Wild charges, name calling, impossible demands - they do not win over the support of the public. However, well-prepared statements which bristle with facts and figures, arguments which are based on sound reason and logic - they win respect and support from the general public. During the negotiation, every charge or announcement by management should be met with reasonable statements, facts and figures. That is why preparation for the negotiation is possibly more important than the negotiation itself. Proper preparation, assembly of the facts, make the negotiation easier and a better agreement possible more rapidly.

Contrariwise, trade union officials who rush into a negotiation meeting without knowing too much about the entire matter will find that management can not only confuse the issue, but management can go to the newspaper and the public and say: "We cannot deal with these people. They are unreasonable. They do not know what they are talking about."

Facts, not fists, build sound collective agreements.

Reference Books in Japanese

Trade Union Primer, by S. Matsui, Labor Ministry, ¥ 42.
Collective Bargaining and Contracts, S. Matsui.
Arbitration of Grievances, Labor Ministry, ¥ 20.
Trade Union Agreements, Welfare Ministry (republication of U.S. Department of Labor Pamphlet No. 686), ¥ 23.
The Chrysler Contract, Central Labor College, Shiba ku, Tokyo, ¥ 6.
The General Motors Contract, Ditto, ¥ 15.

Sample Grievance Machinery Clauses

Master agreement between the Pacific Coast Shipbuilders and the Metal Trades Department of the American Federation of Labor. Signed 23 April 1941, at Seattle, Washington.

Par. 18 - Grievances and Complaints

"All grievances or complaints not settled by mutual agreement must be reduced to writing and filed with the employer through the union's representative within fifteen (15) days, if possible, but in no event later than thirty (30) days after the pay day following the occurence causing the complaint or grievance. Any grievance or complaint not so filed shall be demand to have been waived and shall not be entitled to consideration. When grievances cannot be settled with the foreman in charge, they shall be taken up with the management by the business representative and shop committee representing the union having the grievance. If they are not adjusted between them, the metal trades council shall attempt to adjust the matter with management. If this fails, the servises of the United States Conciliation Service, Department of Labor, shall be speedily secured. Should no agreement be reached, arbitration should be resorted to as hereinafter stated."

Par. 19 - Arbitration of Dispute

"In the event the parties shall be unable to adjust any grievance or dispute arising under this agreement, such grievance or dispute shall be referred to an arbitration committee consisting of one representative of the employer, one representative of the local metal trades council, and a third member to be chosen by those two. In the event the two arbiters designated by the parties shall be unable to agree upon the third arbiter within five (5) days, the Senior District Judge of the United States District Court of the district in which the plant is located shall be requested to nominate one principal and four alternates, all of whom shall be impartial persons qualified to act as arbiters, Employer and the council shall each have the choice of rejecting the names of two of the five nominees, and the remaining one-fifth shall be selected as the third arbiter. In the event the same nominee shall be rejected by the both parties, leaving more than one nominee on the list, the one nearest the top of the list, as submitted by the district judge shall act as the third arbiter. Any expense of arbitration shall be borne by and divided equally between the unions and the employer. The decision of a majority of the arbitration committee shall be final and binding upon the parties hereto. Such decision shall be within the scope and terms of this agreement, but shall not change any of its terms or conditions. The arbiters shall in their decision specify whether or not the decision is retroactive and the effective date thereto..."

Appalachian Joint Wage Agreement, United Mine Workers of America, American Federation of Labor

Signed 1 April 1941 at Washington, D. C.
Settlement of Disputes

"Should differences arise between the mine workers and the operators as to the meaning and application of the provisions of this agreement, or should differences arise about matters not specifically mentioned in this agreement, or should any local trouble of any kind arise at any mine, there shall be no suspension of work on account of such differences, but an earnest effort shall be made to settle such differences immediately:

"First: Between the aggrieved party and the mine management;

"Second: Through the management of the mine and the mine committee (of the union);

"Third, by a board consisting of four members, two of whom shall be designated by the mine workers and two by the operators.

"Should the board fail to agree, the matter shall be referred to an umpire selected by said board. Should the board be unable to agree on the selection of an umpire, he shall be designated by the International President of the United Mine Workers of America and the President of the Operators' Association affected. The decision in any event of the umpire shall be final...

"Pending the hearing of disputes, the mine workers shall not cease work because of any dispute; and a decision reached at any stage of the proceeding shall be binding on both parties hereto, and shall not be subject to reopening by any other party of either association except by mutual agreement.

"Expenses and salary incident to the service of an umpire shall be paid jointly by the operators and the mine workers in each district."

Agreement between the San Francisco-Oakland Newspaper Guild, Local 52, American Newspaper Guild, C.I.O. and the Oakland Post Enquirer
San Francisco Call-Bulletin, San Francisco Chronicle,
San Francisco Examiner, and San Francisco News,
Signed 27 January 1945 at San Francisco, California

Section 11: Adjustment of Disputes

"A grievance committee, designated by the guild, shall be established to settle amicably with the publisher, or his representative, all grievances arising under this contract.

"If the executive committee and the publisher cannot reach mutual agreement within five (5) days (this time may be extended by mutual agreement) from the date on which a dispute is first considered by them, the two sides shall, upon motion of either side, appoint two (2) representatives each, to constitute a board of arbitration, and select a fifth member from the panel of three (3) arbitrators set up hereinafter, who shall act as chairman of said arbitration board. In the event of a deadlock in the selection, the arbitrator shall be chosen by lot.

"The board of arbitration so formed shall proceed with all dispatch to settle the dispute. Rules of procedure shall be determined by the board of arbitration.

"It shall require the affirmative vote of a majority of the board to decide the issues and, when signed by such majority, the decision shall be binding on the parties hereto. Any expense incurred jointly through arbitration shall be shared equally be the publisher and the build.

"In case of a vacancy on the arbitration board from any cause, said vacancy shall be filled immediately by the appointment of a new member by the party in whose representation the vacancy occurs. Either party may at any time make substitution for either of its appointees on the board of arbitration.

"The panel of three(3) arbitrators herein shall be selected by agreement of the parties within thirty (30) days after the signing of this contract, if the panel of three (3) has not been completed within the time limit provided, the

selection shall, upon the motion of either party, be made by ..... (Note: The name of the person is agree upon by the union and management. It is usual practice to name a judge, a college professer, or some other disinterested person who will be fair and impartial to both management and the trade union concerned.)

Labor Agreement between the Arizona General Contractors and the American Federation of Labor Building and Construction Trade Unions, Signed 1 May 1943 at Phoenix, Arizona.

Section V - Procedure for the Settlement of Grievances and Disputes

"(a) That the unions shall appoint a working employee as craft job steward on each job, whose duty it will be to receive all grievances or disputes from employees and adjust them with the superintendent in charge of the job or other designated contracter's representative. The job steward shall not be discriminated against in any manner by the company or his agents because of or an account of his activities in presenting and adjusting grievances or disputes.

"(b) That the settlement or adjustment of any grievance or dispute by any craft job steward or any special representative with any superintendent or contracter shall be limited to the particular contract on which it is made and shall not constitute a precedent for or against any union or employee, or any contracter on the job.

"(c) That in the event said grievance or dispute is not satisfactorily settled by the employee or his representative and the superintendent in charge within twenty-four hours from the time it is reported, it shall be referred to the business or special representative of the appropriate union or unions. Said business or special representative shall then attempt to adjust said grievance or dispute with the contracter perferring the work. If said grievance or dispute is not satisfactority settled by said business or special representative and the contracter within three days from the date the grievance arose, it shall be referred to a joint labor-management committee which shall be composed of three representatives appointed by the unions and three representatives appointed by the contracters, provided, that a representative of the craft and a member of the construction firm involved in the controversy may represent his respective organization at the hearings. The said joint labor-management committee shall hear and review any grievance or dispute submitted to it and adjudicate the same. The decision of said joint labor-management committee shall require an affirmative vote of not less thon four committeemen, and shall be final and binding upon all parties to the agreement. In the event that the required vote of four committeemen cannot be secured within three days after the submission of the said grievance or dispute to said joint labor-management committee, the six committeemen shall select a seventh person who shall act as arbiter and all the parties hereto agree that the decisions that come from such arbitration shall be final and binding upon them. If within twenty-four hours after said committeemen attempt to choose a seventh person to act as arbiter they are unable to agree upon such seventh person, the seventh person shall be chosen in the following manner:

"The local conciliator of the United States Department of Labor shall immediately be requested by said committee to submit the names of five persons qualified to act as arbitors. When said list has been presented, the representatives of the unions and the representatives of the contractors shall each have the choise of rejecting the names of two of these five persons, the remaining fifth one shall be selected as the arbiter within twenty-four hours after submission of said list, and it shall be mendatory for said arbiter to render a decision within 48 hours thereafter unless an extension of time is mutually agreed to by the parties hereto. All disputes (not only employee grievances) between the parties regarding the interpretation or performance of any of the terms of conditions of this agreement shall be submitted to arbitration in the manner provided in this section.

"(d) That any expenses of arbitration shall be borne by and divided equally between the unions and the contracters..."

Glossary

Arbiter: A person with the power to judge. The term applies to the person who makes the decision in a case referred to him by joint agreement of the union and the management.

Arbitration: To make a decision. When management and labor cannot reach an agreement through collective bargaining, they may decide to call in a third party who will review the question under dispute, hear both sides of the agrument, and then make a final decision. Management and the union agree in advance as to the selection of the person or persons to make the decision, and both agree beforehand to accept the decision of the arbitor as final and binding on both parties.

Bargain: The final agreement reach between two persons, or two groups, regarding a financial transaction, terms of wages, or other economic matters. To bargain is to come to terms as to what each party will receive, and what each party will give. Each party will try to give as little as possible, to receive as much as possible. The economic equality of both parties is essential for just and fair bargaining.

Collective Agreement: An agreement or contract stipulating the wages to be paid, hours to be worked, working conditions, union status, and other relations including a number of workers who are treated as a unit. It is also at times called a Union Contract.

Conciliation: To draw together. Conciliation is the process whereby a disinterested party meets with management and labor, at their request or otherwise, during a labor dispute or collective bargaining conferences and, by cooling tempers and having each side explain its position, aids in the reaching of an agreement. The conciliator makes no proposals. He merely asks questions of both parties and makes suggestions which may clarify the problem and aid in working out a peaceful solution.

Contract: To bind together. A contract is an agreement which draws the management and the union together, and regulates the terms of employment, wages hours, and working conditions. It is usually a written document, in force for a stated period of time, and is signed by the representatives of both the union and management.

Contract Clause: A group of words in a contract stating a distinct idea. A basic contract clause usually determines wages, hours, and over-all working conditions. A modifying contract clause states how wages will be paid, when they will be paid, and where they will be paid. Contract clauses are used to separate the contract into convenient sections.

Cost-of-Living: The weekly or monthly cash budget which it is determined by actual pricing of the necessities a certain type family will require for a certain area at a certain time in order to maintain their life in frugal comfort and carry on the minimum functions of family and social life. It is based on current food prices, rent, heat, light, and other family expenses. It is sometimes called the minimum amount of money needed by a certain type family in a given area to maintain life and health during a given period.

Deadlocked: When management and labor have reached a point in negotiations where neither side will yield on one or more points, and no agreement can be reached, the negotiations are said to be deadlocked.

Fact Finding Board: A group of disinterested public spirited persons set up by the union, by the management, or both, or by either government or some independent agency for the purpose of making a study of a labor dispute in order to determine the true facts about wages, hours, profits, and other socio-economic conditions affecting or causing a labor dispute. The purpose is to publish the findings in order that the public may know the truth about the matter and make a decision as to whether management, or labor, or neither, has the better case.

Individual Bargaining: When the worker by himself approaches the employer and tries to reach an agreement as to wages, hours, and working conditions. Individual bargaining presupposes that the strength and power of the worker is as strong as that of the employer.

Local Union: If a majority of the persons employed in a given mine, mill, or factory form a union, the unit covering that plant, mine, or mill is termed a "local union." This distinguishes it from the national union, which is a collection of all local unions in the nation from the same craft or industry, federating for purposes of union solidarity, strength, and united action.

Local Union: If a majority of the persons employed in a given mine, mill, or factory form a union, the unit covering that plant, mine, or mill is termed a "local union." This distinguishes it from the national union, which is a collection of all local unions in the nation from the same craft or industry, federating for purposes of union soliderity, strength, and united action.

Management: The person or persons who control a factory, mine, or mill. Sometimes it may be the owner of the factory, the stockholders, or the person hired by the owner to conduct business, hire and fire, and otherwise act on behalf of the owners of the factory or business.

Mandate: A command or order. When the members of a trade union pass a motion or a resolution or a report directing that the officers of the union follow a certain course of action, the officer or officers then have a "mandate" from the union membership to take action.

Mediation: To be in the middle. When management and labor are deadlocked, mediation takes place when a disinterested person enters the deadlocked negotiation, as a friend of both parties, makes a study of each side, and then makes definite proposals which may aid in an agreement being reached. The mediator seeks to find points of agreement in order to bring about a peaceful settlement of the dispute.

National Union: If all the local unions in the same craft or industry or other combination of local unions federate on a national basis, they then form what is called a national union. It is the basic trade union unit on the national level.

Peaceful Picketing: The members of a striking union, or their friends, appear in the area at or near the site of the plant which has been struck in order to advertise the strike and demand that the employer conclude negotiations with the trade union. No attempt is made to engage in violence of any sort. It is simply a demonstration of solidarity at the scene of the strike. The advertising is done with leaflets, signs, banners, speaches, and other means of public persuasion.

Picket Line: When a number of striking unionists and their friends form a line around or in front of a struck mine, mill, or factory, they carry signs or banners announcing that they are on strike for certain given reasons. No other union person will have any dealings with the company, nor will they cross the picket line until the dispute is settled. The picket line is used to prevent strikebreaking. Even if only one picket appears in front of a mine, mill or factory, union theory states that no other union person will violate the picket line. No force is used: picketing is moral persuasion.

Productivity: Refers to the amount of work which a given worker can turn out in a given period; or to the amount of goods, etc., which a certain factory can turn out during a given period under certain conditions. An inefficient factory has low productivity. A very efficient plant using all possible technical devices is said to have high productivity.

Public Opinion: What the public as a group believes to be true about a certain situation, act, or other social or economic or other matter. Public opinion on a certain matter, such as a labor dispute is what the typical citizen believes to be true. It may or may not have a relation to the true facts of the situation.

Public Relations: The series of acts which both the employer and the union perform in order to tell the general public the facts as they see them. The public is informed by each group through the newspapers, the radio, by leaflets, by speeches, and by all other media. A group or union which can inform a large part of the public on a specific issue is said to have good public relations. A group which cannot or does not inform the public, is said to have poor public relations.

