude was expressed before the original code was modified and accepted, but there were few important changes forced by the NRA. When the Nye-Borah-FTC-Darrow criticisms began to fill the Washington air, both Richberg and Johnson constantly took the position that nothing new was being revealed and that it was fully intended that the steel code would be modified. For example, Johnson stated in regard to the FTC report on the steel code: "We know there are a few things the matter with the steel code, but, generally speaking, I don't think a great deal." Yet, he admitted: "The basing point probably is wrong; we knew that from our attendance at the steel code authority meeting, but I am not going to get too excited about it; I am going to be sure. When it is necessary to change one of these things we are going to change."[5]

There is little known about the negotiations which transpired between the NRA and AISI. Late in April, Richberg and Simpson met with the Code Authority to discuss the code revision.[6] Other conferences must have been held during early May with negotiations being conducted by Richberg and Simpson. Johnson acted in his usual role, as the following memorandum from Richberg to Johnson reveals:

> Steel Code Committee coming to my office for conference at 11 a.m. today. Following your previous policy, I assume you prefer to have Simpson and me make as much progress as possible before bring you in. However, you may wish to drop in for a time and say "hello" to those present.[7]

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[4]Memorandum from Richberg to Johnson, August 2, 1933. NRA Papers.

[5]Iron Age, CXXXIII (April 26, 1934), p. 34. [6]Ibid. (May 3, 1934), p. 43.

[7]Richberg to Johnson, May 16, 1934. NRA Papers.

Shannon had drawn an extensive list of revisions which he thought should be made, with alternate suggestions in case some were not accepted. Of the more important proposals, he thought that the ten-day waiting period on price filing should be eliminated or greatly reduced and that a provision should be inserted into the code making it unlawful for any member to use coercive measures to get another member to either file a particular price or to withdraw a price already filed. He also wanted to allow members to vote on the list of extras before they became effective and proposed that allowances be made for transportation charges by other than rail freight. As far as the basing point system was concerned, he advocated either a change to a group mill base system or adding a number of new basing point. To eliminate the problem of enforcing code provisions on non-members, Shannon proposed making most sections of the code binding on all industry members whether signatory to the code or not. Finally, Shannon wanted to eliminate all the regulations and resolutions promulgated by the Code Authority, especially those applying to jobbers and the fabrication-in-transit rule, and to incorporate the essential provisions into the code. He would then have limited the power of the Code Authority to interpret the code provisions.[8] Thus, Shannon's experience with the operation of the code gave him a good insight into those provisions, or the lack of provisions, which were causing the greatest difficulties for the NRA.

Others were also interested in the revision of the steel code. On April 7 a member of the FTC called Shannon and said that if the NRA were

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[8]Memorandum by Shannon on Revision of Steel Code, May 25, 1934. NRA Papers.

planning to revise the code that the Commission wanted to present some information on the matter.[9] The industrial adviser on the steel code also reported that he had talked with a businessman who thought that the basing point system should be retained even if modifications had to be made and that price filing was necessary, although the waiting period should be shortened.[10] It has already been stated that Tighe of the Amalgamated and many of the Rank and File Committee wanted an open hearing on the code. When William Green requested such a hearing, however, Johnson replied that "in view of an industry-wide strike now threatened, no such hearing on purely economic and technical questions which the President must decide could have any useful purpose and it could have a very harmful effect."[11] Green still persisted, however, and in a memorandum to Johnson four days later said that the code in its present form should not be renewed. He said that the Labor Advisory Board was not satisfied with the code because it had not relieved unemployment, increased purchasing power, or provided improved labor relations.[12]

On May 29, Johnson informed Roosevelt that the Steel Code Authority had agreed to a revised code based on changes insisted upon by the NRA resulting from "justifiable complaints and criticisms" of the code and suggestions made by the Code Authority to "improve the workability of the Code and the fair applications of its requirements." Johnson called the small number of complaints received against the code "largely theoretical"

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[9]Unsigned Memorandum of Telephone Conversation with Mrs. Plummer of the FTC, April 7, 1934. NRA Papers.

[10]John V. W. Reynders to Simpson, May 18, 1934. NRA Papers.

[11]Johnson to Green, May 25, 1934. NRA Papers.

[12]Green to Johnson, May 29, 1934. NRA Papers.

on the ground that "they might operate in aid of monopolistic practices." Yet, he claimed that the industry was "highly competitive" and that small enterprises had actually been helped by the operation of the code. He further stated that the multiple basing point system should be retained "to maintain existing areas of production and channels of distribution and to prevent violent dislocations." Johnson did admit that the most serious complaints had come from those who claimed violations of Section 7a but stated that workers would not benefit from cancellation of the code. Johnson concluded by recommending that Roosevelt approve the revisions but suggested that he direct the NRA and FTC to study the basing point system.[13]

Roosevelt issued an executive order on May 30, 1934, approving the revised steel code and putting it into effect on June 11. In a statement released with the order Roosevelt stated that the economic emergency made it necessary to retain the basing point system but that the revisions "illustrate the desirability of working toward the end of having prices quoted on the basis of areas of production and the eventual establishment of basing point coincident with all such areas, as well as the elimination of artificial transportation charges in price quotations." Then Roosevelt directed the FTC and the NRA to conduct a study of the basing point system.[14] The revised code which the President approved represented little concession to critics of the steel industry. The Code Authority was stripped of its power to set a fair base price if it decided that a company

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[13]Johnson to Roosevelt, May 29, 1934. NRA Papers.

[14]Executive Order of May 30, 1934. NRA Papers.

had filed too low a price. This power had never been used anyway. The ten day waiting period for changing filed prices was removed altogether. A gesture was made to those who had protested against being always charged the all-rail freight rate by inserting a provision allowing a company to reduce the rail rate when water or truck transportation was used. The basing point system was retained in the revised code but a number of new basing points were added to meet the chief complaints from consumers. The other changes were very minor ones.[15]

Thus, the steel industry weathered the storm of reports, investigations and public opinion without having to yield many of the policies which it had followed since the NRA was enacted. The NRA itself, however, faced its final year of operation with mounting criticism of its policies and deep internal strife. Hugh Johnson wrote before the NRA was declared unconstitutional that "the Little Man Issue, as such, is political buncombe but in the controversy here there is an issue on which all that has been done under the Recovery Act may be completely annihilated."[16] Johnson believed this but neither he nor Roosevelt could ignore the public outcry. The Chamber of Commerce, one of the earliest advocates of the NRA idea, was wavering in its support of the Blue Eagle and Henry I Harriman, its president, said that business was still not willing "to cast loose from its old moorings and strike out on an uncharted sea of experiment."[17]

Yet, Hugh Johnson began a new crusade to arouse public support for,

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[15]Johnson to Roosevelt, May 29, 1934. NRA Papers.

[16]Johnson, Blue Eagle, p. 274.

[17]New York Times, May 4, 1934, p. 1; and May 23, 1934, p. 5.

and compliance with, the NRA and Roosevelt announced that he would "stand pat" on the general principles of the NRA through 1935 and that he would use his cross-country summer trip to survey the results of NRA operations.[18] Stepped-up code enforcement was also begun in the summer of 1934 with surprise raids on garment shops in New York and arrests of their owners for violations of NRA wages and hours.[19] There was also an attempt, however, in view of charges that only small businesses were being prosecuted, to rid the NRA of what might be called "nuisance codes." Late in May, Roosevelt exempted service trades, such as beauty and barber shops, cleaners, dyers and pressers, and such concerns from the fair trade practices of codes and announced that no open-price provision of codes for such industries would be enforced.[20]

Yet, the whole question of price policy, with its implication of monopolistic control and oppression of small business, could not be deferred. The Consumers Advisory Board was in open attack on certain code price provisions. Dexter Keezer, the Board's executive director, charged that the more rigid price control provisions were "leading to a species of bootlegging by those who have devised means to thwart them."[21] And the Board's chairman, Mary Harriman Rumsey, stated that minimum price controls had become price fixing and warned that the CAB would work to eliminate price fixing provisions from 450 codes.[22] Johnson was attuned to these criticisms, for on June 1 he told the International Ladies Gar-

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[18] Ibid., May 24, 1934, p. 1. [19] Ibid., May 11, 1934, p. 1.

[20] Ibid., May 28, 1934, p. 1. [21] Ibid., May 19, 1934, p. 4.

[22] Ibid., June 22, 1934, p. 17.

ment Workers Union that no more price fixing provisions would be allowed in codes. This statement caused great confusion among administrators who were negotiating new codes or revisions in old codes and caused buyers to refuse to place orders thinking that prices would go down immediately.[23] On June 7 Johnson issued Office Memorandum 228 formally announcing the banning of all price protection clauses in codes. The protests from industry were so great, however, that Johnson quickly announced the next day that the new rule did not apply to codes already in effect.[24] Although this modification exempted about 90 percent of codified industry, a change in policy was clearly indicated.

Two other steps were taken to answer criticisms of the NRA codes. On June 29, Roosevelt ordered that henceforth all bids on local, state, and municipal contracts, prices could be quoted at as much as 15 percent below official code prices.[25] The steel industry was not pleased with this policy, calling it a "code-smashing fiat."[26] But once more this ruling was in answer to complaints from government agencies which had been receiving identical bids from the steel, cement, and other industries. Then on July 15, Johnson created a three-man Industrial Appeals Board to hear complaints from the "Little Fellow" and to make recommendations to Johnson on what action to take.[27] This was the type of board which Darrow had recommended and was a concrete result of the Review

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[23] Ibid., June 2, 1934, p. 1.

[24] Iron Age, CXXXIII (June 14, 1934), p. 42.

[25] Blue Eagle, July 2, 1934, p. 1. [26] Iron Age, CXXXIV (July 5, 1934), p. 49.

[27] New York Times, July 15, 1934, p. 5.

Board hearings.

While the NRA lumbered on, attempting now to avoid a collapse before mounting criticism over its policies and failure to bring the recovery it had promised, an internal struggle was ensuing within the Recovery Administration. As early as February 1934, Johnson was "tearfully" telling Bernard Baruch that "he couldn't stand it much longer and wanted to resign."[28] The pressure on Johnson was becoming greater and he continued to work too long and hard, smoke too many cigarettes and still disappeared occasionally for a weekend drinking bout. Yet, Johnson's troubles also came from his right-hand man, Donald Richberg. The NRA legal counsel had always maintained that he was not really Johnson's employee and, moreover, Richberg had a penchant for internal intrigue. Richberg contended that Johnson frequently suggested that they both should resign so that the President could appoint a board to administer the NRA. Johnson would add: "But I don't see how I can resign just yet." Richberg charged that in long talks with the President, Roosevelt told him that he wanted Johnson to retire.[29] Whether Richberg's allegations are true or not, he did send an increasing number of letters to Roosevelt undermining Johnson's position.[30] Richberg and other cabinet members were finally able to persuade Roosevelt that Johnson was too great a liability for the administration and in September one of the General's

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[28]Ickes, Diary, p. 148.

[29]See files of Richberg's association with the Progressive Party in Richberg Papers.

[30]Richberg, My Hero, p. 174. Ickes confirms that as early as June 1934, Roosevelt wanted Johnson to take a month's vacation and that a cabinet board would have been appointed to fill Johnson's place (Diary, p. 173).

numerous resignations was finally accepted.[31]

The National Industrial Recovery Board was appointed on September 27 to administer the NRA and end one-man rule. The NIRB was composed of its chairman, S. Clay Williams, Sidney Hillman, Leon Marshall and Walter Hamilton, and was placed under the general supervision of the Industrial Emergency Committee, which Richberg headed.[32] Richberg had long been suspect by industrialists for his old labor ties and many of his statements made while serving NRA did not change their attitudes. Even in the month of Johnson's resignation Richberg criticized the steel code, being the longest in existence, written almost entirely by the industry and administered with a minimum of government control. "Its administration requires the expenditure of $500,000 annually and a force of employees who," claimed Richberg, "if established by the Government, would be called a bureaucracy."[33] Yet, after attending a Code Authority meeting the next month, he told the press that he contemplated no changes in the steel code and said that he was very pleased with its operations.[34] It seems as if Richberg's ascendancy in government had led to more conservative positions and caused one steel leader to write him saying that he could not "let the opportunity pass to express my sincere appreciation of the constructive position that you have been taking with respect to the relation between government and business.[35]

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[31]See Richberg Papers, Boxes 1 and 2.

[32]Ickes, Diary, p. 198. [33]Blue Eagle, October 1, 1934, p. 1.

[34]Iron Age, CXXXIV (September 27, 1934), p. 54A.

[35]Charles R. Hook to Richberg, November 23, 1934. Richberg Papers.

Richberg was not solely responsible for running the NRA as Johnson had been, however, and the NIRB had to find a new formula to keep the organization afloat. The CAB and the Legal Division were both pushing for a consolidation and simplification of the whole Recovery Administration's operation and an end to price fixing and monopolistic practices. For the steel industry the reports on the basing point system brought back into the area of controversy those two oft-discussed matters.

The basing point system, as has already been demonstrated, was "the heart of the trade-practice phase of the industry's procedure under the code."[36] In August, Blackwell Smith, acting general counsel, told Johnson that the NRA and FTC had already expressed differing opinions about the basing point system and that the study must "reconcile these opinions and develop a consistent policy on the part of the Government." Smith suggested that the steel industry should be allowed to explain its position before the two agencies but should not be a member of the study group. Finally he urged that the study should state facts and not be "an occasion for publicity or political controversy."[37] At the first meeting between the FTC and the NRA, Malcolm Sharp, professor of law at the University of Chicago whom the NRA had engaged to aid in the study, echoed Smith's attitude that the steel industry should be consulted but not be made members of the group. Sharp also warned that the study not become a prosecutor's document but should stick to facts.[38]

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[36]Galloway, Industrial Planning, p. 159.

