DISPOSITION OF DISPUTED CASES, INVOLVING NON-BASIC
WAGE, UNION SECURITY, AND NON-WAGE ISSUES
OF THE OIL REFINING INDUSTRY BY THE
EIGHTH REGIONAL WAR LABOR BOARD

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By

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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I.</td>
<td>1</td>
</tr>
<tr>
<td>INTRODUCTION</td>
<td></td>
</tr>
<tr>
<td>Source of Information and Scope of Study</td>
<td></td>
</tr>
<tr>
<td>Definition of Terms</td>
<td></td>
</tr>
<tr>
<td>II.</td>
<td>10</td>
</tr>
<tr>
<td>NON-BASIC WAGE ISSUES</td>
<td></td>
</tr>
<tr>
<td>Shift Differential Pay</td>
<td></td>
</tr>
<tr>
<td>Overtime</td>
<td></td>
</tr>
<tr>
<td>Holidays</td>
<td></td>
</tr>
<tr>
<td>Vacations</td>
<td></td>
</tr>
<tr>
<td>Severance Pay</td>
<td></td>
</tr>
<tr>
<td>Meals Furnished</td>
<td></td>
</tr>
<tr>
<td>Sick Leave Benefits</td>
<td></td>
</tr>
<tr>
<td>Job Classification</td>
<td></td>
</tr>
<tr>
<td>III.</td>
<td>43</td>
</tr>
<tr>
<td>UNION SECURITY ISSUES</td>
<td></td>
</tr>
<tr>
<td>Maintenance of Membership</td>
<td></td>
</tr>
<tr>
<td>Check-off</td>
<td></td>
</tr>
<tr>
<td>IV.</td>
<td>63</td>
</tr>
<tr>
<td>NON-WAGE ISSUES</td>
<td></td>
</tr>
<tr>
<td>Terms of Agreement</td>
<td></td>
</tr>
<tr>
<td>Grievance Procedure</td>
<td></td>
</tr>
<tr>
<td>Arbitration</td>
<td></td>
</tr>
<tr>
<td>Discrimination</td>
<td></td>
</tr>
<tr>
<td>Seniority</td>
<td></td>
</tr>
<tr>
<td>Hours of Work</td>
<td></td>
</tr>
<tr>
<td>Leave of Absence for Union Officials</td>
<td></td>
</tr>
<tr>
<td>Bulletin Board</td>
<td></td>
</tr>
<tr>
<td>Health and Safety</td>
<td></td>
</tr>
<tr>
<td>Contracting Work</td>
<td></td>
</tr>
<tr>
<td>Apprentice</td>
<td></td>
</tr>
<tr>
<td>Physical Examination</td>
<td></td>
</tr>
<tr>
<td>V.</td>
<td>94</td>
</tr>
<tr>
<td>SUMMARY AND CONCLUSION</td>
<td></td>
</tr>
<tr>
<td>Comment on Outstanding Cases</td>
<td></td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>103</td>
</tr>
</tbody>
</table>
CHAPTER I

INTRODUCTION

This investigation is a study of the issues involved in the disputed cases pertaining to the Oil Refining Industry which were certified to the Eighth Regional War Labor Board serving Texas, Oklahoma, and Louisiana.¹

The purpose of the present study is to show the nature and disposition of the various issues involved in fifty-two cases acted upon by the Regional Board and affecting the Oil Refining Industry during World War II.² This paper will further attempt to show the effects of the decisions of the Regional Board on collective bargaining contracts between unions and refineries.

The establishment of the War Labor Board arose out of the President's labor-management conference of December 17, 1941. At the end of the conference it was announced that there would be no lockouts or strikes, and that all labor disputes would be settled by peaceful methods for the duration of the national emergency. To provide a mechanism for the peaceful adjudication of disputes, the conference agreed that a National War

¹The Eighth Regional Board was located in Dallas, Texas.

²There were eighteen additional cases, relating only to wage issues, which were not included.
Labor Board should be created. Executive Order 9017, January 12, 1942, created the National Board which was made up of twelve members, with equal representation from management, labor and the general public. In creating the National Board it was pointed out that:

The Order required collective bargaining between the parties and conciliation by the Conciliation Service of the United States Department of Labor as the first step in adjusting disputes. The Secretary of Labor was directed by the order to certify to the Board disputes which, threatening to interfere with the prosecution of the war, could not be resolved by these methods. In finally determining the disputes, the Board was authorized to use "mediation, voluntary arbitration, or ab irption under the rules established by the Board...."

Disputes coming before the Board are customarily referred first to a tri-partite committee, known as the New Case Committee. The Committee may (1) retain the case for disposition by the National Board (2) refer it to one of the Board's agents (3) divide the issue between the Board and other agents (4) return the case to Conciliation Service with an appropriate explanation or (5) take other action deemed appropriate. If the Board believed that the issues may be settled by direct negotiation, the dispute may be referred back to the parties.3

The National Board was unable to handle all of the cases certified to it, and in order to speed up the process, established the twelve Regional War Labor Boards which were patterned after the National Board. The National Board delegated many of its duties to these Regional Boards which acted as agents of the National Board and, as such, handled most of the disputed cases arising between labor and management.

After a case was submitted to a Regional Board it was referred to a hearing panel or to a hearing officer, whose duties were to hear and consider all matters deemed necessary to the conducting of a fair and impartial hearing. The hearing panel was composed of three members, one each representing labor, management, and the general public. A hearing officer was used in cases where the parties agreed to have their case heard by an individual. The procedure used by the hearing officer was the same as that used by the hearing panel. The public member of a hearing panel acted as chairman in cases coming before it. The labor member of the panel could not be from the local union involved but he might be a member of the national union with which the local union was affiliated. No member of the panel could serve in a case in which he had a pecuniary or other direct interest. The method of selecting the panel was as follows:

When each case is scheduled for hearing a summary of the case is presented to the New Case Committee of the Regional Board which is a tri-partite committee. The Labor Member of the Committee selects the labor panel member, the industry member selects the Industry Panel Member, and the labor and industry members each consult with the public member to select a public chairman.4

After the panel had been selected its members were submitted, in advance of the hearing, a file of material pertaining to the disputes involved, which included the following information:

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1. The statement of agreed facts (if any).
4. The contract of the union with the company.
5. An analysis of the certification to the Board showing:
   a. The name of the company and the union involved.
   b. The nature and the scope of the company's operations.
   c. The number of employees involved.
   d. The issues for consideration by the panel.\(^5\)

After the panel had been selected and the necessary information had been submitted to its members, the parties involved in the dispute were given advance notice of the time and place of the hearing which was public and informal. At the hearing the parties involved were given adequate opportunity to present their testimony and to refute the testimony of each other. At the close of the panel hearing the panel members were required to prepare a report to be submitted to the Regional Board. This report, which was usually titled "Panel Report and Recommendations," contained the pertinent information for each disputed issue under the following headings:

1. Position of the Company
2. Position of the Union
3. The Panel's finding of fact on such issue
4. The panel's recommendation thereon\(^6\)

The panel report was to contain such general information as the names of the parties, the case number, date of panel report, and the names of panel members. When one of the panel members disagreed with the decision of the majority, he was required

\(^{5}\text{Ibid., p. 5.}\)
\(^{6}\text{Ibid., p. 13.}\)
to submit a dissenting opinion which was attached to the majority opinion. When the labor and management members of the panel agreed, the public member, as a matter of common practice, agreed also.

The panel report, after being submitted to the Regional Board, was mimeographed, and copies were sent to the parties concerned with a covering letter inviting comments as they saw fit. The panel report was then submitted to the Joint Disputes Division and Wage Stabilization Division where it was analyzed for the Regional Board to ascertain if the panel’s report and recommendation were consistent with the policy of the National Board. After these preliminary proceedings the Regional Board considered the material submitted and discussed the merits of the case in executive session and voted upon the issue or issues. On the basis of the vote of the Regional Board, the Disputes Division prepared a formal directive order in which the decision of the Regional Board was given and a copy was submitted to each of the parties involved. After receiving the decision a dissatisfied party had the right to petition the Regional Board for another hearing or to petition the National Board for a review of the decision of the Regional Board. In case one of the parties petitioned for a review by the National Board, it was pointed out that:

The burden of proof is on the party petitioning for review to persuade the National Board that a novel question is involved of sufficient importance to warrant
National Board action, or that the procedure resulting in the order was unfair to the petitioner and has caused a substantial hardship, or the orders exceed the National Board’s jurisdiction, or contravene established practices of the National Board. 7

If neither party petitioned for a review or if the petition for review was denied, the directive order of the Regional Board became effective and the parties were required to abide thereby.

Source of Information and Scope of Study

Most of the data contained in this study were obtained from the supplementary files of the Eighth Regional War Labor Board. 8 These files were given to the Economics Department, North Texas State College, and are made up of union briefs, company briefs, exhibits which were used as evidence by the parties involved, panel or hearing officer reports, analyses by the Disputes Division and Wage Stabilization Division and directive orders of the Regional Board. In cases where reviews were granted, additional information on the National Board’s action was included. 9 The Bureau of National Affairs “War Labor Reports” were used in cases appealed to the National

7Ibid., p. 17.

8Supplementary files were those files made up of duplicate copies. The primary files, consisting of the original copies are in the National Archives in Washington, D. C.

9Some of the cases used did not contain all of the information listed; however, sufficient material was present to show the disposition of the issues.
Board. Pamphlets and other information published by both the National and Regional Boards were used to obtain information relating to this investigation.

The present study is limited to the cases which involve three major classifications of issues which are non-basic wage, union security, and non-wage issues. Omitted from consideration were all basic wage issues, since decisions on wage rates were regarded as more temporary in character; whereas, decisions on other issues, when embodied in collective bargaining contracts and established through usage, might be expected to endure beyond the liquidation of the "hold-the-line" wage order.\(^{10}\)

**Definition of Terms**

To facilitate reading and understanding of this study the following definitions and abbreviations are included.

1. Where the term "National Board" is used it has reference to the National War Labor Board which was located in Washington, D. C.

2. The terms "Regional Board" and "Board" are used to indicate the Eighth Regional War Labor Board.

3. A disputed case involves a case in which the differences between the parties could not be settled through action of the parties involved.\(^{11}\)

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\(^{10}\)See footnote 2, p. 1.

\(^{11}\)In contrast to "disputed cases" there were numerous cases settled by collective bargaining and submitted to the Board for approval or disapproval only, which were known as "voluntary cases."
4. The initials CIO refer to the Congress of Industrial Organization.

5. AFL is used to designate the American Federation of Labor.

6. An independent union is a union not affiliated with a national labor organization.

7. The terms "contract" and "agreement" are interchangeable and refer to the articles which govern the relations between a union and a company.

Chapter II, "Non-Basic Wage Issues," is a treatment of eight types of issues, such as shift differential pay, overtime pay, paid vacation, etc., which appeared before the Board. Wage increases granted under these issues were not considered inflationary and were not prohibited by the "hold-the-line" wage order. 

Chapter III, "Union Security Issues," is a discussion of the maintenance of membership and check-off issues appearing before the Board. These issues pertained to provisions which unions requested for their self-protection after agreeing to the "no-strike" pledge.

Chapter IV, "Non-Wage Issues," is a presentation of thirteen issues relating to such matters as seniority, grievance

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12 The "hold-the-line" wage policy was effectuated by Executive Order No. 9250 which attempted to maintain wages at the prevailing rate of September 15, 1942.
procedure, arbitration, non-discrimination, etc., which arose from the attempt of unions to gain further "economic security" for their members.

Chapter V is a summation of the facts and conclusions drawn from the present study.
CHAPTER II

NON-BASIC WAGE ISSUES

Increases in basic wages were difficult to obtain after the issuance of the Executive Order No. 9250 on October 3, 1942, which stated in part:

The National War Labor Board shall not approve any increases in the wage rates prevailing on September 15, 1942, unless such increase is necessary to correct mal-adjustments of inequalities, to eliminate substandards of living, to correct gross inequities, or to aid in the effective prosecution of the war.

Expanding plants for the production of war materials created what amounted to a "manpower" shortage. Wages in the war plants were among the highest in the United States and workers began to quit lower paid jobs to fill vacancies existing in the higher paid fields. As a consequence many employers found that they could not maintain an adequate working force at their existing wage level. The National Board would not grant wage increases, in voluntary or disputed cases, on the grounds that it was necessary in order to maintain sufficient workers, since such action would not increase the available manpower.

Industry and labor, finding that the basic wage rates would not be changed except in special instances, resorted to the practice of obtaining additional wages through the following devices: more overtime pay, vacations with pay, shift
differential pay, and other "non-basic wage issues," which were not construed as violating the wage stabilization order.

Shift Differential Pay

The shift differential pay issue, one of the most frequent non-basic wage issues appearing before the Board, was involved in ten disputed cases. The definition of this term must be made through a study of the prevailing work schedule of the oil refining industry. The Refining Division of the Petroleum Industry operates on a continuous 24-hour day which is divided into three eight-hour shifts. Employees rotate in such manner

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Case No. 8-D-337, in the matter of the Texas Company, Fort Arthur Works and Terminal, Fort Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO); Case No. 8-D-360, in the matter of the Texas Company, Fort Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO); Case No. 8-D-447 in the matter of Humble Oil and Refining Company, Ingleside, Texas, and Oil Workers International Union, Local No. 316 (CIO); Case No. 8-D-448, in the matter of Consumers Cooperative Refining Association, Levelland, Texas, and Oil Workers International Union, Local No. 504 (CIO); Case No. 8-D-451, in the matter of Continental Oil Company, Wichita Falls, Texas, and Oil Workers International Union, Local No. 489 (CIO); Case No. 8-D-462, in the matter of Tide Water Associated Oil Company, Mid-Continent Division, and Oil Workers International Union, Locals No. 330 and 280 (CIO); Case No. 8-D-503, in the matter of J. S. Abercrombie Oil Company and Harrison Oil Company, Houston, Texas, and International Brotherhood of Boiler-makers, Iron Ship Builders and Helpers of America, Local No. 74, United Association of Plumbers and Steam Fitters of the United States and Canada, Local No. 195 and Brotherhood of Painters, Decorators and Paper Hangers of America, Local No. 130 (AFL); Case No. 8-D-513, in the matter of Taylor Refining Company, Corpus Christi, Texas, and Oil Workers International Union, Local No. 343 (CIO); Case No. 8-D-527, in the matter of Humble Oil and Refining Company, Baytown, Texas, and International Association of Machinists, Lodge No. 1051, District 37 (AFL); and Case No. 8-D-528, in the matter of Gulf Oil Corporation, Fort Arthur, Texas, and Oil Workers International Union, Local Nos. 23 and 254 (CIO).
that all work an equal amount of time on each shift. In this manner one group of employees is not required to work on one of the less desirable shifts continuously. As a general rule these three shifts are: the day shift, operating from 8 a. m. until 4 p. m.; the evening shift, operating from 4 p. m. until 12 midnight; and the "graveyard" shift, operating from 12 midnight until 8 a. m. It is generally agreed that the evening shift is a less desirable work period than the day shift and that the "graveyard" shift is the least desirable of the three. The reason these two late work periods are considered undesirable is that the work must be done under artificial light; that the work is more hazardous when done at night; and that they cause deviation from normal physical and work habits which is hard on the health of the worker. Because of these general reasons, union representatives of various local groups demanded that the employees working the evening and "graveyard" shifts receive additional wages to compensate them for working under these less desirable conditions.

