THE GOVERNMENT AND INDUSTRIAL DISPUTES

28 October 1952

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ADMIRAL HAGUE: Mr. Secretary, gentlemen: It is difficult for me to express the pleasure and pride I have in presenting to you this morning my friend Mr. Warren E. Hall, Jr., of Atlanta, who will discuss the role of the Government in industrial disputes.

I think probably it would be worth while, just in order to orient ourselves, if we take a brief look at the highlights of intervention by the Federal Government in industrial disputes. Aside from wartime seizures which took place as early as the Civil War, the first outstanding case we have was the breaking of the railroad strike, which was sympathetic to the Pullman strike, by President Cleveland on 3 June 1894, when he sent a troop of cavalry into Chicago to escort a train out of the stockyards. Incidentally, it was over the protests of the Governor of Illinois and the Mayor of Chicago that President Cleveland stated that if there were a postcard to be delivered in Chicago, that postcard would be delivered if it took the Army and Navy to do so.

The next intervention of the Federal Government of note occurred in 1902 when there was an anthracite coal strike that was beginning to make it appear that there would be considerable suffering due to a shortage of coal during the winter. Mr. George F. Baer, the spokesmen for the mine owners, wrote to a resident of Wilkes-Barre: "I beg of you not to be discouraged. The rights and interests of the laboring man will be protected and cared for, not by the labor agitators, but by the Christian men to whom God in His infinite wisdom has given control of the property interests of the country."

That sounds a little queer to us today, but I think it was a very sincere statement of a conception. The leader of the mine workers was one John Mitchell, who was apparently a very fine man and a very fine character. Because of the impending hardships, President Theodore Roosevelt asked Mr. Baer and Mr. Mitchell to meet with him in the White House. The meeting wasn't too successful, because Mr. Baer took the position that he should not have been called, even by the President of the United States, to meet with a "criminal."

Now, of course that threw down a gage to Teddy Roosevelt and, so far as I have been able to read in history, that was something that he never retreated from. So Theodore told Mr. Morgan, Mr. Baer's banker, that he proposed to move in with the Army and seize the mine. The pressure from Mr. Morgan caused Mr. Baer to agree to the arbitration that Mr. Mitchell had proposed.

The miners went back to work, and for the first time we had the Federal Government injecting itself into a strike, an industrial dispute, in order to break the strike and to settle it.

So labor relations rocked along very much under the law which protected property and the conception of its being illegal to restrain trade, with the courts issuing injunctions on that basis, until 23 March 1932 when the Norris-LaGuardia Act curtailed the power of the court sharply to issue injunctions in labor disputes.

The next milestone took place in the next year, 16 June 1933, when the National Recovery Act (NRA), section 7 a, provided a guarantee of the right of workers and organized unions to bargain collectively. NRA was declared unconstitutional, but on 5 July 1935, Congress passed the Wagner-Connolly Act which reenacted section 7 a of NRA and put some teeth in it, and which made it virtually impractical for an employer to interfere with the rights of workers for collective bargaining.

Early this year the President seized the steel industry and, as we all know, in a couple of months that seizure was declared unconstitutional by the Supreme Court.

So we see that there has been a gradual body of statute which injects the Federal Government into the whole question of labor-management relations. The National Labor Relations Board (NLRB) set up as a result of the Wagner Act, in itself a quasi-judicial body, has been developing law. So it is quite natural that we should turn to an attorney, one skilled in this very complex part of law, to give us this talk this morning on the Government and labor disputes.

Now, you have all read the brief of Mr. Hall's attainments, which is taken from "Who's Who," so there is no need of my dwelling on that. So that you may be better acquainted with him, however, I would like to state just this: I first met Mr. Hall when the Honorable Francis P. Whitehair became Secretary of the Navy and brought him to the Navy Department as a special assistant and adviser in management-labor relations from the Economic Stabilization Agency. Being Chief of the Navy's Office of industrial relations, naturally I found that I had to do business with Mr. Hall daily, and frequently as much as every hour. It wasn't long before I recognized the tremendous knowledge of Mr. Hall, but, more than that, his keen understanding of the issues, the various facets of this complex business of industrial management-labor relations.

I think I rather prided myself on making a tremendous discovery, until I learned that I was merely echoing the estimate of Mr. Hall that was held by all of his colleagues, particularly those of the Bar Association. It is a great pleasure for me to be able to present to you this morning Mr. Warren E. Hall, Jr., of Atlanta.

MR. HALL: Mr. Secretary, Admiral Hague, gentlemen: What I am going to discuss this morning is not quite so broad a subject as it might appear to be in the announcement.

Industrial relations are labor relations, and to me they are slightly different concepts, different fields of law or economics or sociology or whatever you want to call them. Labor relations and labor disputes are two different things, in that labor disputes are merely a very small fragment of the whole field of labor industrial relations.

If I were to get into the Government's part in labor relations as such, we would be here for some days, so I am going to try very hard to limit my discussion this morning to the Government's part, by intervention or otherwise, in labor disputes.

By labor disputes I will make clear in a moment what I mean. This subject encompasses a tremendous field, not just of legalifies of labor relationships, but of social and economic and personal, human relationships between great segments of the population and between individuals leading those segments. Moreover, it embraces basic philosophies and political attitudes about which the participants never feel impartial, never feel neutral toward one another. Sometimes their feelings are adamant and quite often violent.