[37]Smith to Johnson, August 8, 1934. NRA Papers.

[38]Memorandum by Malcolm Sharp, August 10, 1934. NRA Papers.

A week later Sharp reported that a sharp difference had arisen between the NRA and the FTC. The NRA representatives were insisting that the study be confined only to basing points in order to secure industry cooperation, while the FTC wanted the study to include "the system by which prices are determined at basing points." In an attempt to compromise Sharp stressed that this would be only the first in a series of studies.[39] But the FTC would not compromise and stated that it regarded the study "as an opportunity to demonstrate the unsoundness of the treatment of competition as a whole, by the Administration." The AISI officials knew the attitude of the FTC and suggested that the NRA make its study separately from the Commission. Sharp agreed, recommending that the NRA conduct its own study with the steel industry and only exchange information with the FTC.[40]

By October, Richberg recommended that Roosevelt call the Attorney General, the chairman of the FTC, and Richberg to the White House to define the relationship between these three groups.[41] Sometime in the next few days the split between the NRA and FTC became complete, and both agencies began their own studies. FTC investigators went to the offices of the Steel Institute requesting access to their records. However, Tower refused to let them see any files which pertained to jobbers, Regulation Nine, liquidated damages, extras, and deductions.[42] The AISI counsel

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[39] Ibid., August 17, 1934. NRA Papers.

[40] Ibid., August 25, 1934. NRA Papers.

[41] Richberg to Stephen Early, October 8, 1934. NRA Papers.

[42] Tower to FTC, October 26, 1934. NRA Papers.

informed Richberg of the Institute's position, justifying it on the basis of the "biased" report the FTC had made on the steel code and because he believed the FTC was expanding the scope of the study which Roosevelt had ordered.[43] Richberg informed the FTC that he concurred with the Institute's restrictions and added: "I hope that it may be possible for the Commission and the NRA at least to confine themselves to the same field of study, so that if joint conclusions are not possible (which I hope may be possible) at least the separate conclusions may all arise out of consideration of the same subject matter."[44]

Joint conclusions or consideration of the same subject matter was not evident in the separate reports on the basing point system issued by the FTC and NRA on November 30, 1934. The NRA report followed the position which had been taken by the administration almost from the beginning. It was acknowledged that there was waste in cross-hauling and that certain purchasers were burdened with artificial freight rates, but the NRA report asserted that the basing point system tended "to be as serviceable a form of competition as a system in which there is more incentive for a producer to lower his base price as a means of extending his sales area, rather than doing this by merely absorbing freights and discriminating." Yet, the NRA recognized that certain changes were necessary but rejected the oft-proposed change to f.o.b. mill pricing as being "too uncertain and disturbing in its effects to be seriously considered at this time."

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[43] Hoyt A. Moore to Richberg, October 26, 1934. NRA Papers.

[44] Richberg to the Chairman of the FTC, November 6, 1934. NRA Papers.

Instead, the recommendation was made that any revised code should change the multiple basing point system to the group mill base system and that a limitation be placed on freight absorption. Finally, the NRA report recommended that if it appeared that this suggestion could not be effected, then consideration should be given to abandon all price provisions in the code.[45]

The FTC report, as expected, contrasted sharply with the NRA report. Not only the basing point system but a wide range of code provisions were attacked. Jobber regulations, transportation charges, uniform extras and the administration of code administration in general were denounced. While not specifically calling for f.o.b. mill pricing, the FTC recommended the elimination of the multiple basing point system by allowing court tests under the Sherman Act. The Commission denied that the basing point system simply allowed price fixing but stated that it was price fixing. The addition of more basing points in the revised code were held not to have corrected the abuses. Some amendments, "heralded as restraints upon price fixing," had no real value at all. Only price competition served as a regulator of prices, the Trade Commission concluded.[46]

The basing point reports were not publicly released until March, but already NRA officials were analyzing the differences between the two. Sharp thought that the FTC had not assumed as implacable a position as it

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[45]"Report of the National Recovery Administration on the Operation of the Basing Point System," November 6, 1934 (mimeographed), pp. 172-174. NRA Papers.

[46]"Report of the Federal Trade Commission on the Operation of the Basing Point System," November 30, 1934 (mimeographed), pp. 1 passim. NRA Papers.

had in the past. Moreover, he contended that if one did not take too seriously the part of its report which had been disposed of in the NRA report, and confined analysis to the Commission's recommendations, then there seemed to be a way open to agreement between the two agencies and the steel industry. Sharp's conversations with Walter Tower had revealed that the AISI official thought the proper solution to the basing point controversy was the establishment of basing points for all centers producing a surplus. Sharp thought that this might also represent the position of Eugene Grace of Bethlehem Steel and his recent election as president of AISI might be a further help in getting a satisfactory modification of the basing point system.[47]

Once the reports became public, however, the steel industry vented its wrath on the FTC. The Commission, commented Iron Age, "seized upon the instruction to study the basing point system as a pretext to launch . . . an attack." The report itself was called "a biased, inaccurate and misleading statement" on both the basing point system and the steel code.[48] The NRA report, on the other hand, received generous praise in the trade journal, being called a "remarkable and exhaustive study . . . clearly and accurately set forth."[49] Tower, however, simply told Sharp that he considered the NRA report more "sympathetic" than that of the FTC, which Sharp reported "seemed to be faint praise." Sharp further concluded that the Institute officials did not take either report very seriously.[50]

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[47] Sharp to Shannon, December 17, 1934. NRA Papers.

[48] Iron Age, CXXXV (March 21, 1935), p. 44.

[49] Ibid., p. 41. [50] Sharp to Shannon, March 28, 1935. NRA Papers.

Meanwhile, the NIRB had again been tackling the subject of prices. Another "field day" for criticisms was held in Washington from January 9 through January 12, 1935, with some 300 witnesses representing industry, labor, and the consumer presenting testimony. The CAB charged that the original purpose of the law had been lost sight of and asserted that price fixing and monopolistic conditions had been fixed through the codes. Once again the Consumers Board recommended limitation of price and production controls and more representation for the public on Code Authorities.[51] The majority of industry spokesmen, however, continued to demand some form of price regulation and open price filing was the method most often advocated.[52] By April the NIRB had made its decision: open price filing was necessary to insure fair competition. "Open-price filing is a device," stated the Recovery Board, "price fixing is a business policy in operation."[53]

The NRA was rushing headlong into oblivion, however. On February 20, 1935, Roosevelt asked Congress to extend the Recovery Act for two years, suggesting that some revisions would be necessary but that "the fundamental purposes and principles of the Act are sound."[54] Business in general, nevertheless, had been wavering for some time in its support of the NRA. On December 17, 1934, ninety business leaders had gathered at

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[51] Iron Age, CXXXV (January 10, 1935), p. 52.

[52] Blue Eagle, January 16, 1935, p. 1.

[53] Ibid., April 29, 1935, p. 4.

[54] Public Papers of Franklin D. Roosevelt, IV, pp. 79-83.

White Sulphur Springs, Virginia, and had voted to ask for only a one year extension of the act. As the new year progressed, however, the Chamber of Commerce began to abandon its shaky policy of cooperation with the New Deal and by May 1935, even Henry Harriman was criticizing the NRA.[55] The general public was also wavering in its support of the NRA. At a movie theatre in Philadelphia the crowd greeted the appearance of Father Charles Coughlin and Hugh Johnson, who was still thought of as the personification of the Blue Eagle, "with about an equal amount of laughter."[56]

For the steel industry the question was not only the extension of the Recovery Act but another revision of the steel code. From some steel concerns there continued to come complaints. One correspondent wrote that although there had been almost a hundred percent compliance with the code in the beginning because of fear, there had come to be more and more violations, at first by only the "bolder ones" but "when they went unpunished those not so bold engaged in the same practices until now violations are almost universal."[57] Another writer protested extending the life of the NRA at all, claiming that the steel code placed the entire industry under the control of the two or three largest companies.[58] A strong plea for the ending of the NRA experiment was made in a letter to the editor of

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[55]William H. Wilson, "How the Chamber of Commerce Viewed the NRA: A Re-examination," Mid-America, XLIV (April, 1962), pp. 105-107.

[56]Ira Jewell Williams to Congressman P. L. Gassaway, March 30, 1935. Gassaway Papers, University of Oklahoma Library.

[57]John D. Roberts to Shannon, April 15, 1935. NRA Papers.

[58]W. P. Simpson to Congressman Leo Kocialkowski, April 17, 1935. NRA Papers.

the New York Herald Tribune. The writer, who signed only his initials in attacking the steel code, wrote:

> Let's wipe out or revise these discriminating codes which are favoring price fixing by big business, and let the man with the best price win. Let's return to Mr. Hoover's rugged individualism of the small man that built up this country and deflate those "brass bellies" who, with the aid of Washington, are putting this country on the rocks. The small man does not need codes to help him. He wants to be left alone and have his mind free for constructive thought and not have to spend the best part of his time consulting code and law books.[59]

Even the Steel Code Authority was found by Simpson to be in "a gloomy frame of mind, being not cheerful either as to their own affairs or the general state of affairs in the nation."[60]

Yet, Shannon had to go ahead with plans for a revision of the steel code to conform with any changes which might be made in the Recovery Act. On April 20, Richberg attended the meeting of the Steel Code Authority and discussed with them the "form in which the NIRA should be continued."[61] That same day Shannon wrote Sharp asking him to try to get away from his teaching duties to help in revising the code.[62] A few weeks later Sharp wrote that he thought the industry would be ready to yield its provision against construction of new steel capacity and to make some changes in its pricing policy. Sharp concluded:

If the industry continues to be as interested in keeping its code

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[59]"HJVN" to New York Herald Tribune, April 20, 1935, n.p.

[60]Simpson to Shannon, March 15, 1935. NRA Papers.

[61]Ibid., April 20, 1935.

[62]Shannon to Sharp, April 20, 1935. NRA Papers.

> in operation as it has been heretofore, the executives should be ready to make the reasonable improvements on which we have been insisting. The comments on the basing point study have been interesting in this respect; and I was particularly struck with the statement from Pittsburgh that the industry was almost unanimously in favor of the code--as we know it to be--and was furthermore quite satisfied with its administration.[63]

There is little doubt that the steel industry wanted to retain its code as long as it did not have to yield its policies, either in code provisions or code administration.

But continuance of the steel code depended upon extension of the Recovery Act and the form in which the act was retained. In mid-April, Richberg wrote Roosevelt that if the NRA legislation were "sufficiently devitalized to conform to the anti-monopoly ideas of Senators Borah and Nye, it will in my opinion be made so ineffective and unworkable that it would be worse than no law." Richberg added that since he could not support such a bill he urged that, "before any concessions are made to the defeatist position which some of your friends are sincerely urging because of their lack of information and experience," Roosevelt study the situation carefully.[64] The President, however, did not clearly designate anyone to devise more than "halfway plans" and merely suggested slight revisions of the act. As Raymond Moley stated: "This throwing-up of the presidential hands was the signal for a long, acrimonious wrangle before the Finance Committee of the Senate."[65]

The Senate Finance Committee began its lengthy hearings on the NRA,

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[63]Sharp to Shannon, May 4, 1935. NRA Papers.

[64]Richberg to Roosevelt, April 13, 1935. NRA Papers.

[65]Moley, After Seven Years, p. 304.

which were called an investigation, in March. Testifying were businessmen, labor and consumer spokesmen, and local, state, and national government officials. Harry Babcock, attorney for the FTC, again resumed the attack on the steel code. Calling the basing point system price fixing, Babcock concluded that "only aims of a blindly selfish character can account for the arbitrary abnormalities and flagrant fictions which are inherent in the basing-point system."[66] Lowell Mason joined the FTC's attack by contending that if anti-trust decisions and the steel code were placed side by side, it would be found that the words "thou shalt not" had been supplanted with the words "thou must."[67] The testimony of Babcock and Mason was supplemented by statements of steel company executives. An attorney for a Jersey City company complained that, although raw steel the company purchased only came from New York on a ferry or through the Holland Tunnel, Buffalo was the basing point, and an extra four dollars a ton for phantom freight had to be paid.[68] The president of a small rolling mill concluded that the basing point system with its phantom freight charges "tends to put the small mill out of business and as long as the steel code is dominated by the larger mills, we have no chance for any relief."[69]

The two star witnesses at the hearings were the old antagonists--Hugh Johnson and Clarence Darrow. The General was in top form as he told the Committee of the great hopes and objectives which the NRA had. He freely admitted, however, that progress had not been as rapid as he had hoped, that "rotten provisions" had crept into certain codes, that Code

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[66] Senate Investigation of NRA, p. 294. [67] Ibid., p. 1100.

[68] Ibid., p. 1155. [69] Ibid., p. 1163.