The National Board's policy regarding the shift differential pay issue was clearly stated in the following news release:

Decisions by the National War Labor Board in disputes involving payment of night shift premiums will be made on the basis of three considerations—area practice, industry practice, and intra-plant wage relationships—Dr. George W. Taylor, Vice-Chairman of the Board, declared in an opinion released today. "These factors
will be evaluated in relation to circumstances surround-
ing each case," said Dr. Taylor, "since it is not pos-
sible to outline a general rule which would automatically
apply to all cases.\(^2\)

The National Board was consistent in carrying out this policy
except in cases where unusual circumstances made it advisable
to alter a decision in the interest of National Affairs.

Some light was shed upon the Regional Board's policy on
shift differential pay in the following instructions issued to
members of its hearing panels:

In some industries, the practice has been established
of paying employees extra compensation who work at night.
In some industries, employees on the second shift receive
five cents per hour bonus and employees on the third, or
"graveyard" shift, receive ten cents per hour. In other
industries, the amount is smaller. In some industries,
no night shift bonus is paid. The companies and the
unions which have agreed on the payment of a night shift
bonus have been motivated by the belief that working nights
involves inconveniences, that it may be harmful to the
health of the worker, that the worker is deprived of cer-
tain normal social contacts, or that living costs to the
worker have been increased due to the fact he must have
his meals at irregular hours.

The Board has not, as a rule, granted night shifts
bonuses for employees who work rotating shifts on the
theory that so long as the shifts rotate, all employees
will in the long run receive equal treatment.\(^3\)

None of the eleven agreements between various local unions
and oil refineries examined granted shift differential pay.\(^4\)

\(^2\)National War Labor Board, Division of Public Information,
Press Release, Saturday, February 19, 1944.

\(^3\)Eighth Regional War Labor Board, Handbook for Tri-Partite
Panel Members, p. 12.

\(^4\)Articles of Agreement between Oil Workers International
Union, Local No. 231 (CIO) and Cities Service Oil Company, Ponca
City, Oklahoma, March, 1942; Articles of Agreement between Oil
Thus apparently the prevailing practice of the industry in this area was not to include this premium payment in collective bargaining agreements.

The union request for shift differential pay was not granted in any of the cases appearing before the Board. The Board's first denial of shift differential pay was in a case involving the Continental Oil Company, Wichita Falls, Texas, and as the first case appearing before the Regional Board it deserves special attention.\(^5\) In this case the union's position, as stated in its brief, maintained that it would not be an inflationary step, that it would bring the oil company in line

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\(^5\)Supra., p. 11, Case No. 8-D-451.
with most basic industries; that rotating shifts were a mental and physical strain upon the workers; that industrial accidents in the petroleum industry were most prevalent at night because of inferior outside lighting; and that these additional risks had not been included in the basic wages. The company's main contentions were that the requirements of night work had been taken into consideration when the basic wage was established; that the company operated on a multiple shift basis; that shift differential pay had not been adopted by the petroleum industry at large; that it was not a prevailing practice in the Wichita Falls, Texas, area; and that the health of the employees was not endangered by night work and even if it were, the granting of this differential pay would not improve their health condition. The case was heard before the Board and a directive order issued on May 28, 1945, which stated:

The request of the union that the company be ordered and directed to make premium payments for all hours worked on the second and third shifts is hereby denied.6

Since this was the first case involving this issue before the Board, a majority opinion was written and attached to this directive. The majority opinion pointed out that the decision in this case would affect thousands of workers and for this reason, it was highly important; that a plausible conclusion was that night work was unpleasant, more hazardous to health and safety to the workers and in many respects more arduous

6Ibid.
work than day work; but that the union had been unable to
discount the testimony of the company that these things were
taken into consideration in adjusting the basic wage. The
opinion further pointed out that for twenty-five years the
employees had been working on a multiple shift schedule with-
out complaint; and that this, along with the company’s state-
ment that the basic wage took into consideration the union's
complaints, was conclusive evidence that compensation for
night shift workers had already been included in the basic
wage rates. The Board concluded its remarks by expressing
the opinion that its decision conformed with the policy laid
down by the National Board. The union’s appeal to the National
Board was denied.

The unions were denied their requests for shift differ-
ential pay in six additional cases which appeared before the
Board. The facts were essentially the same in these cases
as those discussed in the case above and will not be repeated.

The Board ordered this issue back for a second tri-partite
panel hearing, with special instructions that it be ascertained
if the basic wage rates compensated the employees for work per-
formed on night shifts, in two cases involving the Texas Company,
Port Arthur, Texas. Before the Regional Board issued its

7 Supra., p. 11, Case Nos. 8-D-447, 462, 503, 513, 527 and
528.

8 Supra., p. 11, Case Nos. 8-D-337 and 360.
directive order a work stoppage occurred at the plants and they were seized by the government. On instructions from the National Board all of the files, including the Regional Board's unreleased directive order, were submitted to that office for processing. While these cases were pending before the National Board a second work stoppage and plant seizure occurred at the plants. Further instructions were submitted to the Regional Board to the effect that these cases would be officially closed by the National Board.\(^9\)

The panel recommended that shift differential pay be granted the union in a case involving the Consumers Cooperative, Levelland, Texas.\(^{10}\) In this case the union had requested a

\(^9\)These two cases are very complex and for this reason the following information is given: Case No. 8-D-337 was certified to the Board on September 25, 1944, and Case No. 8-D-360 was certified on November 11, 1944. The panel hearing was conducted January 16 through 19, 1945. The Regional Board first considered the panel's report on June 16, 1945. A work stoppage occurred at the plants on June 27, 1945, and they were seized by the government and were placed under the control of the Petroleum Administrator on July 1, 1945. The National Board requested that it be submitted all the information relating to the cases including the unreleased directive order. These instructions were carried out on July 21, 1945, by the Regional Board. The cases appeared before the National Board on August 27, 1945, at which time the directive order of the Regional Board was released to the parties with a covering letter asking for their comments within fourteen days. On September 19, 1945, while these cases were pending before the National Board, a second work stoppage occurred at the plants. The plants were again seized by the government on October 8, 1945. The Regional Board was notified that the cases would be officially closed by the National Board. There is no indication in the data that further action was taken on this matter.

\(^{10}\)Supra., p. 11, Case No. 8-D-448.
bonus of $ .05 per hour for employees working on the second shift and $ .10 per hour for employees working on the third shift. The union maintained that the refinery was located in an oil field where the constant noise of the trucks moving drilling equipment made it difficult to obtain rest in the daytime and that this noise would go on for sometime, creating a rare and unusual circumstance from which the employees were entitled to some relief. The company maintained the position that the drilling of new wells was practically at a standstill and that to grant a shift differential pay would be disastrous to the plant since it was just beginning to recover from a bankruptcy. The majority of the panel held that there was an inequity; that the home and social life of the employees were disrupted; and that the men who had to sleep in the daytime were at a distinct disadvantage. The panel recommended that the union be granted a shift differential pay of $ .04 per hour for the second shift and $ .06 per hour for the third shift. The Board, in its directive order of September 28, 1945, disposed of the issue as follows:

The Board declines to pass upon the issue of "Shift Differential" at this time and refers such issue back to the parties for further negotiation. The parties are instructed to report the result of their negotiations to the Board on or before the expiration of thirty (30) days from the date of issuance of this Directive Order and/or submit any agreement reached by the parties to the Board for its approval or rejection.\[11\]

\[11\]ibid.
Overtime

The overtime issue, involving the question of when overtime pay should be paid and how it should be computed, appeared before the Board in seven disputed cases.\textsuperscript{12} The policy of the Regional Board was to consider the prevailing practice of the industry when any change was requested in the matter of overtime pay.\textsuperscript{13}

Examination of eleven contracts between unions and refineries indicated that "time and one-half," for work in excess of eight hours per day or forty hours per week and on official holidays, was the prevailing practice.\textsuperscript{14}

The unions requested that Monday through Friday be the official work week, and that when the companies closed the

\textsuperscript{12}Case No. 8-D-137, in the matter of Continental Oil Company, Ponca City, Oklahoma, and International Brotherhood of Boiler Makers, Iron Shipbuilding and Helpers of America, Local No. 707 (AFL); Case No. 8-D-150, in the matter of Pan American Petroleum Corporation, Destrehan, Louisiana, and Oil Workers International Union Local No. 447 (CIO); Case No. 8-D-206, in the matter of Gulf Oil Corporation, Port Arthur, Texas, and International Brotherhood of Electrical Workers of America, Local No. 457 (AFL); Case No. 8-D-234, in the matter of Phillips Petroleum Company, Borger, Texas, and International Union of Operating Engineers, Local No. 351 (AFL); Case No. 8-D-337, in the matter of the Texas Company, Port Arthur Works and Terminal, Port Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO); Case No. 8-D-360, in the matter of the Texas Company, Port Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO); and Case No. 8-D-396, in the matter of Shell Oil Company, Norco, Louisiana, and Employees Labor Council of the Norco Refinery. (Ind)


\textsuperscript{14}See Articles of Agreement listed in footnote 4, pp. 13-14.
plants in observance of a holiday during this work week and the employees were required to work on Saturday or Sunday, they be paid overtime pay for these days. In both of these cases, which involved the Continental Oil Company, Ponca City, Oklahoma, and Pan American Petroleum Corporation, Destrehan, Louisiana, the companies objected to the unions' requests, maintaining that to do so would be to violate Executive Order 9240.15

In the first of these cases the panel found that when a holiday falls upon a regular work day and the plants close down, the holiday must be included as time worked in computing the work week for overtime pay. The Board based its opinion upon the U. S. Department of Labor, Interpretative Bulletin No. 1 dated February 17, 1943, on Executive Order 9240 which stated:

For the purpose of computing the seventh day of work in a work week under the Order, the designated holidays must be included in computing the sixth day worked in the work week unless the employment contract specified otherwise.16

The Board's directive order of January 24, 1944, read in part:

The Board directs that designated holidays be included in computing the work week whether or not work is performed on these days. The Board further directs that the Company pay overtime to employees for the sixth and seventh days worked in any work week, the other days having been worked, and that this be made retroactive to August 1, 1943, such date being the effective date of the existing contract between the parties.17

15 Supra., p. 19, Case Nos. 8-D-137 and 180.
16 Supra., p. 19, Case No. 8-D-137.
17 Ibid.
The Board ordered that the issue be referred back to the parties and settled through the use of the arbitration provision of the existing agreement between the parties in the second case.

In a third case, involving the Gulf Oil Corporation, Port Arthur, Texas, the dispute between the parties involved was settled through the process of collective bargaining.\(^{18}\) At the panel hearing the union asserted that the company had not made a serious attempt to settle the issue through negotiation with the union. The union further claimed that, if the company would make an honest attempt to settle this issue through the process of collective bargaining, a settlement could be reached. Upon hearing the position of the union, the panel suggested that the parties meet together for the purpose of settling their differences. The panel recessed and later reconvened, at which time the parties announced that an agreement on the issue had been reached. No further action was taken by the Board.\(^{19}\)

Wording of the contract was the issue involved in the case of the Phillips Petroleum Company, Borger, Texas, and

\(^{18}\text{Supra, p. 19, Case No. 8-D-206.}\)

\(^{19}\text{The following issues were involved in the Gulf Oil Corporation case at Port Arthur, Texas, and were settled in the same manner: Job Classification, Terms of Agreement, Grievance Procedure, Arbitration, Seniority, Hours of Work, Health and Safety, and Apprentice. When presenting these issues in the following pages their disposition will be referred back to this issue.}\)
the Shell Oil Company, Norco, Louisiana. The overtime provision in the contract stated that overtime would be paid in accordance with the provisions of the Walsh-Healy Act and the Fair Labor Standards Act. The unions asserted that the wording indicated that there had been no collective bargaining on this issue and requested that the words "Walsh-Healy Act and Fair Labor Standards Act" be deleted from the overtime provision. The panels sustained the companies' objection to changing the wording of the overtime provision and recommended that the unions' request be denied. The Board, in its directive order, dated November 4, 1944, upheld the panels' recommendation.

No final decision was obtained in the remaining two cases involving the Texas Company, Port Arthur, Texas. Here the union requested that the Board order a more liberal overtime provision for the agreement under negotiation. The company objected to the union's request maintaining that the overtime provision was liberal enough and was sustained by the panel. The Board, in its directive order of June 29, 1945, upheld the recommendation of the panel. As was previously indicated, a work stoppage and governmental plant seizure occurred at the plants, at which time the National Board requested that it

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20 Supra., p. 19, Case Nos. 8-D-234 and 396.
21 Supra., p. 19, Case Nos. 8-D-337 and 360.
be submitted the files pertaining to the cases. The cases were officially closed by the National Board without further action by the Regional Board.22

Holidays

The holiday issue was closely related to the overtime issue because work done on these days was paid for at a premium rate. This issue involved the number of holidays which were to be designated as such in an agreement between the unions and the refineries and appeared before the Board in three disputed cases.23

The National Board's policy was clearly defined in Executive Order 9240 as amended by Executive Order 9246, which states in part:

No premium wage or extra compensation shall be paid for work on customary holidays except that time and one-half wage compensation shall be paid for work performed on any of the following holidays only: New Year's Day, Thanksgiving Day, Fourth of July, Christmas Day, Labor Day, and either Memorial Day or one other such holiday of greater local importance.

22See footnote 9, p. 17.

23Case No. 8-D-185, in the matter of Cities Service Oil Company, Bartlesville, Oklahoma, and Oil Workers International Union, Locals No. 241, 246, 474, and 475 (CIO); Case No. 8-D-337, in the matter of the Texas Company, Port Arthur Works and Terminal, Port Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO); and Case No. 8-D-360, in the matter of the Texas Company, Port Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO).
The prevailing practice of the industry apparently was to grant six holidays with pay of time and one-half for time worked on these days.\textsuperscript{24}

The union requested that the Board direct the company to agree to place three additional holidays into its agreement with the union in a case involving the Cities Service Oil Company, Bartlesville, Oklahoma.\textsuperscript{25} The existing contract specified that there were three holidays which would be paid at a rate of time and one-half for time worked. The union based its request on Executive Order No. 9240. The union further requested that employees be paid straight time for holidays not worked. The company objected to the payment for holidays not worked, and further objected to the inclusion of the three additional holidays in their agreement with the union. The company justified its position, maintaining that it was abiding by the rules of Executive Order 9240 but did not want to incorporate them into agreement with the union, because there was no way of knowing what post-war conditions would be. The panel considered the facts in the case and recommended that the Board approve the union's request for the inclusion of the three additional holidays, and that the request for straight time pay for holidays not worked be denied the union. The Board, in its directive order

\textsuperscript{24}See Articles of Agreement listed in footnote 4, pp. 13-14.

\textsuperscript{25}\textit{Supra.}, p. 23, Case No. 8-D-185.
of April 12, 1944, ordered that:

The parties are directed to incorporate in their collective bargaining agreement a clause in regard to holidays which shall provide for payment at the rate of time and one-half the regular rate for all hours worked on the following holidays, namely: New Year's Day, 4th of July, Thanksgiving Day, Memorial Day, Labor Day, Christmas Day.  

A contract provision which would designate eight holidays, with straight time pay for holidays not worked and double time for holidays worked, was requested by the union in two cases involving the Texas Company, Fort Arthur, Texas, in asserting its position the union presented the following argument:

The Union's position is that a holiday not paid for is not a holiday, but a lay-off, and that regardless of the past practice of the company, it was time that precedents were shattered and the workman's right to paid holidays be recognized in the same way that is for salaried employees.

The company's position was a complete rejection of the union's request on the ground that the union's demands were excessive. The panel recommended that the Board deny the union's request. The Board, in its directive order, directed that the agreement between the parties designate seven holidays for which time and one-half would be paid; and that the employees be paid straight time for two holidays not worked. Industry members dissented on this issue.  

