Colonel Jordan's Remarks
Introducing
Dr. William M. Leiserson
5/3/38

The subjects of the address of our speaker this morning are: "The Powers and Limitations of the Federal Government in the Settlement of Labor Disputes" and "Labor in Industry".

Dr. Leiserson is a graduate of the University of Wisconsin, obtaining his B.A. there in 1908 and his Ph.D. at Columbia University in 1911. He has a long list of titles which I might read you but the ones that I want to particularly stress are that he has been Professor of Economics and Political Science at Toledo University, 1915 to 1918; Chief of the Division of Labor Administration, Department of Labor, 1918-1919, which was a very crucial period in our history; Chairman of the Labor Adjustment Board, Clothing Industry, in Rochester, 1919-1921; Chairman of the Board of Arbitration, Men's Clothing Industry, New York, 1921-1923, and the same industry in Baltimore and Chicago, 1923-1926. He has been Professor of Economics at Antioch College since 1925, and Secretary of the National Labor Board of N.R.A. in 1933. He is now a member of the National Mediation Board which he has been since 1934.

We are particularly lucky in having this gentleman with us this morning to discuss the two subjects which he is going to cover. I don't believe there is any man who has a broader viewpoint and is more able and capable of giving us real good advice on those two subjects.

Dr. Leiserson —

Restricted

The Powers and Limitations of the Federal Government in the Settlement of Labor Disputes
and
Labor in Industry
by
Dr. William M. Leiserson
National Mediation Board
May 3, 1938

I trust that I can do something to live up to Colonel Jordan's reputation that he has given me. I am to address you for about forty minutes or so on this subject of the Government in relation to labor disputes and something about labor in industry after which I understand you will ask some questions, so I will try to go over briefly the general ideas that I have in mind on the subject.

I think it is important that we bear in mind in discussing labor disputes and the Government powers and limitations in connection with them that labor disputes are not all of one kind. That is a very important source of confusion in dealing with labor disputes. Most people thing: "Well, the wage earners or unions are on one side and employers and management on the other and you have strikes, and that's labor dispute." But actually labor disputes are of several different kinds, so different that both private agencies for dealing with them, I mean the agencies that they themselves develop, and the Government agencies for dealing with different disputes, are entirely different. Various kinds of agencies are arranged for various kinds of disputes, that is, for handling them, and the Governmental powers are different. Around those agencies grow up certain personal and property rights as they have been functioning in industry which cannot be upset even in times of war, I think, although I don't know very much about that. They may be regulated somewhat, I

suppose, but those rights are important to know, whether they are in times of peace or in times of war. For instance, let us take the first kind of dispute. The first kind is the kind that you hear about most nowadays, the one that the National Labor Relations Board is concerned with. They are disputes over the right to organize; they don't have anything to do with wages, hours, or conditions of employment as they exist in the plant particularly. They have to do merely with the question, May wage earners freely associate themselves in an organization and act as an entity through the organization similar to the way the stockholders of a corporation act as an entity or similarly to the way in which the management of a large industrial enterprise is handled, which commonly consists of about 10% of the employees of a corporation only they are the upper supervisory employees. That management acts as a unit and this question of the right to organize is the problem of the National Labor Relations Act — and there are now six state labor relations acts with a state Labor Relations Board dealing with the same problem. Now it is rather important to bear in mind that apparently wage earners in this country have had the right to organize for about a hundred years. It was in 1842 that the Supreme Judicial Court of Massachusetts established the doctrine that working people are free to organize and to strike for organization purposes, but it was a right as against the Government, that is, the Government could not interfere with their organization and the Government could not charge that they were engaged in a criminal conspiracy. Prior to that time it was a criminal conspiracy for working people to organize and to strike. While they had that right as against the Government they didn't have it as against the

employer. The employers had the equal and free right to destroy their organization and so in one of the early railway labor acts known as the Erdman Act there was a clause that no employer shall discharge a man for belonging to a labor organization and no employer shall make contracts with employees which compel him not to join the labor organization. That went up to the Supreme Court of the United States in a famous case known as Adair against the United States, and the court held that that provision was unconstitutional on the ground that the employees' right to quit was equal to the employers' right to discharge for any or no reason, and when two such equal rights meet the Government has no power. Further, the court went on to say that since an employer has a right to discharge for any or no reason equal to the employee's right to quit, the Government cannot inquire as to the reasons for his discharge and cannot say that you can't discharge a person for union activity, and therefore the law was declared unconstitutional, or that section of it.