Authorities were not properly organized and that the administration had not been very efficient. Typically making himself the center of the controversy, Johnson contended that "such faults as arose were due to my bad administration rather than a bad law." Johnson pled for a continuation of his heroic experiment, saying "that to destroy N.R.A. because there are these creaky joints in its structure would be like burning down your house to get rid of a few rats in the attic." Johnson recommended the elimination of many codes and the consolidation of others and closed by stating: "May I reiterate my belief that we must take our capitalistic system in hand. . . . To my mind we should not go back to what has failed, we should not go forward to communism or fascism, but we must do something, and let us stick to the middle of the road."[70] Like Johnson, Darrow was at his typical best. Fully acknowledging that his sympathies lay with small business as compared with big business, the aged lawyer charged that the Recovery Act was written by and administered for the "rich man." When asked if he thought anything in the NRA were worth saving, Darrow answered that he was not certain, but that the present law was bad.[71]

After the hearings were completed, Finance Committee Chairman Pat Harrison introduced amendments which forbade price fixing except in natural resources' industries, limited the power of Code Authorities and gave the FTC powers over certain features of the bill. "Champ" Clark of Missouri then introduced a resolution which would have extended the Recovery Act in its present form until March 1936, and the resolution passed by a large majority. The bill was reported out of the Committee

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[70] Ibid., pp. 2181-2184 and 2416. [71] Ibid., pp. 299-310.

early in May. Not only did this move shock the administration, but both labor and business leaders in general charged that such a brief extension would amount to a virtual abandonment of the NRA. The House had to have its turn, however, and there the administration thought that it would get what it wanted.[72] On May 14 Richberg reported that the NRA was proceeding on the assumption that there would be an extension of the law and that code revisions would be a lengthy process.[73] Two days later Roosevelt met with the NIRB and approved a list of recommendations which the Board presented. An extension of the NRA for two years, a code revision period of three to six months, improved legislative mandate to guide NRA administration and a consolidation and strengthening of the whole system were called for.[74]

The entire matter, however, was to be taken out of the hands of the administration, industry, and consumers by the Supreme Court. There had, of course, been numerous litigations over various provisions of the Recovery Act, but the NRA had fared rather well. Up to April 1935, some 206 cases had been tried in federal courts, with favorable rulings for the government in 186 cases. Sixty-five separate district judges had granted permanent injunctions against violators of code provisions and there had been nineteen criminal convictions.[75] There was also a question of public opinion. As one writer stated, the New Deal had such great popular support that if the Supreme Court ever declared the NIRA unconstitutional, the public resentment would be so great that the people would

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[72] Iron Age, CXXXV (May 2 and 9, 1935), pp. 55 and 58.

[73] Ibid. (May 16, 1935), p. 51. [74] Blue Eagle, May 17, 1935, p. 1.

[75] Richberg, The Rainbow, pp. 210-211.

agree to a constitutional amendment taking away the Court's power in such cases.[76]

In the spring of 1935, however, court decisions began to run more against NIRA than previously. The Recovery Administration seemed to be avoiding a true court test of the major provisions of the law and this assumption appeared more likely when the government withdrew an appeal before the Supreme Court on a case in which a U. S. District Judge had dismissed a suit against the Belcher Lumber Company on the grounds that the Recovery Act was unconstitutional.[77] The action by the government was met in many quarters with hostility. The president of the National Association of Manufacturers called upon the Justice Department to allow the case to be decided before the Recovery Act was extended because "it is only through a clear definition of Federal Authority in the industrial field that the uncertainty which obstructs recovery can be allayed."[78]

Another case to test the validity of the Recovery Act was coming to fruition at this time, however. Two brothers named Schechter who operated a live poultry business had been charged with violations of the code for their business. In the fall of 1934 they were tried and convicted by a New York federal district court. In an appeal before the Second Circuit Court of Appeals on April 1, 1935, a three-panel court, including Judge Learned Hand, upheld the previous decision. Two of the judges, however,

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[76]Maurice Finkelstein, The Dilemma of the Supreme Court--Is the N.R.A. Constitutional (New York, 1933), pp. 10-11.

[77]Richberg, The Rainbow, p. 215.

[78]Iron Age, CXXXV (April 4, 1935), p. 53D.

overturned that part of the conviction applying to wages and hours because they decided that the Schechters did a purely intrastate business.[79] A Justice Department official informed Richberg the next day that the defendants would apply immediately to the Supreme Court for a writ of certiorari.[80] Richberg notified Roosevelt that public opinion had been very unfavorable on the Belcher case, causing difficulty in enforcement of codes and strengthening the hostility of Congress to the extension of the NIRA. He therefore recommended that the Justice Department be allowed to cooperate in bringing the Schechter case to the Court. Richberg emphasized that a good case could remove many of the difficulties facing the NRA but that ignoring the situation would "gradually destroy the industrial recovery program."[81]

Richberg thought that the Schechter appeal would be a genuine test case because the Court would have to rule on all the essential features of the Recovery Act. He knew, however, that it was not as ideal a case from the NRA viewpoint as one involving a purely inter-state business. Roosevelt gave his approval and the Department of Justice asked Richberg to participate in preparing the case. In presenting his argument before the Supreme Court Richberg emphasized the underlying purposes of NIRA which was necessitated by the economic emergency and the solution sought through federal legislation and its administration. But the Court did not concur. On May 27 the Court handed down a unanimous opinion ruling that Congress could not regulate intrastate commerce and that it had

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[79] Blue Eagle, April 5, 1935, p. 1.

[80] G. S. Arnold to Richberg, April 2, 1935. Richberg Papers.

[81] Richberg to Roosevelt, April 3, 1935. Richberg Papers.

exceeded its authority in delegating essentially legislative powers to the executive branch. In the words of Justice Cardozo's concurring opinion: "This is delegation running riot." And on the interstate commerce issue, he wrote: "There is no penumbra of uncertainty obscuring judgment here."[82]

The Schechter decision threw the administration into an uproar. Hugh Johnson rushed to the White House with a plan for a new act which could stand the court test. Richberg also had a plan, while Raymond Moley and Felix Frankfurter wanted a constitutional amendment specificially giving Congress the power to regulate industry.[83] Oklahoma Congressman Gassaway wrote a constituent that the Court's decision had thrown the nation "into the most pitiful chaotic condition that it has ever been thrown into in the history of our nation," and suggested that Congress might remain in session through August to enact a new Recovery Act.[84] Roosevelt made his angry speech about the "horse-and-buggy" attitude of the Court and talked about a new NRA, but the Blue Eagle was clearly dead.

The attitude of the steel industry toward the Schechter decision was a strange one indeed. Iron Age, which had maintained rather steadfast support of the NIRA and the steel code throughout its life, hailed the decision as stopping the "trend toward State socialism." Its editor wrote:

> The Supreme Court has spoken. By unanimous decision, it has turned thumbs down on the brain trusters and constitution "busters" who for two years have been attempting to build a super-government in

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[82] Richberg, The Rainbow, pp. 217-222.

[83] Moley, After Seven Years, p. 306.

[84] P. L. Gassaway to Carl Portman, May 28, 1935. Gassaway Papers.

> America, a consolidated clan of bureaucracies having the assumed power to make and enforce our laws. . . . The Supreme Court decision will go far toward restoring business confidence and to encouraging our great army of fear-frozen investment dollars to go to work. Steel and capital goods industries will shortly feel the impetus of renewed buying that will follow the smashing of the strange gods and brazen images of a regimented economy and a philosophy of scarcity. The Schechter chicken has broken the American goose step.[85]

Iron Age nevertheless, reported that the Court decision had stunned the steel industry and created confusion, even though district sales offices had been instructed by their home offices to maintain all code prices and commercial practices.[86]

Only a few days passed before steel industry leaders could decide what their new policy would be. Tom Girdler, president of Republic Steel, stated that "during the past two years a new spirit of cooperation and fair play had grown up in the steel industry to the benefit of employees, customers and the industry itself, and I believe steel men everywhere will support any effort on the part of the government to develop a constructive program which will preserve these benefits." Other steel executives did not publicly support any government program but did announce no fundamental change in policy. As one steel official asserted: "We will go right along just the same as under the code. We will pay the same wages, maintain the same prices and 'play the game' the same as if we had a code."[87] On June 6 more than 200 steel executives met at AISI headquarters in Washington and unanimously voted to continue the fair trade practices inaugurated by the

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[85] Iron Age, CXXXV (May 30, 1935), p. 57.

[86] Ibid., p. 63.

[87] Ibid., June 6, 1935, p. 61.

code. When asked if price filing would be maintained, Eugene Grace replied that prices had already been filed for the third quarter and that he hoped prices would be maintained at their present level.[88]

On June 1 all deputy administrators were informed that Code Authorities no longer had any legal status and should be notified of that fact. Shannon promptly wrote Tower of what he was probably already well aware.[89] A few days later Shannon also wrote Tower telling him that he had been directed to request that all Code Authority records be sent to the Research and Planning Division, but Tower replied that disposition of their records had already been made on advice of counsel.[90] All that remained for Shannon to do, as for all deputy administrators, was to compile a history of the operation of his code. In an attempt to secure information of how the code had affected members of the steel industry, questionnaires were sent to the 206 companies which had been members of the code, and to AISI. By December 1, 1935, only nine companies had replied to the request, four companies had written their refusal to answer and the remaining had not even acknowledge the questionnaire. Cooperation from AISI had been almost non-existent.[91] Moreover, Tower even refused to help the NRA staff frame the questions.[92] Shannon's legal adviser's whole experience with the steel industry must have

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[88] Ibid., June 13, 1935, pp. 44-45.

[89] Prentiss L. Coonley to Shannon, June 1, 1935; and Shannon to Tower, June 3, 1935. NRA Papers.

[90] Wayne P. Ellis to Shannon, June 6, 1935; and Tower to Shannon, June 12, 1935. NRA Papers.

[91] Memorandum by A. G. White, December 1, 1935. NRA Papers.

[92] Shannon to J. M. Clark, August 27, 1935. NRA Papers.

colored his reply to a question from Leon C. Marshall as to his thoughts on a new bill for industrial control, because he answered: "Over a period of some years I have held firmly to the opinion that rigid control of industry in this country by the federal government is needed in order to accomplish the securing by labor of a larger share of the national income, the protection of the consumer against the avarice of large aggregations of capital and the preservation of small enterprise."[93]

With the demise of the NRA began to come the assessment which has remained rather standard in history and economic studies. That traditional story has the NIRA as a poorly conceived act which generated some enthusiasm for a time, then began to break down because of over-expansion and faulty administration. Finally, the Supreme Court rescued the administration from its dilemma by declaring the act unconstitutional. At the time few persons disagreed with that analysis. Hugh Johnson defended his brain child by claiming that the NRA created more jobs than all the other emergency agencies combined and did it naturally without drains on the federal treasury. And Johnson asserted that the NRA did more than that:

> It abolished child labor. It ran out the sweatshops. It established the principle of regulated hours, wages, and working conditions. It went far toward removing wages from the area of predatory competition. It added to the rights and freedom of human labor.[94]

And there is much truths in these claims.

Yet, admirable though these accomplishments may be, assuming that

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[93]Burr T. Ansell to Shannon, August 29, 1935. NRA Papers.

[94]Johnson, Blue Eagle, pp. ix-x.

the NRA was solely responsible for them, the act was designed to promote recovery as well as reform. The most objective economic analysis of the National Industrial Recovery Act concluded that in achieving recovery, the Blue Eagle was a failure. A Brookings Institution study found that while the objective of the Recovery Act had been to increase purchasing power by raising wages and holding prices down, both prices and wages advanced. And even this method was wrong because it should have sought to increase purchasing power by holding down both wages and prices.[95] Another economist saw the fault in NRA policy as allowing price fixing in individual industries without reference to price fixing in other industries.[96] Herbert Hoover condemned the whole idea as one of a regimented "economy of scarcity--an idea that increased costs, restricted production and hampered enterprise will enrich a nation."[97] And there is truth in these denunciations.

Recently, however, at least two commentators have been willing to follow more closely the reasoning of Hugh Johnson and to expand on his zeal for the NRA. The first, Arthur Schlesinger, Jr., has written that the reason the NRA has received such a bad verdict is because those making the assessment have proceeded from the classical model of the competitive market. Schlesinger thinks that most mistakes attributed to

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[95]Lyon, National Recovery Administration, pp. 871-874.

[96]Benjamin M. Anderson, "Government Economic Planning and Prices," The Chase Economic Bulletin, XVI (April 18, 1936), p. 23.

[97]Herbert C. Hoover, Addresses Upon the American Road (New York, 1938), p. 47.

the NRA resulted from faulty administration and policy, and not in the noble goals of economic stabilization and social decency. As an example, he wrote that the idea of price fixing was not wrong but that allowing business to fix prices was. But above all Schlesinger thinks that the Blue Eagle "helped break the chains of economic fatalism" and gave the American people "new confidence in their capacity to work out their economic salvation."[98] Like Schlesinger, John Kenneth Galbraith has written that the idea of the NIRA was neither bad nor unrealistic, but he thinks that the contrary assessment has become part of the "folk wisdom" of the nation and cannot be changed.[99] Perhaps a definitive analysis and assessment of the NIRA in general can be made when there are more studies on the subject. In the most recently published work on the Blue Eagle, Sidney Fine states: "It is not easy to generalize about the N.I.R.A. since its history is so much a history of individual codes rather than of policy formulated at the top and then uniformily applied." As Fine so accurately points out, the records for the study of individual codes are "available in embarassing abundance."[100]

If the history of the steel code is typical of the way all codes were written and administered, then both the proponents and detractors of the NRA will find comfort. For those, such as Alfred Bingham, who thought that the act was designed to aid the small businessman and consumer but was transformed because big business gained control of the

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[98]Schlesinger, Coming of the New Deal, pp. 172-176.

[99]John Kenneth Galbraith, The Liberal Hour (New York, 1964), pp. 74-75.