26Ibid.  
27Supra., p. 23, Case Nos. 8-D-337 and 360.  
28Ibid.  
29See footnote 9, p. 17.
Vacations

Five disputed cases, in which the vacation issue was involved, appeared before the Board. This issue involved either the union’s asking the company for a paid vacation or for the liberalization of the existing vacation plan.

The National Board’s policy on the vacation issue has been well defined in its pamphlet “Summary of Decisions” in which it stated:

On the issue of vacations the Board has frequently denied requests for extending vacation plans where the existing plan was reasonable.

This policy was reflected in the matter of the General Chemical Company case (National War Labor Board Case No. 267, September 18, 1942) in which the union was seeking a vacation plan more liberal than that which had been previously granted. In this case the National Board ruled that:

30Case No. 3-D-153, in the matter of the Arkansas Fuel Oil Company, Shreveport, Louisiana, and Oil Workers International Union, Local No. 245 (CIO); Case No. 3-D-337, in the matter of the Texas Company, Port Arthur Works and Terminal, Port Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO); Case No. 3-D-360, in the matter of the Texas Company, Port Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO); Case No. 3-D-443, in the matter of the Consumers Cooperative Refinery Association, Levelland, Texas, and Oil Workers International Union, Local No. 504 (CIO); and Case No. 3-D-528, in the matter of Gulf Oil Corporation, Port Arthur, Texas, and Oil Workers International Union, Locals No. 23 and 254 (CIO).

The Board rejected the panel's recommendations that the well-established policy of the Company in this case should be changed chiefly on the ground that in past cases the Board has followed the policy that where an existing vacation plan of a Company is a reasonably liberal one, it should not be modified during this war period. It is submitted that the Board's position on this matter is a reasonable and sound one.\(^{32}\)

In determining whether or not a vacation plan should be granted or denied, the National Board's decision was determined by prevailing practice in the area.\(^{33}\)

A study of eleven collective bargaining contracts indicated that the prevailing practice of the industry was to grant a one-week vacation with pay for one continuous year of service and two weeks' vacation with pay for two years' or more continuous service.\(^{34}\)

The Board refused to consider the union's request for a change in the vacation provision of the existing agreement in a case involving the Arkansas Fuel Oil Company, Shreveport, Louisiana, on the ground that the agreement between the parties was still in effect.\(^{35}\) The Board stated that, if at such time the agreement between the parties was terminated the issue was still in dispute, it would assume jurisdiction of

\(^{32}\)Ibid.

\(^{33}\)Ibid.

\(^{34}\)See Articles of Agreements listed in footnote 4, pp. 13-14.

\(^{35}\)Supra., p. 26, Case No. 8-D-153.
the issue. When the contract between the parties was terminated, however, the vacation issue was settled through the process of collective bargaining.

A more liberal vacation plan provision for the contract under negotiation was sought by the union in two other cases involving the Texas Company, Port Arthur, Texas. 36 The union asked that the employees be granted three weeks' vacation with pay after fifteen years' service with the company. The company's counter proposal was no more liberal than the one in the previous agreement with the union. The panel recommended that the union's request be denied, but the Board, in its directive order of June 29, 1945, directed that the employees be granted an additional week at the end of twenty years' service, two additional weeks at the end of twenty-five years' service, and three additional weeks at the end of thirty years' service with the company. A final decision was never obtained in these cases as a result of a work stoppage and plant seizure by the government. 37

The union requested that the agreement under negotiation with the Consumers Cooperative Refinery Association, Levelland, Texas, carry a provision granting the employees a paid vacation as follows: one week's vacation with pay for one year's service, two weeks' vacation with pay for two years' service, and

36 supra., p. 26, Case Nos. 8-D-337 and 360.
37 See footnote 9, p. 17.
three weeks' vacation with pay after fifteen years' continuous service with the company. The union further requested that in computing the pay it be based upon the average of the three months' period preceding the vacation period. The company objected to the union's proposal, maintaining that the company was too small to afford any sort of vacation plan with pay. The panel recommended that the Board grant the union a vacation provision which would allow one week with pay for one year's service and two weeks with pay for two or more continuous years of service with the company. The panel upheld its recommendation by pointing out that:

The majority of the Panel held that vacations are now considered as part of an employee's earnings and due him; that it is a nationally recognized fact; that it is area and industry practice; that vacations may be staggered so as not to cause hardships on the industry in question.

The Board, in its directive order of September 28, 1945, directed that the agreement between the parties carry a provision giving the employees one week's vacation with pay after one year of service with the company and two weeks' vacation with pay after five years' service with the company.

A change in the method of computing vacation pay was requested by the union in the Gulf Oil Corporation case, Port Arthur, Texas. The union had requested that it be granted

\[38 \text{Supra, p. 26, Case No. 8-D-442.} \quad 39 \text{Ibid.}\]
\[40 \text{Supra, p. 26, Case No. 8-D-528.}\]
shift differential pay and that this wage increase be taken into consideration when computing vacation pay for the employees. No action was taken by the Board on this issue after it had denied shift differential pay.

Severance Pay

The severance pay issue was brought before the Board by the unions in an attempt to have a provision placed in their contracts with the refineries which would require compensation to an employee whose duties were terminated through no fault of his own. The amount of severance pay was to be determined by length of service, and its purpose was to tide over a discharged employee until such time as other employment could be obtained.

The National Board's policy on severance pay was to order severance pay paid to employees in cases in which workers were permanently displaced by the closing of less efficient plants.\footnote{National War Labor Board, Division of Public Information, \textit{Advance Press Releases on Severance Pay, 1942-1945}.}

A study of eleven agreements between various unions and companies in the oil refining industry revealed that the prevailing practice of the industry was not to pay severance pay.\footnote{See Articles of Agreements listed in footnote 4, pp. 13-14.}
The severance pay issue was involved in three disputed cases appearing before the Board. In the first two cases, involving the Texas Company, Port Arthur, Texas, the union's request for severance pay was denied. The union maintained the position that should severance pay be granted it would help maintain the purchasing power of the industry and that the company would agree to severance pay if it had any regard for the welfare of its employees and their families. The union further stated that they recognized severance pay was not the practice of the oil industry. The company opposed the union's request, maintaining that the proposal was not necessary since the company anticipated no general reduction in force for a great many years. The panel, after considering the position of the parties involved, recommended that the issue be the subject of further collective bargaining between the parties. The Board, in its directive order of June 29, 1945, ordered that the union's request for severance pay be denied.

43 Case No. 8-D-337, in the matter of the Texas Company, Port Arthur Works and Terminal, Port Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO); Case No. 8-D-360, in the matter of the Texas Company, Port Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO); and Case No. 8-D-448, in the matter of Consumers Cooperative Refinery Association, Levelland, Texas, and Oil Workers International Union, Local No. 504 (CIO).

44 Supra., p. 31, Case Nos. 8-D-337 and 360.

45 See footnote 9, p. 17.
The Board denied the union's request for a severance pay provision in a third case which involved the Consumers Cooperative Refinery Association, Levelland, Texas.\textsuperscript{46} The union requested that the following severance provision be written into their contract with the company:

The union proposes under Section 1 of the Contract that any employee whose services are terminated through no fault of his own shall be granted a termination allowance after one year's service of one (1) week's pay, and after two (2) or more years' service two (2) weeks' pay.\textsuperscript{47}

The company objected to the inclusion of any provision granting severance pay and was sustained by the panel's recommendation to the Board. The Board, in its directive order of September 28, 1945, denied the union's proposal.

Meals Furnished

An increase in the monetary allowance for meals consumed during overtime work periods was requested by the union in a case involving the Arkansas Fuel Oil Company, Shreveport, Louisiana.\textsuperscript{48} In this case the existing agreement between the union and the company contained the following provision regarding lunch allowance:

\textsuperscript{46}Supra, p. 31, Case No. 8-D-448.

\textsuperscript{47}Ibid.

\textsuperscript{48}Case No. 8-D-153, in the matter of Arkansas Fuel Oil Company, Shreveport, Louisiana, and Oil Workers International Union, Local No. 245 (CIO).
Any employee required to work six (6) hours after his previously scheduled lunch period shall be provided a lunch by the company, not to exceed 50¢, and no deductions shall be made for the time necessary to eat such lunch. The expense to the company shall not exceed $5.00 per month. 49

The union requested that the $5.00 limitation be removed from the provision. In making this request the union pointed out that there were no facilities within the plant or near the plant where the employees could obtain meals, and that this worked a hardship on the workers. The company objected to the union's proposal, maintaining that the $5.00 was a liberal allowance; that the company was willing to send a truck, free of cost, to get any lunches ordered by the workers; and that the company was paying time and one-half for the time used by the workers to eat their lunches. The panel considered the testimony of both parties and then recommended that the union's request be denied, stating that there was no reason why the company should even be required to pay the $5.00 allowance. The panel based its contentions on the grounds that the employees should be willing to bear the expense of lunches consumed while engaged in overtime work, since the company went after the lunches free of cost and paid time and one-half for time used in eating the lunches. The Board refused to consider the issue in dispute by stating that there was an existing contract covering this issue. The Board further stated that if the contract between the parties was terminated and the

49 Ibid.
issue was still in dispute, it would then be considered. The agreement between the union and the company was terminated but the lunch issue was settled through collective bargaining. Though the Board did not make a decision on this issue, it is reasonable to assume that the action of the panel played an important part in the outcome of the issue as settled through collective bargaining. This assumption is based upon the fact that the panel recommended that the union be denied the $5.00 lunch allowance provision as agreed upon by the company and the union. This recommendation seems entirely outside the jurisdiction of the panel since at no time did the company ask that the $5.00 allowance be denied the union. The recommendation of the panel could have easily been used as a weapon against the union in a collective bargaining meeting between the parties.

Sick Leave Benefits

The sick leave benefits issue involved an attempt by the unions to get a more liberal sick leave clause in their agreements with the companies and appeared before the Board in two disputed cases.\(^5\)

The decision, which reflects the National Board's policy on sick leave, was handed down on December 10, 1942, in the

\(^5\)Case No. 8-D-153, in the matter of Arkansas Fuel Oil Company, Shreveport, Louisiana, and the Oil Workers International Union, Local No. 245 (CIO); and Case No. 8-D-448 in the matter of Consumers Cooperative Refinery Association, Levelland, Texas, and Oil Workers International Union, Local No. 504 (CIO).
matter of Strand Baking Company and General Drivers' Union, Local No. 790, International Brotherhood of Teamsters, Chauffeurs, and Warehousemen and Helpers of America. Wayne L. Morse, Public Member of the National Board, in writing the majority opinion in the Strand case in which the union was asking for a more liberal sick leave benefit plan, stated:

The majority of the National War Labor Board rejects this recommendation of the arbitrator and rules that the new contract should contain the identical provisions on sickness benefits as was contained in the June 15, 1941, agreement between the parties. It is the view of the majority of the Board that once again, just as in the case of the Hospitalization Plan, there are no special circumstances or extraordinary conditions inherent in the employment involved in this case as to justify the War Labor Board's, either through itself or through one of its arbitrators, imposing upon employers a sickness benefits plan involving expenditures of funds greater than the parties were able to agree upon in collective bargaining negotiations. In the absence of a clear showing that the nature of the employment is inherently such as to place an added danger of sickness upon the employees, it would seem that the question of Sick Benefits is most properly one which should be agreed upon in collective bargaining.51

From this statement it can be ascertained that the National Board will refuse to change, by arbitration, an existing contract concerning sick leave benefits; and that this was a matter which must be settled through the process of collective bargaining. The National Board's policy was further clarified through its Division of Public Press Release during the period 1942-1945. In general, these releases stated that sick leave

benefits plans are proper subjects for collective bargaining; that the National Board will not order a sick leave benefits plan in a disputed case except under unusual circumstances; and that the prevailing industry practice would not alter their decisions.

In the first case, involving the Arkansas Fuel Oil Company, Shreveport, Louisiana, the union requested that it be granted a more liberal sick leave benefits plan than the one in the existing agreement with the company.\textsuperscript{52} The company maintained the position that the sick leave benefits plan in the existing contract was still in effect and should remain until the termination of the contract. The panel made the following recommendation to the Board:

The Panel is unanimous in its opinion that Section One of Article 8 covering Sick Leave should be changed to substantial conformity with the agreement between Cities Service Oil Company and Oil Workers International Union which is dated April 4, 1942, and covers the State of Oklahoma.\textsuperscript{53}

With these recommendations the case was submitted to the Board for a decision. The Board examined the facts as submitted and on March 6, 1944, issued the following directive order:

The Board declines to pass on the following issues... Sick Leave---for the reason that the parties have an existing agreement which has not expired and, in so doing, would abrogate an existing contract. In the event the Union gives notice to terminate the contract now in force, the parties are to commence negotiations immediately upon receipt of such notice, the Company having expressly agreed to waive the 30-day notice provision in the existing contract. In the event notice is given by the Union,

\textsuperscript{52}\textsuperscript{Supra.}, p. 34, Case No. 8-D-153. \textsuperscript{53}\textsuperscript{Ibid.}
as above set out, the parties are to report back to this Board within thirty days from the receipt of such termination notice the result of their mutual negotiations. The Board expressly retains jurisdiction of this dispute and orders that the existing contract between the parties shall, in all respects, remain in force and effect until further order of this Board.\textsuperscript{54}

The union terminated the contract and the case was again brought before the Board for action; however, the sick leave issue had been settled by the union and the company through the process of collective bargaining. The contents of the new clause in the agreement between the union and the company were given in an Eighth Regional War Labor Board Memorandum. It was clear that the union had been able to obtain a more liberal sick leave plan. Whether or not the panel's recommendation for a more liberal sick leave benefit plan had anything to do with the granting of the more liberal plan would be impossible to prove; however, it seems reasonable to conclude that it did have some bearing on the course of action between the union and the company.

The other case coming before the Board involving the sick leave benefit issue was in the matter of Consumers Cooperative Refinery Association, Levelland, Texas.\textsuperscript{55} In this case the union was asking that a more liberal sick benefit clause be added to their agreement with the company. The previous contract between the union and the company contained the following sick leave benefit plan:

\textsuperscript{54}\textit{bid.} \textsuperscript{55}\textit{Supra.}, p. 34, Case No. 8-D-448.
There is presently in effect a plan which entitles the employees to participate in sick, health, and accident benefits, through a group insurance policy, and in addition thereto, the employees have a voluntary mutual benefit organization in which the company matches each dollar paid in by the employees. Such funds are administered by representatives of the employees. 56

The union’s assertions were summarized by the Board’s analyst division as:

The union contends that its proposal is less liberal than that in effect by other companies in the surrounding area, namely, the Texas Company, Stanolind Pipe Line Company, Honolulu Oil Company, and Shell Petroleum Corporation. 57

The analyst division summed up the company’s position in this manner:

It is the contention of the company that the union agreed in the presence of the Conciliation Commissioner that the insurance policy provided by the company for its employees was one of the most liberal and submits that the plan is workable and wholly adequate for the employees of the company and agrees to continue such plan in effect during the terms of the contract. 58

The majority opinion of the panel was that the union was excessive in its demands and they were not in keeping with the prevailing practice of the area. The union had stressed its case by pointing out that some companies had granted more liberal sick leave benefit plans to their employees. This argument was invalidated by the analysts division in pointing out to the Board the National Board’s policy:

56 Ibid. 57 Ibid. 58 Ibid.
The Company's proposal and the Panel recommendation that the present sick leave benefits be continued for the duration of the contract is approvable and in accordance with the National and Regional Board policy. It is not the policy of the National or Regional Board to order sick leave benefits in dispute cases more liberal than those presently in effect.\textsuperscript{59}

After the panel hearing, the case was decided by the Board and a directive order was issued on September 28, 1945, in which the Board ruled that:

Section 1. The company's policy on sick and accident benefits shall be continued for the term of this contract.\textsuperscript{60}

This decision was apparently in accordance with the policy laid down by the National Board.