About the same time the state of Kansas as a state passed a similar law to that provision in the Erdman Act. That went up to the United States Supreme Court and the court held that state law unconstitutional under the Fourteenth Amendment that it interferes with the employer's freedom of contract and the employee's too, and the employer's right to discharge, so both of those laws were unconstitutional. Now that meant what? It meant that the employees had a right under the law to try to organize and to try to force the employers to recognize their organization and deal with them. The employer had an equal right to try to destroy their organization and not deal with them. Therefore, it meant that on that question there had to be industrial war. It couldn't be settled by legal process. You take

the figures of strikes over a period of years, approximately 50% of all strikes are not over wages, hours or terms of employment, but they are over the right of the employees to organize and to be represented by a union in their dealing with the employer. When those industrial wars over that question became so serious and interrupted commerce so much the United States Government adopted this National Labor Relations Act. I won't try to trace the things that went before it. There were provisions in the so-called Norris-Laguardia Act, anti-injunction act, which indicated the trend, and there was Section 7a of the National Recovery Act, and then there was a regulation of Congress. But we come to the point where the National Labor Relations Act was passed, and that is an act only to settle such disputes which arise over the right to organize. If that act is properly enforced and administered there should never be any strikes over these rights to organize, that is, legally Congress and the Labor Relations Board and the courts can settle all of that because the law now defines the rights and provides administrative and judicial machinery for settling this kind of dispute. You will admit that if we could provide the legal machinery, civilized machinery, for getting rid of 50% of all of our strikes we would be doing a very good job. Now many people are confused because strikes continue after the law is passed. Partly that is due to human nature. We have to understand. If employers for a hundred years have considered it part of their personal and property rights to hire and fire people for any or no reason the mere fact that you pass a law will not overnight change their moral convictions on those things, just as the mere fact that we passed the Eighteenth Amendment didn't change people's ideas about their rights to drink. Employers are not wholeheartedly willing to accept this

law as the final word on this question. That's one reason. The other reason is that whenever you start a new thing of this kind you need several thousand people to administer it; they haven't trained people to administer it, and as a result you have a lot of errors in administration which are bound to come with any new law. It is my judgment that in time, and I think it is the judgment of all students of the subject, disputes over the right to organize will hereafter be settled by legal process and not by strikes. It is just a matter of time, and the reason is this: that the Supreme Court in unholding the right to organize in the Virginian railway case, which involved the constitutionality of the Railway Labor Act, unanimously upheld two lower courts which had ruled that a wage earner's right to organize belonged to a union as a property right and that the courts will protect the wage earner's property right just as they will protect the employer's right to do business which is also a property right to belong to an organization which is now held to be a property right. In other words, to do business through an organization. Now that's as much as I can say about the disputes over the right to organize. That includes to bargain collectively, that is, to make the terms of employment through an organization.

There is another set of disputes and those you hear of, commonly referred to as jurisdictional disputes, namely disputes between rival unions. That has been a very bitter source of conflict in thiscountry more than in most other countries. When the members of one's own family get to fighting they fight very much harder and more bitterly than one family as against another family, and when labor gets to fighting within its own right then there seems to be no rules at all. These Labor Relations acts in their

need for settling disputes with respect to the right to organize have to settle this question also and so the laws provide when there is any doubt as to which organization the employees prefer to belong to or to have represented the laws provide that the National Labor Relations Board or the National Mediation Board which administers the Railway Labor Act or the state Labor Relations Board, shall conduct an election and the majority of the appropriate unit, it doesn't necessarily mean the major of all the the employees taken in one vote, but the majority of verious crafts or the majority of a plant or the majority of a department, whatever is found to be the appropriate unit, may designate the representative, that is, the union that will make the collective bargaining agreement with the employer that is binding on all the employees whether they belong to the organization or not. The National Mediation Board conducts about a hundred of those elections every year. We have very many bitter jurisdictional disputes between locomotive firemen and locomotive engineers because a man gets his job as a fireman thenis promoted to be an engineer but he retains his membership very largely in the firemen's organization. The engineer's organization doesn't like that and they get to scrapping as to who shall represent employees. The same is true between the brakemen and the conductors. Each have an organization but the younger men start as brakemen, move up to conductors and then retain their membership in the brakeman's organization known as the Brotherhood of Railroad Trainmen and they have disputes.

Then we have in the railroad shops seven different shop crafts and they get to scrapping, but so far as the railroad industries is concerned, I may say, that we have no strikes or disputes in the sense that it interrupts commerce in any way on any of those jurisdictional questions. The

organization and the employers have learned that the law provides a democratic method of settling such cases, and we proceed to hold the election and issue a certificate: this and this organization have been designated by the majority of the employees to represent this craft of employees or this unit of the employees and the employers must treat with whoever is certified in that way. Now outside the railroad industry you still have a good many strikes on that question. Neither the employers nor the union have yet got into the habit of obeying this new kind of a law but I venture to say that in a comparatively short time this kind of dispute will also be settled by legal machinery of election and we want have any interruption to production on this account.