Almost every one, whether he knows anything about it or not, has a partisan feeling about labor disputes. Thus it seems to me very important to present to you at this discussion my concept of the inherent nature of labor disputes, and primarily to discuss what the Federal Government's position is in the settlement or adjustment of those disputes. This is perhaps a daring statement, one which some of my colleagues challenge, but which I believe to be true.

Speaking in general terms, the relationship between labor and management is an adversary relationship. You gentlemen are skilled in adversary relationships--that's your business. The relationship between labor and management, I say, insofar as the present is concerned, is one of adversaries. Management's weapon on the one hand is its capacity for creating jobs, whereas labor's--and I am speaking of labor in the organized sense, the collective sense--labor's weapon of retaliation or its offensive weapon, is its refusal to man those jobs created by management. So it comes down in my mind to a very simple principle of adversary relationship, on the one hand management fighting with its creative capacity of making jobs, and labor collectively trying to get the most from those jobs or refusing on the other hand to man those jobs through its weapon, simply stated, the right to strike or the right to refuse to work.

The public's interest therefore, and thus the Government's interest in a period of actual emergency, is to inhibit the full use of these weapons of either party in an effort to try to prevent interruption of

production in a war emergency effort. The serious problem of the Government is to do those acts of inhibition or prohibition, as the case might be, without violating to any greater extent than is necessary the constitutional privileges and immunities of individuals and of groups of individuals.

The Government's function in labor disputes runs the whole gamut of society. It is not solely an executive function. We don't deal only with the legislative function and the judicial, although the executive and the judiciary both have tremendous parts to play in the adjustment of labor disputes and even in the prevention of labor disputes. We really have to look to the legislation to see precisely what we are going to discuss at this point, because it is only through our statutory enactments that we can define the terms upon which these things must be settled.

We see the courts acting on very independent powers to enjoin strikes, picketing, secondary boycotts, and other unlawful situations. I might say in that field I consider myself an expert. Friday I tried my 304th labor injunction case in a period of 15 years, so I know whereof I speak when I say the injunction is a tool, a weapon which the judiciary uses.

So I say again that basically we must look to the statutes to find out where we stand insofar as the Government is concerned in its part in this picture.

For the purpose of this discussion I am not going to consider the Government's function except as it relates more or less directly to the settlement or prevention of disputes. Everything the Government does in reference to labor relations has some effect upon labor disputes. However, a consideration of these numerous functions defined by statue would be equally irrelevant to this discussion. To show the breadth of the Government's participation in the field of labor relations, I have made a little list of some of these agencies of the Government which have been established. It is by no means an exhaustive list. Some of them you probably have never heard of. Some of them I had never heard of when I started making the list.

1. Bureau of Apprenticeship
2. Federal Mediation and Conciliation Service
3. Bureau of Employees Compensation
4. Bureau of Employment Security
5. Bureau of Labor Standards
6. Bureau of Labor Statistics
7. Bureau of Veterans Reemployment Rights
8. International Labor Organization
9. National Mediation Board
10. National Railroad Adjustment Board
11. Office of Vocational Rehabilitation
12. President's Committee on Industrial Safety

13. Railroad Retirement Board
14. Trade Union Advisory Committee
15. United States Employment Service
16. Vocational Division of the United States Office of Education

and ad infinitum.

A partial list of the Federal statutes which deal with labor is also revealing. I emphasize that this likewise is a partial list.

1. The Taft-Hartley Act
2. Railway Labor Act
3. Norris-LaGuardia Injunction Act
4. Byrnes Anti-Strikebreaker Law
5. Hobbs Anti-Racketeering Law
6. Lea Unlawful Practices in Radio Broadcasting Act
7. Fair Labor Standards Act
8. Walsh-Healey Public Contracts Act
9. Davis-Bacon Prevailing Wage Law
10. Copeland Anti-Kickback Law
11. Eight Hour Law
12. Social Security Act
13. Railroad Retirement Act
14. Railroad Unemployment Insurance Act
15. Longshoremen's and Harbor Workers' Compensation Act
16. Defense Production Act
17. Clayton Anti-Trust Act
18. Selective Training and Service Act of 1940
19. Service Extension Act of 1941
20. Universal Military Training and Service Act of 1950
21. Interstate Commerce Act
22. Act of 1951 Relating to the Importation of Foreign Agricultural Workers

So you see there is an infinite number of bureaus, agencies, committees, and departments of the Government dealing exclusively with labor relations. There is likewise an infinite bibliography of Federal acts which deal exclusively, or almost exclusively, with the field of labor relations. Now, in addition to these numerous bureaus and committees and Federal laws affecting labor relations, almost every department of the Government, including the services and the Department of Defense, has its labor relations division. Sometimes it has 10 or 12 labor relations divisions. From my brief experience with the Navy, I know of at least four significant departments which have direct labor relations functions and their offices assigned exclusively to those functions.

So that, because of the combination of statutes and the combination of bureaus, and the combination of functions within the Government so

defined, I will try to limit this discussion to the most practical statutory facilities at the Government's command in its role representing the public interest to prevent or inhibit labor disputes which will reach the point of work stoppage and thus interfere with the productive effort.

The thing that I would like to stress to this group today and the thing I think it is important to remember is that actually the Government's function as defined by statute and the Government's capacity to stop labor disputes on the one hand or to prevent them on the other is extremely limited. Almost every time a strike is about to happen or a strike has happened and the public ire is raised, the first question from the man on the street, and even the man in Congress, is, "Why doesn't the Government do something about it?"