Job Classification

The job classification issue was frequently before the Board in cases where the unions and the companies could not agree upon the classification in which specific jobs should be placed. This issue was important because the basic wage rate of a job depended upon its classification—the higher the classification the higher the wage rate. The unions were unable to obtain higher wages because of the stabilization of wages at the prevailing rate existing on September 15, 1942, by Executive Order 9250, and sought a wage raise by placing jobs in higher classifications. The companies opposed all attempts to change the existing job classification plans in

\textsuperscript{59}Ibid. \hspace{1cm} \textsuperscript{60}Ibid.
the eleven disputed cases appearing before the Board. The Board's policy was to settle this issue by applying a "sound and tested" wage bracket which contained classifications and rates of pay for most jobs.

A shortened break-in period for new employees was proposed by the union in a case involving the Arkansas Fuel Oil Company, Shreveport, Louisiana. If the union's proposal was granted the new employees would be placed into a higher job classification at a more rapid date. The company maintained that the

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61Case No. 8-D-153, in the matter of the Arkansas Fuel Oil Company, Shreveport, Louisiana, and Oil Workers International Union, Local No. 245 (CIO); Case No. 8-D-206, in the matter of Gulf Oil Corporation, Port Arthur, Texas, and Electrical Workers Union, Local No. 457 (AFL); Case No. 8-D-228, in the matter of Tide Water Associated Oil Company, Tulsa, Oklahoma, and Oil Workers International Union, Local No. 280 (CIO); Case No. 8-D-278, in the matter of Republic Oil Company, Texas City, Texas, and Oil Workers International Union, Local No. 449 (CIO); Case No. 8-D-355, in the matter of Cities Service Oil Company, Ponca City, Oklahoma, and Oil Workers International Union, Local No. 231 (CIO); Case No. 8-D-386 in the matter of Continental Oil Company, Westlake, Louisiana, and Refinery Employees, Union of the Lake Charles Area (Ind); Case No. 8-D-396, in the matter of Shell Oil Company, Norco, Louisiana, and Employees Labor Council of the Norco Refinery (Ind); Case No. 8-D-414, in the matter of Chalmette Petroleum Corporation, New Orleans, Louisiana, and Oil Workers International Union, Local No. 522 (CIO); Case No. 8-D-436, in the matter of Shell Oil Company, Houston, Texas, and Oil Workers International Union, Local No. 367 (CIO); Case No. 8-D-441, in the matter of Pan American Refining Corporation, Texas City, Texas, and Oil Workers International Union, Local No. 449 (CIO); and Case No. 8-D-511, in the matter of Anderson-Franchard Refinery Corporation, Cyril, Oklahoma, and Oil Workers International Union, Local No. 385 (CIO).


63Supra, p. 40, Case No. 8-D-153.
break-in period had previously been shortened, and that to shorten this period further would be hazardous to the company's property and to the employees. The panel unanimously recommended that the union's request be denied. The Board, in its directive order of March 6, 1944, upheld the recommendation of the panel.

In a case involving the Gulf Oil Corporation, Port Arthur, Texas, the job classification issue was settled by the parties through the process of collective bargaining after the case had been certified to the War Labor Board.64

Pay for the "Poly Unit" operators based on duties performed was requested by the union in the case involving the Tide Water Associated Oil Company, Tulsa, Oklahoma.65 A "Poly Unit" is a high pressure distillation unit which must be taken care of by highly skilled and responsible operators. In contrast to the high pressure distillation unit there is a low pressure distillation unit which does not require as much skill and responsibility on the part of the operators. The union pointed out that the company had established a job classification for the "Poly Unit" operators but had not established a rate of pay on the basis of duties performed. The union requested that the "Poly Unit" operators' job classification specify that the operators would receive $1.30 an hour. This would be a...

64 Supra., p. 40, Case No. 3-D-206. See footnote 19, p. 21.
65 Supra., p. 40, Case No. 3-D-228.
$0.145 per hour increase for said classification. The company maintained that the union's request could not be granted because of the Wage Stabilization Law which had "frozen" wages. The company agreed with the union that the "Poly Unit" operators must possess a higher degree of skill and responsibility than the low pressure distillation operators but held that there should be no difference in the wages of the two. The panel recommended that the union's request be granted. The Board, in its directive order of August 21, 1944, directed that the agreement between the parties carry a provision which would give the "Poly Unit" operators an increase of $0.145 per hour. The company petitioned for a review but was denied.

Arbitrarily creating a "Senior and Junior Trainee Classification" by the Republic Oil Company, Texas City, Texas, was challenged by the union on the ground that this was a matter for collective bargaining.\(^{66}\) The company admitted that the Junior and Senior Trainee Classification plan had been set up and that the pay was $0.58 and $0.78 per hour respectively and maintained the position that this action was within the jurisdiction of management. The company later agreed to the elimination of these classifications and that such employees would be placed in the lowest job classification bracket. The parties, however, could not agree upon the retroactive date of such an agreement and the Board was requested to

\(^{66}\)Supra., p. 40, Case No. S-D-278.
settle the dispute. The panel recommended that the retroactive date be seventy-five days after each employee began work. The Board, in its directive order of August 29, 1944, directed that employees classified as Junior and Senior Trainees be paid the lowest classification wage rate retroactive to the date of employment.

Pay for Stillman operators lower than that called for in the job classification plan was charged by the union in two other cases involving the Cities Service Oil Company, Ponca City, Oklahoma, and Anderson-Prichard Refinery Association, Cyril, Oklahoma. The unions requested that the hourly wage of Stillman operators be raised from $1.155 per hour to $1.30 per hour. The companies maintained the position that the existing job classification, and wage rates were fair and objected to any change.

In the first case the panel recommended that the union’s request be granted. The Board, in its directive order of March 29, 1945, refused to act upon the issue and directed that the matter be referred to the parties for further negotiation. The Board further directed that the results of the negotiation between the parties be submitted to the Board for approval or rejection. The Board, in its supplementary directive order of August 8, 1945, approved the agreement reached by the company and the union.

67 Supra., p. 40, Case Nos. 8-D-355 and 511.
In the second case the Board ordered that the dispute be settled through the grievance procedure clause of the existing contract between the parties.

The union requested that the title "Power Plant Operator" be changed to "Power Plant Engineer" in its job classification provision in a case involving the Continental Oil Company, Westlake, Louisiana. The company opposed the union's request, maintaining that this change would involve a great deal of clerical work and that the two terms were used interchangeably. The panel recommended that the union's request be denied. The Board, in its directive order of January 29, 1945, upheld the panel's recommendation.

The union charged that the company was requiring workers to perform duties in a higher job classification than that which they had been assigned, in a case involving the Shell Oil Company, Norco, Louisiana. The union objected, maintaining that the employees should be paid a wage rate equivalent to the duties performed. The panel pointed out that the company's position in this matter was not clear. The panel recommended that the company be required to pay a wage rate in accordance with the job classification plan, and in cases where the employees were doing work in a higher classification than their classification the company be compelled to abstain from such practices. The Board, in its directive order

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68 Supra., p. 40, Case No. S-D-366.

69 Supra., p. 40, Case No. S-D-396.
of July 11, 1945, directed that the matter be referred to the parties for further negotiation and at such time an agreement was reached it be returned to the Board for approval or disapproval. In a supplementary directive order of August 20, 1945, the Board approved the agreement of the parties.

The union objected to the company's abolishing certain jobs in a case involving Chalmette Petroleum Corporation, New Orleans, Louisiana.\textsuperscript{70} The company wanted to abolish the jobs of gaugers, oilers, slush pit workers, and tool room checkers and transfer them to other duties. The union maintained that the company could not abolish these jobs without the union's consent. The panel recommended that the jobs of slush pit worker and tool room checker be abolished and that the workers affected be transferred to other duties with the same pay. The panel further recommended that the jobs of gaugers and oilers be retained. The Board, in its directive order of May 21, 1945, adopted the recommendations of the panel.

Objection, by the union, to the company's setting up job classifications in the newly created Allyl Alcohol unit and Allyl Chloride unit without first submitting the matter to the union for collective bargaining was an issue in the Shell Oil Company case at Houston, Texas.\textsuperscript{71} The union contended that the company had not acted in good faith on this matter and that

\textsuperscript{70}\textit{Supra.}, p. 40, Case No. 8-D-411.

\textsuperscript{71}\textit{Supra.}, p. 40, Case No. 8-D-436.
the classifications were not justifiable. There was a work stoppage at the plant as a result of this issue. The company maintained that the union had violated its no-strike pledge and had not attempted to settle the matter through the grievance procedure of its agreement with the company. The panel ruled that the union had made no attempt to settle its differences with the company through the process which was designated in the agreement between the parties. The panel recommended that the union's request be denied. The Board issued its directive order in which it stated that:

The Board further found that as an incident to this dispute when the contractor had completed construction of the unit, the maintenance employees of subject company, who are employees in the bargaining unit, after starting to tie the unit into the rest of the Chemical Division, declined and refused to continue therewith when the subject dispute arose; and that the Company has not exhausted or undertaken to assert the rights or prerogatives which are inherently vested in management, or which it has under its contract, but instead has shown a desire to have this Board invoke its war time powers in a manner which ordinarily is viewed with alarm by industry as an usurpation of its rights and privileges.

This Board is of the opinion that the acts and conduct of neither party to this dispute is conducive to the best interests of the public or the furtherance of the war effort.

It is the further opinion of this Board that Section 2(a), Article II and Section 2(a), and 2(c), Article IV of the presently existing contract between the parties, if not expressly applicable to the matters in dispute, are broad enough in their scope to provide the basis for settling the existing differences between the parties, and that such differences should be settled in accordance with the terms of said agreement.

Accordingly, it is the directive of this Board that the parties place the Allyl Alcohol and Allyl Chloride
unit of the subject company's Houston refinery into opera-
tion within ten (10) days from the date hereof, or appear
before this Board on the 19th day of June, 1945, at 10:00
A. M. and show cause, if there be any, why this directive
of the Board has not been complied with.72

In a final case the union requested that the job classifi-
cation provision pertaining to "Laborer and Laborer-Special"
be changed so that they would be granted a higher classifica-
tion with higher pay after six months service, in a case in-
volving the Pan American Refining Corporation, Texas City, Texas.73

The company maintained that the existing classification plan
was fair. It was sustained by the panel and by the Board in
its directive order of August 28, 1945.

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72 Supra., p. 40, Case No. 3-D-436.
73 Supra., p. 40, Case No. 3-D-441.
CHAPTER III

UNION SECURITY ISSUES

The National Board and its Regional Boards were called upon to settle disputes between unions and management which involved union security. The unions had made their "no-strike pledge" and in so doing had given up their main weapon of self-protection for the duration of the national emergency. Recognizing this fact the unions sought to obtain from the National Board some form of union security. The National Board attempted to settle this issue by some method which was fair to both parties. Its reasoning on this issue is indicated as follows:

Recognizing that unions, during the war period, will not be able to secure for their members all the gains, particularly wage increases, which they might have secured through normal collective bargaining, the Board has sought to insure the "status quo" of union strength in order that all the normal collective-bargaining activities may be resumed when the war ends.1

To meet this need the National Board adopted the maintenance of membership and check-off provisions, which will be considered in greater detail in the discussion of the Regional Board's disposition of cases in which union security was an issue.

Maintenance of Membership

This issue evolved from an attempt by the unions to have entered in their agreements with the refineries a provision which would require all employees to join the unions as a condition of employment. The "closed shop," which would require that an employer hire only union members, and the "union shop," which would require all employees to become union members within a certain time after they begin working, were the most frequent forms of security sought by the unions; however, the National Board consistently refused to grant either, in a disputed case. It recognized, however, that the unions were in need of some form of union security provision in their agreements with the companies and adopted the maintenance of a membership clause which was designed to be an equitable compromise between unions and management. The National Board, as a matter of convenience, prepared the following standard maintenance of membership clause:

(a) All employees who are members of the union in good standing in accordance with its constitution and by-laws, and all employees who become members after that date, shall, as a condition of employment, maintain their membership in the union in good standing for the duration of the collective agreement in which this provision is incorporated, or until further order of the Board.

The union shall, immediately after the aforesaid date, furnish the Regional War Labor Board with a notarized list of its members in good standing as of that date.

The union, its officers and members shall not intimidate or coerce employees into joining the Union or continuing their membership therein.
Neither shall the employer intimidate or coerce employees into withdrawing from or refraining from joining the union. The final decision and determination as to whether any member of the union shall withdraw from union membership during the 15-day period herein provided, shall be the sole decision and determination of that member. Any member may record his decision to withdraw from the union, or to remain in the union, by giving written notice to the union, the company, and the Regional War Labor Board before the 15-day period expires. Receipt of such notice by the Regional Board shall be considered prima facie evidence of the employee's decision.

(b) If a dispute arises as to whether an employee (1) was a member of the union on the date specified above, or (2) was intimidated or coerced during the 15-day "escape period" into joining the union or continuing his membership therein, such dispute may be submitted for determination by an arbitrator to be appointed by the Regional War Labor Board. The decision of the arbitrator shall be final and binding upon the parties.

(c) If a dispute arises as to whether an employee (1) has failed to maintain his membership in the union in good standing after the aforesaid date, or (2) was intimidated or coerced into joining the union after the aforesaid date, such dispute may be submitted for determination by an arbitrator to be selected in the matter provided by the contract of the parties, or if no such provision exists, to be selected by special agreement.

In the absence of such a contract provision or special agreement, the arbitrator will be selected by the Regional War Labor Board, on due application. The decision of the arbitrator shall be final and binding upon the parties.²

In ordering that the unions be granted the maintenance of membership provision, the National Board's policy was to consider each case on its individual merits.³ The union must prove that it was a responsible organization which was capable of fulfilling all of its obligations to its members, to


management, and to the Board; and that a maintenance of membership provision would lead to industrial harmony and increased cooperation between the union and company.