Shop Steward System: A system developed by democratic trade unions whereby the workers in a department, section, building, or other convenient subdivision of a manufacturing or industrial plant elect one worker, the shop steward, who presents and argues for their grievances with the foreman or other representatives of the management. The custom in America is to have one shop steward for from twenty to fifty workers, but this depends entirely upon the circumstances and tradition.

Strike Meeting: Before or during a dispute with management, the union will call a special membership meeting in order to discuss whether or not the rank-and-file

authorize the calling of a strike in the event that all other means of settling the dispute proves to be unavailing.

Strike Vote: When a strike meeting has been called, a secret ballot vote is taken to determine whether or not to call a strike. If a majority of the workers in the plant vote of a strike, the entire membership of the union, or local, is bound to accept the decision. The strike meeting is secret, with no non-union members being allowed to hear the discussion. Sometimes the union may not announce the result of the strike vote to the public for time in order to keep management guessing. The strike vote strengthens the hand of the negotiating committee, for it is a mandate from the union rank-and-file.

Strikebreaker: A person who enters a factory which has been struck in order to go to work while the union members are still out on strike. Sometimes the employer will offer very high wages in order to attract unemployed person, and by the use of strikebreakers, ruin the strike of the union. Any union person who acts as a strikebreaker is usually expelled from his union, and may even be black-listed by other unions.

Trade Union Responsibility: A trade union is always striving to maintain and extend the rights of its members; but the idea of responsibility emphasizes that with expanded rights go expanded duties - duties to the membership, duties to the employer, duties to the people, and duties to the government. A trade union that accepts its duties and lives up to its promises is said to be a responsible trade union. A union which breaks contracts and ignores the common good is said to be an irresponsible trade union.

Wildcat Strike: When a group of workers in a plant precipitate a strike, or work stoppage, without the permission of their local union, or without a democratic vote, it is called a wildcat strike. If the national union constitution calls for national union approval of local union strikes, and a local union goes out on strike without national union authorization, it is a wildcat strike, and the national union will usually denounce the wildcat strike and refuse any help to the striking members. Wildcat strikes indicate a lack of trade unionism and a lack of union discipline.

Work Stoppage: When a group of workers in a factory votes to go on strike. At a previously decided time, all of the workers leave their places of work and either return to their home or form a picket line. This occurs when a labor dispute has been in progress, negotiations have broken down, and settlement is in no other way possible. As all other ways of reaching a settlement have been exhausted, the workers then stop work in order to demonstrate that they will not work until the employer grants them the conditions they are demanding.

Orientation Lectures
on
Labor Relations Legislation and Agencies

To be presented to the Central Labor Relations Committee
and
Prefectural Labor Relations Committees
in the Tokyo Area

II. THE NATIONAL LABOR RELATIONS BOARD IN UNITED STATES

Presented 18 October 1946

Prepared by
John R. Harold
Labor Relations Officer

ECONOMIC AND SCIENTIFIC SECTION
LABOR DIVISION
GHQ

NATIONAL LABOR RELATIONS ACT

(49 Stat. 440)

AN ACT

To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right to employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this Act -

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in Section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

The Trial

Someone is mistaken. Who? Up to this point the parties to the dispute are only giving their own side of the case. Now, therefore, the Board in Washington, in order to assist itself in finding out who is telling the truth, appoints a trained person as a trial examiner. This person is just like a judge. He sits before all the parties and asks each to prove his side of the story. In all probability the employer has hired a very good lawyer to help him. However, the government recognizes that the worker oftentimes does not have the money necessary to hire a good lawyer, so the government supplies one to him free. This person is the attorney for the Board who had helped the worker prepare his complaint. This man does nothing except handle cases like this and has had much experience in proving violations of the law by employers. He thus comes to the aid of the discharged worker and his Union and step by step, detail by detail, fact by fact, he proves before the Trial Examiner that the law was violated, that the employer fired the worker for Union activity. If the employer says he fired the man because he was incompetent, the Board attorney will bring out the fact that the man was an excellent worker for years, that he had been praised by the employer and promoted, and that it was not until the worker joined the union that the employer then for the first time thought him incompetent. All of these facts will tend to prove that the worker is telling the truth and that the employer is not.

Clear Decision

After everyone has had an opportunity to present, under oath, their side of the case to the Trial Examiner, he then makes up his mind and renders a report in writing with definite conclusions as to disputed facts and definite clear recommendations. These recommendations are forwarded to the Board in Washington and the Board, after reading the written record in the case and the recommendations of the Trial Examiner, renders a decision. This decision, too, is direct and conclusive.

In this case it might be decided that as the worker was discharged because he tried to start a Union, it would order the employer to rehire him, and to pay him any wages he had lost by reason of the discharge.

If the employer refused to obey the decision, he would be held in contempt of court, heavily fined and perhaps sent to jail.

Puppet Unions

If the Union had complained that the employer had sponsored a puppet Union, an employer-dominated Union, this same experienced Board attorney would assist the Union in preparing facts to prove this allegation and, if in fact, the Union was a puppet of the employer, then the Board after a hearing and recommendation by the Trial Examiner would order the puppet Union dissolved. The Board would forbid the employer to bargain with it and would declare void any contract between the employer and the puppet Union.

Representation Proceedings

In America our legislature through the National Labor Relations Act has also provided for elections among workers to determine whether they want a Union

and if so, which among two or more Unions they prefer. Sometimes the CIO and the AF of L are contesting for the same group of workers; sometimes there is an independent Union in the picture; sometimes there is only one Union involved. In any event, the law provides that the workers involved shall have the right to vote in a secret election as to what Union they wish to join. The National Labor Relations Board conducts this election, and when it is concluded, it is generally the rule that the winning Union bargains for all the workers and the losing Union withdraws. A considerable degree of stability in labor relations results through this machinery, and the workers are assured a free choice of their bargaining representative.

Whether this is necessary or advisable for Japan today is for the Japanese to say. It is enough to say here that if it is necessary or advisable, then the people of Japan have the facilities whereby they may amend the law to make it meet changing needs.

The Size of the Task

It would be well to appreciate the size of the National Labor Relations Board and the size and scope of its business

In the year ending June 1943, the Board had 889 employees. A total of 9,543 new cases was filed with the Board. Representation cases numbered 6,140 and discrimination cases, 3,403. Company-dominated unions were disestablished in 205 cases, and 7,111 workers were reinstated to remedy discriminatory discharges. Back pay amounting to $2,284,593.00 was paid to workers who had been discharged by employers in violation of the law. The Board conducted 4,153 elections with 1,126,501 workers voting in these elections. The Board spent $2,590,577.00 in salaries for its personnel, $418, 240.00 for traveling expenses for its personnel. Its printing bill came to $213,971.00, and its total expenses to $3,598,992.00. Yet this is not the complete picture for many states, in addition, have the same kind of law and the same kind of Board. In New York State, in one year, 1760 cases were filed, 900 of which concerned charges of discrimination. Over 25,000 people voted in worker elections conducted by the Board in that State. Much of the same work is going on in other States. All of this work must be done by your committees as well as the work prescribed by your Labor Relations Adjustment Law.

Conclusion

In America all of the work of the Board is governed by definite Rules and Regulations of the Labor Board. Your committees here in Japan have not formed governing rules and regulations in any complete sense. You will need to draft such rules as may be necessary and appropriate. Again they must be Japanese rules and regulations to meet a Japanese situation and to serve Japanese people. We should not and will not propose appropriate rules and regulations to you. We do submit, as Appendix One to this discussion, a complete copy of the rules and regulations of the National Labor Relations Board with the caution, however, that this is just the way one country saw fit to develop its labor relations. It may be of use for study or as a guide. The way in which it is to be used, however, rests in your hands. We will now briefly examine and discuss these rules.

THE NATIONAL LABOR RELATIONS BOARD

Introduction

Our last discussion considered the purpose of the National Labor Relations Act and various similar state acts. We may say then that these laws were created to assist the worker to organize and bargain collectively. However, it is one thing to state a pious hope by way of enacting legislation, and it is entirely another thing to see that that law is adequately enforced. Let us see if in America the government really helps labor.

The National Labor Relations Board

The National Labor Relations Act created the National Labor Relations Board to enforce that Act. It is a Board composed of three men appointed by the President with the consent of the Senate. Two of the three members constitute a quorum and the Board can function in the absence of one member. This Board has been given the responsibility of seeing that workers are not discriminated against in their efforts to organize and bargain collectively, that unions are free and autonomous and not puppet employer dominated. The Board has the further duty and power to provide means whereby workers can indicate, by secret ballot, their choice between two unions where necessary. This Board has nothing to do directly with the adjustment of labor disputes which concern wages, hours or working conditions. Other agencies of government consider those problems and we will discuss them in detail later.

Independent

The National Labor Relations Board is independent and non-partisan. It is not part of any other government agency and its personnel are taken from all walks of life, not alone from government employees. It administers its own business independently and has no obligation to report to the legislative or executive branch of the government, except that once a year it files an annual report. The three members of the Board cannot be removed by anyone except after an extensive hearing and then only for neglect of duty. It is truly independent.

The three members of the Board sit like judges trying each case on its merits. There are many, many other people to help the Board in its work. To relieve the Board members of all administrative problems there is an Executive Secretary. He is responsible for all the details of the functioning of the Board. In turn, the work of the Board is divided among an Administrative Department. The Board has 24 Regional Offices throughout the country.

The Legal Division is charged with the review and analysis of records in Board cases, the preparation of decisions at the Board's direction, the conduction of litigation in the Courts and the general direction of the field attorneys throughout the country.

The Trial Examining Division is composed of Trial Examiners who sit, to assist the Board, as judges in individual cases and prepare intermediate reports and recommendations for the final decision of the Board.

The Field Division, which directs the activities of Regional Offices throughout the country, reviews and analyzes cases in the local region to assist the

National Board and carries on liaison activities with other government agencies.

The Information Division makes available to the public necessary data concerning the work of the Board and publicizes its work, so that all the people may know of its activities.

Procedure

The Board has drafted, at length, carefu detailed rules of procedure governing the manner in which individual cases are handled by it. These rules can be best illustrated by a supposed case in respect to a discrimination by an employer.

An Unfair Labor Practice

Suppose an employer learns that his workers are trying to organize a Union in his factory. He does not want the Union to succeed and he knows that the workers are afraid of losing their jobs. He, therefore, finds out who is the leader in the Union drive and he discharges that person as a lesson to others not to join the Union. Now the Union believes that the worker was discharged because he was organizing a Union and that, therefore, the employer has violated the law.

Informal Procedure

In America the discharged worker and his Union representative would go to the regional office of the Labor Board. The worker would tell his story to an agent of the Board. Then this agent would call in the employer for a separate conference and get his side of the story. Then he would call both sides together in a common meeting and see if there was any room for agreement. In this stage it is not a question of which side is right or wrong but whether, without deciding that issue, the parties can get together. Many times an employer will insist that he is right and yet be willing to go along with the Union and reinstate the man. Maybe the Union would be agreeable to this procedure, and the matter would end there.

Attorney for the Board

If, however, no agreement could be reached, say within one week, informal discussions would cease and the matter would be referred to the Attorney for the Board. The Union and the discharged worker would tell their story to a Board attorney. This attorney is a trained, experienced man who knows the difference between a fact and propaganda. He, therefore, goes over the facts with the discharged worker and assists him in preparing to prove that the employer discharged the worker because he was organizing a Union. The employer will claim that he discharged the worker because he was incompetent.

The next step is for the Board attorney to prepare a complaint in which he sets down in detail the allegations which will prove that the employer violated the law. Then the employer is given a copy of this complaint and he must answer it in writing. In all probability he will deny the allegations. So up to this point we have the worker charging that he was discharged for union activity and the employer saying that he was discharged for incompetence.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 133 approved June 14, 1935.

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board") which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as the chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civil-service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC 8. It shall be an unfair labor practice for an employer -

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6(a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in the National

Industrial Recovery Act (U.S.C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require, as a condition of employment, membership therein, if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10(c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10(e) or 10(f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the

Board its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts if, supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States and upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (USC, title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such a court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts if supported by evidence shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the act entitled "An act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity and for other purposes," approved March 23, 1932 (U.S.C., Supp. VII, title 29, secs. 101-115).

(i) Petitions filed under this act shall be heard expeditiously, and if possible within ten days after they have been docketed.

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10--

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 14. Wherever the application of the provisions of section 7(a) of the National Industrial Recovery Act (U.S.C., Supp. VII, title 15, sec. 707(a), as amended from time to time, or of section 77B, paragraphs (1) and (m) of the Act approved June 7, 1934 entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (1) and (m), as amended from time to time or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act this Act shall prevail: Provided, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect

SEC. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 16. This Act may be cited as the "National Labor Relations Act."

Approved, July 5, 1935.

APPENDIX I

NATIONAL LABOR RELATIONS BOARD
Rules and Regulations
Series 3
(Effective November 26, 1943)

"By virtue of the authority vested in it by the National Labor Relations Act, the National Labor Relations Board issued its Rules and Regulations on November 8, 1943. . . The following, in consolidated form, with headnotes, are those Rules and Regulations. . .

"Signed at Washington, D. C., this 26th day of November 1943."

H. A. MILLIS, Chairman,
GERARD D. REILLY, Member,
JOHN M. HOUSTON, Member.

* * * * * * *

Article I

DEFINITIONS

"Section 1. Terms defined in Section 2 of the Act.--The terms 'person,' 'employer,' 'employee,' 'representatives,' 'labor organization,' 'commerce,' 'affecting commerce,' and 'unfair labor practice,' as used herein, shall have the meanings set forth in Section 2 of the National Labor Relations Act, a copy of which Act is appended hereto.

"Sec. 2. Act, Board.--The term 'Act' as used herein shall mean the National Labor Relations Act, and the term 'Board' shall mean the National Labor Relations Board.

"Sec. 3. Region.--The term 'Region' as used herein shall mean that part of the United States or any Territory thereof fixed by the Board as a particular Region.

"Sec. 4. Regional Director.--The term 'Regional Director' as used herein shall mean the agent designated by the Board as Regional Director for a particular Region.

"Sec. 5. Trial Examiner.--The term 'Trial Examiner' as used herein shall mean the Board, its member, agent, or agency conducting the hearing.

"Sec. 6. State.--The term 'State' as used herein shall include all States, Territories, and possessions of the United States and the District of Columbia."