It is my purpose here in general to explain to you why the Government doesn't do something about it. Principally, the answer is, the Government has no authority to do much about labor disputes; I think that may be a very good thing. There are three general areas of action which can be taken. Each has its obvious limitations. They are:

First, seizure of property.

Second, injunction procedures under the Taft-Hartley Act.

Third, mediation and conciliation.

The question of seizure has become fairly moot since the decision in the steel cases on 2 June 1952. Prior to that time there had been a great many government seizures during national emergency. During the Civil War President Lincoln seized plants and facilities on at least four occasions without any statutory war powers. During World War I President Wilson on at least 11 occasions seized such facilities and operated them by the Government, not including the railroads. Prior to Pearl Harbor President Roosevelt had seized some 6 to 10 facilities engaged in the production of goods and the transportation of goods. During World War II I don't know how many were seized--offhand I would say approximately 20 large facilities, including almost entire industries, and in the case of the railroads including virtually an entire industry.

It has been thought by some lawyers and by the lawyers representing the Government in particular issues that the President had certain inherent powers during a period of emergency to seize productive facilities, whether or not they were engaged exclusively in the preparation of production of goods for emergency uses, by virtue of the practical powers which he must have, so they argued, under his office, as the Chief Executive Officer of the Nation charged with the responsibility of seeing to it that the Armed Forces operated successfully in a period of emergency. It was argued that he certainly must have the right to do something on his own to assure continued production.

The Supreme Court took the position, in its decision of 2 June and other related decisions, that there are no such powers in the President; that in the absence of the enactment of statutory powers by the Congress of the United States, the President has no such powers. I might say, the Supreme Court is always right, so it is moot to argue. There is a theory now being developed (I know some are studying it with seriousness) which may change that concept in the future. Whether or not seizure under those conditions is a good thing, I do not know.

Now, there are three principal statutes, however, under which the President clearly has the right to seizure, existing statutes, the powers of which have not always been used. The first is the act of 29 August 1916, under which the railroads have been seized from time to time since 1916, during World War I, during World War II, and almost continuously since World War II. I believe the last seizure was in the summer of 1950 and that seizure is either still in effect or is just about to be removed.

That is a very limited statute. It is a statute that simply says that under a very narrow factual situation the President may instruct the Secretary of the Army to seize railroad facilities to insure continued transportation during a statutory period. The Government has, in fact, operated the railroads more during the last decade than the railroads have. It has been a very practical thing in some respects. The Department of Army has been very sensible in its handling of the railroads. They have been managed with railroad personnel, with the same officials of the railroads, under the same systems, generally speaking, that they operated under before. The only difference is that the Army has made adjustment, under Executive order of the President, of certain disputed issues. Other than this, the status quo has been maintained between the disputing parties during the course of seizure, and it has been, at least from the public point of view, a successful seizure.

Secondly, the Universal Military Training Act gives authority to the President to seize facilities engaged in war production under rather narrowly defined situations. If a contract is let to a facility and that facility doesn't meet a time schedule, or if that facility doesn't produce the quantity or quality of the goods that is demanded for the armed forces, or if a few other similar factual situations exist, then in those eventualities, or in any of them, the President may seize and operate those facilities.

Now, that of course is not limited to seizure because of a labor dispute--the statute does not say anything about labor disputes whatsoever--but I dare say, in any productive facilities engaged in production exclusively, or almost exclusively, for the armed forces or for our allies, if any labor dispute disrupts production and other conditions exist, the seizure will occur. Time schedules cannot be met and standards of quality and quantities cannot be measured up to if the place is on strike. Therefore, it is probably under the UMT that most seizures will take place, if any are required, in the future, if they result from any disputes.

There is also a third very narrow authority granted to the President to seize production facilities, transportation facilities, and communication facilities under the Defense Production Act. It is so ambiguous and so very narrow I hardly think it is worth referring to here--at least not discussing.

Thus we are left with only three statutes under which seizure may take place. In all of them the factual situations have to be very precisely met and the legalities are just borderline always.

Secondly, the statutory facility available to the Government for intervention in labor disputes is the Taft-Hartley Act. I am accustomed to making speeches just on the Taft-Hartley Act, so don't let me run away with myself on that act. There is probably no piece of Federal legislation in the history of Federal legislation that has been so misunderstood, insofar as the powers of the Government are concerned in labor dispute cases, as is the Taft-Hartley Act.

The Taft-Hartley Act has as a stated purpose that labor and management should recognize and respect each other's rights, and I quote, "and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest." That is a preamble, a stated purpose, but actually there is little done under the Taft-Hartley Act in furtherance of that purpose. It is true, of course, some parts of the Taft-Hartley Act have a tendency to prevent disputes and often do prevent disputes. However, the Taft-Hartley Act is interjected long before the dispute reaches the stage of probable work stoppage.

As I pointed out before, I am limiting this discussion insofar as I possibly can to dispute leading to interruption of work. Actually, the Taft-Hartley Act, I say again, has very little to do with this type of dispute. Title I of the Taft-Hartley Act is the old Wagner Act revamped considerably. It is still the National Labor Relations Act. It has to do exclusively with two types of situations, one known generally as representation, which is who represents the people, if anybody, for the purpose of collective bargaining with an employer. That involves the election procedures, the determination of appropriate representation.