The facts and decisions were essentially the same in twenty cases appearing before the Board in which the maintenance of membership issue was involved. In these cases the unions held the position that the maintenance of membership provision, if granted, would give the unions a feeling of security and would lead to industrial harmony. They also declared themselves to be the sole bargaining agents for the departments or plants involved and further asserted that each union had shown that it was capable of assuming full

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4Case No. 8-D-185, in the matter of Cities Service Oil Company, Bartlesville, Oklahoma, and Oil Workers International Union, Locals No. 241, 246, 264, 464, 474 and 475 (CIO); Case No. 8-D-198, in the matter of Gulf Oil Corporation, Fort Arthur, Texas, and Machinists Lodge No. 823 (AFL); Case No. 8-D-213, in the matter of the Texas Company, Houston, Texas, and Oil Workers International Union, Local No. 367 (CIO); Case No. 8-D-234, in the matter of the Phillips Petroleum Company, Borger, Texas, and International Union of Operating Engineers, Local No. 351 (AFL); Case No. 8-D-245, in the matter of Gulf Oil Corporation, Fort Worth, Texas, and Oil Workers International Union, Local No. 205 (CIO); Case No. 8-D-246, in the matter of the Texas Company, Fort Arthur, Texas, and United Laboratory Workers (Ind); Case No. 8-D-308, in the matter of Atlantic Refining Company, Kilgore, Texas, and Oil Workers International Union, Local No. 207 (CIO); Case No. 8-D-330, in the matter of Gulf Oil Corporation, Fort Arthur, Texas, and International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, Local No. 305 (AFL); Case No. 8-D-333, in the matter of the Texas Company, Port Neches, Texas, and Oil Workers International Union, Local No. 228 (CIO); Case No. 8-D-355, in the matter of Cities Service Oil Company, Ponca City, Oklahoma, and Oil Workers International Union, Local No. 252 (CIO); Case No. 8-D-450, in the matter
responsibility for its members. In contrast to the position taken by the unions in these cases, the companies held that if the Board granted the maintenance of membership provision the companies would be denied the basic freedom of private enterprise. The companies further asserted that the union's security was in no way threatened; and that the granting of such a provision as the maintenance of membership would not lead to industrial harmony. Although the maintenance of

of J. S. Abercrombie Oil Company and Harrison Oil Company, Houston, Texas, and Oil Workers International Union, Local No. 521 (CIO); Case No. 8-D-454, in the matter of the Baroco Oil Company, Tulsa, Oklahoma, and Oil Workers International Union, Local No. 361 (CIO); Case No. 8-D-462, in the matter of Tide Water Associated Oil Company and Oil Workers International Union, Locals No. 330 and 281 (CIO); Case No. 8-D-472, in the matter of Cities Service Oil Company, Pampa, Texas, and Oil Workers International Union, Local No. 235 (CIO); Case No. 8-D-503, in the matter of J. S. Abercrombie Oil Company and Harrison Oil Company, Houston, Texas, and International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, Local No. 74 (AFL), United Association of Plumbers and Steam Fitters of the United States and Canada, Local No. 195 (AFL); and Brotherhood of Painters, Decorators and Paper Hangers of America, Local No. 130 (AFL); Case No. 8-D-527, in the matter of Humble Oil and Refining Company, Baytown, Texas, and International Association of Machinists, Lodge No. 1051, District No. 37 (AFL); Case No. 8-D-156, in the matter of Gulf Oil Corporation, Port Arthur, Texas, and Oil Workers International Union, Local Nos. 23 and 254 (CIO); Case No. 8-D-159, in the matter of Standard Oil Company of Texas, El Paso, Texas, and International Union of Operating Engineers, Local No. 552 (AFL); Case No. 8-D-192, in the matter of the Texas Company, Dallas, Texas, and International Union of Operating Engineers, Local No. 412 (AFL); and Case No. 8-D-193, in the matter of the Texas Company, Dallas, Texas, and Office Employees' Federal Labor Union, Local No. 22210 (AFL). The relative position of the parties in the last four cases could not be ascertained because the data were incomplete; however, it is reasonable to conclude that they were the same as in the other case in which maintenance of membership provisions were granted.
membership provision was granted in each of these cases the companies vigorously opposed this issue each time that it appeared before the Board. The Regional Board apparently based its decisions in these cases upon the policy of the National Board.

Maintenance of membership provisions were granted in five additional cases in which the unions had requested a "union shop" provision. In these cases the facts were generally the same, with the unions maintaining that they were responsible unions, that the union shop would promote better relationship between the unions and the companies, and that the unions needed some form of union security for self-protection. The companies opposed the unions in their requests for a union shop provision on the ground that the inclusion of such a provision would not lead to a better relationship between the employees and the companies. The companies not only opposed the unions' requests for union shop provisions but also opposed any form of union security.

5Case No. 8-D-206, in the matter of Gulf Oil Corporation, Fort Arthur, Texas, and Electrical Workers Union, Local No. 457 (AFL); Case No. 8-D-427, in the matter of J. S. Abercrombie Oil Company and Harrison Oil Company, Houston, Texas, and International Association of Machinists, Lodge No. 128, District 37 (AFL); Case No. 8-D-448, in the matter of the Consumers Cooperative Refinery Association, Levalland, Texas, and Oil Workers International Union, Local No. 504 (CIO); Case No. 8-D-513, in the matter of Taylor Refining Company, Corpus Christi, Texas, and Oil Workers International Union, Local No. 343 (CIO); and Case No. 8-D-514, in the matter of J. S. Abercrombie Oil Company and Harrison Oil Company, Houston, Texas, and International Brotherhood of Painters, Decorators, and Paper Hangers of America, Local No. 130(AFL).
A typical case in which the union requested a union shop provision, but was granted a maintenance of membership provision, was in the matter of the Consumers Cooperative Refinery Association, Levelland, Texas. In this case the union asked that the union shop provision be included in their agreement with the company. This provision, if granted, would require all persons employed by the company to join the union within thirty days after commencing work. The union further pointed out that a union shop would create a harmonious spirit which would lead to increased production and efficiency. The company objected to any form of union security provision on the grounds that it would disrupt the present good relationship between the company and its employees, and that the union had not proven its responsibility. The Board, however, found that the union was capable of fulfilling all of its responsibilities and should be granted the maintenance of membership provision.

In two cases, involving the Texas Company, Port Arthur, Texas, there were no final decisions because of a work stoppage by the employees and plant seizure by the government.

The National Board reversed the Regional Board's decisions denying the unions a maintenance of membership provision in

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6Supra., p. 53, Case No. 8-D-443.
7Supra., p. 31, Case Nos. 8-D-337 and 360.
8See footnote 9, p. 17.
two other cases which involved the Humble Oil Company, Ingleside, Texas, and the Texas Company, Amarillo, Texas. 9

In the Humble Company case the union requested the maintenance of membership provision on the grounds that it was a responsible union and that the company was indulging in anti-union activities. The Company objected to the inclusion of the maintenance of membership provision in this agreement with the union, contending that the relationship between the company and the union could not be improved upon by the inclusion of this clause in the agreement with the company. The panel found that certain employees of the company had been guilty of anti-union activities but that there was no reason to believe that the company had been acting in bad faith toward the union. In its recommendation to the Board the panel recommended that a clause be placed in the agreement between the company and the union which would require a union member to submit in writing his intentions of withdrawing from the union. This notice was to be submitted sixty days in advance.

9Case No. 8-D-67, in the matter of the Humble Oil and Refining Company, Ingleside, Texas, and Oil Workers International Union, Local No. 316 (CIO); and Case No. 8-D-136, in the matter of the Texas Company, Amarillo, Texas, and International Union of Operating Engineers, Local No. 340 (AFL).
The Board considered the facts of the case as presented by the panel, and in its directive order of September 7, 1943, adopted the recommendations of the panel.

The union appealed the case to the National Board. In reversing the decision of the Regional Board the National Board stated:

Decision of Regional Board substituting for Board's standard maintenance-of-membership clause provision that union members authorizing check-off of union dues give 60 days' notice for revocation of authorization is vacated on ground that rejection of maintenance-of-membership provision was contravention of Board policy in that union is democratic in organization and is responsible and cooperative in maintenance of contract and in keeping no-strike pledge.

Board's authority to determine union security disputes between unions and employers and, as a consequence, to order membership-maintenance clauses, is based on (1) national no-strike agreement, (2) Executive Order establishing Board, (3) history of unanimous Board decisions to take jurisdiction of issue, (4) unanimous decisions of Board in 35 cases to grant membership-maintenance and unanimous decisions in cases of non-compliance to ask president for enforcement of orders.10

The decision of the National Board clearly indicated that the recommendation of the panel and the decision of the Regional Board in this matter was not in keeping with the fixed policy of the National War Labor Board.

In the second case, in which the Regional Board was reversed, the union had requested a maintenance of membership provision, asserting that it was a democratic union, capable

10National War Labor Board, War Labor Reports, Humble Oil and Refining Company, Vol XV, No. 4, p. 320.
of fulfilling all of its responsibilities and that this pro-
vision, if granted, would stabilize union-management relations.
The company did not attempt to refute the position of the union
but held that the union was only four months old and that this
was an insufficient length of time to judge the union's ability
to fulfill its responsibilities. The panel upheld the posi-
tion maintained by the company and recommended that the Board
deny the union's request for a maintenance of membership pro-
vision. The Board, in its directive order of April 26, 1944,
denied the union's request for the maintenance of membership
provision on the ground that the union had had insufficient
time in which to demonstrate its ability to fulfill its respon-
sibilities.

The union appealed the case to the National Board, and
in reversing the Regional Board's decision, the National Board
stated:

Responsible union is entitled to standard mainten-
ance of membership clause despite the fact that it has
bargained with company only for a few months. Regional
Board's denying maintenance of membership is therefore
set aside.\footnote{National War Labor Board, War Labor Reports, Texas
Company, Vol. XIX, No. 5, p. 447.}

The Board denied the union's request for a maintenance
of membership provision, on the ground of union irresponsibility,
in two cases involving the Arkansas Fuel Oil Company.
Shreveport, Louisiana. The facts in these two cases are the same in that some of the union members had indulged in a strike against the company. The union appealed the decision of the Regional Board to the National Board which sustained the ruling of the Regional Board.

The Board denied the union's request for a maintenance of membership provision in a third case involving the Texas Company, El Paso, Texas.

The maintenance of membership issue was not acted upon by the Board because the matter was withdrawn by action of the parties in a case involving the Skelly Oil Company, Pampa, Texas.

Check-Off

A second form of union security frequently involved in Board cases was the unions' requests for the "check-off" provision. This provision, if granted, would require the companies

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12Case No. S-D-120, in the matter of the Arkansas Fuel Oil Company, Shreveport, Louisiana, and Oil Workers International Union, Local Nos. 207 and 245 (CIO) and Case No. S-D-153, in the matter of Arkansas Fuel Oil Company, Shreveport, Louisiana, and Oil Workers International Union, Local No. 245 (CIO).

13Case No. S-D-203, in the matter of the Texas Company, El Paso, Texas, and International Union of Operating Engineers, Local No. 552 (AFL). The relative position of the parties in this case could not be ascertained because the data were incomplete.

14Case No. S-D-212, in the matter of the Skelly Oil Company, Pampa, Texas, and Oil Workers International Union, Local No. 463 (CIO).
to collect union dues from union members by withholding the specified amount from the pay of such employees. This issue was usually involved in cases in which the unions had requested the maintenance of membership provision and appeared before the Board in fifteen disputed cases.15

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15Case No. 8-D-120, in the matter of the Arkansas Fuel Oil Company, Shreveport, Louisiana, and Oil Workers International Union, Locals Nos. 207 and 245 (CIO); Case No. 8-D-153, in the matter of Arkansas Fuel Oil Company, Shreveport, Louisiana, and Oil Workers International Union, Local No. 245 (CIO); Case No. 8-D-156, in the matter of Gulf Oil Corporation, Fort Arthur, Texas, and Oil Workers International Union, Local 23 (CIO); Case No. 8-D-193, in the matter of Gulf Oil Corporation, Fort Arthur, Texas, and International Association of Machinists, Lodge No. 823 (AFL); Case No. 8-D-206, in the matter of Gulf Oil Corporation, Fort Arthur, Texas, and Electrical Workers Local Union No. 457 (AFL); Case No. 8-D-213, in the matter of the Texas Company, Houston, Texas, and Oil Workers International Union, Local No. 367 (CIO); Case No. 8-D-214, in the matter of Gulf Oil Corporation, Fort Worth, Texas, and Oil Workers International Union, Local No. 208 (CIO); Case No. 8-D-248, in the matter of the Texas Company, Fort Arthur, Texas, and International Brotherhood of Electrical Workers, Local No. 390 (AFL); Case No. 8-D-306, in the matter of Atlantic Refining Company, Kilgore, Texas, and Oil Workers International Union, Local No. 207 (CIO); Case No. 8-D-333, in the matter of the Texas Company, Port Neches, Texas, Local No. 223 (AFL); Case No. 8-D-337, in the matter of the Texas Company, Port Arthur, Works and Terminal, Port Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO); Case No. 8-D-360, in the matter of the Texas Company, Port Arthur, Texas, and Oil Workers International Union, Local 23 (CIO); Case No. 8-D-442, in the matter of Consumers Cooperative Refinery Association, Levelland, Texas, and Oil Workers International Union, Local No. 504 (CIO); Case No. 8-D-450, in the matter of J. S. Abercrombie Oil Company and Harrison Oil Company, Houston, Texas, and Oil Workers International Union, Local No. 521 (CIO); and Case No. 8-D-454, in the matter of bareco Oil Company, Tulsa, Oklahoma, and Oil Workers International Union, Local No. 391 (CIO).
The National's Board's policy on the check-off issue was shown in the following statement:

The Board in some cases, has granted a check-off provision along with a maintenance of membership provision, where the circumstances revealed that the check-off would implement the maintenance of membership provision.16

The Regional Board gave a clear indication of its policy on the check-off provision in stating:

The check-off provision usually approved by the Eighth Regional War Labor Board points out that the employer will be required to check-off the union dues of such employees who, of their own free will, request the company in writing to do so. It is usually provided further that the employees are at liberty to revoke and cancel in writing the check-off authorization at any time they see fit.

The Regional Board has consistently ordered the voluntary, revocable check-off, if it deemed any type of check-off appropriate.17

The standard voluntary revocable check-off provision which was adopted by the Board reads as follows:

Date ____________ 19__

Company Name ________________
Company Location ________________

You are hereby requested and authorized to deduct from wages due me and payable on the next regular pay day, the sum of $________, being my initiation fee, and on the first pay day of each succeeding month the sum of $________.


being my monthly dues to Local Union No. ____ and you are hereby authorized and directed to pay the amount deducted to Local Union No. ____ for my account on or before the ____ day of the calendar month for which said deductions are made.

You are further authorized and requested to continue the monthly dues deduction unless written instructions from me to you to advise the discontinuance of such deductions are received.

'Employee'

The union was granted the check-off provision in eleven of the fifteen cases which appeared before the Board. The position of the unions in these cases was generally the same in that they requested the check-off provision on the ground that the company was in a convenient position to collect such dues which the employees owed the union. The companies opposed the granting of the check-off provision on the grounds that if granted, the companies would be forced to work for the unions, and that it would be most expensive and inconvenient for the company to withhold such dues.

The Regional Board granted the unions' request for a check-off provision in two cases involving the Texas Company, Port Arthur, Texas. As mentioned above, both of these cases were

18 Supra., p. 59, Case No. 8-D-448.

19 Supra., p. 59, Case Nos. 8-D-156, 193, 206, 213, 244, 248, 308, 333, 448, 450, and 454.

20 Supra., p. 59, Case Nos. 8-D-337 and 360.
closed by the National Board before final action was taken, because of a work stoppage and plant seizures by the government. 21

The Board denied the union's request for a check-off provision on the ground of union irresponsibility in a case involving the Arkansas Fuel Oil Company, Shreveport, Louisiana. 22 In this case both the check-off and maintenance of membership provision were denied when it was proven that some of the union members had indulged in a work stoppage.

The Board refused to consider the check-off issue, on the ground that the question involved was "legal in nature," in a case involving the Arkansas Fuel Oil Company, Shreveport, Louisiana. 23 In this case both parties had requested the Board to decide if the check-off provision was legal. The Board, in refusing to answer this request, stated that the question was one which should be answered by the National Labor Relations Board.

21 See footnote 9, p. 17.
22 Supra., p. 59, Case No. 8-D-153.
23 Supra., p. 59, Case No. 8-D-120.
CHAPTER IV

NON-WAGE ISSUES

Very prominent in collective bargaining between labor and management are matters which do not relate to monetary compensation. These issues, which include such things as terms of agreements, seniority, non-discrimination, grievance procedure, arbitration, etc., may be classified as labor's efforts to obtain long-range job security for workers and assurance that employees will not be discriminated against merely because they "joined" a labor organization. Many of the contract provisions which have resulted from these issues clearly set forth and define the relationship of unions and management.