[100]Sidney Fine, The Automobile Under the Blue Eagle (Ann Arbor, 1963), p. 430.

codes, the case of the steel code was will reinforce that assertion.[101] To those, such as Gerard Swope, J. W. Hook and other industry leaders who yearned for industrial self-government, the operation of the steel code met their desires. The steel code was industrial self-government without restraint. Neither the President of the United States, nor Hugh Johnson, nor the Federal Trade Commission, nor Borah and Nye could force the steel industry to yield on its price or labor policies.

While more research needs to be done to answer many of the questions raised as to the effects of the steel code, a number of conclusions are clear. The depression crisis led the steel industry, as well as other big industries, to advocate economic planning. But from the very start the steel industry wanted to be the planning agent, free of restrictions or influence by the public, the government, and labor. The American Iron and Steel Institute, which had long been the spokesman of cooperation in the industry, was responsible for drafting the code, and in negotiations with the government over code provisions, proved to be a shrewd bargainer. Moreover, the AISI was responsible for administering the provisions of the code and, in effect, continually added to the provisions with its legislative authority. With such powers the steel industry was effective in controlling the business actions and practices of all its members.

Administration members expressed concern from time to time about this unbridled power of the industry to control its own affairs. The economic power of the steel industry was so great, however, that the NRA most often

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[101] Alfred M. Bingham, Insurgent America: Revolt of the Middle-Classes (New York, 1935), p. 181.

plead with executives of AISI to "play the game" or, at most, made veiled threats which were never carried out. Cooperation of such a great industry was essential to the nation's recovery and the administration simply could not afford to alienate steel industry leaders. At the same time the initially-promised cooperation between government and industry never materialized. The steel industry posed an almost arrogant disregard for the public interest, and there did not seem to be any public official who was willing to challenge it. It is also very debatable whether such cooperation could have had a very long life at any rate, for antitrust sentiment was still strong among the American people, many politicians, and even small businessmen.

Under the steel code prices did advance at a rate almost equal to wages, but also the eight-hour day was secured generally for steelworkers. The steel industry was the most implacable opponent of those who held that Section 7a meant that national labor unions could organize steelworkers and bargain for them; yet, most industry officials, even Ernest Weir, recognized the right of workers to organize and bargain collectively if only in company unions. And the experience of the steelworkers in their fight with the industry from 1933 to 1935 contributed materially to their tactics and victory in the mills in the late 1930's.

Thus, as Fine suggests, perhaps the most that can be hoped for at this time are studies of individual codes with a postponement of a final assessment of the NRA until more are completed. In the case of the steel code much economic analysis is needed to determine the economic effects of the code's operation. Nevertheless, the operation of the Code of Fair

Competition of the Iron and Steel Industry offers the future historian a superb case study of one very important code.

APPENDIX

IRON AND STEEL INDUSTRY

Approved August 19, 1933; Effective August 29, 1933

Executive Order

An application having been duly made, pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for my approval a Code of Fair Competition for the Iron and Steel Industry, and hearings having been held thereon and the Administrator having rendered his report together with his recommendations and finding with respect thereto, and the Administrator having found that the said Code of Fair Competition complies in all respects with the pertinent provisions of Title I of said Act and that the requirements of clauses (1) and (2) of subsection (a) of Section 3 of said Act have been met:

NOW, THEREFORE, I Franklin D. Roosevelt, President of the United States, pursuant to the authority vested in me by Title I of the National Industrial Recovery Act, approved June 16, 1933, and otherwise, do adopt and approve the report, recommendations and findings of the Administrator and do order that the said Code of Fair Competition be and it is hereby approved.

Approval Recommended:
(Signed) HUGH S. JOHNSON, Administrator

(Signed) FRANKLIN D. ROOSEVELT

The White House,
August 19, 1933.

CODE OF FAIR COMPETITION OF THE IRON AND STEEL INDUSTRY

Article I

Definitions

Wherever used in this Code or in any schedule appertaining hereto the terms hereinafter in this Article and in Schedule E annexed hereto defined shall, unless the context shall otherwise clearly indicate, have the respective meanings hereinafter in this Article and in such Schedule E set forth. The definition of any such term in the singular shall apply

to the use of such term in the plural and vice versa.

Section 1. The term "the United States" means and includes all of the territory of the United States of America on the North American continent.

Section 2. The term "the President" means the President of the United States of America.

Section 3. The term "products" means only pig iron, iron or steel ingots and the rolled or drawn iron or steel products which are generally named in Schedule F to the Code as at the time in effect and standard Tee rails of more than 60 pounds per yard, angle bars and rail joints, or any of such products.

Section 4. The term "the Industry" means and includes the business of producing in the United States and selling products, or any of them.

Section 5. The term "member of the Industry" means and includes any person, firm, association or corporation operating a plant or plants in the United States for the production of products, or any of them.

Section 6. The term "the Code" means and includes this Code and all Schedules annexed hereto as originally approved by the President and all amendments hereof and thereof made as hereinafter in Article XII provided.

Section 7. The term "member of the Code" means any member of the Industry who shall have become a member of the Code as hereinafter in Section 3 of Article III provided.

Section 8. The term "the Institute" means American Iron and Steel Institute, a New York membership corporation.

Section 9. The term "the Board of Directors" means the Board of Directors (as from time to time constituted) of the Institute.

Section 10. The term "the Secretary" means the Secretary of the Institute at the time in office.

Section 11. The term "the Treasurer" means the treasurer of the Institute at the time in office.

Section 12. The term "unfair practice" means and includes any act described as an unfair practice in Schedule H annexed hereto.

Section 13. Wherever used in the Code with reference to the Industry or any member of the Industry or any member of the Code, unless the context shall otherwise clearly indicate.

(a) The term "plant" means only a plant for the production of one or more products in the Industry;

(b) the term "prices" include only prices for products produced in the Industry;
(c) the term "wages" includes only wages for labor performed in the Industry;
(d) the term "labor" means only labor performed in the Industry;
(e) the term "hours of labor" or "hours of work" includes only hours of labor or hours of work in the Industry; and
(f) the term "employee" means only an employee in the Industry.

Section 14. The term "the National Industrial Recovery Act" means the National Industrial Recovery Act as approved by the President, June 16, 1933.

Section 15. The term "the effective date of the Code" means the date on which the Code shall have been approved by the President pursuant to the National Industrial Recovery Act.

Section 16. The term "the Administrator" means the Administrator appointed by the President under the National Industrial Recovery Act and at the time in office.

Section 17. The term "the Administration" means the agency established pursuant to the provisions of Section 2 of the National Industrial Recovery Act.

Article II

Purpose of the Code

Section 1. The Code is adopted pursuant to Title I of the National Industrial Recovery Act.

Section 2. The purpose of the Code is to effectuate the policy of Title I of the National Industrial Recovery Act insofar as it is applicable to the Industry.

Article III

Membership in the Code

Section 1. It is of the essence of the Code that all members of the Industry which shall comply with the provisions of the Code shall be entitled to participate in its benefits upon the terms and conditions set forth in the Code.

Section 2. Any member of the Industry is eligible for membership in the Code.

Section 3. Any member of the Industry desiring to become a member of the Code may do so by signing and delivering to the Secretary a letter substantially in the form set forth in Schedule A annexed hereto.

Section 4. The rules and regulations in respect of meetings of members of the Code are set forth in Schedule B annexed hereto.

Article IV

Hours of Labor, Rates of Pay and Other Conditions of Employment

Section 1. Pursuant to subsection (a) of Section 7 of the National Industrial Recovery Act and so long as the Code shall be in effect, the Code shall be subject to the following conditions:

(1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization, or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;

(2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and

(3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

Section 2. Since the beginning of the present depression and the consequent reduction in the total number of hours of work available in the Industry, its members have made every effort to distribute, and with a remarkable degree of success have distributed, the hours of work available in their plants so as to give employment to the maximum number of employees. It is the intention of the Industry to continue that policy insofar as practicable, to the end that the policy of Title I of the National Industrial Recovery Act may be effectuated, and that work in the Industry shall insofar as practicable be distributed so as to provide employment for the employees normally attached to the Industry. The basic processes in the Industry are of a continuous character and they cannot be changed in this respect without serious adverse effect upon production and employment. As demand for the products of the Industry and, therefore, for labor shall increase, hours of labor for employees in the Industry must necessarily increase; but, except in the case of executives, those employed in supervisory capacities and in technical work and their respective staffs and those employed in emergency work, insofar as practicable and so long as employees qualified for the work required shall be available in the respective lacalities where such work shall be required and having due regard for the varying demands of the consuming and processing industries for the respective products, none of the members of the Code shall cause or permit any employee to work at an average of more

than 40 hours per week in any six months period or to work more than 48 hours or more than 6 days in any one week. On or after November 1, 1933, as soon as the members of the Code shall be operating at 60% of capacity, they shall adjust the operations of their plants so that, except as to executives, those employed in supervisory capacities and in technical work and their respective staffs and those employed in emergency work, they will establish the 8-hour day for all their employees. For the purposes of this Section 2 the first six months period for each employee in the employ of any member of the Code at the effective date thereof shall begin with that date, and the first six months period for any employee thereafter employed by any member of the Code shall begin with the date of employment of such employee by such member. After the date of the employment by any member of the Code of any employee such member shall not knowingly permit such employee who also shall have performed work for one or more other employers to work for such member such number of hours as would result in a violation of the Code had all such work been performed for such member.

Section 3. None of the members of the Code shall employ in or about its plants in the Industry any person under 16 years of age.

Section 4. Throughout the history of the Industry geographical wage differentials have existed, due in the main to differences in living costs and general economic conditions and the ability adequately to man the industries in the respective localities. The establishments in the Industry in the different localities have been developed under such differences in wages and, after a survey of the matters bearing on such differences in the various sections of the United States, for the purposes of this Article IV the wage districts described in Schedule C annexed hereto have been established.

Section 5. Until changed by amendment of the Code as hereinafter in Article XII provided, the minimum rates of pay per hour which shall be paid by members of the Code for common labor (not including that of apprentices and learners) in the Industry in the respective wage districts described in such Schedule C shall be the rates set forth in Schedule D annexed hereto. None of the members of the Code shall pay common laborers (not including apprentices and learners) in its employ in the Industry in any such district any rate of pay less than the rate specified for such districts in such Schedule D, and any violation of this provision of the Code shall be deemed an unfair practice. Such rates of pay shall not, however, be understood to be the maximum rates of pay for their respective districts, but, until changed as aforesaid, none of the members of the Code shall be required to pay its common laborers in the Industry in any of such districts a rate of pay higher than the rate specified for such district in such Schedule D, except as such member shall have agreed to pay such higher rate in any agreement heretofore or hereafter made by such member with its employees. Until this provision shall have been changed by amendment as aforesaid, each member of the Code will pay to each of its employees in the Industry who on July 14, 1933, was receiving pay at a rate of pay per

hour in excess of the rate of pay per hour then being paid by such member for common labor a rate of pay per hour which shall be at least 15% greater than that which such employee was then receiving; provided, however, that the foregoing provision shall not be so construed as to require any member of the Code to make any increase in the rate of pay per hour to be paid by such member to any of its employees in any wage district that will result in a rate of pay per hour which shall be higher than the rate of pay per hour paid to employees doing substantially the same class or kind of labor in the same wage district by any other member of the Code which shall have increased its rates of pay per hour in accordance with such provision. In the case of employees (not including apprentices and learners) performing work for which they are paid per piece of work performed, the minimum rate of pay which each member of the Code shall pay for such work shall be sufficient to produce at the average rate of performance of such work at the time prevailing at the plant of such member where such work is performed the minimum rate of pay per hour provided in the Code for common labor at such plant.

Article V

Production and New Capacity

Section 1. It is the concensus of opinion in the Industry that it is not necessary, in order to effectuate the policy of Title I of the National Industrial Recovery Act, to make any specific provision in the Code for controlling or regulating the volume of production in the Industry or for allocating production or sales among its members. It is believed that the elimination of unfair practices in the Industry will automatically eliminate any over-production therein and any alleged inequities in the distribution of production and sales among its members. Adequate provision shall be made under the Code for the collection of statistics regarding production and of other data from which it may be determined from time to time whether over-production in the Industry exists and whether in the circumstances any restriction of production is necessary in order to effectuate the policy of Title I. The Board of Directors shall furnish to the Administrator summaries or compilations of such statistics and other data in reasonable detail. Should it at any time in the circumstances as they shall then exist appear to the Board of Directors that the policy of such Title I will not be effectuated in the Industry because of the fact that through the Code production therein is not controlled and regulated, then the Board of Directors is hereby empowered, subject to the approval of the President after such conference with, or hearing of interested persons, as he may prescribe, to make, modify or rescind such rules and regulations for the purpose of controlling and regulating production in the Industry, including the fixing of such liquidated damages for violations of such rules and regulations, as such Board shall deem to be necessary or proper in order to effectuate the policy of such Title I. All such rules and regulations from time to time so made and in effect shall be binding upon each member of the Code to which notice thereof shall have been given.

Section 2. It is also the consensus of opinion in the Industry that, until such time as the demand for its products cannot adequately be met by the fullest possible use of existing capacities for producing pig iron and steel ingots, such capacities should not be increased. Accordingly, unless and until the Code shall have been amended as hereinafter provided so as to permit it, none of the members of the Code shall initiate the construction of any new blast furnace or open hearth or Bessemer steel capacity. The President may, however, suspend the operation of the provisions of this Section.

Article VI

Administration of the Code

Section 1. The administration of the Code shall be under the direction of the Board of Directors. The Board of Directors shall have all the powers and duties conferred upon it by the Code and generally all such other powers and duties as shall be necessary or proper to enable it fully to administer the Code and to effectuate its purpose.