Article II

PROCEDURE UNDER SECTION 10 OF THE ACT FOR THE PREVENTION OF UNFAIR LABOR PRACTICES

Charge

"Section 1. Who may file; withdrawal and dismissal.--A charge that any person has engaged in or is engaging in any unfair labor practice affecting commerce may be made by any person or labor organization. A charge may be withdrawn only with the consent of the Regional Director with whom such charge was filed or of the Board. Upon withdrawal of any charge, any complaint based thereon shall be dismissed by the Regional Director issuing the complaint, by the Trial Examiner designated to conduct the hearing, or by the Board.

"Sec. 2. Where to file.--Except as provided in Section 36 of this Article, such charge shall be filed with the Regional Director for the Region in which the alleged unfair labor practice has occurred or is occurring. A charge alleging that an unfair labor practice has occurred or is occurring in two or more Regions may be filed with the Regional Director for any of such Regions.

"Sec. 3. Form; jurat.--Such charge shall be in writing, the original being signed and sworn to before any notary public or other person duly authorized by law to administer oaths and take acknowledgments or any agent of the Board authorized to administer oaths or acknowledgments. Three additional copies of such charge shall be filed. 1/

"Sec. 4. Contents.--Such charge shall contain the following:

"(a) The full name and address of the person or labor organization making the charge.

"(b) The full name and address of the person against whom the charge is made (hereinafter referred to as the 'respondent').

"(c) A clear and concise statement of the facts constituting the alleged unfair labor practices affecting commerce."

Complaint

"Sec. 5. When and by whom issued; contents; service.--After a charge has been filed, if it appears to the Regional Director that formal proceedings in respect thereto should be instituted, he shall issue and cause to be served upon the respondent and the person or labor organization making the charge (hereinafter referred to as the 'parties') a formal complaint in the name of the Board stating the charges and containing a Notice of Hearing before a Trial Examiner at a place therein fixed and at a time not less than ten days after the service of the complaint. A copy of the charge upon which the complaint is based shall be attached to the complaint.

"Whenever the complaint contains allegations under Section 8 (2) of the Act, any labor organization referred to in such allegations shall be duly served with a copy of the complaint and Notice of Hearing. Whenever any labor organization, not the subject of Section 8 (2) allegation in the complaint, is a party to any contract with the respondent the legality of which is put in issue by any allegation of the complaint, such labor organization shall be made a party to the proceeding."

1/ A blank form for making a charge will be supplied by the Regional Director upon request.

"Sec. 6. Hearing; extension.--Upon his own motion or upon proper cause shown by any of the parties the Regional Director issuing the complaint may extend the date of such hearing.

"Sec. 7. Amendment.--Any such complaint may be amended upon such terms as may be deemed just; prior to the hearing, by the Regional Director issuing the complaint; at the hearing and until the case has been transferred to the Board pursuant to Section 32 of this Article, upon motion, by the Trail Examiner designated to conduct the hearing; and after the case has been transferred to the Board pursuant to Section 32 of this Article at any time prior to the issuance of an order based thereon, by the Board.

"Sec. 8. Withdrawal.--Any such complaint may be withdrawn before the hearing by the Regional Director on his own motion.

"Sec. 9. Review by Board of refusal to issue.--If, after the charge has been filed, the Regional Director declines to issue a complaint, the person or labor organization making the charge may obtain a review of such action by filing a request therefor with the Board in Washington, D. C., and filing a copy of such request with the Regional Director. This request shall contain a complete statement setting forth the facts and reasons upon which the request is based."

Answer

"Sec. 10. Answer to complaint; time for filing; contents; allegations not denied deemed admitted.--The respondent shall have the right, within ten days from the service of the complaint, to file an answer thereto. Such answer shall contain a short and simple statement of the facts which constitute the grounds of defense. The respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Any allegation in the complaint not specifically denied in the answer, unless the respondent shall state in the answer that the respondent is without knowledge, shall be deemed to be admitted to be true and may be so found by the Board.

"Sec. 11. Where to file; form; jurat; service upon other parties.--The answer shall be filed with the Regional Director issuing the complaint. It shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the post office address of the respondent. The respondent shall file three additional copies of the answer. Immediately upon filing his answer the respondent shall serve a copy thereof upon each of the other parties.

"Sec. 12. Extension of time for filing.--Upon his own motion or upon proper cause shown by the respondent the Regional Director issuing the complaint may by written order extend the time within which the answer shall be filed.

"Sec. 13. Amendment.--The respondent may amend his answer at any time prior to the hearing. During the hearing or subsequent thereto, he may amend his answer in any case where the complaint has been amended, within such period as may be fixed by the Trial Examiner or the Board. Whether or not the complaint has been amended, the answer may, in the discretion of the Trial Examiner or the Board, upon motion, be amended upon such terms and within such periods as may be fixed by the Trial Examiner or the Board."

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"Sec. 14. Motions; where to file prior to hearing and during hearing; contents; service on other parties.--All motions made prior to the hearing shall be filed in writing with the Regional Director issuing the complaint, and shall briefly state the order or relief applied for and the grounds for such motion. The moving party shall file an original and four additional copies of all such motions. Immediately upon the filing of such motion, the moving party shall serve a copy thereof upon each of the other parties. All motions made at the hearing (except motions to intervene, as provided in Section 19 of this Article) shall be made in writing to the Trial Examiner or stated orally on the record.

"Sec. 15. Rulings on motions; where to file motion after hearing and before transfer of case to Board.--The Trial Examiner designated to conduct the hearing shall rule upon all motions (except as provided in Sections 6, 12, 19, and 34 of this Article). The Trial Examiner may, before the hearing, rule on motions filed prior to the hearing, and shall file his ruling, and any order in connection therewith, with the Regional Director issuing the complaint. The Regional Director shall cause copies thereof to be served upon the parties. All motions filed subsequent to the hearing, but before the transfer of the case to the Board pursuant to Section 32 of this Article, shall be filed with the Trial Examiner by filing with the Chief Trial Examiner in Washington, D. C., and a copy thereof shall be served upon each of the parties. Rulings by the Trial Examiner on motions, and any orders in connection therewith, if announced at the hearing, shall be stated orally on the record; in all other cases such rulings and orders shall be issued in writing and filed with the Regional Director, who shall cause a copy of the same to be served upon each of the parties, or shall be contained in the Intermediate Report. Whenever the Trial Examiner has reserved his ruling on any motion, and the proceeding is thereafter transferred to and continued before the Board pursuant to Section 36 of this Article, the Board shall rule on such motion.

"Sec. 16. Motions; rulings and orders part of record; rulings not to be appealed directly to Board without special permission.--All motions, rulings, and orders shall become part of the record. Rulings by the Regional Director and by the Trial Examiner on motions, and by the Trial Examiner on objections, and orders in connection therewith, shall not be appealed directly to the Board except by special permission of the Board, but shall be considered by the Board in reviewing the record, if exception is taken to the rulings or order when made and included in the statement of Exceptions filed with the Board, pursuant to Section 33 of this Article.

"Sec. 17. Review of granting of motion to dismiss entire complaint; reopening of record.--If any motion in the nature of a motion to dismiss the complaint in its entirety is granted by the Trial Examiner, the party making the charge may obtain a review of such action by filing a request therefor with the Board in Washington, D. C., stating the grounds for review, and filing a copy of such request with the Regional Director and serving copies upon the parties. Unless such request for review is filed within ten days from the date of the order of dismissal, the case shall be considered closed. The Board may, upon motion made within a reasonable period and for good cause shown, reopen the record for further proceedings.

"Sec. 18. Filing of answer or other participation in proceeding not a waiver of rights.--The right to make motions or to make objection to rulings upon motions shall not be deemed waived by the filing of an answer or by other participation in the proceedings before the Trial Examiner or the Board."

Intervention

"Sec. 19. Intervention; requisites; rulings on motions to intervene.--Any person or labor organization desiring to intervene in any proceeding shall file a motion in writing, setting out the grounds upon which such person or organization claims to be interested. Prior to the hearing such motion shall be filed with the Regional Director issuing the complaint; during the hearing such motion shall be filed with the Trial Examiner. The original of such motion shall be signed and sworn to by the person or labor organization filing the motion, and shall be accompanied by four additional copies. Immediately upon filing such motion, the moving party shall serve a copy thereof upon each of the other parties. The Regional Director shall rule upon all such motions filed prior to the hearing, and shall cause a copy of said ruling to be served upon each of the parties, or shall refer the motion to the Trial Examiner for ruling. The Trial Examiner shall rule upon all such motions filed at the hearing or referred to him by the Regional Director, in the manner set forth in Section 15 of this Article. The Regional Director or the Trial Examiner, as the case may be, may by order permit intervention in person or by counsel to such extent and upon such terms as he shall deem just."

Witnesses, Depositions, and Subpenas

"Sec. 20. Examination of witnesses; depositions.--Witnesses shall be examined orally under oath, except that for good cause shown, after the issuance of a complaint, testimony may be taken by deposition.

"(a) Applications to take depositions shall be in writing setting forth the reasons why such depositions should be taken, the name and post-office address of the witness, the matters concerning which it is expected the witness will testify, and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken (for the purposes of this Section hereinafter referred to as the 'officer'). Such application shall be made to the Regional Director prior to the hearing, to the Trial Examiner during and subsequent to the hearing but before transfer of the case to the Board pursuant to Section 32 or 36 of this Article. Such application shall be served upon the Regional Director or the Trial Examiner, as the case may be, and upon the other parties, not less than seven days (when the deposition is taken within the continental United States) and fifteen days (if the deposition is to be taken elsewhere) prior to the time when it is desired that the deposition be taken. The Regional Director or Trial Examiner, as the case may be, shall, upon receipt of the application, if in his discretion good cause has been shown, make and serve upon the parties an order which will specify the name of the witness whose deposition is to be taken, the time when, the place where, and shall contain a designation of the officer before whom the witness is to testify, who may or may not be the same officer as that specified in the application. Such order shall be served upon all parties by the Regional Director or the Trial Examiner.

"(b) Such deposition may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, including any agent of the Board authorized to administer oaths. If the examination is held in a foreign country, it may be taken before any Secretary of Embassy or Legation, Consul General, Consul, Vice Consul, or Consular Agent of the United States.

"(c) At the time and place specified in said order the officer designated to take such deposition shall permit the witness to be examined and cross-examined under oath by all the parties appearing, and his testimony shall be reduced to typewriting by the officer or under his direction. All objections to questions or evidence shall be deemed waived unless made at the examination. The officer shall not have power to rule upon any objections but he shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was duly sworn by him, that the deposition is a true record of the testimony and exhibits given by the witness and that said officer is not of counsel or attorney to any of the parties nor interested in the event of the proceeding or investigation. If the deposition is not signed by the witness because he is ill, dead, cannot be found, or refuses to sign it, such fact shall be included in the certificate of the officer and the deposition may then be used as fully as though signed. The officer shall immediately deliver an original and two copies of said transcript, together with his certificate, in person or by registered mail to the Regional Director or the Trial Examiner, care of the Chief Trial Examiner, Washington, D. C., as the case may be.

"(d) The Trial Examiner shall rule upon the admissibility of the deposition or any part thereof.

"(e) All errors or irregularities in compliance with the provisions of this Section shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is or, with due diligence, might have been ascertained.

"(f) If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used like other depositions.

"Sec. 21. Issuance of subpenas; requisites of application for.--Any member of the Board may issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, or documents that relate to any matter under investigation or in question, before the Board, its member, agent, or agency, conducting the hearing or investigation. Applications for subpenas may be filed by any party prior to the hearing with the Regional Director. The Regional Director may grant or deny the application, or may refer it to the Trial Examiner, who may thereafter grant or deny the application. Application for subpenas made during the hearing shall be made to the Trial Examiner who may grant or deny the application. Such applications shall be timely, and shall specify the name of the witness and the nature of the facts to be proved by him, and, if calling for documents, must specify the same with such particularity as will enable them to be identified for purposes of production.

"Sec. 22. Payment of witness fees and mileage; fees of persons taking depositions.--Witnesses summoned before the Trial Examiner shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear and the person taking the deposition shall be paid by the party at whose instance the deposition is taken."

"Sec. 23. Who shall conduct; to be public unless otherwise ordered.--The hearing for the purpose of taking evidence upon a complaint shall be conducted by a Trial Examiner designated by the Board or the Chief Trial Examiner. At any time a Trial Examiner may be designated to take the place of the Trial Examiner previously designated to conduct the hearing. Such hearings shall be public unless otherwise ordered by the Trial Examiner.

"Sec. 24. Duty of Trial Examiner; powers of Board counsel and Trial Examiners.--It shall be the duty of the Trial Examiner to inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice affecting commerce as set forth in the complaint or amended complaint. Counsel for the Board, and the Trial Examiner, shall have power to call, examine and cross-examine witnesses, and to introduce into the record documentary or other evidence.

"Sec. 25. Rights of parties.--Any party shall have the right to appear at such hearing in person, by counsel, or otherwise, to call, examine and cross-examine witnesses, and to introduce into the record documentary or other evidence.

"Sec. 26. Rules of evidence not controlling.--In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

"Sec. 27. Stipulations of fact admissible.--In any such proceeding stipulations of fact may be introduced in evidence with respect to any issue.

"Sec. 28. Objection to conduct of hearing; how made; objections not waived by further participation.--Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing, accompanied by a short statement of the grounds of such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing.

"Sec. 29. Filing of briefs with Trial Examiner and oral argument at hearing.--Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall not be included in the stenographic report of the hearing unless the Trial Examiner so directs. Any party shall be entitled, upon request made at or before the close of the hearing, to file a brief with the Trial Examiner, who may fix the time for such filing.

"Sec. 30. Continuance and adjournment.--In the discretion of the Trial Examiner, the hearing may be continued from day to day, or adjourned to a later date or to a different place, by announcement thereof at the hearing by the Trial Examiner, or by other appropriate notice. The Chief Trial Examiner may, at any time prior to the service of the Intermediate Report, upon appropriate notice to the parties, direct that the hearing be reopened.

"Sec. 31. Contemptuous conduct; refusal of witness to answer questions.--Contemptuous conduct at any hearing before a Trial Examiner or before the Board shall be ground for exclusion upon the hearing. The refusal of a witness at any such hearing to answer any question which has been ruled to be proper shall, in the discretion of the Trial Examiner, be ground for the striking out of all testimony previously given by such witness on related matters."