Terms of Agreement

The "terms of agreement" issue, involving such matters as the effective date of the agreement, length of time the agreement was to remain in force, and the termination date of the agreement, appeared before the Board in four disputed cases.¹

¹Case No. 8-D-206, in the matter of the Gulf Oil Corporation, Port Arthur, Texas, and Electrical Workers Union, Local No. 457 (AFL); Case No. 8-D-337, in the matter of the Texas Company, Port Arthur Works and Terminal, Port Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO); Case No. 8-D-360, in the matter of the Texas Company, Port Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO); and Case No. 8-D-448, in the matter of the Consumers Cooperative Refinery Association, Levelland, Texas, and Oil Workers International Union, Local No. 504 (CIO).
The following instructions were issued by the Regional Board to its panel members regarding the "terms of agreement" issue:

If the parties have been unable to agree on an effective date of contract, the provision directed by the Board usually is that the contract becomes effective as of the date of the issuance of the Board's order. There are, however, exceptions which should be noted.

The effective date of a wage adjustment is usually retroactive to the expiration date of the former contract.

If there has been no former contract, but the dispute has grown out of the negotiations for a first contract, then the date on which the dispute was certified to the National War Labor Board by the Department of Labor becomes the retroactive date, for the wage adjustment.

Contracts usually run from year to year and are automatically renewed if neither party gives notice of a desire to modify or cancel the agreement.

Panels are sometimes called upon to determine the proper termination date. In such cases, the determination should be based upon a finding of fact as to what will best stabilize the relationship of the employer and the union.2

The terms of agreement were in dispute in a case which involved the Gulf Oil Corporation, Fort Arthur, Texas.3 This matter was settled by joint action of the parties at the suggestion of the panel without further action of the Board.4

3Supra., p. 63, Case No. 8-D-206.
4See footnote 19, p. 21.
The effective date of the contract under negotiation was in dispute in two cases involving the Texas Company, Port Arthur, Texas. In these cases, the union wanted the effective date of the contract to be retroactive to April 1, 1945, giving as its reason that most of the union's other contracts were effective on that date. The company requested that the contract be effective for one year from the date on which the agreement was reached, claiming that the contract contained so many new provisions that it would take a full year to put them into operation. The panel recommended that the contract become effective upon the date of the issuance of the directive order by the Board and was sustained by the Board's directive order of June 29, 1945. Final action was not taken on these issues because of a work stoppage at the plants which resulted in a government seizure.

Whether the contract would be effective for a year or for six months was the issue in a dispute involving the Consumers Cooperative Refinery Association, Levelland, Texas. In this case the union proposed that the contract be effective for a period of one year. The company objected to the union's proposal, maintaining that the contract should be effective for a period of six months. The panel recommended that the

5Supra., p. 63, Case Nos. 8-D-337 and 360.
6See footnote 9, p. 17. 7Supra., p. 63, Case No. 8-D-448.
agreement should become effective from the date the dispute was certified to the Board, and that it should last for a period of one year. The recommendation of the panel was adopted by the Board in its directive order issued on September 23, 1945.

Grievance Procedure

A grievance procedure provision is that clause in an agreement which sets up the machinery to handle a dispute between the union and the company concerning the interpretation and application of other provisions in the agreement, and alleged violations of the agreement.

The policy of the National Board was pointed out in the Eighth Regional War Labor Board's Handbook which stated:

The Eighth Regional Board, following the policy of the National Board, encourages the use of grievance procedure.

Employers and Unions are urged to incorporate provisions for the adjustments of grievances in their agreements, and when they disagree as to the form and content of their grievance machinery the Board is quite likely to direct them to use that type of procedure which, in the judgment of the Board, best suits their needs.

This usually includes a provision for final arbitration.8

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This issue was involved in six cases which appeared before the Board.\(^9\) In the first of these cases, involving the Gulf Oil Corporation, Port Arthur, Texas, the matter was settled by the parties through the process of collective bargaining.\(^{10}\)

Revision of the existing grievance procedure provision was requested by the union in three cases which involved the Texas Company, Port Arthur, Texas, and the Humble Oil Refining Company, Baytown, Texas.\(^{11}\)

The union, in the two Texas Company cases, wanted to revise the existing grievance procedure provision in a number of respects. The major revisions advocated by the union were to condense the existing clause and to facilitate a more rapid hearing of complaints by removing some of the existing barriers which were prevalent in the provision. The company

\(^9\)Case No. 8-D-206, in the matter of Gulf Oil Corporation, Port Arthur, Texas, and Electrical Workers Union, Local No. 457 (AFL); Case No. 8-D-337, in the matter of the Texas Company, Port Arthur Works and Terminal, Port Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO); Case No. 8-D-360, in the matter of the Texas Company, Port Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO); Case No. 8-D-448, in the matter of the Consumers Cooperative Refinery Association, and Oil Workers International Union, Local No. 504 (CIO); Case No. 8-D-471, in the matter of Gulf Oil Corporation, Port Arthur, Texas, and Oil Workers International Union, Local Nos. 23 and 254 (CIO); and Case No. 8-D-527, in the matter of Humble Oil and Refining Company, Baytown, Texas, and International Association of Machinists, Lodge No. 105, District 37 (AFL).

\(^{10}\)For full details see footnote 19, p. 21.

\(^{11}\)Supra., Case Nos. 8-D-337, 360, and 527.
opposed any changes. The panel found that the existing grievance procedure was lengthy and cumbersome and recommended that the procedure be changed; however, the Board, in its directive order of June 29, 1945, refused to alter the existing provision in any manner.\textsuperscript{12}

In a third case, involving the Humble Company, the union wanted to change the wording of a grievance procedure provision asserting that the company was allowing another labor organization to represent employees in matters which should be settled under its grievance procedure provision. The union further claimed that any member of the union must present his grievance to the union at the time it is presented to the company. The company did not attempt to refute the first allegation of the union but took the position that an individual should not be required to call upon the union in presenting a personal grievance to the company.\textsuperscript{13} The Board, in its directive order of November 14, 1945, granted the request of the union.

Both parties presented a grievance procedure provision which they wanted adopted and placed in their contract in a

\textsuperscript{12}See footnote 9, p. 17.

\textsuperscript{13}The panel's report was missing from the case files and its position could not be ascertained.
case which involved the Consumers Cooperative Refinery Association, Levelland, Texas. The panel considered both proposals and found that neither was suitable; therefore, it prepared a third grievance procedure provision which was accepted by both parties. The Board, in its directive order of September 28, 1945, ordered that the grievance procedure prepared by the panel be placed in the agreement of the parties involved.

Violation of the grievance procedure provision on the part of the company was claimed by the union in the Gulf Oil Corporation case, Port Arthur, Texas. The union held that this violation was due to the company's misinterpretation of the grievance procedure provision and for this reason wanted the wording of the provision changed. The company maintained that they had adhered to the grievance procedure provision. The panel found that a part of the grievance procedure provision in the existing agreement between the parties was in terms which could lead to confusion; however, the panel found that the company was adhering to the provision and recommended that the Board deny the union's request. The Board, in its directive order of October 8, 1945, adopted the recommendation of the panel.

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14 Supra., p. 67, Case No. 8-D-448.
15 Supra., p. 67, Case No. 8-D-471.
Arbitration

The arbitration issue was closely related to the grievance procedure issue since it was through the process of arbitration that the grievances were usually handled. Executive Order No. 9017 provided that before the Secretary of Labor certified a dispute to the National War Labor Board, the parties should first exhaust all possibilities of deciding the issues involved through collective bargaining or through the process designated by the existing agreement between the union and the company. The grievance procedure provision of an agreement between a union and a company designates the process through which differences of the union and the company should be settled. If the use of this provision fails to settle the disagreement between the union and the company, a second method is used. This second method involves an arbitration between the parties in dispute. The arbitration provision in an agreement between a union and a company specified that when the arbitration method for settling disputes was used, the company and the union would sit together with a third disinterested person and settle the disagreement. The difficulty in this provision was that the company and the union were not always agreeable as to who the third disinterested party was to be. Frequently the Board was called upon to determine who should designate the third party to the arbitration committee when the union and company could not agree.
The policy of the Regional Board in the arbitration issue was to decide each case on its individual merits.\textsuperscript{16} Three disputed cases appeared before the Board in which this issue was involved.\textsuperscript{17}

The unions and the companies were unable to agree upon who should designate the third disinterested member to the arbitration committee in two cases in which the Arkansas Fuel Oil Company, Shreveport, Louisiana, and Consumers Cooperative Refinery Association, Levelland, Texas, were involved.\textsuperscript{18} In both cases the unions maintained the position that the arbitration clause should designate that the head of the U. S. Conciliation Service should name the third member to the arbitration committee. The companies opposed the unions' requests, maintaining the position that the arbitration provision in the agreements under negotiation should be the same as in the previous agreements with the unions. The panels recommended that the Board designate that the Chairman of the Eighth


\textsuperscript{17}Case No. 8-D-153, in the matter of Arkansas Fuel Oil Company, Shreveport, Louisiana, and Oil Workers International Union, Local No. 245 (CIO); Case No. 8-D-206, in the matter of Gulf Oil Corporation, Port Arthur, Texas, and Electrical Workers Union, Local No. 457 (AFL); and Case No. 8-D-448, in the matter of Consumers Cooperative Refinery Association, Levelland, Texas, and Oil Workers International Union, Local No. 504 (CIO).

\textsuperscript{18}Supra., Case Nos. 8-D-153 and 448.
Regional War Labor Board name the third party to the arbitration committee and were sustained by the Board.

The arbitration issue was settled by collective bargaining in the third case affecting Gulf Oil Corporation, Port Arthur, Texas,\textsuperscript{19}

Discrimination

The discrimination issue evolved from the unions' fears that the companies would show favoritism to non-union members at the expense of the union members. The unions' fears were based on the contention that the companies did not want the unions to exist and that they would discourage employees from joining the unions by penalizing union members whenever possible. To prevent such occurrences, the unions requested that their contracts with the companies carry a provision which stated that the companies would not discriminate against union members.

Three cases, two involving the Texas Company, Port Arthur, Texas, and the other involving the Consumers Cooperative Refinery Association, Levelland, Texas, appeared in which the discrimination issue was disputed.\textsuperscript{20} In all of these

\textsuperscript{19}Supra., p. 71, Case No. 8-D-206. See footnote 19, p.21.

\textsuperscript{20}Case No. 8-D-337, in the matter of the Texas Company, Port Arthur Works and Terminal, Port Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO); Case No. 8-D-360, in the matter of the Texas Company, Port Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO); and Case No. 8-D-448, in the matter of Consumers Cooperative Refinery Association, Levelland, Texas, and Oil Workers International Union, Local No. 504 (CIO).
cases the unions requested that their agreements with the companies contain a non-discrimination provision. The facts in the three cases were the same with the unions maintaining that the companies were discriminating against certain employees. The companies asserted that there was no discrimination and further maintained that there was no reason why such a provision should be placed in their agreements with the unions.

No evidence of discrimination on the part of the company was found by the panel in the two Texas Company cases; however, the panel did recommend that the agreement between the parties carry a non-discrimination provision. The Board, in its directive order of June 29, 1945, ordered that the agreement between the parties carry the following non-discrimination clause:

The company will not tolerate nor permit any favoritism or partiality to be shown by its employees who are serving in a supervisory capacity. There will be no discrimination against any applicant for employment or against any employee in regard to promotion, discharge, suspension, layoff, or sickness, accident insurance and pension benefits, on account of membership or non-membership in any church, society, fraternity, or labor union, or on account of any activity taken in good faith in his capacity as a representative of other employees.21

The labor members of the Board dissented. Apparently their objections arose from the subordination of "union discrimination" in the offending text.22

21Supra, p. 72, Case Nos. 8-D-337 and 360.
22See footnote 9, p. 17.
The Board, in the Consumers Cooperative Refinery case, ordered that the agreement between the union and company carry the following non-discrimination provision:

There shall be no discrimination against any member of the union by the management of the company.\textsuperscript{23}

Seniority

The seniority issue involved a disagreement between the unions and the companies on the question of who would be promoted to a higher position, or in a case of a lay-off, who would be laid off first. Another matter involved in this issue was which type of seniority plan should be adopted—plant seniority or departmental seniority. If the plant seniority plan was adopted, the length of time worked for a particular company would be the deciding factor in promotions and lay-offs. If the department seniority plan was used the length of time worked in a particular department of a company would be the deciding factor in promotions and lay-offs. The relative importance of seniority and qualifications for the job, frequently complicated the question.

The National Board's policy on seniority was stated as follows:

The issue of seniority has proven to be one which can usually be settled by mediation, and the Board has not infrequently referred the issue back to the parties.

\textsuperscript{23} Supra., p. 72, Case No. S-D-443.
for direct negotiations. Where it has done so, and also where it has made decisions on seniority, the Board has made its determination after carefully considering the facts in each case, and without formulating any general principles.\textsuperscript{24}

This issue was involved in nine disputed cases appearing before the Board.\textsuperscript{25} The union requested that the Board order that a seniority provision, which decided seniority on the departmental basis, be placed into their agreement with the company in the Magnolia Petroleum Company case, Beaumont, Texas.\textsuperscript{26}

In the previous agreement between the parties the seniority plan was based upon the plant wide seniority plan. The union objected to the plant wide plan on the ground that in case of lay-offs employees would be shifted, as replacements, to


\textsuperscript{25}Case No. 8-D-163, in the matter of Magnolia Petroleum Company, Beaumont, Texas, and International Association of Machinists Union, Lodge No. 395 (AFL); Case No. 8-D-206, in the matter of Gulf Oil Corporation, Port Arthur, Texas, and Electrical Workers Union, Local No. 244 (AFL); Case No. 8-D-213, in the matter of the Texas Company, Houston, Texas, and Oil Workers International Union, Local No. 367 (CIO); Case No. 8-D-276, in the matter of Republic Oil and Refining Company, Texas City, Texas, and Oil Workers International Local No. 449 (CIO); Case No. 8-D-337, in the matter of the Texas Company, Port Arthur Works and Terminal, Port Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO); Case No. 8-D-366, in the matter of the Texas Company, Port Arthur, Texas and Oil Workers International Union, Local No. 23 (CIO); Case No. 8-D-448, in the matter of the Consumers Cooperative Refining Association, Levelland, Texas, and Oil Workers International Union, Local No. 504 (CIO); Case No. 8-D-454, in the matter of Barco Oil Company, Tulsa, Oklahoma, and Oil Workers International Union, Local No. 391 (CIO); and Case No. 8-D-533, in the matter of Standard Oil Company of Texas, El Paso, Texas, and International Union of Operating Engineers, Local No. 552 (AFL).

\textsuperscript{26}Supra., Case No. 8-D-163.
departments to do work for which they were not qualified. The company maintained the position that the union was correct in its reasoning, but felt that since the company was willing to accept the expense of training these men for their new jobs the union should not complain. The company further claimed that the seniority plan in the terminated agreement with the union should be inserted into the new agreement. The majority of the panel recommended that the union's request be granted. The disputes division analyst, in analyzing the case for the Board, stated that:

The Board's attention is called to the fact that the question involved herein is apparently a novel one. A search of the decisions reveals that the National Board has ruled on this question on two different occasions, in cases involving the Westinghouse Air Brake Company, Case No. 111-1244-D and Automatic Transportation Company, Case No. 422. However, in each of these instances, the union was requesting exactly the opposite from that which the Union herein involved is requesting; that is, they sought to have their seniority changed from a departmental one to a plant-wide plan and the National Board, in each instance, denied the Union's request on the ground that only with departmental seniority can it be assumed that competent, qualified employees draw assignments to jobs to which they are entitled by the qualification and length of service. In view of the National Board's ruling in the above mentioned cases, the Board may, at its discretion, deem it proper to sustain the Union's request in this instance and grant its amendment to the seniority provision.27

The Board, in its directive order of March 3, 1944, ordered that the Union's request on the matter of seniority be granted. The appeal of this case to the National Board by the company was denied.