Section 2. The Secretary shall act as Secretary under the Code. Under the direction of the Board of Directors, he shall keep all books (except books of account) and records under the Code and, except as such Board shall otherwise provide, shall collect, file and collate all statistics and other information required by the Board of Directors for the proper administration of the Code.

Section 3. The Treasurer shall act as Treasurer under the Code and, under the direction of the Board of Directors, he shall have custody of, and have charge of the disposition of, all funds collected under the Code; and he shall keep proper books of account showing the collection and disposition thereof.

Section 4. The Board of Directors shall have power from time to time (a) to appoint and remove, and to fix the compensation of, all such other officers and employees and all such accountants, attorneys and experts, as the said Board shall deem necessary or proper for the purpose of administering the Code and (b) to fix the compensation of the Secretary and the Treasurer for their services in acting under the Code.

Section 5. The expenses of administering the Code shall be borne by the members thereof. The Board of Directors may from time to time make such assessments on account of such expenses against the members of the Code as it shall deem proper and such assessments shall be payable as such Board shall specify. The part of such expenses which shall be assessed against each member of the Code shall bear the same relation to the total thereof as the number of votes which, pursuant to the provisions of the Code, such member might cast at a meeting of the members thereof held at the time of any such assessment shall bear to the total number of votes that might be cast thereat by all the then members of the Code. Failure of any member of the Code to pay the amount of any assessment against such member for a period of thirty days after the date on which it became payable shall constitute a violation of the Code.

Section 6. The Board of Directors may from time to time appoint such committees as it shall deem necessary or proper in order to effectuate the purpose of the Code, and it may delegate to any such committee generally or in particular instances such of the powers and duties of the Board of Directors under the Code as such Board shall deem necessary or proper in order to effectuate such purpose. Any member of any such committee may be a member of the Board of Directors or an officer or a director of a member of the Code or a person not having any official connection with any member of the Code or with the Institute, as the Board of Directors shall deem proper.

Section 7. The members of the Code recognize that questions of public interest are or may be involved in its administration. Accordingly, representatives of the Administration consisting of the Administrator and one or two other persons appointed by him (who shall be persons not having or representing interests antagonistic to the interests of members of the Industry) shall be given full opportunity at such times as shall be reasonably convenient to discuss with the Board of Directors or any committee thereof any matters relating to the administration of the Code and to attend meetings of the Board at which action on any such matters shall be undertaken and to make recommendations as to methods or measures of administering the Code. Due notice of all such meetings of the Board of Directors shall be given to such representatives of the Administration. The records of the Board of Directors relating in any way to the administration of the Code shall be open to such representatives at all reasonable times. They shall be afforded by the Board of Directors complete access at all times to all records, statistical material or other information furnished or readily available to the Board of Directors in connection with, or for the purposes of, the administration of the Code. The Board of Directors, acting directly or through one or more committees appointed by it, shall give due consideration to all requests or recommendations made by such representatives of the Administration and render every possible assistance to such representatives in obtaining full information concerning the operation and administration through reports that may be made to him from time to time by such representatives, and to the end that the President may be assured that the Code and the administration thereof do not promote or permit monopolies or monopolistic practices, or eliminate or oppress small enterprises, or operate to discriminate against them and to provide adequate protection of consumers, competitors, employees and others concerned and that they are in furtherance of the public interest and operate to effectuate the purposes of Title I of the National Industrial Recovery Act.

Article VII

Prices and Terms of Payment

None of the members of the Code shall make any sale of any product at a price or on terms and conditions more favorable to the purchaser thereof

than the price, terms or conditions established by such member in accordance with the provisions of Schedule E annexed hereto, and in effect at the time of such sale; nor, except as otherwise provided in such Schedule E, shall any member of the Code make any contract of sale of any product at a price or on terms and conditions more favorable to the purchaser thereof than the price, terms and conditions established as aforesaid and in effect at the time of the making of such contract of sale.

Article VIII

Unfair Practices

For all purposes of the Code the acts described in Schedule H annexed hereto shall constitute unfair practices. Such unfair practices and all other practices which shall be declared to be unfair practices by the Board of Directors as provided in paragraph M of such Schedule H or by any amendment to the Code adopted as hereinafter in Article XII provided and at the time in effect shall be deemed to be unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act as amended, and the using or employing of any of them shall be deemed to be a violation of the Code and any member of the Industry which shall directly, or indirectly through any officer, employee, agent or representative, knowingly use or employ any of such unfair practices shall be guilty of a violation of the Code.

Article IX

Reports and Statistics

Section 1. The Board of Directors shall have power from time to time to require each member of the Code to furnish to the Secretary for the use of the Board of Directors such information concerning the production, shipments, sales, and unfilled orders of such member and the hours of labor, rates of pay and other conditions of employment at the plant or plants of such member and such other information as the Board of Directors shall deem necessary or proper in order to effectuate the purpose of the Code and the policy of Title I of the National Industrial Recovery Act. The Board of Directors may require that any such information be furnished periodically at such times as it shall specify and may require that any or all information furnished be sworn to or otherwise certified or authenticated as it shall prescribe. Failure of any member of the Code promptly to furnish to the Secretary information required by the Board of Directors and substantially in the form prescribed by it shall constitute a violation of the Code. The Board of Directors shall not require any information regarding trade secrets or the names of the customers of any member of the Code.

Section 2. Any or all information furnished to the Secretary by any member of the Code shall be subject to checking for the purpose of verification by an examination of the books and accounts and records of such member by any accountant or accountants or other person or persons

designated by the Board of Directors and shall be so checked for such purpose, if the Board of Directors shall require it. The cost of such examination shall be treated as an expense of administering the Code; provided, however, that, if upon such examination any such information shall be shown to have been incorrect in any material respect, such cost shall be paid by the member of the Code which furnished such information.

Section 3. The Board of Directors shall require the members of the Code from time to time to furnish such information as shall be necessary for the proper administration of the Code.

Section 4. To the extent that the Board of Directors may deem that any information furnished to the Secretary in accordance with the provisions of the Code is of a confidential character in the interest of the member of the Code which shall have furnished it and that the publication thereof is not essential in order to effectuate the policy of Title I of the National Industrial Recovery Act, such information shall be treated by the Board of Directors and by the other members of the Code, if any knowledge of it shall have come to them, as strictly confidential; and no publication thereof to anyone or in any manner shall be made other than in combination with similar information furnished by other members of the Code, in which case the publication shall be made only in such manner as will avoid the disclosing separately of such confidential information.

Section 5. Summaries of compilations in reasonable detail of all information which shall be furnished to the Secretary pursuant to the provisions of this Article IX shall be made periodically and sent to the Administrator.

Article X

Penalties and Damages

Section 1. Any violation of any provision of the Code by any member of the Industry shall constitute a violation of the Code by such member.

Section 2. Recognizing that the violation by any member of the Code of any provision of Article VII or of Schedule E of the Code will disrupt the normal course of fair competition in the Industry and cause serious damage to other members of the Code and that it will be impossible fairly to assess the amount of such damage to any member of the Code, it is hereby agreed by and among all members of the Code that each member of the Code which shall violate any such provision shall pay to the Treasurer as an individual and not as treasurer of the Institute, in trust, as and for liquidated damages the sum of $10 per ton of any products sold by such member in violation of any such provision.

Section 3. Except in cases for which liquidated damages are fixed in the Code and in cases which shall give rise to actions in tort in favor of one or more members of the Code for damages suffered by it or them, the Board of Directors shall have power from time to time to establish the amount of liquidated damages payable by any member of the Code upon the commission by such member of any act constituting an unfair practice under the Code and a list of the amounts so fixed shall from time to time be filed with the Secretary. Upon the commission by any member of the Code of any act constituting an unfair practice under the Code and for which liquidated damages are not fixed in the Code or which does not give rise to an action in tort in favor of one or more members of the Code for damages suffered by it or them, such member shall become liable to pay to the Treasurer as an individual and not as treasurer of the Institute, in trust, liquidated damages in the amount at the time established by the Board of Directors for such unfair practice and specified in the list then on file with the Secretary as aforesaid.

Section 4. All amounts so paid to or collected by the Treasurer under this Article X or under Section 4 of Schedule E of the Code shall be held and disposed of by him as part of the funds collected under the Code and each member of the Code not guilty of the unfair practice in respect of which any such amount shall have been paid or collected shall be credited with its pro rata share of such amount on account of any and all assessments (other than damages for violation of any provision of the Code) due or to become due from such member under the Code, or, in the case of any excess, as shall be determined by the Board of Directors, such pro rata share to be computed on the same basis as the last previous assessment made against such member on account of the expenses of administering the Code as hereinbefore in Section 5 of Article VI provided. All rights of any person who shall at any time be the Treasurer in respect of any amounts which shall be payable to him because of the commission by any member of the Code of any act constituting an unfair practice under the Code, whether payable under the provisions of this Article X or under any other provision of the Code, shall pass to and become vested in his successor in office upon the appointment of such successor.

Section 5. Each member of the Code by becoming such member agrees with every other member thereof that the Code constitutes a valid and binding contract by and among all members of the Code, subject, however, to the provisions of Section 6 of Article XI, and that, in addition to all penalties and liabilities imposed by statute, any violation of any provision of the Code by any member thereof shall constitute a breach of such contract and shall subject the member guilty of such violation to liability for liquidated damages pursuant to the provisions of the Code. Each member of the Code by becoming such member thereby assigns, transfers and delivers to the Treasurer as an individual and not as treasurer of the Institute, in trust, all rights and causes of action whatsoever which shall thereafter accrue to such member under the Code for such liquidated damages by reason of any violation of the Code by any other member thereof, and thereby designates and appoints, the Treasurer as such individual the true and lawful

attorney-in-fact of such member to demand, sue for, collect and receipt for any and all amounts which shall be owing to such member in respect of any such right or cause of action, and to compromise, settle, satisfy and discharge any such right or cause of action, all in the name of such member or in the name of the Treasurer individually, as he shall elect.

Section 6. Anything in the Code to the contrary notwithstanding, the Board of Directors by the affirmative vote of two-thirds of the whole Board may waive any liability for liquidated damages imposed by or pursuant to any provision of the Code for any violation of any provision thereof, if in its discretion it shall decide that such violation was innocently made and that the collection of such damages will not to any material extent tend to effectuate the policy of Title I of the National Industrial Recovery Act.

Article XI

General Provisions

Section 1. Any notice, demand or request required or permitted to be given to or made upon any member of the Code shall be sufficiently given if mailed postage prepaid addressed to such member at the address of such member on file with the Secretary. A waiver in writing, signed by any member of the Code of any such notice, demand or request and delivered to the Secretary shall be deemed to be the equivalent of a notice, demand or request duly given or made, whether or not such waiver was signed and delivered before the time when such notice, demand or request was required or permitted to be given or made.

Section 2. Nothing contained in the Code shall be deemed to constitute the members of the Code partners for any purpose. None of the members of the Code shall be liable in any manner to anyone for any act of any other member of the Code or for any act of the Board of Directors, the Treasurer or the Secretary, or any committee, officer or employee appointed under the Code. None of the members of the Board of Directors or of any committee appointed under the Code, nor the Treasurer, nor the Secretary, nor any officer or employee appointed under the Code, shall be liable to anyone for any action or omission to act under the Code, except for his wilful misfeasance or nonfeasance. Nothing contained in the Code shall be deemed to confer upon anyone other than a member of the Code any right, claim or demand whatsoever not expressly provided by statute against any member of the Code or against the Treasurer or the Secretary or any officer or employee appointed under the Code.

Section 3. As soon as members of the Industry which would, if then members of the Code, have the right to cast at least 75% of all the votes that might be cast at a meeting of the members of the Code, if all members of the Industry were then members of the Code and present at such meeting, shall sign and deliver to the Secretary letters substantially in the form set forth in Schedule A annexed hereto, the Board of Directors shall submit the Code to the President pursuant to the provisions of Title I of the National Industrial Recovery Act and, upon the approval of the Code by the

President pursuant to the provisions of such Title I, it shall constitute a binding contract by and among the members of the Code and the provisions thereof shall be the standards of fair competition for the Industry; subject, however, to amendment or termination as hereinafter in Article XII provided, and subject also to the provisions of Section 6 of this Article XI.

Section 4. To the extent required or made possible by or under the provision of Title I of the National Industrial Recovery Act the provisions of the Code shall apply to and be binding upon every member of the Industry whether or not such member shall be a member of the Code. No member of the Industry which shall not also be a member of the Code shall be entitled to vote at any meeting of members of the Code or to any other right, power or privilege provided in the Code for the members thereof.

Section 5. The Board of Directors shall have power from time to time to interpret and construe the provisions of the Code, including, but without any limitation upon the foregoing, the power to determine what are products within the meaning of that term as it is used in the Code. Any interpretation or construction placed upon the Code by the Board of Directors shall be final and conclusive upon all members of the Code.

Section 6. The members of the Code recognize that, pursuant to subsection (b) of Section 10 of the National Industrial Recovery Act, the President may from time to time cancel or modify any order, approval, license, rule or regulation issued under Title I of said Act.

Article XII

Amendments--Termination

Section 1. The Code may be amended at any time in the manner in this Section 1 provided. The changing of any schedule hereto or the addition hereto of any new schedule shall constitute an amendment of the Code. All amendments shall be proposed by the Board of Directors by vote of the majority of the members thereof at the time in office. Each amendment so proposed shall be submitted to a meeting of the members of the Code which shall be called for such purpose upon notice given in accordance with the provisions of Section 1 of Schedule B and Section 1 of Article XI of the Code. If at such meeting members of the Code having the right to cast at least 75% of all the votes that might be cast at such meeting, if all the members of the Code were present thereat, shall vote in favor of the adoption of such amendment, such amendment shall be submitted by the Board of Directors to the President for approval, if approval thereof by him shall then be required by law. Every such amendment shall take effect as a part of the Code upon the adoption thereof by the members of the Code as above provided and the approval thereof by the President, if approval thereof by him shall be required as aforesaid.