Intermediate Report and Transfer of Case to the Board

"Sec. 32. Intermediate Report; contents; service; transfer of case to Board.--After a hearing for the purpose of taking evidence upon a complaint, the Trial Examiner shall prepare an Intermediate Report. Such report shall contain (a) findings of fact, and (b) recommendations as to what disposition of the case should be made, which may include, if it be found that the respondent has engaged in or is engaging in the alleged unfair labor practice, a recommendation for such affirmative action by the respondent as will effectuate the policies of the Act. The Intermediate Report shall be transmitted to the Chief Trial Examiner, who shall thereupon file the original of the Intermediate Report with the Board, and cause a copy thereof to be served upon each of the parties. Upon the filing of the Intermediate Report, the Board shall enter an order transferring the case to the Board and shall serve copies of the order, setting forth the date of such transfer, upon each of the parties and the Regional Director.

"The charge upon which the complaint was issued and any amendments thereto, the complaint and any amendments thereto, Notice of Hearing, answer and any amendments thereto, motions, rulings, orders, the stenographic report of the hearing, stipulations, exhibits, documentary evidence, and depositions, together with the Intermediate Report and Exceptions, shall constitute the record in the case."

Exceptions to the Record and Proceeding

"Sec. 33. Exceptions; time for filing; where to file; service on parties; extension of time; effect of failure to include matter in exception.--Within fifteen days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of this Article, any party or counsel for the Board may file with the Board at Washington, D. C., an original and four copies of a statement in writing setting forth such Exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of the statement of Exceptions and brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. Upon proper cause shown, the Board may extend the period within which to file a statement of Exceptions or brief.

"No matter not included in a statement of Exceptions may thereafter be objected to before the Board, and failure to file a statement of Exceptions shall operate as a submission of the case to the Board on the record.

"Should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten days after the date of the entry of the order transferring the case to the Board (or in Board cases the date of filing the Intermediate Report) pursuant to Section 32 of this Article. The Board shall notify the parties of the time and place for oral argument, if such permission is granted.

"Sec. 34. Filing of motion after transfer of case to Board.--All motions filed after the case has been transferred to the Board, pursuant to Section 32 of this Article, shall be filed with the Board in Washington, D. C., by transmitting an original and three copies thereof and serving additional copies upon the Regional Director and upon each of the parties."

"Sec. 35. Action of Board upon expiration of time to file Exceptions to Intermediate Report; oral arguments before and filing of briefs with Board; action of Board where Trial Examiner finds no unfair labor practices and no Exceptions filed; reopening of record.---Upon the expiration of the period for filing a statement of Exceptions and brief, as provided in Section 33 of this Article, the Board may decide the matter forthwith upon the record, or after oral argument, or may reopen the record and receive further evidence before a member of the Board or other agent or agency, or may close the case upon compliance with the recommendations of the Intermediate Report, or may make other disposition of the case.

"Where the Trial Examiner has found in his Intermediate Report that the respondent has not engaged in and is not engaging in any of the alleged unfair labor practices affecting commerce, and no Exceptions have been filed within the period for filing a statement of Exceptions as provided for in Section 33 of this Article, the case shall be considered closed. The Board may, upon motion made within a reasonable period and upon proper cause shown, reopen the record for further proceedings in accordance with this Section.

"Sec. 36. Proceedings before Board; filing charges with Board; transfer of charge and proceeding from Region to Board or to another Region; consolidation of proceedings in same Region; severance.---Whenever the Board deems it necessary in order to effectuate the purposes of the Act, it may permit a charge to be filed with it in Washington, D. C., or may, at any time after a charge has been filed with a Regional Director pursuant to Section 2 of this Article, order that such charge, and any proceeding which may have been instituted in respect thereto--

"(a) be transferred to and continued before it, for the purpose of consolidation with any other proceeding which may have been instituted by the Board, or for any other purpose; or

"(b) be consolidated for the purpose of hearing, or for any other purpose, with any other proceeding which may have been instituted in the same Region; or

"(c) be transferred to and continued in any other Region, for the purpose of consolidation with any proceeding which may have been instituted in or transferred to such other Region, or for any other purposes,

"(d) be severed from any other proceeding with which it may have been consolidated pursuant to this Section.

"The provisions of Sections 3 to 31, inclusive, of this Article shall, insofar as applicable, apply to proceedings before the Board pursuant to this Section, and the powers granted to Regional Directors in such provisions shall, for the purpose of this Section, be reserved to and exercised by the Board. After the transfer of any charge and any proceeding which may have been instituted in respect thereto from one Region to another pursuant to this Section, the provisions of Sections 3 to 35, inclusive, of this Article, shall apply to such charge and such proceeding as if the charge had originally been filed in the Region to which the transfer is made.

"Sec. 37. Procedure before the Board in cases over which it has assumed jurisdiction.--After a hearing for the purpose of taking evidence upon the complaint in any proceeding over which the Board has assumed jurisdiction in accordance with Section 36 of this Article, the Board may--

"(a) direct that the Trial Examiner prepare an Intermediate Report, in which case the provisions of Sections 32 to 35, inclusive, of the Article shall insofar as applicable govern subsequent procedure, and the powers granted to Regional Directors in such provisions shall for the purpose of this Section be reserved to and exercised by the Board; or

"(b) reopen the record and receive further evidence before a member of the Board, or other agent or agency; or

"(c) issue proposed findings of fact, proposed conclusions of law, and proposed order; or

"(d) make other disposition of the case.

"Within fifteen days from the date of filing the Intermediate Report pursuant to paragraph (a) of this Section, or from the date of issuance of proposed findings of fact, proposed conclusions of law, and proposed order, pursuant to paragraph (c) of this Section, any party or counsel for the Board may file with the Board at Washington, D. C., an original and four copies of a statement in writing setting forth such Exceptions to the Intermediate Report, or to the proposed findings, conclusions, and order, as the case may be, or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of the statement of Exceptions and brief the party or counsel for the Board filing the same shall serve copies with the Regional Director. Upon proper cause shown, the Board may extend the period within which to file a statement of Exceptions or brief.

"Should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten days after the date of the Intermediate Report or the date of the proposed findings, conclusions, and order, as the case may be. The Board shall notify the parties of the time and place for the oral argument, if such permission is granted. Thereafter the Board shall forthwith decide the matter or make other disposition of the case.

"Sec. 28. Modification or setting aside of order of Board before record filed in court; action thereafter.--Until a transcript of the record in a case shall have been filed in a court, within the meaning of Section 10 of the Act, the Board may at any time upon reasonable notice modify or set aside, in whole or in part, any findings of fact, conclusions of law, or order made or issued by it. Thereafter the Board may proceed pursuant to Section 36 or 37 of this Article, or make any other disposition of the case."

Article III

PROCEDURE UNDER SECTION 9 (C) OF THE ACT FOR THE INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES

"Section 1. Who may file; where to file; withdrawal of petition; form;

jurat.—A petition to investigate and certify under Section 9(c) of the Act the name or names of representatives designated or selected for the purpose of collective bargaining may be filed by an employee or any person or labor organization acting on behalf of employees or by an employer. Prior to the hearing thereon, pursuant to Sections 3 and 6 of this Article, a petition may be withdrawn only with the consent of the Board or of the Regional Director with whom such petition was filed. During the hearing, and thereafter, a petition may be withdrawn only with the consent of the Board. Whenever the Board or the Regional Director approves the withdrawal of any petition the case shall be closed. Except as provided in Section 11 of this Article, such petition shall be filed with the Regional Director for the Region wherein the contemplated bargaining exists, or, if the contemplated bargaining unit exists in two or more Regions, with the Regional Director for any of such Regions. Such petition shall be in writing, the original being signed and sworn to before any notary public or other person duly authorized by law to administer oaths and take acknowledgments or any agent of the Board authorized to administer oaths or acknowledgments. Three copies of the petition shall be filed. 2/

"Sec. 2. Same; contents.—(a) Such petition, when filed by an employee or any person or labor organization acting on behalf of employees, shall contain the following:

"(1) The name and address of the petitioner.

"(2) The name and address of the employer or employers involved and the general nature of their business.

"(3) A brief statement setting forth the nature of the question affecting commerce that has arisen concerning the representation of employees.

"(4) Any other relevant facts.

"(b) Such petition, when filed by an employer shall contain the following:

"(1) The name and address of the petitioner.

"(3) The general nature of petitioner's business.

"(3) A brief statement setting forth that a question or controversy affecting commerce has arisen concerning the representation of employees in that two or more labor organizations have presented to the employer conflicting claims that each represents a majority of the employees in the unit or units claimed to be appropriate.

"(4) Any other relevant facts.

"Sec. 3. Same; investigation by Regional Director; definition of parties; Notice of Hearing; service of notice; withdrawal of notice. —After a petition has been filed, if it appears to the Regional Director that an investigation should be instituted he shall institute such investigation by issuing a Notice of Hearing, provided that the Regional Director shall not institute an investigation on

2/ Blank forms for filing such petitions will be supplied by the Regional Director upon request.

a petition filed by an employer unless it appears to the Regional Director that two or more labor organizations have presented to the employer conflicting claims that each represents a majority of the employees in the bargaining unit or units claimed to be appropriate. The Regional Director shall prepare and cause to be served upon the petitioners and upon the employer or employers involved (all of whom are hereinafter referred to as 'the parties'), and upon any known individuals or labor organizations purporting to act as representatives of any employees directly affected by such investigation, a Notice of Hearing upon the question of representation before a Trial Examiner at a time and place fixed therein, provided that when the petition is filed by an employer the Regional Director shall serve the Notice of Hearing on the employer petitioner and on the labor organizations named in the petition (all of whom are hereinafter referred to as 'the parties'), and upon any known individuals or labor organizations purporting to act as representatives of any employees directly affected by such investigation. A copy of the petition shall be served with such Notice of Hearing. Any such Notice of Hearing may be withdrawn before the hearing by the Regional Director on his own motion.

"Sec. 4. Appeals to Board by petitioner from action of Regional Director.--If, after a petition has been filed, the Regional Director declines to institute an investigation, the employee, person, labor organization, or employer filing the petition may obtain a review of such action by filing a request therefor with the Board in Washington, D. C., and filing a copy of such request with the Regional Director. This request shall contain a complete statement setting forth the facts and reasons upon which the request is based.

"Sec. 5. Same; motions; interventions; witnesses; subpenas.--All matters relating to motions, intervention, witnesses, and subpenas shall be governed by the provisions of Sections 14 to 22 of Article II, inclusive, of these Rules and Regulations insofar as applicable, except that the references to 'the Regional Director issuing the complaint' shall for the purposes of this Article, mean the Regional Director issuing the Notice of Hearing, and references to the 'complaint' shall for the purposes of this Article mean the petition. Motions to dismiss petitions if made prior to the hearing, shall be filed with the Regional Director, and if made during the hearing, with the Trial Examiner, and shall be referred to the Board for appropriate action.

"Sec. 6. Conduct of hearing.--The hearing upon the question of representation shall be conducted by a Trial Examiner designated by the Board or the Chief Trial Examiner, and shall be open to the public unless otherwise ordered by the Trial Examiner. At any time a Trial Examiner may be designated to take the place of the Trial Examiner previously designated to conduct the hearing. It shall be the duty of the Trial Examiner to inquire fully into the question of representation. Counsel for the Board, and the Trial Examiner, shall have power to call, examine, and cross-examine witnesses, and to introduce into the record documentary and other evidence.

"Sec. 7. Introduction of evidence and rights of parties at hearing.--The introduction of evidence at the hearing and the rights of the parties shall be governed by Sections 25, 26, 27, 28, 30, and 31 of Article II of these Rules and Regulations, insofar as applicable.

"Sec. 8. Record; what constitutes; transmission to Board.--Upon the close of the hearing the Regional Director shall forward to the Board in Washington, D. C., the petition, Notice of Hearing, motions, rulings, orders, the stenographic

report of the hearing, stipulations, exhibits, documentary evidence, and depositions, all of which shall constitute the record in the proceeding.

"Sec. 9. Proceeding before Board; briefs, further hearing; Direction of Election; Certification of Representatives.--The Board shall thereupon proceed, either forthwith upon the record, or after oral argument or the submission of briefs, or after further hearing, as it may determine, to direct a secret ballot of the employees in order to complete the investigation, or to certify to the parties the name or names of the representatives that have been designated or selected, or to make other disposition of the matter. Should any party desire to file a brief with the Board, the original and three copies thereof shall be filed with the Board at Washington, D. C., within seven days after the close of the hearing. Immediately upon such filing, the party filing the same shall serve a copy thereof upon each of the other parties.

"Sec. 10. Election procedures, Tally of the Ballots; Objections; Report on Challenged Ballots; Report on Objections; Exceptions; action of Board; hearing; contents of record.--Where the Board determines that a secret ballot should be taken, it shall direct an election to be conducted under the supervision of a designated agent upon such terms as it may specify. Upon the conclusion of such election, the designated agent shall cause to be furnished to the parties a Tally of the Ballots. Within five (5) days thereafter, the parties may file with the designated agent an original and three copies of Objections to the conduct of the election or conduct affecting the results of the election. Copies thereof shall be served upon each of the other parties by the party filing such Objections.

"If no such Objections are filed within five (5) days after the conclusion of the election, and if the challenged ballots are insufficient in number to affect the result of the election, the designated agent shall forthwith forward to the Board in Washington, D. C., the Tally of the Ballots which, together with the record previously made, shall constitute the record in the case, and the Board may thereupon decide the matter forthwith upon the record, or may make other disposition of the case.

"If Objections are filed to the conduct of the election or conduct affecting the results of the election or if the challenged ballots are sufficient in number to affect the result, the designated agent shall investigate the issues raised by such Objections, challenges, or both, and shall prepare and serve upon the parties a Report on the Challenged Ballots, Objections, or both, including his recommendations, which report, together with the Tally of the Ballots, he shall forward to the Board in Washington, D. C. Within five (5) days from the date of the Report on Challenged Ballots, Objections, or both, the parties may file with the Board in Washington, D. C., an original and three copies of Exceptions to such report. Immediately upon the filing of such Exceptions, the party filing the same shall serve a copy thereof upon each of the other parties, and shall file a copy with the designated agent. If no Exceptions are filed to such report the Board, upon the expiration of the period for filing such Exceptions, may decide the matter forthwith upon the record, or may make other disposition of the case.

"The Report on Challenged Ballots shall be consolidated with the Report on Objections in appropriate cases.