The other point that has little to do with labor disputes is the unfair labor practice provisions of that act, also contained in Title I. The unfair labor practice provisions prescribe a great list of things of which management or labor may be guilty; these things constitute unfair labor practices which in some instances may produce results, but which in most instances must go through the processes of the National Labor Relations Board (NLRB).

To give you an example of this process, I had a case recently in the Fifth Circuit Court of Appeals in New Orleans which we started in 1937.

It was decided in 1939 by the Board, but went to the Fifth Circuit Court of Appeals in 1940. Then it went back to the Board and remained one year, and back to the Fifth Circuit Court of Appeals and remained five years. It went from there to the Supreme Court of the United States. Final decision was by the Supreme Court of the United States, a decision at each stage being exactly the same, with never a change of a word in the original finding. It went back last year for enforcement in the Fifth Circuit Court of Appeals and the Fifth Circuit Court of Appeals reversed the Supreme Court--said it was too long, that the parties were not still the same. So, after 18 years, you can see about how useful the facilities of the NLRB are with respect to unfair labor practices.

That is an unjust indictment of the Board. The Board does a whale of a job, and more often than not it does its job within a relatively short period. But those things do happen, and two years for a normal run-of-the-mill decision is not an unusually long time.

So I reiterate that the Taft-Hartley Act, in spite of its terrific build-up as being a preventative of labor disputes and work stoppages, really has only one thing to do with such work stoppages; that is, it limits the types of weapons that the parties may use in their disputes. It says you cannot do things for these or those purposes; it says that you cannot engage in a particular kind of boycott; but it almost never stops a strike once it has started, or prevents a strike that is threatened.

On the contrary, the Taft-Hartley Act in subsections 7 to 13 conferred on labor the right to strike, picket, and boycott; so it is still not an affirmative piece of legislation insofar as labor disputes are concerned.

I am still referring to Title I of the Taft-Hartley Act, which is the revamped Title I of the old Wagner Act.

Title II of the Taft-Hartley Act deals with conciliation of labor disputes. I am going to talk about this later and to impress you with those particular functions. It is important to mention, however, that this title does contain the so-called emergency strike provision of the law which has been much discussed and has been litigated occasionally, but which is almost useless in the typical labor dispute that interrupts production, transportation, or communication. Under the emergency strike provisions of the act the President may, at his discretion, appoint a board or committee to make findings of fact and to report to him the causes of the threatened or existing labor dispute and suggest what should be done about them. Then he can instruct the Attorney General of the United States to go into a Federal district court having jurisdiction and seek an injunction. It is almost mandatory upon the court to grant that injunction. There are involved procedures there that take a maximum of 80 days. There is nothing in the law to assist the parties in the settlement of their dispute. There is no procedure that will lead toward the settlement of that dispute. There is nothing to be done during those 80 days, no forum to

which the parties may go to settle their dispute. At the end of 80 days the union goes back on strike and nothing is left to be done.

In the first place, the emergency strike provisions of the Taft-Hartley Act cannot be used except when the board of inquiry and the President find that a substantial part of or an entire industry is threatened with a shutdown or is shut down by virtue of a strike, so that the national health, safety, and welfare and the war effort are definitely imperiled. It takes a very substantial factual situation for the President to initiate an investigation. Talking about man-hours, a less typical strike is one involving perhaps 100, 200, or 2,000 people in an entire industry; yet you do have an interruption of production that might be of great serious consequence.

So much for the second facility of the Government--now, I repeat, not insofar as the labor relations are concerned, but insofar as the labor disputes are concerned, we have discussed two: We have discussed the Taft-Hartley Act and we have discussed these seizure powers. They are almost nil in the day-to-day effort to settle labor disputes or prevent them.

Third, we come to mediation and conciliation, which again is a much misunderstood provision in the law. Generally speaking, the mediation and conciliation facilities provided by the Taft-Hartley Act are available to the parties purely on a voluntary basis. In other words, if you and I get into a labor dispute and we are about to have a strike, or we are in a strike, if we want the Federal Government to intervene through its Federal Mediation and Conciliation Service, we must both request that service. Naturally and normally, the disputant who feels he is in the stronger economic position and is going to win that dispute does not want the intervention of the Federal Government in the case and will not join in such a request.

In addition to that fact, the Service has absolutely no sanction it can impose or powers it can use. It cannot order the parties to do anything. It can merely talk with the parties and make an effort to bring them together. They can say, "Look, Joe, give in a little bit here; and Bill, you give in a little bit, too." The amazing thing about this voluntary service is, as experience and history have proven, it is infinitely more effective than all of the statutory, executive, and judicial powers that are specifically granted by statute.

I wish I had the figures and statistics to give to you. In my experience of some 16 years I dare say, even in the South, that 19 out of 20 disputes which do go to the Conciliation Service are settled, without a strike and without any interruption of production, by the Federal Mediation and Conciliation Service, that agency of the Government serving purely on a voluntary basis, with no available sanctions and with a budget of something like 1.5 million--2 million, I think, today--to cover the whole United States. It is a remarkable tribute to the professional and human capacity

of a great many people. They are principally--and especially this is true of Cyrus Ching, who has retired as Director of that Service--they are men who, if you once see them, you know and understand that where human relations are concerned, they are the men to handle them.

That effort to settle on a logical, reasonable, equitable basis moves down from the Director of the Service to the brand new conciliator, and it is amazing what those people accomplish. They go in with the parties who can no longer speak to each other, when they have reached the "cussing" stage, when the director of labor relations for the employer will not stay in the same room with the labor leader, and vice versa, they go in and manage, by going to each party individually, by getting enough people into the picture, or by getting them together, to settle these things that could not be settled by injunction, by fine, or by criminal punishment.