Now we come to the third kind of dispute, disputes about making and maintaining collective bargaining agreements. Now you will find the first provision in the Railway Labor Act is this: "It shall be the duty of all carriers and all their employees in order to avoid interruptions of commerce to make and maintain agreements covering rates of pay, rules, and working conditions. Now that refers to agreements arrived at by collective bargaining. They are then put in and they have to be filed with the National Mediation Board. We have close to 4,000 such agreements on file with us. By implication, although not expressly, that is also in the National Labor Relations Act, that the employers should bargain collectively with the representative of the employee and then when it is over they should embody the results of their collective bargaining in an agreement but the law doesn't say that specifically and the National Labor Relations Board is not authorized by law to assist the parties to getting together in an agreement. That's the difference, the essential difference between the National Labor Relations Act and the Railway Labor Act. The Railway Labor Act has

law as the final word on this question. That's one reason. The other reason is that whenever you start a new thing of this kind you need several thousand people to administer it; they haven't the trained people to administer it, and as a result you have a lot of errors in administration which are bound to come with any new law. It is my judgment that in time, and I think it is the judgment of all students of the subject, that disputes over the right to organize will hereafter be settled by legal process and not by strikes. It is just a matter of time, and the reason is this: the Supreme Court in upholding the right to organize in the Virginia railway case, which involved the constitutionality of the Railway Labor Act, unanimously upheld two lower courts which had ruled that a wage earner's right to organize belonged to a union as a property right. Further, it held that the courts will protect the wage earner's property right (just as they will protect the employer's right to do business, which is also a property right) to belong to an organization, which is now held to be a property right, in other words, to do business through an organization. Now that's as much as I can say about the disputes over the right to organize. That includes to bargain collectively, that is, to make the terms of employment through an organization.

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its own right then there seem to be no rules at all. These Labor Relations Acts in their need for settling disputes with respect to the right to organize have to settle this question also, and so when there is any doubt as to which organization the employees prefer to belong to or to have represented, the laws provide that the National Labor Relations Board or the National Mediation Board, which administers the Railway Labor Act, or the State Labor Relations Board, shall conduct an election and the majority of the appropriate unit, it doesn't necessarily mean the majority of all the employees taken in one vote, but the majority of various crafts or the majority of a plant or of a department, whatever is found to be the appropriate unit, may designate the representative, that is, the union, that will make the collective bargaining agreement with the employer that is binding on all the employees whether they belong to the organization or not. The National Mediation Board conducts about a hundred of these elections every year. We have very many bitter jurisdictional disputes between locomotive firemen and locomotive engineers because a man gets his job as a fireman, then is promoted to an engineer but he retains his membership very largely in the fireman's organization. The engineer's organization doesn't like that and they get to scrapping as to who shall represent employees. The same is true between the brakemen and the conductors. Each has an organization but the younger men start as brakemen, move up to conductors and then retain their membership in the brakemen's organization, known as the Brotherhood of Railroad Trainmen, and they have disputes.

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interrupted in any way on any of those jurisdictional questions. The organization and the employers have learned that the law provides a democratic method of settling such cases, and we proceed to hold the election and issue a certificate: "this organization has been designated by the majority of the employees to represent this craft of employees or this unit of the employees," and the employers must treat with whoever is certified in that way. Now outside the railroad industry you still have a good many strikes on that question. Neither the employers nor the union have yet got into the habit of obeying this new kind of a law, but I venture to say that in a comparatively short time this kind of dispute will also be settled by legal machinery of election and we won't have any interruption to production on this account.

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the National Labor Relations Act and the Railway Labor Act. The Railway Labor Act has elections just like the National Labor Relations Act. It also has provisions for enforcing the right to organize but our National Mediation Board has nothing to do with the enforcement. That is left entirely to the court. If employees come to us and say the employer has interfered with the union, has coerced people, has refused to bargain collectively, has discharged someone for belonging to the union, instead of hearing them as the National Labor Relations Board does, we say to them: "Now you take your evidence to the United States District Attorney in the district in which you live and he will handle it and take it to the Grand Jury and get an indictment and prosecute." But the National Labor Relations Act is entirely different. It doesn't refer to a Grand Jury or any jury. It appoints the National Labor Relations Board to act as the court of original jurisdiction to hear and decide such questions of violation of law and to issue what are known as cease and desist orders against the employer if he has been interfering. Those are not enforceable by the Board itself. The Board must ask a court to review their findings and then issue the order and enforce it. In effect then the Railway Labor Act begins where the National Labor Relations Act ends, that is to say, it deals exclusively with the right to organize and when they have enforced that through the courts they are through. We don't deal with enforcing the right to organize at all. We leave that to district attorneys. We come in when the employer wants to deal with the organization and the organization wants to deal with him, and they bargain collectively and they get stuck. When they can't agree on what should be done that's

where our work begins and that is why we are called the National Mediation Board. Ninety percent of our work has to do with mediation, that is, we are requested either by one party or the other, commonly also by both, to come in. They say: "We have been trying to negotiate and reach a bargain and we couldn't. Won't you please send a mediator in to help us?" We go in with no authority whatever to make a decision; we are friends of both parties and we see one side and then the other. We talk over their positions and we analyze the facts they have to back up the position; then we bring them closer and closer together. We call them to a joing meeting and then we put up all the persuasiveness we possibly can, and I will say that in more than ninety percent of the cases we bring them to an agreement. They sign an agreement; we merely witness it. That is known as the collective bargaining agreement.