"If Exceptions are duly filed, either to the Report on Challenged Ballots, Objections, or both if it be a consolidated report, or to conduct affecting the

results of the election and it appears to the Board that such Exceptions do not raise substantial and material issues with respect to the conduct or results of the election, the Board may decide the matter forthwith upon the record, or may make other disposition of the case. If it appears to the Board that such Exceptions raise substantial and material issues, the Board may direct the designated agent or other agent of the Board to issue, and cause to be served upon the parties, a Notice of Hearing on said Exceptions before a Trial Examiner, designated by the Board or the Chief Trial Examiner. The hearing shall be conducted in accordance with the provisions of Sections 5, 6, and 7 of this Article, insofar as applicable. Upon the close of the hearing, the agent conducting the hearing shall forward to the Board in Washington, D. C., the Notice of Hearing, motions, rulings, orders, stenographic report of the hearing, stipulations, Exceptions, documentary evidence, all of which, together with the Objections to the conduct of the election or conduct affecting the results of the election, the Report on such Objections, the Report on Challenged Ballots, and Exceptions to the Report on Objections or to the Report on Challenged Ballots, and the record previously made, shall constitute the record in the case. The Board shall thereupon proceed pursuant to Section 9 of this Article.

"Sec. 11. Run-Off Elections.--(a) The agent designated pursuant to the provisions of Section 10 of this Article to conduct the election, shall conduct a run-off election, without further order of the Board, when the results in the election are inconclusive because no choice on the ballot in the election received a majority of the valid ballots cast and when no objections are filed as provided in Section 10 of this Article, provided that a written request by any representative entitled to appear on the run-off ballot pursuant to this Section is submitted to him within ten days after the date of the election. Only one run-off election shall be held pursuant to this Section.

"(b) Employees who were eligible to vote in the election and who are employed in an eligible category on the date of the run-off election shall be eligible to vote in a run-off election.

"(c) The ballot in the run-off election shall provide for a selection between the two choices that received the largest and the second largest number of valid votes cast in the election, except as provided in this subsection.

"(1) In the event the number of votes cast for 'neither' in an inconclusive election in which the ballot provided for a choice among two representatives and 'neither' is less than the number cast for one representative, but more than or equal to the number cast for the other representative, or if the votes are equally divided among the threechoices, the run-off ballot shall provide for a choice between the two representatives.

"(2) In the event the number of votes cast for 'none' in an inconclusive election, in which the ballot provided for a choice among three or more representatives and 'none' is equal to the number cast for the representative with the largest number of votes, or is less than the number cast for the representative with the largest number of votes but more than or the same as the number cast for the representative with the second largest number of votes as among representatives, or is the same as the number cast for each of the two highest representatives, the run-off ballot shall provide for a choice between the two representatives.

"(3) In the event the number of votes cast for 'none' in an inconclusive election, in which the ballot provided for a choice among three or more

representatives and 'none' is less than the number cast for the representative with the largest number of votes and more than the number cast for any other representative but an equal number of votes is cast for each of two or more such other representatives, the run-off ballot shall provide for a choice among the three or more representatives, provided, however, that in the event such run-off election is inconclusive no further run-off shall be conducted.

"(4) No representative shall be accorded a place on the run-off ballot unless that representative received at least twenty percent of the valid votes cast in the election.

"(d) Upon the conclusion of the run-off election, the agent who conducted the run-off election, the parties, and the Board shall proceed pursuant to Section 10 of this Article, insofar as applicable.

"Sec. 12. Hearing waived by stipulation; consent election agreements; consent cross-check agreements.--After a petition has been filed and it appears to the Regional Director that an investigation should be instituted, the parties and any known individuals or labor organizations representing a substantial number of the employees involved may, nevertheless, with the approval of the Regional Director, by stipulation, waive a hearing and in lieu thereof enter into an agreement determining the appropriate unit, the time and place of holding the election, and the payroll to be used in determining what employees within the appropriate unit shall be eligible to vote. The method of conducting such election and the post-election procedure shall be consistent with that followed by the Regional Director in conducting elections directed by the Board and with Sections 10 and 11 of Article III, of these Rules and Regulations.

"After a petition has been filed and it appears to the Regional Director that an investigation should be instituted, the parties and any known individuals or labor organizations representing a substantial number of the employees involved may, with the approval of the Regional Director, enter into a consent election agreement or consent cross-check agreement leading to a statement by the Regional Director of the facts ascertained after such consent election or cross check but not resulting in a certification by the Board under Section 9 (c) of the Act. Such agreement shall include a determination of the appropriate unit, the time and place of holding the election, and the payroll to be used in determining what employees within the appropriate unit shall be eligible to vote or to be counted. Such consent election or consent cross check shall be conducted under the direction and supervision of the Regional Director.

"The method of conducting such consent election shall be consistent with the method followed by the Regional Director in conducting elections directed by the Board, pursuant to Section 9, Article III, of these Rules and Regulations, except that the rulings of the Regional Director shall be final, and the statement by the Regional Director of the results thereof shall be final. The method of conducting such consent cross check shall be set forth in the consent cross-check agreement. The rulings of the Regional Director on all matters shall be final, and the statement by the Regional Director of the results thereof shall be final.

"Sec. 13. Proceedings before Board; filing petition with Board; investigation upon motion of Board; transfer of petition and proceeding from Region to Board or to another Region; consolidation of proceedings in same Region; severance; procedure before Board in cases over which it has assumed jurisdiction.--Whenever

the Board deems it necessary in order to effectuate the purposes of the Act, it may -

(a) permit a petition requesting an investigation and certification to be filed with it, and may upon the filing of such petition proceed to conduct an investigation under Section 9 (c) of the Act, or direct a Regional Director, or other agent or agency to conduct such an investigation: or

(b) upon its own motion conduct, or direct any member, Regional Director or other agent or agency to conduct an investigation under Section 9 (c) of the Act; or

(c) at any time after a petition has been filed with a Regional Director pursuant to Section 1 of this Article, order that such petition and any proceeding which may have been instituted in respect thereto-

(1) be transferred to and continued before it, for the purpose of consolidation with any proceeding which may have been instituted by the Board, or for any other purpose; or

(2) be consolidated for the purpose of hearing, or for any other purpose with any other proceeding which may have been instituted in the same Region; or

(3) be transferred to and continued in any other Region, for the purpose of consolidation with any proceeding which may have been instituted in such other Region, or for any other purpose,

(4) be severed from any other proceeding with which it may have been consolidated.

The provisions of the Article shall insofar as applicable, apply to proceedings conducted pursuant to subsections (a), (b), and (c)(1) of this Section, and the powers granted to the Regional Director in such provisions shall for the purpose of this Section be reserved to and exercised by the Board, or by the Regional Director, or other agent or agency, directed to conduct the investigation. After the transfer of any petition and any proceeding which may have been instituted in respect thereto from one Region to another pursuant to subsection (c)(3) of this Section, the provisions of this Article shall apply to such proceedings as if the petition had originally been filed in the Region to which the transfer is made.

ARTICLE LV

DESIGNATION OF REGIONAL DIRECTORS, EXAMINERS, AND ATTORNEYS AS AGENTS OF THE BOARD

Section 1. Powers and duties of Regional Directors. - All Regional Directors now or hereafter in the employ of the Board are herewith designated by the Board as its agents:

(a) To prosecute any inquiry necessary to the functions of the Board, in accordance with Section 5 of the Act.

(b) To investigate concerning the representation of employees (including the taking of secret ballots of employees) and conduct hearings in connection with such investigations, in accordance with Section 9 (c) of the Act.

(c) To issue and cause to be served complaints, to amend complaints, and to conduct hearing upon such complaints, in accordance with Section 10 (b) of the Act.

(d) To have access to and the right to copy evidence, to administer oaths and affirmations, to examine witnesses, and to receive evidence, in accordance with Section 11 (1) of the Act.

Section 2. Powers and duties of Examiners.- All Examiners now or hereafter in the employ of the Board are herewith designated by the Board as its agents:

(a) To prosecute any inquiry necessary to the functions of the Board, in accordance with Section 5 of the Act.

(b) To investigate concerning the representation of employees (including the taking of secret ballots of employees) in accordance with section 9 (c) of the Act.

(c) To have access to and the right to copy evidence, and to administer oaths and affirmations, in accordance with Section 11 (1) of the Act.

Section 3. Powers and duties of attorneys.- All attorneys now or hereafter in the employ of the Board are herewith designated by the Board as its agents:

(a) To prosecute any inquiry necessary to the functions of the Board, in accordance with Section 5 of the Act.

(b) To investigate concerning the representation of employees (including the taking of secret ballots of employees) and conduct hearings in connection with such investigation, in accordance with Section 9 (c) of the Act.

(c) To amend complaints issued under Section 10 (b) of the Act and to conduct hearings upon complaints issued in accordance with Section 10 (b) of the Act.

(d) To have access to and the right to copy evidence, to administer oaths and affirmations, to examine witnesses, and to receive evidence, in accordance with Section 11 (1) of the Act.

Section 4. Special Designation of Agents.- The foregoing designations shall not be construed to limit the power of the Board to make such special designation of agents as may in its discretion be necessary or proper to effectuate the purposes of the Act.

ARTICLE V

SERVICE OF PAPERS

Section 1. Service of process and papers; proof of service.- Complaints, orders and other process and papers of the Board, its member, agent, or agency, may be served personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same, setting forth the manner of such service shall be proof of the same, and the return post-office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same.

Section 2. Same; by parties proof of service.- Service of papers by a party on other parties shall be made by registered mail or in any manner provided for the service of papers in a civil action by the law of the State in which the hearing is pending. When service is made by registered mail, the return post-office receipt shall be proof of service. When service is made in any manner provided by such law, proof of service shall be made in accordance with such law.

Article VI

CERTIFICATION AND SIGNATURE OF DOCUMENTS

"Section 1. Certification of papers and documents.--The Chief of the Order Section, or in the event of his absence or disability whosoever may be designated by the Board in his place and stead, shall certify copies of all papers and documents which are a part of any of the files or records of the Board as may be necessary or desirable from time to time.

"Sec. 2. Signatures of orders and complaints.--The Chief of the Order Section, or in the event of his absence or disability whosoever may be designated by the Board in his place and stead, is hereby authorized to sign all orders of the Board, and sign and issue all complaints authorized to be issued by the Board."

Article VII

RECORDS AND INFORMATION

"Section 1. Files, records, etc., in exclusive custody of Board and not subject to inspection; formal documents subject to inspection.--All files, documents, reports, memoranda, and records, and the contents thereof, whether in the Regional Offices of the Board or in its principal office in the District of Columbia, are in the exclusive control and custody of the Board for the purpose of administering and effectuating the policies of the Act; and are confidential and not subject to inspection or examination except that the formal documents described as the record in the case or proceeding and defined in Article II, Section 32; and Article III, Sections 8 and 10 of these Rules and Regulations, shall be open to inspection and examination during usual business hours, within the appropriate office of the Board, and true and correct copies thereof will be certified upon submission of such copies a reasonable time in advance of need.

"Sec. 2. Same: Board employees prohibited from producing files, records, etc., pursuant to subpena duces tecum, prohibited from testifying in regard thereto.--No Regional Director, Examiner, Trial Examiner, attorney, specially designated agent, member of the Board, or other officer or employee of the Board shall produce or present any files, documents, reports, memoranda, or records of the Board or testify in behalf of any party to any cause pending in any court or before any Board, Commission, or other administrative agency of the United States or of any State, Territory, or the District of Columbia with respect to any information, facts, or other matter coming to his knowledge in his official capacity or with respect to the contents of any files, documents, reports, memoranda, or records of the Board, whether in answer to a subpena, subpena duces tecum or otherwise without the written consent of the Board or the Chairman of the Board. Whenever any subpena or subpena duces tecum calling for records or testimony as described hereinabove shall have been served upon any such persons or other officer or employee of the Board, he will, unless otherwise expressly directed by the Board or the Chairman of the Board, appear in answer thereto and respectfully decline by reason of this Rule to produce or present such files, documents, reports, memoranda or records of the Board or give such testimony."

Article VIII

PRACTICE BEFORE THE BOARD OF FORMER EMPLOYEES

"Section 1. Prohibition of practice before Board of its former Regional employees in cases pending in Region during employment.--No person who has been an employee of the Board and attached to any of its Regional Offices shall engage in practice before the Board or its agents in any respect or in any capacity in connection with any case or proceeding which was pending in any Regional Office to which he was attached during the time of his employment with the Board.

"Sec. 2. Same; application to former employees of Washington staff.--No person who has been an employee of the Board and attached to the Washington staff shall engage in practice before the Board or its agents in any respect or in any capacity in connection with any case or proceeding pending before the Board or any of the Regional Offices during the time of his employment with the Board."

Article IX

CONSTRUCTION OF RULES

"Section 1. Rules to be liberally construed.--These Rules and Regulations shall be liberally construed to effectuate the purposes and provisions of the Act."

Article X

ENFORCEMENT OF RIGHTS, PRIVILEGES, AND IMMUNITIES GRANTED OR GUARANTEED UNDER SECTION 222 (F), COMMUNICATIONS ACT OF 1934, AS AMENDED, TO EMPLOYEES OF MERGED TELEGRAPH CARRIERS

"Section 1. All matters relating to the enforcement of rights, privileges, or immunities granted or guaranteed under Section 222 (f) of the Communications Act of 1934, as amended, shall be governed by the provisions of Articles I, II, IV, V, VI, VII, VIII, IX, and XI of these Rules and Regulations, insofar as applicable, except that reference in Article II to 'unfair labor practices' or 'unfair labor practices affecting commerce' shall for the purposes of this Article mean the denial of any rights, privileges, or immunities granted or guaranteed under Section 222 (f) of the Communications Act of 1934, as amended."

Article XI

AMENDMENTS

"Section 1. Amendment or rescission of rules.--Any rule or regulation may be amended or rescinded by the Board at any time."

AMERICAN
LABOR RELATIONS LEGISLATION & AGENCIES

Presented as part of a course of
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LABOR RELATIONS LEGISLATION AND AGENCIES

Introduction

Mr. Korb yesterday spoke of the work of the Department of Labor in America. From his discussions you can see how much time, money and effort is given by society--by government to the welfare of the worker. We have not sacrificed the advantages of a competitive capitalistic system nor do we intend to, yet much energy by labor and by government is solely devoted to see that the working man gets a good day's pay for a good day's work.

The theme of the present discussion is intended to show you the purpose and size of the American government's efforts in the dynamic, controversial field of labor relations--the relation of employer to Union in terms of wages, hours and working conditions.

It must be understood that we in America look upon our legislation and our government agencies in this field as an aid to our society. Laws are passed to help us, not to hurt us.