Section 2. The Code shall continue in effect for a period of ninety (90) days after the effective date thereof, in order to afford to the President an opportunity to determine upon the recommendations of the representatives of the Administration, for which provision has heretofore been made in Article VI, whether its provisions will effectuate the purposes of Title I of the National Industrial Recovery Act, as further defined in said Article VI, subject, however, to amendment at any time as hereinbefore provided, and also subject to the reserved power of the President to cancel or modify his approval thereof. The Code shall continue in effect after the expiration of said period of ninety (90) days in the absence of the exercise of such reserved power on the part of the President, or in the absence of the exercise by members of the Code of the power which they hereby reserve to terminate the Code at any time after the expiration of said period of ninety (90) days by the same action by them as is above provided for the amendment thereof. When so terminated all obligations and liabilities under the Code shall cease, except those for unpaid assessments theretofore made in accordance with the provisions of the Code and those for liquidated damages theretofore accrued under any provision of the Code.

Schedule A

Form of Letter of Assent to the Code

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To the Secretary of
American Iron and Steel Institute,
Empire State Building,
New York, N. Y.

Dear Sir:

The undersigned, desiring to become a member of the Code of Fair Competition of the Iron and Steel Industry, a copy of which is annexed hereto marked Annex A, hereby assents to all of the provisions of said Code (hereinafter referred to as the Code), and, effective as of the date on which the Code shall have been approved by the President of the United States of America as therein provided, or as of the date on which this letter shall have been delivered, if delivery thereof shall have been made subsequent to the date of which the Code shall have been approved by said President as aforesaid, by the signing and delivery of this letter becomes a member of the Code and effective as aforesaid hereby agrees with every person, firm, association and corporation who shall then be or thereafter become a member of the Code that the Code shall constitute a valid and binding contract between the undersigned and all such other members.

Effective as aforesaid, pursuant to Section 5 of Article X of said

Code, the undersigned (a) hereby assigns, transfers and delivers to the Treasurer under the Code, as an individual and not as treasurer of American Iron and Steel Institute, in trust, all rights and causes of action whatsoever hereafter accruing to the undersigned under the Code for liquidated damages by reason of any violation thereof by anyone, and (b) hereby designates and appoints said Treasurer as such individual the true and lawful attorney-in-fact of the undersigned, to demand, sue for, collect and receipt for any and all amounts which shall be owing to the undersigned in respect of any such right or cause of action, and to compromise, settle, satisfy and discharge any such right or cause of action, all in the name of the undersigned or in the name of said Treasurer, as said Treasurer shall elect.

For all purposes of Section 1 of Article XI of the Code the address of the undersigned, until it shall file with the Secretary of American Iron and Steel Institute written notice of a change of such address, shall be as set forth at the foot of this letter.

Very truly yours,

Address:

Schedule B

The Rules and Regulations in Respect of Meetings of Members of the Code

Section 1. A meeting of members of the Code may be called and held at any time by order of the Board of Directors or, by members of the Code having the right to cast at least 50% of all the votes that might be cast at such meeting, if all the members of the Code were present thereat, on not less than three days' notice to each of such members stating the time and place of such meeting and the purposes thereof.

Section 2. At each meeting of the members of the Code each member thereof shall have as many votes as shall equal the quotient obtained by dividing by 500,000 the aggregate amount in dollars of the invoiced value of the products delivered by such member for consumption within the United States during the preceding calendar year. Fractions in such quotient shall be disregarded; provided, however, that each member of the Code shall have at least one vote. All questions as to the number of votes which each member of the Code shall be entitled to cast at any meeting of the members thereof shall be determined by the Board of Directors. Any person or firm who shall be a member of the Code may, and any association or corporation which shall be a member of the Code shall, vote at meetings of the members of the Code by proxy in writing duly executed by such member and filed with the Secretary. Any such proxy may be for a specified meeting or be a general proxy for any or all meetings that may be held until such proxy shall have been revoked by an instrument in writing duly executed by the member of the Code which gave such proxy and filed with the Secretary.

Section 3. At each meeting of the members of the Code, members thereof having the right to cast at least 75% of all the votes that might be cast at such meeting, if all the members of the Code were present thereat, shall constitute a quorum for the transaction of business at such meeting.

Schedule C

Description of Wage Districts

1. Eastern District:

Comprises that part of the United States which is north of the State of Virginia and east of a line drawn north and south through the most easterly point of Altoona, Pennsylvania; that part of the State of Maryland which is west of such line; and the Counties of Monongalia, Marion and Harrison in the State of West Virginia.

2. Johnstown District:

Comprises Cambria County and the City of Altoona in the State of Pennsylvania.

3. Pittsburgh District:

Comprises the Counties of Westmoreland, Fayette, Greene, Washington, Allegheny, Beaver, Butler, Armstrong and Jefferson and that part of the County of Clearfield which is west of a line drawn north and south through the most easterly point of Altoona, all in the State of Pennsylvania.

4. Youngstown Valley District:

Comprises the Counties of Lawrence, Mercer and Venango in the State of Pennsylvania and the Counties of Trumbull, Mahoning and Columbiana in the State of Ohio.

5. North Ohio River District:

Comprises the cities along the Ohio River north of the City of Parkersburg, West Virginia, and the Counties of Belmont and Jefferson in the State of Ohio and the Counties of Marshall, Ohio, Brook and Hancock in the State of West Virginia.

6. Canton, Massillon and Mansfield District:

Comprises the Counties of Stark, Tuscarawas, Summit and Richland in the State of Ohio.

7. Cleveland District:

Comprises the Counties of Ashtabula, Lake, Cuyahoga and Lorain in the State of Ohio.

8. Buffalo District:

Comprises that part of the State of New York west of a line drawn north and south through the most easterly point of Altoona, Pennsylvania, and Erie County in that State.

9. Detroit-Toledo District:

Comprises the Counties of Seneca and Lucas in the State of Ohio and the Counties of Monroe, Lenawee, Jackson, Wayne, Oakland, Macomb and Washtenaw in the State of Michigan.

10. South Ohio River District:

Comprises the State of Kentucky, the City of Parkersburg, West Virginia, the cities along the Ohio River south of said City, the Counties of Guernsey, Muskingum, Jackson and Butler in the State of Ohio and the County of Wood in the State of West Virginia.

11. Indiana-Illinois-St. Louis District:

Comprises all the State of Indiana, except the County of Lake; all the State of Illinois, except the Counties of Lake and Du Page and the Chicago Switching District; the City of St. Louis and the County of St. Louis in the State of Missouri; and the County of Rock in the State of Wisconsin.

12. Chicago District:

Comprises the Chicago Switching District; the Counties of Lake and Du Page in the State of Illinois; the County of Lake in the State of Indiana; and the Counties of Kenosha, Racine and Milwaukee in the State of Wisconsin.

13. Southern District:

Comprises all that part of the United States south of the States of Maryland, West Virginia, Kentucky and Missouri, and the States of Texas and Oklahoma, but does not include the County of Jefferson in the State of Alabama.

14. Birmingham District:

Comprises the County of Jefferson in the State of Alabama.

15. Kansas City District:

Comprises the County of Jackson in the State of Missouri.

16. Duluth District:

Comprises the County of St. Louis in the State of Minnesota.

17. Colorado District:

Comprises the State of Colorado.

18. Utah District:

Comprises the State of Utah.

19. Seattle District:

Comprises the County of King in the State of Washington and the County of Multonomah in the State of Oregon.

20. Los Angeles District:

Comprises the County of Los Angeles in the State of California.

Schedule D

Minimum Rates of Pay for Common Labor

	Cents per Hour
1--Eastern District	35
2--Johnstown District	37
3--Pittsburgh District	40
4--Youngstown Valley District	40
5--North Ohio River District	40
6--Canton, Massillon and Mansfield District	37
7--Cleveland District	40
8--Buffalo District	38
9--Detroit-Toledo District	40
10--South Ohio River District	37
11--Indiana-Illinois-St. Louis District	37
12--Chicago District	40
13--Southern District	25
14--Birmingham District	27
15--Kansas City District	35
16--Duluth District	37
17--Colorado District	40
18--Utah District	39
19--Seattle District	38
20--San Francisco District	37
21--Los Angeles District	35

Schedule E

Concerning Prices and Terms of Payment

Section 1. Wherever used in the Code the terms hereinafter in this Section 1 defined shall, unless the context shall otherwise clearly indicate,

have the respective meanings hereinafter in this Section 1 set forth. The definition of any such term in the singular shall apply to the use of such term in the plural and vice versa.

(a) Until Schedule F of this Code shall have been amended as in Article XII of the Code provided, the term "basing point" for any product means one of the places listed in such Schedule F as a basing point for such product. Thereafter the term shall mean one of the places listed in such Schedule F as at the time in effect as a basing point for such product.

(b) The term "base price" of any product means the price for such product f.o.b. a basing point, before any extras in respect of such product shall be added or any discounts for early payment or deductions shall be allowed or made.

(c) The term "period of free credit" means the period of time between the date of a shipment of a product to the purchaser of such product and the date from and after which such purchaser shall be required to pay interest on the purchase price of such product or any part thereof which shall not have been paid prior to the expiration of such period.

(d) The term "date of invoice" means the date of the invoice of any product.

(e) The term "discount for early payment" means the amount of the deduction allowed for the payment of an invoice of products before the expiration of the period of free credit in respect thereof.

(f) The term "an affiliated group" means one or more corporations connected through stock ownership with a common parent corporation, if (1) at least 75% of the stock of each of such corporations (except such common parent corporation) is owned directly by one or more of the other corporations, and (2) such common parent corporation owns directly at least 75% of the stock of at least one of the other corporations. The term "an affiliated company of a member of the Code" means (1) a corporation which is one of an affiliated group that also includes such member of the Code, or (2), in case the member of the Code is a person, firm or association, a corporation at least 75% of the stock of which is owned by such member. For the purposes of this paragraph (f) the term "stock" does not include non-voting stock which is limited and preferred as to dividends.

Section 2. Each member of the Code shall, within ten days after the effective date of the Code, file with the Secretary a list showing the base prices for all its products, and from and after the expiration of such ten days such member shall at all times maintain on file with the Secretary a list showing the base prices for all its products and shall not make any change in such base prices except as provided in this

Schedule E. Each such list shall state the date upon which it shall become effective, which date shall be not less than ten days after the date of filing such list with the Secretary; provided, however, that the first list of base prices filed by any member of the Code as above provided shall take effect on the date of filing thereof. None of the base prices shown in any list filed by any member of the Code as herein provided shall be changed except by the filing by such member with Secretary of a new list of its base prices, which shall become effective on the effective date therein specified which shall not be less than ten days after the date on which such new price list shall have been so filed. In the case of pipe of sizes or kinds which are sold on a list and discount basis, for the purposes of this Section 2 the list of base prices shall consist of a price list and one or more basing discount lists, from which the base prices of such pipe shall be determined; provided, however, that in the case of oil country tubular goods there shall be filed in lieu of a list of base prices a price list and one or more basing discount lists from which the delivered prices of such goods shall be determined.

Section 3. Except as hereinafter otherwise provided in respect of standard Tee rails of more than 60 pounds per yard, angle bars and rail joints, the base price for any product shown in any list of base prices filed by a member of the Code in accordance with the provisions of the foregoing Section 2 shall be as follows: (a) If such member shall operate a plant for the production of such product which is located as a basing point for such product, f.o.b. such basing point, or (b), if such member shall operate a plant for the production of such product which is not located at a basing point for such product, f.o.b. the basing point for such product nearest in terms of all-rail freight rates to such plant, or (c), if any Gulf or Pacific Coast port shall be listed as a basing point in Schedule F of the Code as at the time in effect, f.o.b. cars dock such port. Except as otherwise provided in this Schedule E, each member of the Code shall file with the Secretary and maintain on file with him a list showing the base price for each of its products for each basing point for such product at which a plant of such member for the manufacture of such product shall be located and for each basing point for such product which shall be nearest in terms of all-rail freight rates to any plant of such member for the manufacture of such product not located at a basing point for such product; and, if any Gulf or Pacific Coast port shall be listed in such Schedule F as a basing point for a product, such member may show in such list its base price for such product at such basing point. All base prices shown in the list so filed shall constitute the published base prices of such member for the products and for the basing points shown in such list. Except as aforesaid, none of the members of the Code shall file any list of base prices showing any price for any of its products other than the base price for such product f.o.b. the basing point or basing points for such product as hereinbefore provided. The published base price of each such member for any product (except standard Tee rails of more than 60 pounds per yard, angle bars and rail joints) for any basing point for such product other than that or those

shown in the list of base prices so filed by such member shall be deemed to be the lowest base price for such product at such other basing point which shall be shown in the list of base prices filed by any other member of the Code and then in effect. All base prices for standard Tee rails of more than 60 pounds per yard and all base prices for angle bars and rail joints shall be f.o.b. mill of the producer thereof, or, in the case of rails, angle bars and rail joints carried by water from any Atlantic Coast or Gulf port to any Gulf or Pacific Coast port, c.i.f. the port of destination. Lists of prices filed with the Secretary pursuant to the foregoing Section 2 and to this Section 3 shall be open to inspection at all reasonable times by anyone.