Summing up to this point, of the three types of facilities of government intervention in labor disputes, only one looks toward the actual settlement of disputes and that is a voluntary one.

To evaluate the Government's participation in labor disputes, it is important to know just what we are talking about, and again, I am assuming here that our discussion is limited to disputes which would lead to a stoppage of work, and no others. What gives rise to the typical strike? Usually, one of two situations exists: The union comes to the employer and says, "We want something," usually money, and the employer says, "I am not going to give it to you," or "I will give you only part of it," as a result of which a strike occurs. Or--and this happens very often, and it points up a delinquency in the Taft-Hartley Act, in my opinion--the union demands that an employer recognize it as the representative of a major part of his employees. The employer will not recognize the union and the union strikes to obtain such recognition.

What does it take to settle a dispute, once one is started? Either the economic strength of one wins out over the other--that is, the capacity of the workers to stay out longer than the employer can afford for them to stay out--or the matter is adjudicated in some way or other. Under existing laws, the battle of economic force is controlled only to the extent, as I said before, by the Taft-Hartley Act, that certain weapons cannot be used without subjecting one or both parties to the unfair labor practices provision.

Adjudication is limited to arbitration. We have no system of compulsory arbitration in this country at the present time. Our arbitration is limited to voluntary action by the parties. Either they have a contract which provides by its terms that disputes will be submitted to an impartial arbitrator--and that's the way most disputes are settled--or, after getting into the disputes, they get together and say, "Look, there's no sense fighting about this. Let's get somebody who is impartial and submit our views to him and get it settled."

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Compulsory arbitration, like the seizure of property by force by governmental fiat, is repugnant to our way of life. Every time a bill comes before the Congress to provide for some sort of compulsory arbitration means, the proponent wakes up and finds he has conflicts on both sides--they don't want compulsory arbitration. The phenomenon there is that the only really successful period of adjustment of labor disputes in a national emergency occurred in World War II, when we did operate under a system of compulsory arbitration. Whether or not this era, this war experience, our present economic situation, justifies that sort of interference with the freedom of enterprise and collective bargaining, is a very grave question. We are neither "at war" today nor does the public generally accept the state of national emergency. I want to stress again that any legislative approach to this problem must come down to the question of whether or not we are willing perhaps to destroy free enterprise, free collective bargaining, and the inalienable right to strike. Those three things have to be considered when we try to make up our minds whether or not we want a system of compulsory arbitration. They are concomitants one of the other, in our concept of constitutional government, granted that situations do make those things subjugated to the greater national interest.

The War Labor Board (WLB) operated under a Federal statute which actually did two things: It had a stabilization feature and it administered a Federal system of compulsory arbitration. That explains a great deal. People who get into any sort of arguments, be they labor and management or individuals, like an audience, like a place to go, a forum, like to go to somebody and say, "Look, this so and so is doing this--we want to have it decided," or vice versa.

But there is today no such forum. The WLB administered one under a very stiff statute, the Smith-Connolly Act on war labor disputes, and labor could not strike without giving certain indications; it could not strike for economic advancement without submitting its wishes to the WLB. Either party could submit the dispute to the WLB which controlled wages, and couldn't do anything about it except that. Just as in court, they had to defend their case.

In spite of all that has been said about the economic conditions in this country in World War II, the WLB was an amazingly successful organization. The WLB was an experiment about which I have had many qualms in this present period. It was administered by a tripartite body composed equally of labor, management, and persons representing the public. It is a difficult system to work. It is difficult to get three segments of the economy together to try to decide anything. However, it did work and, to a degree, it is presently working under this Defense Production Act.

The President was faced with a very grave situation. He had a number of crises that were coming up, about to cause significant nation-wide strikes. There appeared to be nothing that could be done about it. Title V of the Defense Production Act provided in effect that, if all industry,

labor, and public got together and would agree upon a forum to handle these disputes and their settlements, the President might initiate such a program.

You will perhaps recall that in the spring of 1951, from February until May, the labor members of the Wage Stabilization Board (WSB) left that Board in a body in protest of some of the Board's actions. They vowed that they would not go back until the President provided some means of handling labor disputes by that Board. Mr. Eric Johnston held, I believe, 74 meetings during that period of time with industry in an effort to get some significant segments of industry to say, "Yes, we will submit to such a forum." Industry would never submit.

So, in the alternative, and as his only recourse, the President decided, "I will let this Board handle disputes that are brought to it by both parties, or, in the absence of that I will let them investigate and make recommendations to me with respect to these disputes." That was a futile thing, as history has proved. There was still no forum to which one party might go and bring the other party whether or not he wanted to go, with the result that you have some of the concomitants of a wartime economy without all of the essential concomitants. You have alleged price control, alleged wage control, but you have no place that your people under control may go to settle disputes between them.

You have heard a great deal about the WSB recommendations in the coal case, recently, in the steel case, and in others. It is important to note that those recommendations are made as mere suggestions. They have no efficacy whatsoever, are not enforceable, the President derives no power by virtue of them. They are merely professional suggestions.

It is important here to note that the only thing that justified, in my opinion, the existence of the WLB, which, as I say, was successful in stopping and preventing labor disputes, was the fact that both parties wanted very rigid economic controls, wage and price controls, at that time. From time to time I have been of the firm opinion that the very existence of such controls, or partial controls, actually creates more disputes than are settled in the absence of a forum for the settlement of them.