Now this method in the Railway Labor Act is not something that somebody has thought up in the back of his head as a grand way of settling labor disputes. It is a method that has been hammered out by almost fifty years of experience in the railway industry, beginning with the first act in 1888. I can't stop to give you the history of it except to say that history showed that Congress tried every wrong method of dealing with this problem that it could. When it found it was wrong it tried another and another, and finally it hit upon this mediation method as on the whole the best method. It tried to say the parties shall arbitrate, but of course it could not enforce the arbitration by making it compulsory under the Constitution because the courts have held compulsory arbitration is unconstitutional. Whether they would still hold it on a railroad industry

is a question but they held it in certain food industries. Under the Kansas Industrial Act they declared it unconstitutional. They tried the method of saying they must arbitrate, that is, submit it to an arbitration board, the board makes a decision and they leave it to public opinion to enforce the decision. That didn't work.

They tried various other methods and finally hit on mediation, just friendly conferences, and that has proved most successful. It looks like a long way around to get to a place because we have no authority whatever, and yet it has proved the shortest way and the most effective. Less than 10% of the cases we can't settle by mediation and so we say to the parties: "This law says this, if we fail. Now we have done our darnedest to try to get you folks together." We usually end up this way, putting the responsibility on them: "Now is there some stone that we have left unturned, some suggestion that we should have made that we couldn't think of that would lead you to get together? Perhaps you have some suggestion." Sometimes they come along. But then we say: "We have failed and now the law puts a duty upon us, to urge you and try to induce you to submit this particular dispute to a board of arbitration." In most of the cases that we can't settle we induce them, with no authority to force them as either side may reject arbitration, to submit it voluntarily to a board of arbitration. Now a small number of cases are left, where one party or both refuse to arbitrate. Then the law provides another method. If there is threat of an emergency, that is, commerce will be interrupted on any large scale, we report the fact to the President and the President may then appoint an emergency board that makes an investigation. It must report within thirty days and recommend how this dispute ought to

be settled on its merits. In all the cases in twelve years of operation of the Railway Labor Act since 1926 there has only been one case where the recommendation of such an emergency board was not accepted and made the basis of an agreement. In that case an employer, one of the carriers, refused to carry out the recommendation. The employees waited about three years, called a strike, tied up the railroad, and then he made an agreement with them. I thought it was rather a bad way of going at the matter.

That is a third kind of dispute that the Labor Relations Board has nothing to do with. You need mediation boards somewhat like ours. I should say there is in the Department of Labor an organization, a division of conciliation, which acts as mediator, but they have no law which lays down rules for them. They just come in in such disputes as the Secretary of Labor tells them to go into and they are not in any industry long enough to get acquainted with the people on both sides the strike has occurred. We always tell the employee: "If you go on strike we can't help you. It's all over then. But if you postpone your strikes,(and the law does provide that the status quo shall be maintained while we mediate) if you will maintain the status quo we will go in and see what we can do."

After the agreements have been made, and there are hundreds of thousands of them, in the country, another set of disputes arises as to the meaning, interpretation or application of those agreements, and that is an altogether different kind of dispute. That is the way it is in the Labor Department, whereas the National Mediation Board handles about two hundred cases a year altogether, two hundred and fifty perhaps.

There is a board created by the Railway Labor Act which functions in Chicago known as the National Railroad Adjustment Board, whose duties are confined only to settling any disputes that arise about the agreement, any grievances under the agreement, and they have authority to make final, binding and compulsory decisions which are enforceable in the court. Why compulsory arbitration there and not in the other places? Because this compulsory arbitration is based on an agreement that the parties have voluntarily made, theoretically they have settled all disputes. They said wages shall be so and so; hours shall be so and so; overtime shall be paid for so and so; seniority shall be so and so. It is all settled but a fellow comes along and says "Well, I was senior to this man and I was given the run around" and a dispute comes up. It goes to this Board and the Board decides not what they think but what the agreement required. Some fellow says he didn't get his right pay, that he worked overtime without getting his time and a half or time and a quarter, or whatever the agreement provided. That goes to the Board if it isn't settled and that Board makes a final and binding decision. They handle three or four thousand such disputes a year as compared with ours. That board is made up of an equal number of representatives from both sides; most of the cases they settle that way without a neutral chairman. When they deadlock, however, our Board, the National Mediation Board, appoints a neutral connected with neither side to sit as chairman. We call them referees, and in that way they get a majority ruling that is final and binding.

All of these devices are needed in peace time and, without knowing

anything about war, I should say the things that work effectively during peace time will be most effective in war time if it can all be unified in one national policy. That question of unification is another problem entirely that I can't stop now to go into, but I think it would be important to establish some kind of a war labor administration that will unite all of these things together in one general policy for all of industry and see that all the parts fit into each other properly and they function as one national uniform way of handling all the problems. Certainly what works effectively in the railroad industry, in the printing industry, in various other industries, ought to be, as far as possible, applied everywhere in all the other industries in time of great national emergency.