27Ibid.
The company and the union were in complete disagreement over the question of seniority versus qualifications in a case involving the Texas Company, Houston, Texas.\textsuperscript{28} Article 6, Section 8, of the existing contract between the parties stated:

In exceptional cases where an employee possesses special or unusual ability, the company may, regardless of seniority rights, promote such employee, or transfer him to another classification.\textsuperscript{29}

The union proposed that Article 6, Section 8, be amended to read:

Reasons for any deviation in seniority shall be given to the affected employee or employees and the Workmens' Committee and if desired, shall be made the subject of a conference between the Workmens' Committee and the Management prior to the permanent placement of the employee in the position. All rules and methods of promotion do not intend to place a man in a position which he is not capable of handling. In cases where a man's capability is questioned, a satisfactory method of determining this question will be agreed upon by the Company and the Workmens' Committee. If no agreement is reached, the matter will be determined by arbitration in accordance with the provisions of this agreement.\textsuperscript{30}

The company objected to the union's proposal, maintaining that the existing seniority provision had been agreed upon by collective bargaining between the parties involved. The company further maintained that it was a prerogative of management to promote any employee who possessed exceptional abilities. The panel recommended that the Board deny the union's request on the ground that the union was fully protected under the existing

\textsuperscript{28}Supra., p. 75, Case No. 8-D-213.

\textsuperscript{29}Ibid.

\textsuperscript{30}Ibid.
agreement. The Board, in its directive order of May 27, 1944, adopted the recommendation of the panel.

Twenty-one disputed points on the seniority provision for the contract under negotiation were involved in two cases of the Texas Company, Port Arthur, Texas.31 The panel, in its recommendations to the Board, upheld the company's position on fifteen points, upheld the union's position on one point, and rejected the position of both parties on five points involved in the seniority provision dispute. The Board, in its directive order of June 29, 1945, sustained the company's position on seven points, sustained the union's position on four points, and rejected both parties' position on ten points involved in this issue. More detailed discussion will not be given on this issue since the cases were never completed.32

A seniority provision suitable to both parties could not be drawn in a case involving Consumers Cooperative Refinery Association, Levelland, Texas.33 The company had proposed a short seniority provision which was to the effect that seniority would govern promotions, demotions, and lay-offs. Seniority was to govern promotions only when the employee possessed certain qualifications. The union requested that the Board order a seniority provision which would more fully define seniority

31 Supra., p. 75, Case Nos. 8-D-337 and 360.
32 See footnote 9, p. 17. 33 Supra., p. 75, Case No. 8-D-448.
and qualifications. The panel recommended that the Board deny the union's request for a detailed seniority provision in its agreement with the company and, in its directive order of September 28, 1945, the Board upheld the recommendation of the panel.

A progression chart based upon departmental seniority was requested by the union in a case involving the Standard Oil Company of Texas, El Paso, Texas.\[34]\ The progression chart would list the names of the employees who were eligible for promotions on the basis of seniority and qualifications. The company maintained the position that seniority must be based upon a plant-wide plan and that the agreement with the union should not contain any kind of progression chart. The hearing officer recommended that the Board order a progression chart be placed into agreement between the parties. The Board, in its directive order of December 11, 1945, made the following recommendation:

The Board recommends that the parties negotiate a progression chart which shall be drawn up on a plant rather than a departmental basis in order that such progression chart may be consistent with the seniority provision of the existing contract between the parties and further recommends that such negotiated progression chart be made a part of the existing contract between the parties.\[35]\n
Final action was not necessary by the Board in three other cases involving the Gulf Oil Corporation, Port Arthur, Texas.\[36]\n
\[34\] Supra, p. 75, Case No. S-D-533.  
\[35\] Ibid.  
\[36\] See footnote 19, p. 21.
the Republic Oil and Refining Company, Texas City, Texas, and the Bareco Oil Company, Tulsa, Oklahoma, because the seniority issue was settled by the parties involved through the process of collective bargaining.\footnote{Supra., p. 75, Case Nos. 8-D-206, 278, and 454.} In each of these cases the panel, in conforming with the suggestion of the National Board, urged the parties to negotiate further in the issue.

**Hours of Work**

There were five disputed cases involving the hours of work issue which appeared before the Board.\footnote{Case No. 8-D-186, in the matter of the Texas Company, Amarillo, Texas, and International Union of Operating Engineers, Local No. 340 (AFL); Case No. 8-D-206, in the matter of Gulf Oil Corporation, Fort Arthur, Texas, and Electrical Workers, Local Union No. 457 (AFL); Case No. 8-D-337, in the matter of the Texas Company, Port Arthur Works and Terminal, Port Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO); and Case No. 8-D-448, in the matter of Consumers Cooperative Association, Levelland, Texas, and Oil Workers International Union, Local No. 504 (CIO).} This issue involved the provision of the agreement between the union and the company which stated the number of hours of work which would be required of the employees.

The union protested the reduction in job classifications of certain employees as a result of adopting the forty-eight hour work week in a case involving the Texas Company, Amarillo, Texas.\footnote{Supra., Case No. 8-D-186.} The company had been working a forty-hour week but

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\footnote{Supra., p. 75, Case Nos. 8-D-206, 278, and 454.}

\footnote{Case No. 8-D-186, in the matter of the Texas Company, Amarillo, Texas, and International Union of Operating Engineers, Local No. 340 (AFL); Case No. 8-D-206, in the matter of Gulf Oil Corporation, Fort Arthur, Texas, and Electrical Workers, Local Union No. 457 (AFL); Case No. 8-D-337, in the matter of the Texas Company, Port Arthur Works and Terminal, Port Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO); and Case No. 8-D-448, in the matter of Consumers Cooperative Association, Levelland, Texas, and Oil Workers International Union, Local No. 504 (CIO).}

\footnote{Supra., Case No. 8-D-186.}
was forced to change to the longer work week as a result of the manpower shortage. At the time of this change the company placed some of its employees in a lower job classification with lower wages. The union demanded that the job classification remain unchanged or that the company retain the shorter work week. The company claimed that the adoption of the forty-eight hour work week automatically resulted in lower classifications and that the company was forced to pay its employees according to the classification schedule. The company further asserted that the employees were getting "time and one-half" for all work done in excess of forty hours a week which was more than enough to compensate for being reduced to a lower classification. The panel's recommendation that the union's demand be denied was sustained by the Board.

The union petitioned the National Board for a review of the Regional Board's decision, maintaining that the Chairman of the Hearing Panel had dominated the hearing as representative of the company instead of acting in an impartial capacity. The petition for review was granted, and the National Board ruled that:

B. Section 2, Wages, is remanded to the Eighth Regional Board for reconsideration.40

The Regional Board reconsidered the issue and in a directive order of October 2, 1944, stated in part:

The company is hereby directed to grant each employee whose job classification has been reduced by reason of a change from a forty to a forty-eight hour week...pay at the rate of his previous classification for a period of ninety days from the date such employee was reduced in classification.\(^1\)

The hours of work issue in dispute in a second case involving the Gulf Oil Corporation, Port Arthur, Texas, was settled by the parties through the process of collective bargaining.\(^2\)

The union wanted a provision placed in its contract which would require the company to reinstate the pre-war standard of seventy-two hours work in two successive weeks as soon as manpower was available, in two other cases involving the Texas Company, Port Arthur, Texas.\(^3\) The company opposed the union’s request maintaining that it was a function of management to decide on the number of hours to be worked. The panel was of the opinion that a more gradual return to the pre-war work week should be considered but pointed out that the work week issue was a matter which should be decided through the process of collective bargaining. The panel made the following recommendation to the Board:

If and when the labor supply permits, and a return to the 72 hours in any two successive weeks is practicable, the Company and the Union will agree to return to the schedule of 72 hours in any two successive weeks.\(^4\)

\(^1\)Supra., p. 80, Case No. 8-D-186.

\(^2\)Supra., p. 80, Case No. 8-D-206, see footnote 19, p. 21.

\(^3\)Supra., p. 80, Case No. 8-D-337 and 360. \(^4\)Ibid.
The Board, in its directive order of June 29, 1945, ordered that:

Regular scheduled hours of work shall not exceed 8 hours in any one day or 40 hours in any one week. Due to existing regulations of the War Manpower Commission in this area under Presidential Executive Order No. 9301, 48 hours shall be the scheduled work week; it is understood, however, that upon termination of existing regulations in this area requiring a 48 hour work week, a 40 hour work week will be put into effect as soon as practicable. If and when the labor supply permits, and a return to the 72 hours in any two successive weeks is practicable, the Company and the Union, if mutually agreeable, will return to the schedule of 72 hours in any two successive weeks.\footnote{Ibid.}

As previously mentioned, these cases were never completed as a result of a work stoppage and plant seizure.\footnote{See footnote 9, p. 17.}

A provision requiring the Consumer Cooperative Refinery Association, Levelland, Texas, to revert to the pre-war forty hour work week at the conclusion of the National Emergency was requested by the union.\footnote{Supra., p. 80, Case No. 8-D-443. The union further requested that the hours of work provision stipulate that the work week could not be changed without seven days prior notice to the union. The company maintained that the hours of work provision submitted by the union was too ambiguous and lengthy for a small plant. The panel upheld the position maintained by the company and recommended that the Board deny the union's request. The Board, in its directive...}
order of September 28, 1945, rejected the recommendation of the panel and ordered that the union's request be granted.

Leave of Absence for Union Officials

The leave of absence for union officials provision in an agreement between a union and a company is that provision which designates the length of time and number of employees which may be absent from their jobs while engaged in union activities. This clause does not entitle the employee to any pay from the company, but it prevents the employee's job being jeopardized while he is away from work on union business. This issue appeared before the Board in five disputed cases.48 The prevailing practice of the oil refining industry appears to be to grant leaves of absence for union officials.49

In one instance the union and company wanted the Board to rule on whether the inclusion of a leave of absence for union

48 Case No. 8-D-120, in the matter of the Arkansas Fuel Oil Company, Shreveport, Louisiana, and Oil Workers International Union, Local No. 207 and 245 (CIO); Case No. 8-D-153, in the matter of Arkansas Fuel Oil Company, Shreveport, Louisiana, and Oil Workers International Union, Local No. 245 (CIO); Case No. 8-D-337, in the matter of the Texas Company, Port Arthur Works and Terminal, Port Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO); Case No. 8-D-360, in the matter of the Texas Company, Port Arthur, Texas and Oil Workers International Union, Local No. 23 (CIO); and Case No. 8-D-443, in the matter of the Consumers Cooperative Refinery Association, Levelland, Texas, and Oil Workers International Union, Local No. 504 (CIO).

49 See Articles of Agreements listed in footnote 4, pp. 13-14.
officals was a violation of the National Labor Relations Act. In this case, involving the Arkansas Fuel Oil Company, Shreveport, Louisiana, the panel and the Board refused to consider the question, pointing out that it was legal in nature and should be decided by the National Labor Relations Board.\textsuperscript{50}

The union requested that the wording of the leave of absence for union officials in the agreement with the company be changed in another case involving the same company.\textsuperscript{51} In this case the existing provision stated that a leave of absence for union officials would be granted if and when Section 8 of the National Labor Relations Act is not violated. The union requested that the words pertaining to the National Labor Relations Act be deleted from the provisions. The company did not object to this change if it was agreeable to the Board. The panel recommended that the Board grant the union's request; however, the Board, in its directive order of March 6, 1944, refused to consider the issue because the leave of absence provision for union officials in the existing contract was still in effect. The Board further stated that, at such time the contract between the parties was terminated and the issue was still unsettled, the matter would be considered by the Board. The contract was terminated by the union and the issue was submitted to the Board for final action. In its

\textsuperscript{50}\textsuperscript{supra}, p. 84, Case No. 8-D-120.

\textsuperscript{51}\textsuperscript{supra}, p. 84, Case No. 8-D-153.
second directive order, dated April 15, 1944, the Board granted the union's request.

Two other cases involving the Texas Company, Port Arthur, Texas, appeared before the Board, in which the union wanted the leave of absence for union officials provision changed in the contract under negotiation. The union's main objection to the previous provision was that it required that permission must be obtained from the company before any member would be granted a leave of absence for union business. The company objected to any change of the previous leave of absence for union officials provision, on the ground that it was liberal enough. The panel recommended that the union's request be denied but further recommended that the following clause be inserted into the leave of absence for union officials provision:

Leaves of absence up to one year for Union business will be granted upon application of the union. The number of employees to be granted such leaves shall not exceed, concurrently, twelve as follows:

2 for one year
3 for six months
3 for sixty days
4 for fifteen days.

Due regard shall be given to plant conditions without the loss of employee rights or benefits, except that such employee will not be paid for time lost during such absence. 53

52 Supra., p. 84, Case Nos. S-D-337 and 360.
53 Ibid.
The Board, in its directive order of June 29, 1945, adopted the recommendations of the panel.\textsuperscript{54}

Wording of the leave of absence for union officials provision was the matter to be settled in the Consumers Cooperative Refinery case, Levelland, Texas.\textsuperscript{55} Both parties had designed a provision which they wanted adopted; however, the panel decided that neither provision was suitable and prepared one of its own which was accepted by the union and company. The Board ordered that the leave of absence for union officials provision as prepared by the panel be placed into the agreement between the company and the union.

Bulletin Board

The bulletin board issue was involved in one disputed case appearing before the Board.\textsuperscript{56} In this case the union wanted to place the following clause in their agreement with the company:

\begin{quote}
The Employer shall cause a bulletin board to be placed on the property where it may be seen by employees entering and leaving their places of employment. This Board may be used by the Union for any matters of the Union.\textsuperscript{57}
\end{quote}

The company objected to the inclusion of this provision in its agreement with the union; however, before the Board could take

\footnotesize
\textsuperscript{54}See footnote 9, p. 17.  \textsuperscript{55}\textsuperscript{Supra}, p. 84, Case No. 8-D-448.

\textsuperscript{56}Case No. 8-D-448, in the matter of Consumers Cooperative Refinery Association, Levelland, Texas, and Oil Workers International Union, Local No. 594 (CIO).

\textsuperscript{57}\textit{Ibid.}
final action on this issue the parties involved reached an agreement which was submitted to the Board for approval. The Board, in its directive order of September 28, 1945, in approving the agreement, stated:

The Board hereby approves the agreement of the parties on the above issue and orders and directs that the terms and provisions of such agreement shall be included in the contract between the parties. 58

Health and Safety

In some instances the unions attempted to have written into their agreements with the companies a contract provision giving them some power over health and safety regulations. Four disputed cases involving this issue appeared before the Board. 59

Two cases, involving the Gulf Oil Corporation, Port Arthur, Texas, 60 and Consumers Cooperative Refinery Association, Levelland, Texas, 61 were certified to the Board in which the

58 Ibid.

59 Case No. 8-D-206, in the matter of Gulf Oil Corporation, Port Arthur, Texas, and Electrical Workers Union, Local No. 456 (AFL); Case No. 8-D-337, in the matter of the Texas Company, Port Arthur Works and Terminal, Port Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO); Case No. 8-D-360, in the matter of the Texas Company, Port Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO); and Case No. 448, in the matter of Consumers Cooperative Refinery Association, Levelland, Texas, and Oil Workers International Union, Local No. 504, (CIO).