There are some industries perhaps in which wages have been raised to a point greater than the union could have obtained by its own economic strength. So I don't attempt to state an opinion on much of this, but sometimes I doubt the efficiency of a program which brings in some of these things without bringing them all in. Please don't misunderstand me. I believe, generally speaking, that the less government we have in labor relations the better off we are, just as I believe that the less government we have in competitive enterprises the better off we are. In my opinion the same thing is true of labor disputes.

It is well to consider, however, whether in this particular emergency—in a period when we are undertaking to control some of the segments of the

economy in the interest of the public generally--we might not consider the creation of a forum of the kind which the President attempted to get back in the spring of 1951. It was a forum to which the interested parties might go instead of striking, locking out, slowing down, or engaging in the very things of which the public complains.

I will now answer your questions.

QUESTION: Mr. Hall, would you amplify a little more on the Taft-Hartley law, as regards its future, inasmuch as it seems at least labor is violently opposed to it, saying it was conceived in hate and will probably live in hate, and they will continue to foment plans to undermine it or have it thrown out?

MR. HALL: My opinion is, regardless of the winning candidate or party in the election, the Congress is still going to control the Taft-Hartley Act. Efforts have been made, of course, by labor, concerted efforts, ever since May 1947, to get the Taft-Hartley Act repealed. Labor as a whole is still insistent upon repeal per se, which I think is perhaps a shortsighted point of view--and understand, I represent the Union.

In 1951 Senator Taft himself recommended, or agreed to recommend, some 10 or 12 amendments, very good from labor's point of view. Labor still insisted upon repeal only. There is a possibility of revamping of the Taft-Hartley Act. If Governor Stevenson is elected, I think the effort will be for a completely revised act. He has gone on record, as you know, for repeal, but in the same speech he made it very clear that he was going to insist on placing duties and responsibilities upon labor unions. I think we all agree that those are needed. Labor really doesn't object to those things as much as it appears it does. The objections are primarily to the things they have to do that can get them before the Board and thus enmesh them an immeasurable length of time in the processes of the Board.

There will probably be some amendment again. There has been one amendment, as you know. You used to have union shop elections. Now, if you represent a majority of the people, you are given time to negotiate a union shop, except that the Taft-Hartley Act still has section 14 (b) which says that the state law can enforce the closed shop. We have 23 states with such laws. That will undoubtedly be amended. In any event, there will be an amendment that will probably define a secondary boycott, as there will be an amendment which will probably change the present definition of an independent contractor, so that more people will be governed by the law. There may even be an amendment defining the jurisdiction of the Board. The Board has almost unlimited jurisdiction now and can't say really in effect what it covers.

I think you can look toward an amended act. I don't think in any event you can look toward a repeal of the Taft-Hartley Act, because you are going to have substantially the same Congress next year that you have this year. There may be a possibility, but I don't see it.

QUESTION: You spoke glowingly of the WLB and the results it achieved. Assuming a period of similar circumstances, that is, total mobilization, would you recommend that we go back to exactly the same system for the future that we had in the past?

MR. HALL: I think we learned a lot from the WLB that indicates substantial changes, but in substance I would first, were I in authority, insist upon the tripartite system of handling disputes, because of its experience and the experience of individuals in all three groups who have matured. You would be amazed at the maturity of some of those people by virtue of that experience. And I would certainly go back to the WLB's system of "show cause" orders. When things arose the parties could be called in, before they got to the "cussing" stage, and would tell what it was all about, and the mediation service could do something about it. I would implement anything that happens by giving to the Federal Mediation and Conciliation Service authority to go into any case and make recommendations, which authority it doesn't have now. My answer is yes.

QUESTION: Mr. Hall, would you care to comment on the present situation, the soft-coal situation, wherein the operators and labor appeared to have agreed on something which is now denied by the WSB and puts the miners apparently into a strike against the Administration?

MR. HALL: I would rather not, but I will. I think it points up precisely what I was talking about. The WSB can do nothing by itself. As a matter of fact, you know now that the WLB could set a floor as well as a ceiling. It was possible to go over to them and say, "We want more" and get more. Now, the WSB can't require their coming over until both parties have agreed to what they are willing to pay, on the one hand, or receive, on the other. The decision which the President has to make in this case is in the public interest, in terms of whether or not a strike is more serious or has a more unstabilizing effect, or whether an additional increase is more serious in the public interest. Now, that's a difficult decision to make.

I don't, as a matter of fact, think that the position of the Board has been reversed. I don't know a thing about it except what I read in the papers yesterday--there may have been a change you fellows know about that I don't know--but as of yesterday it appears that the decision was merely to prevent the companies from putting into escrow the difference between the amount approved by the Board and that disapproved. The amount, as I recall it, is 40 cents an hour

As I say, it points up again the inadequacy of the present system. The Board is neither fish nor fowl. Whether or not the Board was right or wrong is purely a question of policy; but the Board, by its existence at the present time, creates these things which would otherwise not exist if there were no Board. At the present time the miners would have been paid $1.90--there's no question about it. It is a matter of contract. It would

have prevented a strike. That was agreed to before there was any strike. There was no strike against the operators. The strike was against the Board's decision.

The Board is in a fix, where it can't reverse itself. It can't say to labor, "You strike and we will change our minds." The rubber workers, the oil workers, and the teamsters in Milwaukee tried it. The Board can't be so compromised.