The question arises, in time of war would you, instead of this slow arbitration, have a war labor board of some kind to make final and binding decision? That is a very serious question to consider. In peace time most of the disputes have compulsory arbitration. On the one side, if the peace organization is properly organized all the distraction about right to organize would be outlawed under these labor relations acts and you wouldn't need any strikes there. On the other side, all the disputes about interrupting and application of the agreement would be outlawed because you would have compulsory arbitration there, and together with those will be the jurisdictional dispute. Therefore, the only disputes that remain where you might apply compulsory arbitration are in making the agreement and revising or changing the agreement. My own judgment, from a knowledge of human nature, leads me to believe

that certainly not at the beginning of war time, perhaps in later stress, it might be necessary, but I wouldn't compel compulsory arbitration at the beginning because, while it looks like a short cut, it doesn't actually prove to be the short cut. If the machinery were properly organized on this voluntary mediation and voluntary arbitration business, it would be perfectly possible for a war labor administration to call the representatives of all labor and all industry together and say: "Can't we extend this business of arbitration and agreement and make a voluntary agreement that there shall be no interruption of production during the war period, but we will voluntarily submit it to an arbitration board in accordance with the methods generally used." If you get labor and capital to cooperate on that basis in a voluntary way I think we will get very much more effective enforcement and very much more satisfactory results. That raises the question as to whether the Federal Government will have to control wages and how. I think it will, but it cannot control wages without controlling prices. The way industry ordinarily operates wages are a cost just like materials; they are a cost and what is left goes to the owner. Obviously if prices are rising and there is more left to the owners and you try to keep wages at certain definite costs, you will have a great deal of dissatisfaction and you will have to compel cooperation in war for the purposes of the war rather than getting voluntary cooperation. While I am not prepared to discuss the whole question of prices there cannot be fixing of wages and successfully operating without at the same time successfully fixing the prices. You know you have often been told no doubt that employers will not put forth their best efforts if prices are fixed for them, and there is a good deal to be

said for that, that's true; but just remember that employees are just the same kind of animals that employers are, the same kind of human beings, and if their wages are fixed they won't have the incentive to put forth their best efforts any more than the employers will. That's a problem that has to be dealt with.

In the early days of war there is always a dislocation of industry, and the problem of what to do comes up. I think it is very important to start immediately. The first thing I think is preparedness. This outline that I gave you for handling various kinds of disputes ought to now, in times of peace, be as rapidly as possible extended to cover all industries, both state industries and interstate industries. That is the best preparedness for dealing with the dislocation that comes in the early days of the war. Then right at the beginning this unification under some kind of war labor administration to bring them all in so that if there are any industries or places that have not during peace time been covered by such machinery they will very quickly be covered there. Then of course a big important thing is the mobilization of the labor force.

Colonel Jordan didn't read to you one of my other experiences, and that is that I worked with the United States Employment Service here during the last war and organized the employment services in Wisconsin and Ohio in their early stages, and also in New York State. Now I think we have made a beginning of having a United States Employment Service, when you say a sort of a national mobilization of labor and to distribute it properly and quickly where it belongs; but we have made the very barest beginning now. We find ourselves in this ridiculous situation. The United States Employment Service has an appropriation of approximately $4,000,000 a year. The states and cities contribute an equal amount, about $8,000,000 a year

altogether for the Employment Service. However, since the unemployment insurance has come in every insured employee has to go to register at an employment office with the result that this $8,000,000 is entirely inadequate to maintain a United States employment service so the Social Security Board contributes $40,000,000, five times as much as Congress appropriated to extend the Employment Service. You have got two authorities, the Social Security Board with $40,000,000 and the United States Employment Service with $8,000,000, two separate budgets, and they are scrapping just like family people will scrap among themselves as to who is going to run this service. Obviously we can't have any such fussing during the war period, but it is equally obvious we ought not to have it now and we should quickly put them under one authority. It doesn't make any difference particularly which one. The whole United States Employment Service should be under one authority so as to mobilize labor properly and then when the dislocations come in the early times of the war and a lot of industries lay people off, quickly take those people and put them where they properly belong, and so on.

I have already talked longer than I should, and I thank you very much.

Colonel Jordan: Gentlemen, I want everybody in the audience to remember that this talk is in the family and we don't want it discussed outside. If there are any questions that any of you gentlemen would like to ask Mr. Leiserson I know he would be very glad indeed to attempt to answer them.

DISCUSSION

Q. What is the meaning of the recent action of the National Labor Relations Board in reconsidering its decision in the Republic Steel case?

A. That's a very good question and important to understand. Before an employer can be found guilty of violating the law which prohibits these unfair labor practices, as they are called, of interfering with employees' organization, they have a right to a hearing. This board has thousands of cases coming up all over the country and they have twenty offices and so they designate what they call "trial examiners" to hear the case and make a record. Then they come to the board and the board makes a decision. That has been the procedure. It has been the procedure in the Interstate Commerce Commission, Federal Trade Commission, everywhere. But last week the United States Supreme Court reversed a decision of Secretary of Agriculture Wallace in which he had had a hearing out in Kansas City about a Kansas City stockyard case, and he had sort of gone through the record and then made his decision on the findings of the examiner who heard the case. The court ruled that is not a hearing under the constitutional protection that employers or business men, or employees for that matter, have a right to have. The court said when that happened that the examiner must make a finding first and send the copy of it to the parties and they must have a chance to answer that and then the board make its final decision. Now that wasn't clearly understood before by many boards. The Department of Agriculture didn't understand that. The National Labor Relations Board found that many of the decisions which already had been made had been made on the findings of their trial examiner and the board merely

sort of looked through the record and said "There's nothing wrong about this and we make that our _____ ", and so they are recalling the decision to get the report of the trial examiner and have another hearing before the board.