Section 4. Except as otherwise provided in this Schedule E of the Code, all prices quoted and billed by any member of the Code for any product (except standard Tee rails of more than 60 pounds per yard, angle bars and rail joints and oil country tubular goods, which shall be quoted and billed as hereinafter provided) sold by such member from and after ten days after the effective date of the Code shall be delivered prices, which (disregarding the extras, if any, required by and the deductions, if any, that may be made pursuant to, the provisions of the Code) shall be not less than the sum of (a) the published base price of such member for such product effective at the time of the sale thereof and (b) the all-rail published tariff freight rate charges from the basing point on which such base price is based to the place of delivery to the purchaser thereof or, (1) if such place of delivery shall be at such basing point, the published tariff switching charges to such place of delivery from the plant of any member of the Code for the production of such product at such basing point nearest in terms of such switching charges to such place of delivery; or, (2) if such place of delivery shall be at a Gulf or Pacific Coast port that is listed in Schedule F as a basing point, the published tariff switching charges to such place of delivery from the dock for discharging products nearest in terms of such switching charges to such place of delivery; provided, however, that (a) in any case which such product shall be delivered by other than all-rail transportation, the member of the Code selling such product may allow to the purchaser a reduction in the delivered price otherwise chargeable under this Section 4 at a rate which shall have been previously approved by the Board of Directors and filed with the Secretary; and (b) in the case of plates, shapes or bars intended for fabrication for an identified structure, for the purpose of establishing the delivered price thereof, the place of delivery shall be deemed to be the freight station at or nearest to the place at which such structure is to be erected, and not the shop of the fabricator; and (c) subject as hereinafter in this Section 4 provided, if any list of prices filed with the Secretary at the time in effect shall show a specified rate of deduction by any member of the Code pursuant to this Schedule E and from the price of any product to be allowed by such member on any sale of such product to any jobber for resale, such member may, from and after the date on which such list shall have become effective, allow to any jobber to whom such member shall sell such product for resale a reduction from such price to such jobber for such product at a rate not greater than the rate so shown in such list; and provided,

further, that the Board of Directors by the affirmative vote of three-fourths of the whole Board may permit any member of the Code in special instances or members of the Code generally to sell or contract for the sale of any product produced by such member or members at a base price which shall be less than the then published base price of such member or members for such product at the respective basing points therefor of such members, if by such vote such Board shall determine that the making of such sale or contract of sale at such less base price is in the interest of the Industry or any other branch of industry and will not tend to defeat the policy of Title I of the National Industrial Recovery Act by making possible the using or employing of an unfair practice. The Board of Directors shall prescribe such rules and regulations as it shall deem proper by which the question of whether or not any purchaser or prospective purchaser of any product for resale is a jobber shall be determined, and in granting any permission as aforesaid, the Board of Directors shall prescribe such rules and regulations in respect thereof as in its judgment shall be necessary in order to insure to the members of the Code that action in accordance with any such permission shall not result in an unfair practice; and hereafter such Board may by like vote rescind any permission so granted or modify, cancel or add to any rules and regulations so prescribed. The Secretary shall send to each member of the Code a copy of all such rules and regulations prescribed by such Board with respect to the determination of the question of whether a purchaser or prospective purchaser for resale is a jobber and he shall give notice in writing of all action so taken by the Board of Directors to each member of the Code which at the time shall be engaged in producing the kind of product in respect of which any such permission was granted. Before any member of the Code shall allow any such deduction to any jobber or sell for resale to any purchaswer who shall not be a jobber any product pursuant to any permission so granted to such member, such member shall secure from such jobber or such other purchasar an agreement substantially in a form theretofore approved by the Board of Directors and filed with the Secretary whereby such jobber or other purchaser will not, without the approval of the Board of Directors, sell such product to any third party at a price which at the time of the sale thereof shall be less than the price at which such member might at that time sell such product to such third party, and (b) that, if such jobber or such other purchaser shall violate any such agreement, he shall pay to the Treasurer as an individual and not as treasurer of the Institute, in trust, as and for liquidated damages the sum of $10 per ton of any product sold by such jobber or such other purchaser in violation thereof. Except as aforesaid, all prices quoted and billed by any member of the Code for standard Tee rails of more than 60 pounds per yard, angle bars and rail joints sold by it from and after ten days after the effective date of the Code (disregarding extras and deductions as aforesaid) shall be not less than the published base price of such member for such rails, angle bars and rail joints effective at the time of the sale thereof f.o.b. mill of the producer, or, in the case of rails, angle bars or rail joints carried by water from any Atlantic Coast for Gulf port to any Gulf or Pacific Coast port, c.i.f. the port of destination. Except as aforesaid, all prices quoted and billed by any member of the Code for oil country tubular goods

sold by it from and after ten days after the effective date of the Code (disregarding extras and deductions as aforesaid) shall be not less than the delivered price for such goods determined by deducting from the published list price of such member for such goods effective at the time of the sale thereof the published basing discounts applicable to such goods effective at such time. In case at the effective date of the Code any valid, firm contract to which a member of the Code shall be a party shall exist for a definite quantity of any product or for all or a substantial part of the requirements of the purchaser thereof (a) at a fixed price, or (b) at a price that can be definitely determined in accordance with the provisions of such contract, or (c) at the market price for such product at the date when a definite quantity thereof shall be specified under such contract and such contract covered a sale of 20% or more of the total quantity of such product produced and sold in the United States in the calendar year 1932, it is recognized that such contract will tend to establish the market price for such product during the remainder of its life and that if the other members of the Code which produce and sell such product shall by the foregoing provisions of this Schedule E be prevented from selling such product during the remainder of the life of such contract at as favorable a price and on as favorable terms and conditions as those provided for in such contract, then unfair competition as between the member of the Code which shall be a party to such contract and the other members thereof and also as between the other party to such contract and its competitors may result. Accordingly, anything herein to the contrary notwithstanding during the remainder of the life of such contract any member of the Code may sell such product at a price and on terms and conditions as favorable as (but not more favorable than) the price, terms and conditions provided for in such contract.

Section 5. The Board of Directors shall have power on its own initiative, or on the complaint of any member of the Code, to investigate any base price for any product at any basing point shown in any list filed with the Secretary by any member of the Code, and for the purpose of the investigation thereof to require such member to furnish such information concerning the cost of manufacturing such product as the Board of Directors shall deem necessary or proper for such purpose. If the Board of Directors after such investigation shall determine that such base price is an unfair base price for such product at such basing point, having regard to the cost of manufacturing such product, and that the maintenance of such unfair base price may result in unfair competition in the Industry, the Board of Directors may require the member of the Code that filed the list in which such unfair base price is shown to file a new list showing a fair base price for such product at such basing point, which fair base price shall become effective immediately upon the filing of such list. If such member of determination by the Board of Directors file a new list showing such fair base price for such product at such basing point, the Board of Directors shall have power to fix a fair base price for such product at such basing point, which fair base price, however, shall not be more than the base price of any other member of the Code at that time effective for such product at such basing point and in respect of which the Board of Directors

shall not theretofore have begun an investigation or a complaint shall not have been made by any member of the Code. When the decision of such Board fixing such fair base price shall have been filed with the Secretary and the Secretary shall have given notice thereof to such member, such fair base price shall be the base price of such member for such product at such basing point, until it shall have been changed as in the Code provided. A notice of all decisions of the Board of Directors under this Section 5, together with the reasons therefor, shall be filed with the President.

Section 6. The Board of Directors by the affirmative vote of a majority of the whole Board may establish maximum rates of discount and maximum periods of free credit, other than those specified in Schedule G of the Code, which may be allowed by any member of the Code with respect to the sale of any product or products to jobbers for resale as permitted by the provisions of Section 4 of this Schedule E. The Secretary shall give notice in writing of any action taken by the Board of Directors in accordance with the provisions of this Section 6 to each member of the Code which at the time shall be engaged in producing the kind of product in the sale of which any such other rates or periods shall have been established by such action. Except as aforesaid and except as elsewhere in this Schedule E of the Code otherwise provided, the maximum rates of discount for early payment and the maximum periods of free credit which may be allowed by any member of the Code shall be the rates and periods specified in said Schedule G. Except as aforesaid, all invoices for products sold by any member of the Code after the effective date of the Code shall bear interest from and after the expiration of the period of free credit at a rate which shall be not less than the then current rate established by the Board of Directors and filed with the Secretary. Nothing in the Code contained shall prevent any member of the Code from allowing credit to any purchaser or allowing any purchaser to delay payment in respect of any invoice for a longer period than the maximum period of free credit specified in such Schedule G or such other maximum period as shall be established in accordance with the provisions of this Section 6; but, if any member of the Code shall allow credit to any purchaser or allow any purchaser to delay payment in respect of any invoice for a period longer than such maximum period of free credit, then such member shall charge and collect interest on the amount in respect of which credit shall be so allowed or the payment of which shall have been so delayed at a rate not less than the current rate established and filed as aforesaid.

Section 7. Except as in this Schedule E of the Code otherwise provided, any extras added to, and any deductions made from, the base price for any product sold by any member of the Code in determining its quoted or billed price for such product shall be uniform for all members of the Code. The rates of such extras and of such deductions shall be those approved from time to time by the Board of Directors as being in accordance with the trade practice customary in the Industry at the effective date of the Code and as meeting the requirements of the Code. Lists showing such rates shall be filed with the Secretary and

shall be open to inspection at all reasonable times by anyone. In case any member of the Code shall sell any product to which any such rate of extra or deduction shall apply, except as aforesaid, such member shall add an extra at a rate which shall not be less than the rate of extra applicable to such product theretofore approved by the Board of Directors as aforesaid and at the time in effect and none of the members of the Code shall make any deduction at a rate that shall be more favorable to the purchaser of such product than the rate of deduction applicable to such product theretofore approved by the Board of Directors as aforesaid and at the time in effect; provided, however, that nothing in the Code contained shall be so construed as to prevent any member of the Code from selling or contracting to sell any product for use by the purchaser thereof in the manufacture of articles for shipment in export trade within the meaning of the term "export trade" as it is used in the Export Trade Act under an agreement by such member of the Code with such purchaser that, when such articles shall have been shipped in such export trade, such member of the Code shall make an allowance at a rate approved by the Board of Directors and a statement of the approval of which shall theretofore have been filed with the Secretary, which rate in the opinion of such Board shall be sufficient to enable such member of the Code or such purchaser to meet foreign competition in the sale and delivery of such product or such articles, as the case may be.

Section 8. The practice of shipping products on consignment may result in unfair competition and it is the intention of the Industry to eliminate such practice as soon as possible after the effective date of the Code. Accordingly, except to the extent necessary to carry out arrangements existing on the effective date of the Code and which shall have been reported to the Board of Directors, from and after such date none of the members of the Code shall deliver products, other than pipe, on consignment except to an affiliated company of such member. All arrangements for the delivery by any member of the Code of products on consignment (other than consignments to an affiliated company of such member and other than consignments of pipe) existing on the effective date of the Code shall be terminated on or before June 30, 1934, and all stock held on consignment on that date shall either be sold to the consignee or possession thereof shall be taken by the consignor. The Board of Directors shall investigate problems presented in the elimination of consigned stocks of pipe and shall recommend to the members of the Code which shall be parties to then existing arrangements with respect to shipments of pipe on consignment (other than consignments from a member of the Code to an affiliated company) such action in respect thereof as such Board shall deem proper and designed to accomplish the termination of all such arrangements (other than as aforesaid) at as early a date as possible.

Section 9. For all purposes of this Schedule E, a delivery of any product made pursuant to a contract of sale shall be regarded as a sale thereof made at the time of the making of such contract. Except in the case of a product required by a purchaser for a specified definite contract of such purchaser with a third party at a fixed price, none of the members

of the Code shall make any contract of sale of any product by the terms of which the shipment of such product is not required to be completed before the end of the calendar quarter-year ending not more than four months after the date of the making of such contract.

Section 10. Nothing in the Code contained, however, shall be so construed as to prevent the performance by any member of the Code of a valid, firm contract existing and to which it is a party at the effective date of the Code for a definite quantity of any product or for all or a substantial part of the requirements of the purchaser thereof (a) at a fixed price, or (b) at a price that can be definitely determined in accordance with the provisions of such contract, or (c) at the market price for such product at the date when a definite quantity thereof shall be specified under such contract. If any member of the Code shall at the effective date thereof be a party to any contract for the sale of any product by such member which by its terms is to continue after December 31, 1933, and by its terms the price to be paid for such product by the other party to such contract is related to the market price thereof at the date when a definite quantity thereof may be specified under such contract and may be less than such market price, then such member shall within thirty days after the effective date of the Code file a copy of such contract with the Secretary in order that the Board of Directors may consider it and take such action in respect thereof consistent with the rights and obligations of the parties to such contract as such Board shall deem proper.

Section 11. A sale made by any member of the Code indirectly through any affiliated company of such member shall be deemed to be a sale made by such member.

Section 12. Nothing in the Code contained shall be deemed to apply to or affect the sale of any product for direct shipment in export trade by any member of the Code within the meaning of the term "export trade" as it is used in the Export Trade Act or, unless and to the extent that the Board of Directors shall otherwise determine, the sale of any product by any such member for direct shipment to the Phillippines, Hawaii or Porto Rico or other insular possessions of the United States of America.

Section 13. If and to the extent requested by the Administrator, all decisions of, permissions and approvals given by and rules and regulations made by, the Board of Directors pursuant to any provisions of this Schedule E shall be reported to him.

Schedule F

List of Basing Points

The places hereinafter in this Schedule F listed are the basing points for the respective products named.