So I think it is an inadequate thing. My own feeling is, we should not have it. It is not accomplishing its purpose, and the reason it is not accomplishing its purpose is because it is just a halfway thing.

QUESTION: How would you feel about government arbitration, as well as direction?

MR. HALL: Well, I feel precisely the same way that I have said, Captain, that arbitration by government is successful and I think constitutionally only when there is a complete system of economic controls. It is justified only during a conflict, an all-out war, or when the economy is so threatened that you must do it. Then I think the type of organization that the WLB performed under is a very valuable service. Otherwise I think that arbitration should be limited to contract between the parties.

QUESTION: In the steel strike we were about to run into a serious emergency and we had no device to force the parties to get together. Following up on your last statement--how can we have settlement? Would it have taken Congress to enact legislation requiring the interested parties to get together? In a battle of giants like that, how can the issue be resolved now?

MR. HALL: That particular issue could, according to the Supreme Court, only be resolved by a statute, either vesting in the President the power to physically seize the properties or by the creation of a department of government by the Congress to do that same thing.

Had that happened in World War II--in the first place, it would not have happened in World War II, in my opinion--the parties would have had to submit to the WLB, and the decision of that Board would have been final. In this case they came in for a recommendation only--that is all they could do--and the recommendation was not accepted by both parties. It was accepted by the steel workers but not by the company. The other way it would have been final and enforced by seizure.

QUESTION: Mr. Hall, is seizure the end of the line? Not assuming an all-out war situation, but, let us say, a "normal" situation, in the event of government seizure, supposing a given group decided to continue the strike--what's the next action? Where do we go from there, if, physically speaking, a group decided, despite seizure, that it did not like that, that its terms were not met, and it just didn't go to work?

MR. HALL: If the Government had seized the facilities, you can't strike against the Government. The remedy there would have been action in the court by the Attorney General for the President to enjoin the strike activities. You can't enjoin a man to make him go to work, but if you enjoin his concerted activity, enjoin the union from calling the strike, you get him to go back to work. That has been done. That is the only remedy.

QUESTION: If I may come back to the soft-coal situation, Mr. Hall, you said the President was faced with the alternative of which would be more acceptable to the public--the protecting of a stable ceiling or the strike. You just told us you cannot strike against the Government. Is that not in effect a strike against the Government? It certainly is not a strike against the operators.

MR. HALL: Well, I am a lawyer. You are right, in substance. Of course that is what it amounts to in the public point of view. Legally it is an entirely different thing, the strking against the Government or the absence of the right to strike against the Government. You cannot strike against the Government as your employer. In this situation the Government is not the employer. The coal operators are still the employers.

QUESTION: Do you think the President is still faced with those alternatives?

MR. HALL: I think he is, because I think the strike will continue, in the absence of payment of $1.90. So he has to make the decision.

QUESTION: Mr. Hall, you have pointed out to us the rather narrow restrictions under which the Federal Government is forced to operate on seizure and in settling disputes. Many of the states have seizure laws and means of settling disputes. What degree of success has been achieved through their efforts?

MR. HALL: I don't know of any state which actually has seizure powers. There are some semiseizure powers of public utilities--in Virginia, for instance. Some of those statutes, incidentally, have been declared unconstitutional. But the seizure power has been exercised in the states very rarely. I don't know of any case, actually, that has been litigated under the seizure powers.

Now the state labor relations acts have been amazingly successful in some states, primarily New York, Wisconsin, and Minnesota. They have so-called labor peace acts and state labor relations boards. They have been most successful because they are right on the scene. They get right into the picture. They have to get into the picture. But remember, these laws are always twofold. They are not punitive in concept. They have public interest primarily at heart, but they also preserve the rights of both parties. They give both parties some place to go. They are good

things, but they mostly have been now superseded by the Taft-Hartley Act, because they are limited to operate only in the fields of intrastate commerce. You know that through the interpretations of the Supreme Court there is very little intrastate commerce alive--it's almost all interstate commerce. So very good boards like those of Wisconsin and New York have been limited terrifically in their operation. My answer is, they have been most successful.

But I don't know about seizure powers. I think usually it would be unsuccessful, but I have not seen it exercised. It puts government in the position of being the arbitrator of a dispute in many instances.

QUESTION: Mr. Hall, according to the papers, when the Board denied the miners a raise in pay, or part of it, Mr. Lewis lambasted the Board's decision with all sorts of language. He also came out for the Democratic presidential moninee. He also stated there was no strike, that he had not ordered a strike. All of a sudden he ordered them back to work and didn't give any reason that I could read in there. Do you think the miners are being made a political football, to show that the present party can get along with labor, so they had better go along together?

MR. HALL: That is a rough one. I frankly don't think so, because I know the Democratic Committee was scared about that after that strike took place. It has political implications only in the intervention of the interests of the Administration, rather than the other way around. That is an ever-present problem.

QUESTION: Mr. Hall, in view of the increasing complexity of our economic system and the fact that very seldom can any strike take place without touching the lives of all of us all over the country, don't you think it is about time we should start to reinvestigate the so-called inalienable right to strike?