Q. Would you care to say something about the advisability of having unions responsible?

A. Of course it is absolutely essential that unions shall be responsible, but in the public discussion of the matter it is usually assumed that unions aren't responsible while employers are responsible. That is not the fact. We have to ask ourselves, "What do we mean by responsibility?" It means they assume to carry out whatever obligations they have entered into. When we speak of employer, unwittingly we have in mind one man and that he is responsible, or we say a corporation is responsible, but that is not the employer in labor relations at all. The employer whom the employees know is the hierarchy of managers from the general manager down to the foreman who gives them orders and fires them off the job, and that usually is 10% of the labor force; the upper 10% is the employer. Now when an agreement is made it is this management and all the employees through their representative that make the labor agreement. It is very important that the management shall be responsible and the union shall be responsible for each of the employees. By and large the experience is that the management is necessarily less responsible than the employee. It may not appear so, but if you look at the records of this National Railroad Adjustment Board you will see that over 60% of the decisions are in favor of the employee and that is true where the employer representatives and the employee representatives make the decision

themselves without an impartial chairman. It runs about 62% when the impartial person makes the decision. Now what does that mean? That an employer finds it very difficult to meet his responsibilities because some foreman or superintendent somewhere down the line is constantly violating the agreement. A similar situation exists on the employees' side, that the employees may want to and do violate the agreement. However, if the union has experience, if it is not an entirely new union, they learn to hold their people in line. The responsibility question is not a responsibility of the union. The union officers in the main are anxious to obey the agreement. It is the employees that are not. I will give you an example of it. I recently was asked to arbitrate a request on the part of the employers in the Full-Fashioned ladies hosiery industry for a cut in wages. I made a decision that readjusted wages downward about 10%, a reduction in costs for the employer. The national union and its officers said to me: "We don't like your decision but we will enforce it." However, their members in Philadelphia went out on strike. They said the decision was no good and I shouldn't have cut their wages. The officers of this union got busy, and they called me up and said: "Give us seven days and we will control this situation." I had no authority except to denounce them publicly if they didn't obey. Actually at the end of two days they got their members together in a mass meeting, explained the situation, and then they voted nine to one to force those fellows holding out to go back to work and live up to the agreement. That has happened constantly in the agreement. The notion that if you incorporate unions you would make then more responsible is quite erroneous because incorporation is primarily to limit responsibility of the members of the corporation rather than to

make it responsible, and an unincorporated association is just as responsible in the eyes of the law, in fact more than a corporation. For instance, the New York Stock Exchange is unincorporated and the firms that deal on the Stock Exchange are unincorporated. Why? Because every member of the firm is then responsible. If a union actually does something wrong, as in the Danbury Hatters case when they boycotted a lot of stuff in interstate commerce, every member of the union anywhere is responsible. That dispute arose in Danbury, Connecticut, and a member of the union in Seattle, Washington, could have his home attached to pay the damages that the court assessed against the United Hatters union. I don't know whether that answers your question or if it raises some more.

Q. I think there is a general belief that the National Labor Relations Act favors the employee more than it does the employer. Would you care to comment on that phase of it?

A. It is absolutely true that it favors the employees entirely, but I don't think that is wrong or bad. Would you say if you have a law to protect property against people who have no property that it's a one-sided law, that it only protects the property owner, because the problem is to protect the property owner? Now here you have a problem, to protect the employee's right as property and that's all, and anybody that wants to trespass on that right should be made to keep off. That's what this law deals with. If there were no protection to the employer in his rights then that would be unfair, but there is a large body of law developed by the courts, equity law, which prohibits all the unfair labor practices on the part of labor organizations and unions. No union is permitted to intimidate, to threaten, to have violence, fraud, or, for instance, a

sympathetic strike is illegal. Now what do I mean by illegal? They are considered unfair labor practices on the part of labor people, and any employer can go into a court and get an injunction against such unfair action on the part of the union. Beginning with 1894 or so when Eugene V. Debbs went to jail for violating such an injunction, there have been hundreds of labor leaders that have gone to jail for violating injunctions of courts which have told labor unions to cease and desist from doing certain things. The Norris-Laguardia Act was designed to clarify that law. Just as these trial examiners have been held by the courts to be not giving a full and fair trial to the employers unless the board itself has the hearing, so the Congress found that the judges had developed these unfair labor practices against which they would issue injunctions without giving the employees a hearing of any kind, purely on an ex parte affidavit of the employer. They would enjoin employees and then put them in jail without a trial. The Norris-Laguardia Act says the courts shall issue injunctions on these and these questions, but before they issue them they shall have a hearing to give both sides a chance to be heard. Now when you have all of this equity law to protect the employers right, then it is perfectly fair to have another set of equitable regulations to protect the employees' rights.

Q. Recently we have had a wave of sit-down strikes. They are about over with now but in some of those cases the courts issued legal papers to force the sit-downers out. That was a case where they were backing up the employer. When the sit-downers did not go out, then what was the employer supposed to do?