National Labor Relations Act

Of first importance in this respect is the National Labor Relations Act. We may profit by a brief study of that law, for Japan today, in its relation to Labor Relations Legislation and Agencies, stands, to a degree, in much the same position as our people in America did in 1935, immediately prior to the passage of the National Labor Relations Act. That Act did much to bring about industrial peace during a growing labor period in which our own American labor unions grew by leaps and bounds. A wave of organizational activity on the part of unions brought about a counter-wave of union busting activity by employers and resulting strikes. A society which had within itself the ability to meet changing conditions had its legislature pass the National Labor Relations Act and created the National Labor Relations Board to administer the Act.

Now, therefore, as conditions in Japan today are somewhat like they were in America during that period, it would appear to be helpful to all if we would examine the manner in which our society set up machinery to assist in the peaceful solution of labor disputes.

A Japanese Solution

It is important, however, to keep in mind that the experience of America need not be the ultimate end sought--it should not be viewed as the mountain peak of perfection at the end of the road toward industrial peace. Rather should our American experiences be a lamp post along the road Japan might follow, lighting the road and assisting the traveler to his <u>own</u> solution--a Japanese solution to a Japanese problem.

The Purpose of the Act

I think we will all agree that the right of the working man to organize and to bargain collectively is good and necessary not only for the good of the working man but for the good of society as a whole. We would also conclude that it is the duty of society to provide for the peaceful solution of labor disputes without sacrificing the rights of the worker.

Our best point of inquiry then should be a consideration of the purpose of labor relations legislation. As a starting point it would seem appropriate to examine certain American laws.

The National Labor Relations Act was passed by the American Congress in 1935. Primarily, it was created to assist labor to organize and to provide a method whereby workers could indicate their choice of bargaining representatives. The general beliefs of those who sponsored and supported the Act on its way thru Congress were that labor peace based on a one-sided autocracy of employers has no solid foundation; that lasting labor peace in a political democracy can be obtained only when it is two-sided--i.e., based on a real labor democracy under which employers freely recognize unions of their workers' own selection and deal with them, in good faith and with a will to agree, on the basic terms of employment so vital to the workers' well-being; and that since the workers were too economically weak to organize and secure recognition from union-hating employers, they must be helped to help themselves by government restrictions on the anti-union tactics used by such employers.

This attitude is reflected in the Act itself. Let us read of the "Findings and Policy" of the National Labor Relations Act in Section One.

> "Section 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce . . . causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.
>
> "The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.
>
> "Experience has proved that protection by law of the right to employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.
>
> "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

Thus it was the declared policy of our people acting thru their Diet that employees should be assisted to be the equal of employers in economic bargaining and this for the good of society as a whole. In order to implement this policy, the Act further contained a clear definition of the rights of the employees. Sections 7 and 8 of the Act read as follows:

> "Section 7. Employees shall have the right to self-organize, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

"Section 8. It shall be an unfair labor practice for an employer--

"(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.

"(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: . . .

"(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: . . .

"(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

"(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a)."

Section 10 of the Act gave the National Labor Relations Board, created by the Act, the power to effectuate the policy of the Act:

> "Section 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise."

State Laws

In New York State, as in other states in America, we also have a Labor Relations Act. These laws were created by the States themselves for the same purpose as the Federal Act--that is to help the working man to organize for his benefit and for the benefit of society. These State laws specifically state this to be their policy, specifically define what an employer is forbidden to do and the State further provides the means to assure that the law is enforced.

The National Labor Relations Board

The National Labor Relations Act created the National Labor Relations Board to enforce that Act. It is a Board composed of three men appointed by

the President with the consent of the Senate. Two of the three members constitute a quorum and the Board can function in the absence of one member. This Board has been given the responsibility of seeing that workers are not discriminated against in their efforts to organize and bargain collectively, that unions are free and autonomous and not puppet employer dominated. The Board has the further duty and power to provide means whereby workers can indicate, by secret ballot, their choice between two unions where necessary. This Board has nothing to do directly with the adjustment of labor disputes which concern wages, hours or working conditions. Other agencies of government consider those problems and we will discuss them in detail later.

Independent

The National Labor Relations Board is independent and non-partisan. It is not part of any other government agency and its personnel are taken from all walks of life, not alone from government employees. It administers its own business independently and has no obligation to report to the legislative or executive branch of the government, except that once a year it files an annual report. The three members of the Board cannot be removed by anyone except after an extensive hearing and then only for neglect of duty. It is truly independent.

The three members of the Board sit like judges trying each case on its merits. There are many, many other people to help the Board in its work. To relieve the Board members of all administrative problems there is an Executive Secretary. He is responsible for all the details of the functioning of the Board. In turn, the work of the Board is divided among an Administrative Department, Legal Department, Trial Examiners, Field Division and Information Department. The Board has 24 Regional Offices throughout the country.

The Legal Division is charged with the review and analysis of records in Board cases, the preparation of decisions at the Board's direction, the conduction of litigation in the Courts and the general direction of the field attorneys throughout the country.

The Trial Examining Division is composed of Trial Examiners who sit, to assist the Board, as judges in individual cases and prepare intermediate reports and recommendations for the final decision of the Board.

The Field Division, which directs the activities of Regional offices throughout the country, reviews and analyzes cases in the local region to assist the National Board and carries on liaison activities with other government agencies.

The Information Division makes available to the public necessary data concerning the work of the Board and publicizes its work, so that all the people may know of its activities.

Procedure

The Board has drafted, at length, careful detailed rules of procedure governing the manner in which individual cases are handled by it. These rules can be best illustrated by a supposed case in respect to a discrimination by an employer.

An Unfair Labor Practice

Suppose an employer learns that his workers are trying to organize a Union

in his factory. He does not want the Union to succeed and he knows that the workers are afraid of losing their jobs. He, therefore, finds out who is the leader in the Union drive and he discharges that person as a lesson to others not to join the Union. Now the Union believes that the worker was discharged because he was organizing a Union and that, therefore, the employer has violated the law.

Attorney for the Board

In America the Union would go to a regional office of the Labor Board. The Union and the discharged worker would tell their story to a Board attorney. This attorney is a trained, experienced man who knows the difference between a fact and propaganda. He, therefore, goes over the facts with the discharged worker and assists him in preparing to prove that the employer discharge the worker because he was organizing a Union. The employer will claim that he discharged the worker because he was incompetent.

The next step is for the Board Attorney to prepare a complaint in which he sets down in detail the allegations which will prove that the employer violated the law. Then the employer is given a copy of this complaint and he must answer it in writing. In all probability he will deny the allegations. So up to this point we have the worker charging that he was discharged for union activity and the employer saying that he was discharged for incompetence.

The Trial

Someone is mistaken. Who? Up to this point the parties to the dispute are only giving their own side of the case. Now, therefore, the Board in Washington, in order to assist itself in finding out who is telling the truth, appoints a trained person as a trial examiner. This person is just like a judge. He sits before all the parties and asks each to prove his side of the story. In all probability the employer has hired a very good lawyer to help him. However, the government recognizes that the worker oftentimes does not have the money necessary to hire a good lawyer so the government supplies one to him free. This person is the attorney for the Board who had helped the worker prepare his complaint. This man does nothing except handle cases like this and has had much experience in proving violations of the law by employers. He thus comes to the aid of the discharged worker and his Union and step by step, detail by detail, fact by fact, he proves before the Trial Examiner that the law was violated, that the employer fired the worker for Union activity. If the employer says he fired the man because he was incompetent, the Board attorney will bring out the fact that the man was an excellent worker for years, that he had been praised by the employer and promoted, and that it was not until the worker joined the union that the employer then for the first time thought him incompetent. All of those facts will tend to prove that the worker is telling the truth and that the employer is not.

Clear Decision

After everyone has had an opportunity to present, under oath, their side of the case to the Trial Examiner, he then makes up his mind and renders a report in writing with definite conclusions as to disputed facts and definite clear recommendations. These recommendations are forwarded to the Board in Washington and the Board, after reading the written record in the case and the recommendations of the Trial Examiner, renders a decision. This decision, too, is direct

and conclusive.

In this case it might be decided that as the worker was discharged because he tried to start a Union, it would order the employer to rehire him, and to pay him any wages he had lost by reason of the discharge.

If the employer refused to obey the decision, he would be held in contempt of court, heavily fined and perhaps sent to jail.

Puppet Unions

If the Union had complained that the employer had sponsored a puppet Union, an employer-dominated Union, this same experienced Board attorney would assist the Union in preparing facts to prove this allegation and, if in fact, the Union was a puppet of the employer, then the Board after a hearing and recommendation by the Trial Examiner would order the puppet Union dissolved. The Board would forbid the employer to bargain with it and would declare void any contract between the employer and the puppet Union.

Definite Decisions--Labor Peace

So it is to be seen that these labor Boards in America have real authority, real power, and they have time and time again exercised that power in a forceful way. No one defies successfully the decisions of these Boards. They may decide that a worker was unfairly discharged or they may decide that he was discharged for incompetence; they may decide that a union was a puppet Union or not a puppet Union, but one way or the other they make up their minds, point by point, fact by fact, conclusion by conclusion, and then they render decisions that are clear and decisive, that everyone can understand.

As much as 90% of the cases coming before these Boards are settled by agreement between the parties without the need of a Board decision, but this is so because the parties know, from the past record of the Board, that if they don't agree, the Board will decide their case quickly and definitely. In this way the public, society, knows where lies moral right; the parties observe the decision, or are compelled to, and many, many strikes are avoided.

Unfair Labor Practices

The phrase, "Unfair Labor Practices in America," has become common in use and it means any discrimination by an employer in respect to a worker's efforts to organize or bargain collectively. The statute defines these practices in Section 8 of the Law. The Board has made many decisions that help us understand, in specific cases, what is an unfair labor practice--what is discrimination by an employer.

We can consider a few here, but we must keep in mind that things are different in Japan than in America. What might be discrimination in America would not be discrimination in Japan, and also what would not be discrimination in America might be discrimination in Japan. Essentially, however, in both countries the law recognizes that employers and employer organizations have been more powerful than unions in their organizational stages. Many things that an employer does, although appearing harmless in themselves, when done in relation to an employee might be discrimination. This is so because the individual worker needs his job, and by reason of this need, is inclined to have to pay

attention to the employer's wishes or lose his job. The law and the Board tries to balance this position, so that a worker can feel free to join a Union without worry of losing his job. Labor history teaches us that when an employer wants to discourage a worker from joining a Union, he can think up many, many ways of doing it. The cases that have come before the Boards illustrate this point very clearly.

Specific Cases

The National Labor Relations Board has held that an employer violated the law by sponsoring a meeting of his employees and permitting leaders of one Union to talk at this meeting while another Union was seeking to bargain collectively with the employer. It held in another case that it was an unfair labor practice for an employer to call a meeting of the employees to discuss the management's and the Union's side of a dispute and to fail to invite the leaders of the Union to discuss their side of the case.

An employer may not show favoritism for an inside labor organization or for an independent Union as against a rival Union. He cannot permit supervisory employees to solicit membership in a union favored by him.

Many, many times the Boards have declared that any statement by an employer indicating his preference of one Union over another is an unfair labor practice.

An employer has been held guilty of discrimination if he helps organize an independent citizens committee to interfere with the formation of a Union; or if he contributes to a puppet Union or if he spies on his workers to see who is leading the Union movement; or if he speaks disparagingly of a union or its leaders.

The employer has been held guilty of discrimination if he fails to bargain collectively with a Union. Even giving a raise in wages to employees has been held to be discrimination if done at the time a Union is seeking to organize. Promoting non-union employees, demoting Union employees, changing the position of a union employee in favor of a non-union employee has also been held to be discrimination.

In respect to the refusal of the employer to bargain and a resultant strike, the Board said:

> "To put it concisely, those activities were employed to defeat the strike, to end the strike by breaking it, rather than by settling it through collective bargaining. As the strike was in the first instance directly caused by the respondent's refusal to bargain collectively in violation of Section 8, subdivision (5), and was thereafter perpetuated through further refusals, also in violation of that section, all of those activities must be regarded as contrary to Section 8, subdivision (1). While many, if not all, of those activities would likewise constitute unfair labor practices even though the strike and its continuation were not themselves the results of unfair labor practices, such a determination need not be made in this proceeding. Here, by its illegal refusal to bargain collectively, the respondent caused and perpetuated a strike, and consequently any activities on its part designed to end that strike by defeating it, in contrast to settling it by the method of collective bargaining, are in violation of Section 8, subdivision (1). Each step

taken so to defeat the strike constituted an assertion that the respondent would illegally continue to refuse to settle the strike through collective bargaining as provided by the Act--they were but the opposite faces of the same coin."

The employer has been forbidden to discharge a worker for joining a union. Sometimes an employer recognizes a Union that does not represent the workers. He may sign a contract with that union providing that all people that work for him must be a member of that Union and then he discharges those who are not members. This would also be held to be an unfair labor practice, although said to be done as a result of a contract. The New York State Labor Relations Board said in respect to this type of case the following:

"The evidence shows that respondents (employers) did not wish to bargain with Local 306 because they did not like the terms presented in them. Having come to an understanding with a union that did not represent a majority of the employees, the employer proceeded to discharge that majority. The employer entered into a contract with the union that did not represent the majority of their employees and thereby attempted to preclude such employees from receiving employment at respondent's theatres unless they were to become members of the Empire Union and were to cease their affiliation with Local 306. The entrance into the contract itself clearly constitutes and interferes with the rights of their employees to organize and bargain collectively through representatives of their own choosing. A clearer violation of the express provisions of the Act could scarcely be presented."

The employer, afraid to deal with a bona-fide union, quickly made a contract with a puppet union granting that union a closed shop--that is, requiring that all his employees must be members of that puppet union. How could workers freely exercise their choice of union when the employer told them they must join the puppet union or be discharged? In this case the Labor Board ordered the puppet union dissolved--forbid the employer to recognize or negotiate with it and declared void the contract the employer had made with the puppet union.

Thus the Board is zealous to see that no act of an employer can be construed as influencing the employee unreasonably in his efforts to organize and bargain collectively.

Representation Proceedings

In America our legislature through the National Labor Relations Act has also provided for elections among workers to determine whether they want a Union and if so, which among two or more Unions they prefer. Sometimes the CIO and the AF of L are contesting for the same group of workers; sometimes there is an independent Union in the picture; sometimes there is only one Union involved. In any event, the law provides that the workers involved shall have the right to vote in a secret election as to what Union they wish to join. The National Labor Relations Board conducts this election, and when it is concluded, it is generally the rule that the winning Union bargains for all the workers and the losing Union withdraws. A considerable degree of stability in labor relations results through this machinery, and the workers are assured a free choice of their bargaining representative.