MR. HALL: We have, Colonle, reinvestigated that to a very great extent. Beginning in about March 1950, the courts of the Nation began to reinvestigate that, and they have greatly limited that so-called inalienable right. It is a term I use because it is one I argue without much success quite often in court. There is, as a matter of fact no inalienable right to strike. There is an inalienable right not to work, which is an individual right; not a collective right. The re-examination which the judiciary is making has completely revised that concept. From 1937 to 1950, the courts, led by the Supreme Court of the United States, were saying that it was an inalienable right. Now the courts, beginning with a case in 1950, have been saying it is not , and the current Supreme Court says in no uncertain terms that is not an inalienable right. I think the judiciary is making very real investigations, and the legislators of the various states are, too.

QUESTION: There has been a growing number of people, Mr. Hall, in certain industries and labor organizations, who would like to employ a

full-time paid arbitrator as a means through which they could settle their disputes on a pacific basis. Would you care to comment on that practice?

MR. HALL: Yes, sir, thank you, I would. It is something you should know. I have been talking in this discussion only about those disputes that result in strikes or threaten to result in strikes. There are several industries where the contractual relationships are such that they have really classic operations, and they have prevented disputes. They are notably the automobile industry, the motor freight industry, and the rubber industry and there are many others. The automobile industry, under contract with CIO, operates full time through what they call umpires, by whom decisions are made that could not be resolved at a lower level. Under the contract you make an effort to settle a dispute with the job foreman, a further effort to settle it with the superintendent, and to the highest supervisory official in your department. Then for settlement it goes to the umpire, who makes a decision which is final. That again is by reason of contract.

I will give you another outstanding example. In the central states and the Southeast and Southwest in the motor freight industry, there are some 100,000 employees who are covered by three identical contracts. They have what they call joint committees in the central states of 24 men, 12 from the unions and 12 from the employers. Under their present contract there is nobody from outside. Of those 100,000 employees there are goodness knows how many employers, because there are any number of motor freight carriers in those 24 states. Since 1946, when the system of settling disputes was initiated by contract, until the present time, only three cases out of many thousands of cases have even had to go to the impartial umpire state. They have all been settled by the employers and the employee committee; I have been present when there would be 250 cases heard in a period of three days without the intervention of a third party, just by a fixed contract committee between employers and employees, the union and the employers.

Many others are handling it in different ways by committees, by umpires, or by an arbitrator selected for a particular case. It has been almost essentially the method of bargaining agreement. The printing industry has been most successful in that. You have no strikes in the newspaper industry among those employees represented by the printing pressmen's union. They even arbitrate the terms of their new contract. They can do it. Most industries can't. It is not so well defined in most industries as it is in the newspaper industry, but that has been very successful.

QUESTION: Is it true that the Taft-Hartley Act prohibits lockout, makes it illegal?

MR. HALL: The lockout under the Taft-Hartley Act is illegal if it is an unfair labor practice lockout. It depends upon its purpose.

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QUESTION: That being the case, then, does the operation of a big business become more in the nature of a franchise? If that is so, is that a good line of reasoning to follow in the prevention of labor disputes and interruption of service?

MR. HALL: No, sir, I don't think so. There is a distinction between lockout and curtailment, a fairly drawn distinction between lockout, which is part of a labor dispute, the converse of a strike, and a curtailment of production, or an enlargement of production, or a cessation of production on the part of an employee. There is a great deal of difference. I don't agree that it is in the nature of a franchise.

QUESTION: Mr. Hall, you mentioned the desire to settle these disputes without its being necessary to violate the constitutional right of the disputants. Will you cite for us a case or two where it was necessary?

MR. HALL: Necessary to violate this?

QUESTION: The constitutional rights of the disputants.

MR. HALL: Any of the seizure cases represents a violation of the constitutional rights of the property owners. Constitutional rights are relative. I have them you have them. It all depends upon which one of them is the most important at the particular time. For instance: The NLRB in a case involving the LaTourneau Manufacturing Company near my town, Toccoa, Georgia, had a situation where representatives of a steel union were trying to organize in LaTourneau. In doing so they trespassed on LaTourneau's property and handed out handbills. The Board and the Supreme Court of the United States held that, although the company had a constitutional right as a property owner, nevertheless, because it owned all the property, then covering many miles, including the particular plant that the steel union wished to organize, that the union had a superior right under the right of free speech and free press, namely, to distribute literature, which was a greater constitutional right than was the right to own and possess property exclusively.

QUESTION: Mr. Hall, with respect to definition of the secondary boycott, would you care to comment on the type of definition of the secondary boycott which would be a preventative which would be acceptable to labor?

MR. HALL: I think by way of compromise labor would accept the old judicial meaning as expressed by the Supreme Court of the United States, that if you got outside the area of the dispute, not geographically, but economically, your activities were secondary. For instance: Prior to the Taft-Hartley Act, the Supreme Court of the United States, in the New York case that came up there, permitted picketing of distributors of products that were declared unfair because of a dispute between the manufacturer of a product and the union. That of course was secondary--no

doubt about it--but it was nevertheless protected as a then defined constitutional right.

Almost any activity, like picketing or boycotting that had some direct relationship to the primary dispute was permitted before the Taft-Hartley Act. Today it is very definitely prohibited--not all of those activities, but a great many of them that have been considered so-called traditional secondary activities. I think labor would accept a reversion back to the rather recent common law concept. I surely would, and every labor lawyer would, be delighted.

MR. HILL: I am sorry we have no more time for questions. On behalf of the students and the faculty and, I am sure, Admiral Hague, I thank you very much for a most scholarly address, Mr. Hall.

MR. HALL: It has been a pleasure.

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