A. It wasn't the employer's job after that. That was the job of the public authorities, that is to say, when the court issues an order that these people must go out, they are trespassing on other people's property, the sheriff or the marshal, or whatever it may be, is supposed to get a posse, if nesessary, to clear that place out. It isn't the employer's job; he is not supposed to have the obligation of doing that. Of course then you run up against a question, the problem that you always have in a democratic country. Juries wouldn't convict people who had liquor during prohibition days even though they violated the law, and there are politicians, political sheriffs and marshals who don't carry out their duty to clear these people out. But that's a problem of democratic government. Their duty is clear that they have got to clear them out, and if we should go on for any length of time without carrying out court orders we shall lose all respect for law. In most cases I am glad to say, however, wherever the court issued an order to put the sit-downers out they have been put out. It was only that _____ case at the beginning where it wasn't.

Q. Back to responsibility of labor unions, if I remember correctly, in this Philadelphia affair that you have spoken of there was considerable property damage done to certain mills. Did the unions reimburse mill owners for the property damage that was done by their members who were apparently called for acting on an illegal strike?

A. Well, I am not familiar with the details there, but if there was property damage of that kind there is ample law for the employer to sue either individual members or the union as a whole. The old law used to be that ununinmorporated association can't sue and cannot be sued, but the court has changed that. That was in several cases, one against the coal

miners union, one against the United Hatters. The United States Supreme Court has held that a suit for damages will hold against a union just the same as it would against a corporation. Whether the employer in the case you mention is actually suing or not, I don't know.

Q. I have another question, sir, in reference to labor control during the war without compulsory arbitration. In this country the majority of our labor is still unorganized. Assuming that a new plant was being built that was manned by labor that had been shifted from wherever you could get it and they suddenly decided that wages or hours or something in the early stages didn't meet with their approval. How could you handle that unless you did have compulsory arbitration with a law that forbids striking under those conditions?

A. The only thing I can say to that is this: that in Australia they tried compulsory arbitration and they found that when ten or twenty thousand people strike against the law you don't quite have enough jails to put them into, and you find them in the position of taking your citizenry and instead of fighting against an employer or disputing with them, you force them to become law breakers as against the law. The assumption is that the law will be enforced, but the same thing that I have said about politicians in peace time, well, there are politicians in war time too and you are likely to get into greater difficulty. I think you can approximate the same result by insisting on all the machinery for peaceful negotiation and finally voluntary arbitration and perhaps topping that with a voluntary agreement which general patriotic feeling may force both sides to agree to. The wage question then would be gone into exactly as it would if there were compulsory arbitration,

but it would be done the other way. Now I have a predilection for that method because I happen to be the father of seven children, and I have found that by giving them orders and exercising my authority I don't always get the results that I could get by saying to the boy: "Now I am not going to compel you to do this, I am just trying to advise you so you won't make quite as big a fool of yourself as I did when I was your age." By talking to him that way instead of asserting my authority I discovered by experience that I get obedience better that way, and perhaps that's my reason for prejudice in that.

Q. I was thinking particularly, sir, of unorganized groups of workers. There has never been any attempt made to organize them before this industry started up. There were no channels through which the worker could take it up either through the National Labor Relations Board, if that was acting in that capacity at that time, with different powers than it has now, or with any of the conciliatory boards. Unless we had some method of keeping those men working it might take two, three or four months, as it does with disputes at the present time, for mediation boards to step in and say that you are either right or wrong, and we can't afford to have this particular essential industry tied up for three or four months.

A. That's right. That's a good way of stating it, but visualize the picture. These people are brought from all over and they are unorganized. They can't possibly have an effective strike that would tie anything up unless they had meetings and leaders. A thousand people can't, without concerted action, just walk out. What will they do? They will have a meeting and appoint a committee to go to the manager and say: "We need more money." That's all the organization you want. That committee

that comes there should be received in a very friendly manner: "We want to hear what you have to say, we want to look into the facts; we have this machinery for finding the facts and we will go into it and we will discuss it with you and then we will try to agree on something." The manager or whoever is in charge of this will just go over that whole thing and if they get impatient they will just say: "There's no need to get impatient but if you are we can appoint a voluntary board on which you are represented to make a decision on this matter and you remain at work during this time." I think that method will bring faster results.

Q. I would like to ask, sir, if you recommend the extension of a similar act to the Railroad Labor Relations Act to the shipping industry?

A. I recommend a similar act for all the industries. Whether you should have a separate one for each one or whether you should have one act for a number of industries, or one board for all the industries, that is a question of detail that we can't go into. I should say that we certainly need some kind of an act for the maritime industry modeled on the Railroad Labor Act, just as I think we need it for steel, automobiles and every other industry. But we want to be careful and not put into an act provisions that are not applicable or appropriate for a particular industry. The original act that the Maritime Commission recommended I thought was mistaken approach. They just picked a lot of provisions from the Railway Labor Act — of course this is all confidential — that weren't particularly applicable to their condition. They they picked some provisions from the National Labor Relations Act and put those in; then they kept some provisions for the Maritime Commission to handle itself, and by implication

the Department of Labor could also come in. From an administrative point of view you can't have an effective law whose administration you entrust to four different agencies. The recent revision that they have introduced I think is a very sensible arrangement. It doesn't try to do a job that is going to take ten years by doing it in a moment. It makes a good beginning step toward having that kind of a law, this new bill that has recently been introduced.