Axles--Rolled or Forged:	
Pittsburgh, Pa.	Birmingham, Ala.
Chicago, Ill.	
Bale Ties:	
Pittsburgh, Pa	Duluth, Minn.
Cleveland, O.	Gulf Ports*
Chicago, Ill.	Pacific Coast Ports**
Birmingham, Ala.	
Bars--Alloy Steel, Hot Rolled:	
Pittsburgh, Pa.	Canton, O.
Buffalo, N. Y.	Massillon, O.
Chicago, Ill.	Bethlehem, Pa.
Bars--Cold Finished, Carbon and Alloy:	
Pittsburgh, Pa.	Chicago, Ill.
Buffalo, N. Y.	Gary, Ind.
Cleveland, O.	
Bars--Concrete Reinforcing:	
Pittsburgh, Pa.	Birmingham, Ala.
Buffalo, N. Y.	Youngstown, O.
Cleveland, O.	Gulf Ports
Chicago, Ill.	Pacific Coast Ports
Gary, Ind.	
Bars--Iron:	
Pittsburgh, Pa.	Reading, Pa.
Troy, N. Y.	Danville, Pa.
Jersey City, N. J.	Burham, Pa.
Dover, N. J.	Creighton, Pa.
Philadelphia, Pa.	Richmond, Va.
Columbia, Pa.	Louisville, Ky.
Lebanon, Pa.	Terre Haute, Ind.
Bars--Merchant Steel:	
Pittsburgh, Pa.	Gary, Ind.
Buffalo, N. Y.	Birmingham, Ala.
Cleveland, O.	Gulf Ports
Chicago, Ill.	Pacific Coast Ports**

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*Except as otherwise shown in this Schedule F, the Gulf Ports are Mobile, Alabama; New Orleans, La.; and Orange, Port Arthur, Beaumont, Baytown, Galveston and Houston, Texas.

**The Pacific Coast ports are San Pedro (includes Wilmington) and San Francisco (includes Oakland), Cal.; Portland, Ore.; and Seattle (includes Tacoma), Washington; and San Diego, Cal.; for Plates and Structural Shapes only.

Bars--Tool Steel:

Pittsburgh, Pa.	Bethlehem, Pa.
Syracuse, N. Y.	

Girder Rails:

Lorain, O.	Steelton, Pa.

Ingots, Blooms, Billets and Slabs--Alloy:

Pittsburgh, Pa.	Canton, O.
Buffalo, N. Y.	Massillon, O.
Chicago, Ill.	Bethlehem, Pa.

Ingots, Blooms, Billets and Slabs--Carbon:

Pittsburgh, Pa.	Birmingham, Ala.
Buffalo, N. Y.	Youngstown, O.
Cleveland, O.	Chicago, Ill.
Gary, Ind.	

Light Rails--60 Lbs. or Less per Yard:

Pittsburgh, Pa.	Chicago, Ill.
Birmingham, Ala.	

Mechanical Tubing:

Pittsburgh, Pa.	Detroit, Mich.
Canton, O.	Milwaukee, Wis.
Shelby, O.	

Pig Iron--Foundry, Malleable, Open Hearth Basic and Bessemer:

Buffalo, N. Y.	Bethlehem, Pa.
Cleveland, O.	Swedeland, Pa.
Chicago, Ill.	Birdsboro, Pa.
Birmingham, Ala.	Hamilton, O.
Youngstown, O.	Jackson, O.
Neville Is., Pa.	Toledo, O.
Sharpsville, Pa.	Granite City, Ill.
Erie, Pa.	Detroit, Mich.
Duluth, Minn. (except open hearth basic)	
Provo, Utah	Everett, Mass.
Sparrows Point, Md.	

Pig Iron--Low Phosphorus:

Birdsboro, Pa.	Standish, N. Y.
Steelton, Pa.	Johnson City, Tenn.

Pipe--Rigid Electrical Conduit:

Pittsburgh, Pa.	Evanston, Ill.

Pipe--Standard, Line Pipe and Oil Country Tubular Products:

Pittsburgh, Pa.	Lorain, O.
Gary, Ind.	

Plates:	
Pittsburgh, Pa.	Coatesville, Pa.
Chicago, Ill.	Sparrows Point, Md.
Gary, Ind.	Gulf Ports
Birmingham, Ala.	Pacific Coast Ports
Railroad Tie Plates:	
Pittsburgh, Pa.	Minnequa, Colo.
Buffalo, N. Y.	Weirton, W. Va.
Chicago, Ill.	Portsmouth, O.
Birmingham, Ala.	Steelton, Pa.
St. Louis, Mo.	Pacific Coast Ports
Kansas City, Mo.	
Railroad Track Spikes:	
Pittsburgh, Pa.	Kansas City, Mo.
Buffalo, N. Y.	Minnequa, Colo.
Cleveland, O.	Philadelphia, Pa.
Chicago, Ill.	Lebanon, Pa.
Birmingham, Ala.	Columbia, Pa.
Youngstown, O.	Richmond, Va.
Portsmouth, O.	Jersey City, N. J.
Weirton, W. Va.	Pacific Coast Ports
St. Louis, Mo.	
Sheet Bars:	
Pittsburgh, Pa.	Youngstown, O.
Buffalo, N. Y.	Canton, O.
Cleveland, O.	Sparrows Point, Md.
Chicago, Ill.	
Sheets:	
Pittsburgh, Pa.	Birmingham, Ala.
Gary, Ind.	Pacific Coast Ports
Skelp:	
Pittsburgh, Pa.	Youngstown, O.
Buffalo, N. Y.	Coatesville, Pa.
Chicago, Ill.	Sparrows Point, Md.
Sheet Steel Piling:	
Pittsburgh, Pa.	Gulf Ports
Buffalo, N. Y.	Pacific Coast Ports
Chicago, Ill.	
Strip Steel--Cold-Rolled:	
Pittsburgh, Pa	Worcester, Mass.
Cleveland, O.	
Strip Steel--Hot-Rolled:	
Pittsburgh, Pa.	Chicago, Ill.

Structural Shapes:

Pittsburgh, Pa.	Bethlehem, Pa.
Buffalo, N. Y.	Gulf Ports
Chicago, Ill.	Pacific Coast Ports
Birmingham, Ala. (standard shapes only)	

Tin Plate, Tin Mill Black Plate and Terne Plate:

Pittsburgh, Pa.	Pacific Coast Ports
Gary, Ind.	

Tubes--Boiler:

Pittsburgh, Pa.

Tube Rounds:

Pittsburgh, Pa.	Chicago, Ill.
Buffalo, N. Y.	Birmingham, Ala.
Cleveland, O.	

Wheels, Car, Rolled Steel:

Pittsburgh, Pa.	Chicago, Ill.

Wire--Drawn, except as hereinafter specified:

Pittsburgh, Pa.	Worcester, Mass.
Cleveland, O.	Gulf Ports
Chicago, Ill.	New Orleans, La.
Birmingham, Ala.	Galveston, Tex.
Anderson, Ind.	Houston, Tex.
Duluth, Minn.	Pacific Coast Ports

Wire Nails and Staples, Barbed Wire and Wire Fencing:

Pittsburgh, Pa.	Anderson, Ind.
Cleveland, O.	Duluth, Minn.
Chicago, Ill.	Gulf Ports
Birmingham, Ala.	Pacific Coast Ports

Wire Rods:

Pittsburgh, Pa.	Chicago, Ill.
Cleveland, O.	Birmingham, Ala.

Wire--Spring:

Pittsburgh, Pa.	Worcester, Mass.
Cleveland, O.	Pacific Coast Ports
Chicago, Ill.	

Wire--Telephone:

Pittsburgh, Pa.	Trenton, N. J.
Cleveland, O.	Worcester, Mass.
Waukegan, Ill.	Sparrows Point, Md.
Muncie, Ind.	

Schedule G

Maximum Rates of Discount for Early Payment and Maximum Periods of Free Credit

Maximum Rates of Discount for Early Payment:

In the case of products shipped from plants located east of the Mississippi River to Pacific Coast Ports and which shall be invoiced from such plants--½ of 1%, if the invoice of such products shall be paid within 25 days from the date of such invoice; in all other cases--½ of 1%, if the invoice of such products shall be paid within 10 days from the date of such invoice; provided, however, in the latter cases, that any member of the Code may allow such discount of ½ of 1% for payment within 10 days on the basis of settlements three times in each month, as follows:

(1) On invoices for products dated from the 1st to the 20th, inclusive, in any month, such discount may be allowed on payment of such invoices on or before the 20th of such month;

(2) On invoices for products dated from the 11th to the 20th, inclusive, in any month, such discount may be allowed on payment of such invoices on or before the 30th of each month; and

(3) On invoices for products dated from the 21st to the end of any month, such discount may be allowed on payment of such invoices on or before the 10th of the next following month.

Any discount allowed in accordance with the provisions of this Schedule G shall apply only to the invoiced value of the products specified therein and not to any part of the transportation charges on such products.

Maximum Periods of Free Credit:

In the case of products shipped from plants located east of the Mississippi River to Pacific Coast ports and which shall be invoiced from such plants--45 days; in all other cases--30 days.

Schedule H

List of Unfair Practices

For all purposes of the Code the following described acts shall constitute unfair practices:

A. Making or promising to any purchaser or prospective purchaser of any product, or to any officer, employee, agent or representative of any such purchaser or prospective purchaser, any bribe, gratuity, gift or other payment or remuneration, directly or indirectly.

B. Procuring, otherwise than with the consent of any member of the Code, any information concerning the business of such member which is properly regarded by it as a trade secret or confidential within its organization, other than information relating to a violation of any provision of the Code.

C. Imitating or simulating any design, style, mark or brand used by any other member of the Code.

D. Using or substituting any material superior in quality to that specified by the purchaser of any product or using or substituting any material or any method of manufacture not in accord with any applicable law, rule or regulation of any governmental authority.

E. Cancelling in whole or in part, or permitting the cancellation in whole or in part of, any contract of sale of any product, except for a fair consideration, or paying or allowing to any purchaser in connection with the sale of any product any rebate, commission, credit, discount, adjustment or similar concession other than as is permitted by the Code and specified in the contract of sale.

F. Disseminating, publishing or circulating any false or misleading information relative to any product or price for any product of any member of the Code, or the credit standing or ability of any member thereof to perform any work or manufacture or produce any product, or to the conditions of employment among the employees of any member thereof.

G. Inducing or attempting to induce by any means any party to a contract with a member of the Code to violate such contract.

H. Aiding or abetting any person, firm association or corporation in any unfair practice.

I. Making or giving to any purchaser of any product any guaranty or protection in any form against decline in the market price of such product.

J. Stating in the invoice of any product as the date thereof a date later than the date of the shipment of such product, or including in any invoice any product shipped on a date earlier than the date of such invoice.

K. Making any sale or contract of sale of any product under any description which does not fully describe such product in terms customarily used in the industry.

L. Rendering to any purchaser of any product in or in connection with the sale of such product any service, unless fair compensation for such service shall be paid by such purchaser.

M. Any violation of any other provision of the Code, whether or not therein expressed to be such, or using or employing any practice not hereinabove in this Schedule H described which the Board of Directors by the affirmative vote of three-fourths of the whole Board shall have declared to be a practice that would tend to defeat the policy of Title I of the National Industrial Recovery Act and, therefore, an unfair practice, and of which determination by such Board the Secretary shall have given notice to the members of the Code and to the President.

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Manuscripts

The major part of this study has been based upon the files and records of the National Recovery Administration located in the National Archives. These materials include general administrative and statistical records and also the correspondence and reports for each code group. Therefore, the consolidated files for the iron and steel industry were most valuable for this study. These papers are rich not only in studying the official position of the NRA and the Steel Code Authority but also the opinion of steel executives, other businessmen and steelworkers as revealed in voluminous correspondence. It is unfortunate, however, that the American Iron and Steel Institute, which acted as the Steel Code Authority during the life of the NRA, retained its records and refused to make them available to scholars. The NRA records in the National Archives, however, contain a large amount of correspondence with the Steel Code Authority and many copies of the Board's meetings, regulations, and correspondence with steel industry members.

The use of the records of the National Recovery Administration has been simplified by a number of excellent guides published by the National Archives. These guides are a Pamphlet Accompanying Micro-copy No. 213: Document Series of the National Recovery Administration, 1933-1936. Washington: National Archives Microfilm Publications, 1956; Preliminary Inventories. Number 44 (Records of the National Recovery Administration). Compiled by Homer L. Calkin, Meyer H. Fishbein and Leo Pascal. Washington: National Archives, 1952; and Special Lists. Number 12. (Select List of Documents in the Records of the National Recovery Administration). Compiled by Homer C. Calkin and Meyer H. Fishbein. Washington: National Archives, 1954.

Other manuscript materials used include the records of the Department of Labor in the National Archives which contain correspondence from steelworkers both before and after the adoption of the Steel Code. The papers of Donald Richberg, while few in number, shed light on his role as an official of the NRA and as a government representative on the Steel Code Authority. Senator William E. Borah's papers were valuable in revealing his activity as a critic of the monopolistic implications of the National Recovery Act and letters from his constituents reflect public views on the NRA. Both the Borah and Richberg manuscripts are in the Library of Congress. I also used the papers of Oklahoma Congressman P. L. Gassaway which reveal a legislator's view on the vicissitudes of the NRA and the manuscripts of Patrick J. Hurley which show the opinion of a former Republican official toward the National Recovery Act. These papers are located in the Manuscripts Collection of the University of Oklahoma Library.

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