60 Supra., Case No. 8-D-206. See footnote 19, p. 21.

61 Supra., Case No. 8-D-448.
health and safety issue was in dispute, but were settled by collective bargaining without further action.

Equal right in determining plant safety and sanitation regulations was requested by the union in two other cases involving the Texas Company, Port Arthur, Texas.\textsuperscript{62} The union contended that the company's safety and sanitation regulations were inadequate and should be improved. The company objected to the union's request maintaining that sanitation and safety regulations were the affairs of the company, and that the existing regulations were adequate. The panel found that there had been no neglect on the part of the company in its regulations concerning safety and sanitation, but it recommended that an Advisory Committee on Safety and Sanitation composed equally of Company and Union representatives be set up within the plants. The duty of this Committee was to keep an up-to-date check on the safety and sanitation of the plants. The Board, in its directive order of June 29, 1945, adopted the recommendation of the panel.\textsuperscript{63}

\textbf{Contracting Work}

The contracting work issue was involved in one disputed case appearing before the Board in which the union wanted to keep the company from contracting maintenance workers at

\textsuperscript{62}Supra., p. 88, Case Nos. 8-D-337 and 360.

\textsuperscript{63}See footnote 9, p. 17.
a wage rate lower than that received by union employees. 64

Under the title of "Contracting Work" the union requested that the following provision be placed in their agreement with the company:

Section 1. The Company shall require a provision in all bids called for by it for work to be performed within the refineries in the upkeep and repair of existing facilities which would otherwise be performed by employees to whom this agreement applies, providing that the contractor or any sub-contractor will pay for such work at least the prevailing wage rate and abide by the recognized limitations concerning hours of work in the same trade and character of work under this agreement where the work is performed, and, in any event, rates of pay (including overtime rates) shall not be less than the minimum rates established by this agreement for the same character of work, and that the hours of work shall not exceed forty (40) hours per week without payment of overtime at not less than the overtime rate established by this agreement. 65

The union maintained the position that the inclusion of this provision in its agreement with the company would insure the employees against being laid off for cheap contract labor. The union further asserted that the contracting of maintenance labor was a common practice in the oil industry and because of this practice it must have a protecting provision in its agreement with the company. The company maintained the position that the union's proposal was unnecessary, since it was the company's practice not to violate the spirit of the proposal. Its position was sustained by the panel in its

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64 Case No. 3-D-448, in the matter of Consumers Cooperative Refinery Association, Loveland, Texas, and Oil Workers International Union, Local No. 504 (CIO).

65 Ibid.
recommendation to the Board. The Board issued its directive order on September 28, 1945, in which it ordered that the agreement between the union and the company carry the full text of the union's proposal.

Apprentice

The apprentice issue was introduced to the Board because of a disagreement between the union and company concerning the training of new employees, and appeared in a case involving the Gulf Oil Corporation, Port Arthur, Texas. This issue was settled by action of the parties as discussed previously.66

Physical Examination

The physical examination issue evolved from the question of whether or not the company physician should have the sole authority to determine an employee's physical fitness to work. It appeared before the Board in three disputed cases,67

A proposal, by the union, that the contracts under negotiation contain a provision giving an employee, found

66Supra., p. 88, Case No. 8-D-206. See footnote 19, p. 21.

67Case No. 8-D-337, in the matter of the Texas Company, Port Arthur Works and Terminal, Port Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO); Case No. 8-D-360, in the matter of the Texas Company, Port Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO); and Case No. 8-D-446, in the matter of the Consumers Cooperative Refinery Association, Levelland, Texas, and Oil Workers International Union, Local No. 504 (CIO).
physically unfit for duty, the right to have his case reviewed
by a physician outside the pay of the company was the issue
in dispute. The company (Texas Company, Port Arthur, Texas,) oppossed the union's proposal maintaining that the existing
provision covering physical examinations was adequate.\(^68\)

Sustaining the company the panel recommended that the
union's request be denied. In its directive order dated June
29, 1945, the Board directed that the following provision be
placed in the agreement between the parties:

Applicants for initial employment, and for employment after a layoff of 270 consecutive days or more,
shall submit to a physical examination by a local
physician appointed by the Company. Except in special
circumstances, the Company will not hire any such
applicant who is found not to meet the minimum physical
requirements of the Company for the job for which he is
making application, and the finding of the physician
appointed by the Company shall be final.\(^69\)

This order was, in effect, upholding the views of the company.\(^70\)

The company and union were unable to agree on the wording
of the physical examination provision in the other case involving
the Consumers Cooperative Refinery Association, Lovelace,
Texas.\(^71\) Wording of the provision, as follows, was proposed
by the union:

Employees shall not be required as a condition of
employment to submit to a physical examination by a
physician in the pay of the employer or its agents, but

\(^{68}\) supra, p. 91, Case Nos. S-D-337 and 360.

\(^{69}\) id.

\(^{70}\) See footnote 9, p. 17.

\(^{71}\) supra, p. 91, Case No. S-D-443.
may furnish a certificate of current date from any reputable physician agreed to by both parties. In the case of employees being absent from work due to illness or physical impairment, they shall be readmitted to work upon presentation of a certificate of physical fitness signed by any physician acceptable to both parties.\textsuperscript{72}

The union maintained that the inclusion of this provision in the agreement with the company would tend to keep down discrimination against employees by the company. The company's counter proposal was as follows:

\textbf{Employees shall be required as a condition of employment to submit to physical examination by a physician in the pay of the employer or its agent.}\textsuperscript{73}

Considering both proposals inadequate, the panel recommended that the Board order the following physical examination provision be placed in the agreement between the parties:

\textbf{Employees shall be required as a condition of pre-employment to submit to a physical examination by a physician in the pay of the employer or its agents.}\textsuperscript{74}

Finding the parties agreeable to the panel's recommendation, it was so ordered by the board.

\textsuperscript{72}Ibid.
\textsuperscript{73}Ibid.
\textsuperscript{74}Ibid.
CHAPTER V

SUMMARY AND CONCLUSION

This investigation has presented the Eighth Regional War Labor Board's disposition of disputed cases relating to the Oil Refining Industry. As previously indicated, this study has included fifty-two disputed cases which involved non-basic wage, union security, and non-wage issues. The conclusion to this study is an attempt to show upon what grounds the Board based its decisions. Further comment will be made on some of the cases which possess peculiarities of special interest.

Apparently the Regional Board disposed of disputed issues by returning the matter to the parties for further negotiation or by making a ruling on the issues in dispute. Regardless of which method was used, the Board was expected to conform with the general practices of the National War Labor Board since any deviation by the Regional Board, in favor of either management or labor, would have had an unstabilizing effect upon labor-management relations in other regions. The National Board was often called upon to review the decisions of its Regional Boards in order to ascertain if they were in conformity with the overall policy. As a guide to its Regional Boards the National Board furnished up-to-date and detailed reports on its actions in disputed cases.
Comment on Outstanding Cases

There are three cases in this paper which deserve special consideration because of outstanding peculiarities. The Board considered the first two cases, involving the Texas Company, Port Arthur, Texas, jointly because they related to the same local union and two plants of the same company with identical issues in dispute. The third case referred to involved the Consumers Cooperative Refinery Association, Levelland, Texas.

Special consideration is given to the Texas Company cases because they involved so many disputed issues and because their final outcome was deferred as a result of a work stoppage by the employees and plant seizures by the government. When these cases were certified to the Board there were approximately eighty issues in dispute. The reasons that there were so many issues in dispute were pointed out in the following statement of the panel, in its report to the Board:

Due to the length and complexity of this case, the Panel wishes to call the attention of the Eighth Regional Board to some of its characteristics. It will be noted that what the Union called for was practically a re-writing of the entire contract. Throughout the hearing the Union's attitude was that the Company was antiquated in

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1Case No. S-D-337, in the matter of the Texas Company, Port Arthur Works and Terminal, Port Arthur, Texas, and Oil Workers International Union, Local No. 23 (CIO); and Case No. S-D-360, in the matter of the Texas Company, Port Arthur, Texas, and Oil Workers International Union, Local No. 23, (CIO).

2Case No. S-D-448, in the matter of the Consumers Cooperative Refinery Association, Levelland, Texas, and Oil Workers International Union, Local No. 594 (CIO).
its methods. It is also to be noted that even as negotiations for the new contract were going on, there were serious work stoppages in the plant. Previous to 1944, such stoppages were very rare, and the relations between management and employees seemed peaceable. The Union’s attitude, whenever the past relations were referred to, was that the Union now had strength of numbers, and was in a position to demand an entirely new philosophy as to employer-employee relations.\footnote{Supra., p. 95, Cases Nos. 8-D-337 and 360.}

The panel heard the parties’ argument in these cases in January, 1945, and the Board first considered the panel’s report and recommendation in the following June. Previous to the preparation of the Board’s directive order there was a work stoppage by a part of the company’s employees. The plants were seized by the Petroleum Administrator for War on July 1, 1945, because of the work stoppage and they were operated in accordance with Section 4 of the War Labor Disputes Act. This specified that a seized plant would be operated under the terms and conditions of employment in effect at the time possession was taken. After the first plant seizure the National Board requested that the case records be submitted to it for further processing. With the permission of the Petroleum Administrator, the National Board proceeded with the cases and it submitted the directive order prepared by the Regional Board to the union and the company with the request that they submit their comments within fourteen days. While the case was still pending before the National Board a second work stoppage occurred at the plants and they were again
seized by the Petroleum Administrator for War. The National Board then notified the Regional Board that the cases would be officially closed by that office. Apparently there was no further action taken by the National War Labor Board in this matter.

By the time of the second work stoppage the actual fighting in Europe and Asia had ceased, which was an indication that the National War Labor Board's duties would soon be terminated. So long as this was a possibility it was to the company's advantage to delay the signing of a contract with the union. This was obvious since the union would have to resort to its own powers to obtain concessions which had been granted by the Regional Board. For this reason, whether or not the work stoppage was provoked, it is apparent that the strike was fortuitous for the company. Certainly the union stood to gain nothing from the work stoppages mentioned above.

The third case is given special consideration because it was the result of a failure of the parties to agree in negotiating their first contract. Twenty-one issues were certified to the Board for settlement. Facts in the case indicate that the Consumers Cooperative Refinery Association was unwilling to recognize the Oil Workers International Union. The union was certified by the National Labor Relations Board as the collective bargaining agent for the employees on February 6, 1945. The union and the company entered into their first
collective bargaining effort on February 13, 1945, and in a series of subsequent meetings they were unable to agree on a majority of the provisions. Because of their failure to agree the union requested action by the War Labor Board, which was granted.

At the panel hearing the Oil Workers International Union's right to represent the company's employees was challenged by a group who said that they were rightfully the bargaining agent for the employees. This group, a self-styled "Independent Oil Workers Union," asserted that it had represented the employees since February 5, 1945, and that the majority of the workers no longer wanted the Oil Workers International Union to act as their agent. Because of this conflict the Disputes Director of the Regional War Labor Board established contact with the Director of the Regional Labor Relations Board for the purpose of finding out who should represent the employee of the company. The information submitted showed that the Oil Workers International Union had been elected, by a democratic vote, to represent the employees; that the company had filed a protest which had been overruled; that the election result was final; and that at the time of the election there was no evidence of another union being in existence.

Basis of Board's Decisions

Important factors in determining the disposition of a
disputed issue were such things as: (1) area and industry practice, (2) effects on the war effort, and (3) merits and facts of the individual case.

The "prevailing practice of the area and industry" reasoning was an important point in the consistent denial of shift differential pay. The Board was just as consistent in using this factor in computing overtime pay granted under the Fair Labor Standards Act and Executive Order 9240. A one week's vacation with pay for two or more years continuous service and two weeks' vacation with pay for two or more years continuous service was usually granted by the Board as a prevailing practice of the industry and the area.

Under the "prevailing practice" reasoning unions which had been unable to obtain, by collective bargaining, contract provisions reflecting industry practice could improve their status by presenting their disputes to the Board. Apparently this meant that strong unions, which had been prominent in establishing the prevailing practice of the industry, had less to gain than weaker unions from decisions of the Board. So long as this rule was applied to labor-management disputes new industry and area practices could not be established through the Board. Union leaders apparently recognized this fact when presenting their cases to the Board by maintaining that regardless of the prevailing practice there were some things which should be regarded as due those who are employed by
management. Of course all cases were not decided on the basis of the prevailing practice of the industry and area.

"Effect on the war effort" was a major consideration in the disposition of disputed cases involving union security. The Regional Board, in most instances, adhered to the National Board's policy of ordering the standard maintenance of membership provision and the voluntary revocable check-off provision where any union security was deemed appropriate. Had the unions and the refineries been allowed to continue their struggle over the "union shop" or the "closed shop" form of union security it probably would have resulted in many disastrous "lockouts" and "strikes" harmful to the war effort.

The Board's policy of granting the maintenance of membership and check-off provisions could not be construed as being a "victory" for either management or labor. It merely postponed, for the duration of the National War Labor Board, the struggle between unions and refineries over whether or not a strong union security provision could be gained through the process of collecting bargaining.

At this point attention is directed to the National Board's reversal of the Regional Board's denial of maintenance of membership to two unions. In these cases, involving the Humble Oil Company, Ingleside, Texas, and the Texas Company, Amarillo, Texas, the Regional Board ignored the well defined
policy of the National Board. The Board, in the Humble case, apparently recognized the fact that the union should have been granted a maintenance of membership provision since they ordered a very weak version of the standard provision. In the second case the Board denied the union's request for a maintenance of membership provision on the ground that the union was "too young" to have fully demonstrated its responsibility. In reversing the Regional Board, the National Board's directive orders were so written that the Regional Board was given a clear policy to be followed in maintenance of membership disputes. These two cases are outstanding illustrations of the tendency of the Regional Board to be more favorable to the employer than the National Board. To further prove this point there was no indication that the National Board ever reversed the Eighth Regional Board in cases appealed by the refineries.

In other issues such as arbitration, grievance procedure, seniority, job classifications, etc., the Board encouraged the use of collective bargaining as a means of settling the disputes. In carrying out this policy the Board would order that the issue or issues be sent back to the parties for further negotiation with the instructions that the parties agreement be submitted to the Board for approval or rejection. When

4Case No. 3-D-37, in the matter of the Humble Oil and Refining Company, Ingleside, Texas, and Oil Workers International Union, Local No. 316 (CIO), Case No. 3-D-186, in the matter of the Texas Company, Amarillo, Texas, and International Union of Operating Engineers, Local No. 340 (AFL).
disputed issues of these types could not be settled by further negotiation the Board generally made a decision on the facts and merits of the individual case.

Many disputes came before the Board in which there was no established policy of the National Board. Some of these appeared only once and others appeared more often. When these new issues appeared before the Board, if they were not considered to be a novel question of national scope, the Board decided the dispute on its individual merits. Some of the issues in this classification were: physical examinations, health and safety, contracting work, terms of agreement, etc. A part of these questions appeared before the Board frequently enough that it was able to develop a definite pattern. For example, the Board usually ordered that the effective date of the terms of agreement would be the day its directive order was prepared and that it would be in force for one year.

The Board's decisions on many of these issues resulted in more uniform contracts between unions and refineries. For example, application of the "prevailing practice" reasoning tended toward uniformity of contract provisions. Similarly, the standard union security provisions fostered more consistent industry practice.
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