Q. Our studies here at the College have indicated something of the labor situation in late 1916 just prior to our entry into the World War and of course something of the leadership accomplished at that time. Our current studies of course indicate the trend in the leadership of labor now. If you would care to express an opinion, would we be better off in the labor situation were war to break next month than we were in early 1917, particularly as regards the psychology of labor?

A. I think that on the whole we would be better off because organized labor that would be dealt with by the Government would be more representative of the working people of the United States than the A. F. of L. was in 1916. It is the method that I speak of, voluntary, as against compulsory. When Samuel Gompers and Daniel Willard of the B. & O. Railroad and others were on a committee of the Council of National Defense they committed themselves voluntarily to a basis for settling disputes which became the basis for action for the War Labor Board; but at that time Samuel Gompers represented about half of the wage earners of the country that are now organized. Now more wage earners are organized and if their cooperation can be enlisted (that is another question) you will get much more effective cooperation. There were threats of strikes in those days,

I remember them well. You would get more effective cooperation if it could be enlisted and that question is particularly, in view of the fight between the C. I. O. and the A. F. of L., whether you could get someone or some group of people to represent all organized labor in its effort to cooperate. My own feeling is that, regardless of our opinion of the A. F. of L. executive council or the C. I. O. and Mr. Lewis and his associates, in a time of great national emergency the majority of those men that control both will, in my judgment, respond to patriotism just the same. We had one example, I think, during a very bitter coal strike in which there was a lot of wrong on both sides. The question came up where an injunction, which many lawyers thought was an improper injunction, was issued by a federal court. Lewis said, "We won't fight our Government" and he told their people to obey that injunction. I don't say it won't be a serious problem. All I can answer your question then is this: the opportunity for effective enlistment of the cooperation of the wage earners in this country in time of war is now better than it was at that time because the labor movement is more representative of the working people; but there may be greater problems on account of the internal war that they are having among themselves.

Q. I would like to ask, if prices are controlled in the event of war do you regard the control of wages as being indispensable in any plan or scheme?

A. Yes, I should say that if you are controlling prices you have to control wages and if you control wages you have to control prices. One of the difficulties, for example, with the Interstate Commerce Commission in the railroad industry is the Interstate Commerce Commission

fixes rates for the carrier and it has no control over wages. Wages are a very important element of cost and you will always have the difficulty of having inadequate rates unless they have something to do with considering what the wages shall be. That doesn't mean that I advocate at all the fixing of wages during peace time, because I think that is worse than not fixing them, but it just shows the difficulty which arises if in a time of war you try to fix one without the other because in some industries it may be half the whole cost.

Q. Speaking from your war experience, if we set a ceiling over prices and wages do you regard such control as inevitably limiting production in any event?

A. That's hard to say. In the first place, there is a question of how effective any control of prices and wages would be, that is, we assume that we fix them and everybody is going to obey them, but the problems of enforcing a regulation of that character are very great. I certainly don't know how to solve them. That is one of the most important questions to be considered, whether we can effectively control them. I think something has to be done. I don't care to discuss with you general financial and price problems because I am not so familiar with those but on labor questions all our history shows that labor trouble comes with rising prices. That is just a fact, it doesn't make any difference what kind of law you have or anything else. When prices rise, strikes, labor trouble, organization, and all of that comes. Whether you will be able to control the prices and hold them down is a question. I don't know, I am sure. I can't answer that. You remember that the question came up during the last war as to the price of wheat. We needed lots of wheat

and the Government fixed prices, not to keep them down so much, I think, as to get them up to a point where they could get all the production they could have although the other matter of keeping them down was also in the picture. That's a problem. If you have a few large corporations that can produce all the material you need in a particular industry it is fairly easy to deal with them, but if you have to depend on a million or two of farmers or a million or two of wage earners it is an altogether different problem. I confess that I am not able to answer the question as to whether you could get all of the production you need if you fixed the prices and wages.

Q. If we confined it to controlling profit would that simplify your labor difficulties with regard to price fixing or ceiling on prices and wages?

A. Of course that's one of the things that has been advocated. Many economists feel that we ought not to try to fix prices at all, let things go ahead, and then put a tax on profits heavy enough to take away all the profit that is due to war condition and just allow them an ordinary, fair profit. That may be more effective than fixing prices. I don't know, but if you do that your greatest difficulty is that you can't very well do it with wages because of shortage of labor. At such times they just tend to get out of sight and the prices and cost of living keep going up so that no matter what wages they have today in three months it becomes inadequate. All I can do is to point out some more questions rather than answer your question.

Colonel Jordan: Dr. Leiserson, I want to express my appreciation and that of the College to you for coming down here. It is a great pleasure to have had you and thank you.