Whether this is necessary or advisable for Japan today is for the Japanese

to say. It is enough to say here that if it is necessary or advisable, then the people of Japan have the facilities whereby they may amend the law to make it meet changing needs.

Remedies and Enforcement Procedures

In order to fulfill the purpose of the act, the Board issues appropriate orders which are enforced. When an employer has violated the law by making statements against a union or its leaders or otherwise improperly hindering the work of the Union in organizing, the Board will issue an order ordering the employer to cease and desist from such practices. Wherever affirmative action is necessary, such as reinstating a discharged worker, the Board will also order him reinstated and given back pay lost by reason of the discharge. Oftentimes the Board feels that the conduct of the employer has been such that its effect will continue even after the employer has ceased his illegal activities and for this reason the Board sometimes orders the employer to post on his company bulletin board notice to the effect that he will no longer continue such conduct, so that all his employees may see it and know that they are again free to organize without fear of discrimination. Sometimes the Board requires the employer to send such notices to each employee individually.

The employer may be compelled to withdraw recognition from a puppet Union, the puppet Union may be ordered disestablished and a contract between the employer and Union declared void.

Subsequent to an election and the choice by the workers of one Union, an employer has been ordered to bargain with that Union and has been forbidden to bargain with a Union not representing the majority of its employees. It has been held that the duty to bargain continues during a strike. The Board has further directed that when the parties have reached an agreement in negotiations, then the employer must put that agreement to writing.

When an employer refuses to comply with a Board order, he will be compelled to observe it by Court order. In one case dealing with a puppet Union, Justice Collins of the highest Court of New York State said:

> "The Act signalizes the progress of industrial democracy. It accords legal recognition to the principle that unionism is not only compatible with our free institutions, but that it stems from the ideal that in a democracy workers must be at liberty to organize for their mutual protection and welfare, that their organizations must be uncoerced and unintimidated by their employers, and that they must be permitted to speak through representatives of their own choosing, so that their voice is not an echo of their employer's voice. A ventriloquist or puppet union is deemed unhealthy not alone for the workers, but for a democratic society.
>
> "In sum, the Act is an implemented warning to employers to keep hands off the union aspirations and activities of their employees. No matter how remote the control, how indirect the domination, how devious the dictation, how subtle the influence, how circuitous the coercion, or how disguised the intimidation, if the absolute freedom of the worker respecting union activities is discouraged or abridged or interfered with, the Act bludgeons it."

In sustaining the Board's order in this case, the court emphasized the fact that the organization in question had been created by a supervisory employee working in collaboration with the company's president, who was his intimate friend. Rejecting the company's contention that the supervisory employee's sole purpose in bringing the organization into existence was for the benefit and in the interest of the employees themselves, the court said:

> "The evidence sustains the Board's finding that in conceiving and inspiring (this employee organization), Hanlon (the supervisory employee) was motivated by the interest of Company rather than by the welfare of the employees. The indications are that the real promoter was Company. Hanlon's intentions may have been of the best, and Booth's (the company's president) consent and interest may have issued from the goodness of his heart for the contentment of his employees. But it is employer influence, benevolent or malevolent, which the Act shuns and strives to avert."

Moreover, the Byrnes Anti-strikebreaking Act makes it a crime to use strikebreakers to interfere with picketing or to obstruct or interfere by force or threats with the right of workers to organize. A person who violates this law is subject to $5000 fine and two years in jail.

The Civil Liberties Act forbids any conspiracy intended to injure, oppress, threaten or intimidate any citizen in the free exercise of any right or privilege secured to him by the Constitution or laws of the United States. Since this right to organize is protected by the National Labor Relations Act, anyone who interferes with it may be subject to a $5000 fine and 10 years in jail under the terms of the Civil Liberties Act.

The Size of the Task

It would be well to appreciate the size of the National Labor Relations Board and the size and scope of its business.

In the year ending June 1945 the Board had 889 employees. A total of 9,543 new cases was filed with the Board. Representation cases numbered 6,140 and discrimination cases, 3,403. Company-dominated unions were disestablished in 205 cases, and 7,111 workers were reinstated to remedy discriminatory discharges. Back pay amounting to $2,284,593 was paid to workers who had been discharged by employers in violation of the law. The Board conducted 4,153 elections with 1,126,501 workers voting in these elections. The Board spent $2,590,577 in salaries for its personnel, $418,240 for traveling expenses for its personnel. Its printing bill came to $213,971, and its total expenses to $3,598,992. Yet this is not the complete picture for many states, in addition, have the same kind of law and the same kind of Board. In New York State, in one year, 1760 cases were filed, 900 of which concerned charges of discrimination. Over 25,000 people voted in worker elections conducted by the Board in that State. Much of the same work is going on in other States. All of this work must be done by your committees as well as the work prescribed by your Labor Relations Adjustment Law which will be discussed later.

The Japanese Law

An examination of your own Trade Union Law as it now stands is pertinent. Article 11 of that Act reads:

"The employer shall be disallowed to discharge or give a discriminatory treatment to a worker for his being a member of a trade union, for having tried to form or join a trade union, or for having performed proper acts of a trade union.

"No employer shall make it a condition of employment that the worker must not join or must withdraw from a trade union."

Article 2 of your same law requires that a trade union be autonomous--i.e., not employer dominated, not a company union.

Article 6 gives your committee the power and the duty to determine whether a union is in fact autonomous, and your Imperial Ordinance No. 108, promulgated 27 February 1946, in Articles 2-8 inclusive, prescribes the procedures looking to the disestablishment of a union if it is employer dominated.

Articles 11, 27, and 33 of the Trade Union Law give your committee the power and the duty to protect workers in the exercise of their right to organize. Essentially you have the same law as we do to protect workers against discrimination in their right to organize and bargain collectively. Your Labor Relations Committees have been set up to administer your law. Already two local committees in Japan, in Nara and in Ishikawa, have found that an employer violated the law, and the cases have been handed to the procurator.

It will be interesting to see how your other committees meet their responsibilities under your law. Remember that the Trade Union Law is the law of Japan; this idea of helping workers to organize is not something the Communists, the Socialists, the Liberals or any party thought up. It is the law of the Japanese people, all of the Japanese people. I know you government employees, servants of the people as you are, will be most anxious to do your part to see that the will of the people, the desires of the people of Japan, are fulfilled.

And yet, it should be remembered that your committees not only have to serve the purpose outlined in your Trade Union Law, as discussed up to this point, but they also have the additional duties presented by your Labor Relations Adjustment Law--that is the work of conciliation, mediation and arbitration.

Conciliation, Mediation, Arbitration

In America we have special agencies other than the National Labor Relations Board dealing with the questions of conciliation, mediation and arbitration. We have the United States Conciliation Service, the National Mediation Board, special industry mediation boards appointed by the President from time to time, various state mediation boards and also private mediation and arbitration associations.

The purpose that government plays in this picture can be best illustrated by quoting from the Mediation Law of the State of New York.

"It is hereby declared as the public policy of this state that the best interests of the people of the state are served by the prevention or prompt settlement of labor disputes; that strikes and lockouts and other forms of industrial strife, regardless where the merits of the controversy lie, are forces productive ultimately of economic waste;

that the interests and rights of the consumers and the people of the state, while not direct parties thereto, should always be considered, respected and protected; and that the voluntary mediation of such disputes under the guidance and supervision of a governmental agency will tend to promote permanent industrial peace and the health, welfare, comfort and safety of the people of the state. . . "

It is to the best interest of workers, capital, government and everyone, that strikes be reduced to a minimum without any sacrifice of the rights of the working men. For this reason government makes great efforts to bring about the peaceful solution of labor disputes.

United States Conciliation Service

Foremost among these efforts in America is the work of the United States Conciliation Service. This service is run by a Director in Washington who has under him over 250 trained conciliators. These men have no other duties except to assist in labor disputes and to assist the parties to come to an agreement. Their time is taken up only with this assignment and they stand ready to go anywhere in America to help solve a dispute. These men are carefully chosen, are completely impartial and have developed the ability of giving both sides to a controversy confidence in them. Many times capital and labor have been at an impasse that seemed impossible of solution to the contestants, and these conciliators have stepped into the picture and brought about a solution. Sometimes a new face, a fresh viewpoint will bring new thoughts or a new approach to a solution and the problem will be settled. Sometimes parties have been committed to a position, and they cannot retreat from it without losing face, and a conciliator can provide a medium through which both sides can retreat a little without having their own people lose faith in them. In many ways this conciliation service has helped bring about comparative labor peace.

In the year ending June 30, 1945, the Service handled over 25,000 cases and in general, 95% of the matters they handled are settled without a strike or any stoppage in production.

It should be pointed out that the conciliator has no power to order anyone to do anything. He must depend on his ability to bring the parties to agreement because both parties want an agreement if the meeting ground can be found. The duty of a conciliator is to assist collective bargaining. He has neither power nor desire to take the place of collective bargaining. The weapons of a conciliator are clarification, suggestion, and good will by which he endeavors to have management and labor reach an agreement. The essence of this technique is to have both parties feel that they have solved the problem themselves.

Conciliation can be sought in the early stages of negotiation, and it is best by all means to bring a conciliator into the picture before a strike takes place. Oftentimes when a conciliator cannot completely settle a dispute, he can narrow the differences down to one or two items and the parties may be willing to mediate or arbitrate on those two points.

Mediation

The National Mediation Board was created by the President in 1934 to deal with the railroads exclusively. This Board, when a dispute arises, tries to

bring the parties to agree to arbitrate. If they cannot do this, the President then appoints an emergency board to mediate--that is, to investigate the facts and report thereon. This gives the government an opportunity to bring the facts out into the open for all the peoples of a country to see. Then the mediators make a recommendation. Neither party to this dispute is bound to accept this recommendation, but by this time it has the power of public opinion behind it. The President has on many occasions, in different industries, appointed such Boards. The various State governments, also have their own mediation boards to assist in the handling of local disputes.

Arbitration

Arbitration in America is always and only by prior agreement of the parties. It is always voluntary. In many cases the parties themselves provide for the arbitration of any disputes arising between them for a given period of time. Most Union contracts provide that during the life of the contract all disputes shall be settled by arbitration. Sometimes one man is agreed to as the arbitrator for a given industry for the life of the contract between the Union and employers. Rarely, however, do Unions agree to arbitrate the terms of a new contract. The services of the United States Conciliation Service are available in the field of arbitration as well as the State mediation bodies, for both organizations have panels of arbitrators from which the disputant may select one or more arbitrators.

Often private organizations with the public interest in mind provide procedures for arbitration. The American Arbitration Association has extensive facilities that are made available to employers and Unions. Again, however, the parties voluntarily choose to arbitrate.

Many municipalities also endeavor to establish conciliation, mediation, and arbitration procedures and in nearly every community there are one or more persons held in high repute whose aid is often solicited to resolve a pending dispute. Certain individuals in America have achieved a reputation as arbitrators in labor disputes, and their services are much sought after.

The Japanese Law

Your Labor Relations Adjustment Law will soon be promulgated. Under it you have specifically provided for conciliation, mediation and arbitration. It will be necessary for each of the committees in the prefectures to establish adequate office personnel to see that the details of administration concerning these duties are competently handled. It will also be necessary for these committees to seek out in each community persons of high character and repute whose impartiality is unquestioned. These people may well become the backbone of labor relations peace in your community. Both labor and capital may learn to seek their advice and accept their judgments. A good conciliator in a community can accomplish much of the work that has been set before the Labor Relations Committees by the Labor Relations Adjustment Act.

Conclusion

Although we still have strikes in America and will continue to have them, they are rarely caused by the employer's discrimination against workers. Labor generally has learned to depend on and get protection from government in this regard. Labor has seen to it that our Labor Boards serve their purpose.

Many other strikes on wages, hours and working conditions are avoided by the competent efforts of government in providing conciliation, mediation and arbitration. Although our big strikes get newspaper headlines, we have thousands upon thousands of Union agreements being negotiated between employers and Unions without any work stoppage.

Labor in Japan has quickly organized. For the most part, however, workers are not covered by Union contracts. Unions will want to get these contracts, and many, many strikes will result if government--if you--do not, to the best of your ability, see that the Trade Union Law and the Labor Relations Adjustment Act are effectively administered.

In order to accomplish this, it will be necessary that you have:

1. Adequate administrative personnel for your Committees who understand the purpose of your Labor Relations Laws and are in sympathy with it, recruited from all walks of life, not only government employees.

2. Independent prefectural labor relations committees staffed by personnel who have the confidence of labor, capital and the public. The neutral members must be truly neutral.

3. Adequate finances for the committees, so that people on these committees and working for them may devote their full time to the work of the committees and be in a position to afford to do nothing else.

Orientation Lectures
on
Labor Relations Legislation and Agencies

I. THE PURPOSE OF LABOR RELATIONS LEGISLATION

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GOVERNMENT LABOR RELATIONS LEGISLATION AND AGENCIES

Purpose of These Lectures

It is in order at the outset to inquire why these series of lectures should be held at this time. A considerable amount of the time of you busy men is being consumed and your time cannot be wasted. Japan today, in its relation to Labor Relations Legislation and Agencies, stands, to a degree, in much the same position as our people in America did in 1935, immediately prior to the passage of the National Labor Relations Act. That Act did much to bring about industrial peace during a growing labor period in which our own American labor unions grew by leaps and bounds. A wave of organizational activity on the part of unions brought about a counter-wave of union busting activity by employers and resulting strikes. A society which had within itself the ability to meet changing conditions had its legislature pass the National Labor Relations Act and created the National Labor Relations Board to administer the Act.

Now, therefore, as conditions in Japan today are somewhat like they were in America during that period, it would appear to be helpful to all if we would examine the manner in which our society set up machinery to assist in the peaceful solution of labor disputes.

A Japanese Solution

It is important, however, to keep in mind that the experience of America need not be the ultimate end sought - it should not be viewed as the mountain peak of perfection at the end of the road toward industrial peace. Rather should our American experiences be a lamp post along the road Japan might follow, lighting the road and assisting the traveler to his <u>own</u> solution - a Japanese solution to a Japanese problem.

The Outline of the Lectures

With these few introductory remarks we can get along to the subject in hand. We shall attempt to cover in these lectures a study of the purpose of labor relations legislation - why governments bring such legislation into being; the specific organization and structure of the NLRB and New York State Labor Relations Board, and the procedural regulations of each; the organization and structure of the National War Labor Board and its procedural regulations; a study of what an unfair labor practice is in the States, what employer discrimination is; what we mean by company-dominated or employer-dominated unions, that is, non-autonomous unions; and what we mean by representation proceedings. We will further study how the rulings and judgments of the National Labor Relations Board are enforced and what punishment follows for a failure to comply with such rulings.

Up to this point we will have been considering legislation and agencies that come to the aid of the worker in his efforts to organize and bargain collectively. The equivalent protection in Japan, in this respect, is found in your Trade Union Law and the responsibility therefore rests in in your Labor Relations Committees.

Later we can begin to consider those agencies that deal with the peaceful adjustment of labor disputes in general. In this respect, such procedures are outlined in your Labor Relations Adjustment Law. In America we have the U. S. Conciliation

Service, the National Mediation Board, the various State conciliation and mediation boards and private conciliation and mediation agencies which seek to perform these duties.

You will see, gentlemen, that your committees have assumed the duties of more than five different agencies in the United States, and I hazard the guess that you will be very, very busy.

It is intended that each part of the discussion be related to the appropriate Japanese law and appropriate Japanese agencies so that we both may examine the existing procedures in Japan to appreciate what is needed. Perhaps our studies shall indicate certain organization steps necessary, certain budgetary or personnel requirements. You may resolve, too, that even this new legislation can or should be amended or new laws drafted.

I think we will all agree that the right of the working man to organize and to bargain collectively is good and necessary not only for the good of the working man but for the good of society as a whole. We would also conclude that it is the duty of society to provide for the peaceful solution of labor disputes without sacrificing the rights of the worker. Japan has chosen you gentlemen to do this important work. You can do it. Will you?

The Purpose of Labor Relations Legislation

Now, then, for the discussion for today. Let us study the purpose of labor relations legislation. As a starting point it would seem appropriate to examine certain American laws.

The National Labor Relations Act was passed by the American Congress in 1935. Primarily, it was created to assist labor to organize and to provide a method whereby workers could indicate their choice of bargaining representatives. The general beliefs ~~[illegible]~~ of those who sponsored and supported the Act on its way thru Congress were that labor peace based on a one-sided autocracy of employers has no solid foundation; that lasting labor peace in a political democracy can be obtained only when it is two-sided - i.e., based on a real labor democracy under which employers freely recognize unions of their workers' own selection and deal with them, in good faith and with a will to agree, on the basic terms of employment so vital to the workers' well-being; and that since the workers were too economically weak to organize and secure recognition from union-hating employers, they must be helped to help themselves by government restrictions on the anti-union tactics used by such employers.

This attitude is reflected in the Act itself. Let us read of the "Findings and Policy" of the National Labor Relations Act in Section One.

> "Section 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactures or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

"The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravat recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

"Experience has proved that protection by law of the right to employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

In order to implement this policy the Act further contained a clear definition of the rights of the employees. Sections 7 and 8 of the Act read as follows:

"Sec 7. Employees shall have the right to self-organize, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

"Sec. 8. It shall be an unfair labor practice for an employer--

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6(a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided: That nothing in this Act, or in the National Industrial Recovery Act (U.S.C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require, as a condition of employment, membership therein, if such labor organization is the representative

of the employees as provided in section 9(a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a)."

Section Ten of the Act gave the National Labor Relations Board, created by the Act, the power to effectuate the policy of the Act:

"Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

"(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

"(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint."

New York Labor Relations Act

In New York State, as in other states in American, we also have a Labor Relations Act and a Labor Relations Board. These are created by the States themselves.

The New York State Labor Relations Act clearly illustrates that such legislation is created for the specific purpose of assisting workers to organize and that resultant equality of bargaining power is of distinct value to society. The "Findings and Policy" of this Act follows:

> "The economic necessity for employees to possess full freedom of association, actual liberty of contract and bargaining power equal to that of their employers, who are frequently organized in corporate or other forms of association, has long been sanctioned by public opinion, and recognized and affirmed by legislatures and the highest courts. As the modern industrial system has progressed, there has developed between and among employees and employers an ever greater economic interdependence and community of interest which have become matters of vital public concern. Employers and employees have recognized that the peaceable practice and wholesome development of that relationship and interest are materially aided by the general adoption and advancement of the procedure and practice of bargaining collectively as between equals. It is in the public interest that equality of bargaining power be established and maintained. It is likewise recognized that the denial by some employers of the right of employees freely to organize and the resultant refusal to accept the procedure of collective bargaining, substantially and adversely affect the interest of employees, other employers, and the public in general. Such denial creates variations and instability in competitive wage rates and working conditions within and between industries and between employees and employers engaged in such industries, and by depressing the purchasing power of wage earners and the profits of business, and tends (a) to produce and aggravate recurrent business depressions, (b) to increase the disparity between production and consumption, (c) to create unemployment with its attendant dangers to the health, peace and morale of the people, and (d) to increase public and private expenditures for relief of the needy and the unemployed.
>
> "When some employers deny the right of employees to full freedom of association and organization, and refuse to recognize the practice and procedure of collective bargaining, their actions lead to strikes, lockouts and other forms of industrial strife and unrest which are inimical to the public safety and welfare, and frequently endanger the public health.
>
> "Experience has proved that protection by law of the right of employees to organize and bargain collectively, removes certain recognized sources of industrial strife and unrest, encourages practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours or other working conditions, and tends to restore equality of bargaining power between and among employers and employees, thereby advancing the interests of employers as well as employees.
>
> "In the interpretation and application of this article, and otherwise, it is hereby declared to be the public policy of the state to encourage the practice and procedure of collective bargaining, and to protect employees in the exercise of full freedom of association, self-organization and designation of representatives of their own choosing for the purposes of collective bargaining, or other mutual aid and protection, free from the interference, restraint or coercion of their employers.
>
> "All the provisions of this article shall be liberally construed for the accomplishment of this purpose.

"This article shall be deemed an exercise of the police power of the state for the protection of the public welfare, prosperity, health and peace of the people of the state. (As amended by Chapter 689 of the Laws of 1940.)"

Again, appropriate sections of that law define the rights of employees.

"704. Unfair labor practices. It shall be an unfair labor practice for an employer:

1. To spy upon or keep under surveillance, whether directly or through agents or any other person, any activities of employees or their representatives in the exercise of the rights guaranteed by section seven hundred three.

2. To prepare, maintain, distribute or circulate any blacklist of individuals for the purpose of preventing any of such individuals from obtaining employment because of the exercise by such individuals of any of the rights guaranteed by section seven hundred three.

3. To dominate or interfere with the formation, existence, or administration of any employee organization or association, agency or plan which exists in whole or in part for the purpose of dealing with employers concerning terms or conditions of employment, labor disputes or grievances, or to contribute financial or other support to any such organization, by any means, including but not limited to the following: (a) by participating or assisting in, supervising, controlling or dominating (1) the initiation or creation of any such employee organization or association, agency, or plan, or (2) the meetings management, operation, elections, formulation or amendment of constitution, rules or policies, of any such employee organization or association, agency or plan; (b) by urging the employees to join any such employee organization or association, agency or plan for the purpose of encouraging membership in the same; (c) by compensating any employee or individual for services performed in behalf of any such employees organization or association, agency or plan, or by donating free services, equipment, materials, office or meeting space or anything else of value for the use of any such employee organization or association, agency or plan; provided that, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

4. To require an employee or one seeking employment, as a condition of employment, to join any company union or to refrain from forming, or joining or assisting a labor organization of his own choosing.

5. To encourage membership in any company union or discourage membership in any labor organization, by discrimination in regard to hire or tenure or in any term or condition of employment: Provided that nothing in this article shall preclude an employer from making an agreement with a labor organization requiring as a condition of employment membership therein if such labor organization is the representative of employees as provided in section seven hundred five.

6. To refuse to bargain collectively with the representatives of employees, subject to the provisions of section seven hundred five.

7. To refuse to discuss grievances with representatives of employees, subject to the provisions of section seven hundred five.

8. To discharge or otherwise discriminate against an employee because he has signed or filed any affidavit, petition or complaint or given any information or testimony under this article.

9. To distribute or circulate any blacklist of individuals exercising any right created or confirmed by this article or of members of a labor organization for the purpose of preventing individuals so blacklisted or so named from obtaining or retaining employment.

10. To do any acts, other than those already enumerated in this section, which interfere with, restrain or coerce employees in the exercise of the rights guaranteed by section seven hundred three."

In the same way as the National Labor Relations Board, the State Board is empowered to enforce the provisions of its act and to prohibit unfair labor practices.

It is to be pointed out that these boards have real authority, real power, and they have time and time again exercised their power in a forceful way. No one defies successfully the decisions of these boards.

A Viewpoint of a Committee of Congress

A United States Senate Committee on Education and Labor has this to say of the National Labor Relations Act:

> "A major objective of the bill is to encourage, by developing the procedure of collective bargaining, that equality of bargaining power which is a prerequisite to equality of opportunity and freedom of control. The relative weakness of the isolated wage-earner caught in the complex of modern industrialism has become such a commonplace of our economic, literary, and political vocabulary that it needs no exposition. This relative weakness of position has been intensified by the technological forces of driving toward greater concentration of business and cooperative activity among trade and industrial groups. With these objectives in mind, Congress enacted the Wagner Act, the National Labor Relations Act, enumerating therein the rights of labor, the activities of the employers which shall be considered infringements of those rights, and the machinery whereby the infringement of laborer's right may be prevented or remedied."

The National Labor Relations Board in its 1943 annual report, after eight years of existence, had this to say of its work:

> "The conclusion expressed by Congress in the Act, that protection of the right of employees to organize and bargain collectively would encourage the practice and procedure of collective bargaining is supported by the experience of the Board."

Thus we see that the National Labor Relations Act and the State Acts were purposely created for the specific reason of helping labor organize, so that it might bargain collectively on equal footing with employers.

The Japanese Law

An examination of your own Trade Union Law is pertinent here. Article 11 of that Act reads:

> "The employer shall be disallowed to discharge or give a discriminatory treatment to a worker for his being a member of a trade union, for having tried to form or join a trade union, or for having performed proper acts of a trade union law.
>
> "No employer shall make it a condition of employment that the worker must not join or must withdraw from a trade union."

Article two of your [illegible] law requires that a trade union be autonomous--i.e., not employer dominated, not a company union.

Article six gives your committee the power and the duty to determine whether a union is in fact autonomous and your Imperial Ordinance Number 108, promulgated 27 February 1946 in Articles 2-8 inclusive prescribed the procedure looking to the disestablishment of a union if it is employer dominated.

Articles 11, 27 and 33 of the Trade Union Law give your committee the power and the duty to protect workers in the exercise of their right to organize.

Specific Cases

Now, then, essentially your powers and responsibilities in these respects are the same as the responsibilities of similar Boards in America. Although in subsequent lectures we will consider in detail the question of unfair labor practices and employer-dominated unions, it might be pertinent to pause here and illustrate how our Boards in one or two cases meet these responsibilities. In respect to a discriminatory discharge, the New York State Labor Relations Board stated in one case, in part, as follows:

> "It is hard to believe that the respondent (employer) would have discharged one of its best mechanics without first attempting to retain him by some adjustment of his wages. It is more likely, and we find that the discharge of Judski was intended as an example to the rest of the employees and was designed to discourage union activities. The discharge of the highest paid mechanic in the shop for union activities could readily serve as an effective deterrent to union activities of less skilled employees."

Needless to say, Mr. Judski was reinstated in his job by order of the Board and the employer also had to pay him for any money he lost in wages while he was out of work.

On the question of a company-dominated puppet union being used by an employer to defeat a free choice of union by the workers, the language of the same Board in another case is helpful.

> "The evidence shows that respondents (employers) did not wish to bargain with Local 306 because they did not like the terms presented in them. Having come to an understanding with a union that did <u>not</u> represent a majority of the employees, the employer proceeded to discharge that majority. The employer entered into a contract with the union that did not represent the majority of their employees and thereby attempted to preclude such employees from receiving employment at respondent's theatres unless they were to become members of the Empire Union and were to cease their affiliation with Local 306. The entrance into the contract itself clearly constitutes and interferes with the rights of their employees to organize and bargain collectively through representatives of their own choosing. A clearer violation of the express provisions of the Act could scarcely be presented."

Here was a case where an employer, afraid to deal with a bona-fide union, quickly made a contract with a puppet union granting that union a closed shop--that is, requiring that all his employees must be members of that puppet union. How could workers freely exercise their choice of union when the employer told them they must join the puppet union or be discharged?

In this case the Labor Board ordered the puppet union dissolved--forbid the employer to recognize or negotiate with it and declared void the contract the employer had made with the puppet union.

These are only two cases. Many more illustrations of the points involved will be referred to in later lectures devoted to unfair labor practices and company-dominated unions. It is enough now to illustrate that society gave the Board a purpose and the machinery thru which to execute that purpose, and time after time the American Labor Boards have forcefully served that purpose. Moreover, time after time Labor Unions have appealed to these boards and come prepared to prove specific violations of the law, and found the help they sought. Many times, where necessary, they have stimulated these boards to act when they were reluctant or slow to act.

In Conclusion

In America then the Act was created to help labor. It is in that respect purposely one sided. That is not to say that it is unfair or unjust. An allegation that an employer discriminated against an employee in regard to his union activity must be proved. It cannot be merely propaganda or loose talk. Appropriate and detailed procedures have been established so that the Labor Boards may be sure in their judgments, but once they find the law has been violated, then they never falter from their purpose of helping a worker.

Now why does such legislation result in industrial peace? It can be easily illustrated in part. If A, the employer, discharges B, the worker, because B, the worker, sought to organize a union or sought to lead the union in militant wage negotiations, then the worker has two alternatives. One, he can call all his fellow workers out on strike or can appeal to the Labor Relations Board--if he knows that the Labor Relations Board will compel the employer to rehire him and pay him any back pay he may have lost. In thousands of cases in America just that has happened and many, many strikes have been avoided because Labor had confidence that their Boards would protect them. In a broader sense the resultant equality of bargaining power results in the improvement of the welfare of a large segment of society and is thus a benefit to society as a whole. In America we have stated this latter purpose by enacting the laws we have discussed and also seeing that these laws were really enforced.

Now you have essentially the same law here. Your Diet has enacted in Section 11 and Section 2 of your Trade Union Law similar provisions protecting the rights of workers. This then is the law of Japan--this idea of helping workers to organize is not something the Communists, the Socialists, the Liberals or any other party thought up. It is the law of the Japanese people, all of the Japanese people.

You have been given the honor, duty and responsibility for enforcing it. How well will you meet that responsibility?

At our next meeting we will consider the purpose of legislation and agencies providing for the peaceful solution of labor disputes through conciliation, mediation and voluntary arbitration and then we will go on to study the internal structure and organization of the National Labor Relations Board, giving consideration to its size, its personnel, its volume of business and its procedures.