OFFICE OF NATIONAL RECOVERY ADMINISTRATION

DIVISION OF REVIEW

POLICY IN THE CONTROL OF WAGES UNDER NRA

INTRODUCTION AND MINIMUM WAGE POLICY

By

Robert M. Woodbury

(A Section of Part C: Control of Wages)

WORK MATERIALS NO. 45
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Part A: Introduction
Part B: Control of Hours and Reemployment
Part C: Control of Wages
Part D: Control of Other Conditions of Employment
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LABOR STUDIES SECTION
March, 1936.

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F O R E W O R D

The study of "Policy in the Control of Wages Under NRA: Introduction and Minimum Wage Policy" - was prepared by Mr. Robert M. Woodbury of the Labor Studies Section, Mr. Solomon Barkin in charge. It is the first of several studies on NRA wage policy. These wage policy studies discuss the policies, standards, problems, and code provisions which were worked out in the development of wage legislation in NRA codes.

In this study the NRA background for the negotiations of codes and the organization of NRA for the development of policy are depicted to secure a better understanding of the manner in which policy and code provisions evolved. The principles which were to bear upon the determination of minimum wages are discussed. The inquiry is especially directed to the importance of bargaining, precedents, and NRA principles in the establishment of code minimum wage rates.

Necessarily, a study of the type here presented, must be representative of the author's individual analyses rather than of official positions.

At the back of this report will be found a brief statement of the studies undertaken by the Division of Review.

L. C. Marshall, Director
Division of Review

March 25, 1936

TABLE OF CONTENTS

POLICY IN THE CONTROL OF WAGES UNDER NRA

INTRODUCTION AND MINIMUM WAGE POLICY

SUMMARY

Chapter I. Introduction

Policy includes both explicit policy as formulated by policy determining organs within the NRA and implicit policy embodied in the decisions of approval or disapproval of codes. The principles of policy constituted the guiding lines for the deputies and the Administration in their efforts to realize the objectives of the NIRA.

The framework of negotiations and the principles governing the rules of the struggle between the contestants were vital parts of general policy affecting and controlling the wage provisions of the codes. Differences in the strength of labor in different industries were of special significance in affecting the character of the results obtained. Industry was favored by the fact that all codes were voluntary. The Deputies were in position to bargain with industry by in effect trading fair trade practice provisions against higher wage rates, and to obtain for labor a better bargain than labor--at least unorganized labor--might have been able to obtain by itself.

The organs of policy within the NRA include the Review Division and the policy formulating groups, including the Policy Board, the Policy Group, the Labor Policy Group, and the Advisory Council.

Chapter II. Minimum Wage Policy

The law contained a statement of the general objectives "to increase purchasing power" and "to improve standards of labor", together with authorization for codes of fair competition for industries and trades to include minimum wage rates for their labor. Provision for collective bargaining and emphasis upon negotiated agreements suggest that it was contemplated that minimum rates of wages might be determined by a bargaining procedure.

General public pronouncements by the President and the Administrator emphasized the need for wages sufficient to give a decent living to workers for the shorter week necessary to permit reemployment of the unemployed.

The first Code, that for the Cotton Textile Industry, set the general outline for the minimum rates. Rates for male employees set at $12 and $13 a week of 40 hours for the south and north, respectively, were justified on the ground that they represented, though not perhaps a decent living, a substantial increase over existing wages and as much as the industry could reasonably be expected to bear.

The PRA "blanket Code" set a standard rate of 40¢ for 35 hours for factory workers. Substitutions might be approved by the Administration for an industry on the basis of evidence that the circumstances in the industry required the lower amount. In some few cases the substitution raised the rate for certain districts.

Subsequent NRA policy was gathered, correlated & contained in various pronouncements of the Review Division, which reviewed all codes set up for approval to determine whether they were in accord with established principles of policy, and in decisions and recommendations of the Policy Board, Policy Group, and the Advisory Council.

The principles of policy concerned with minimum wages may be summarized under two main headings, the Decent Living and the Increase in Wages.

So far as the decent living is concerned. the first pronouncements by the President emphatically set forth the decent living as a principle to be followed in the determination of minimum wages. This principle was aided by a specific statement that industries unable to pay a wage sufficient for a decent living were not entitled to be allowed to survive. Pronouncements of the Administrator and of the Review Division followed this cue. Actually, the first code was signed with a disclaimer that the rates of $12 and $13 a week, were economically sufficient for decent living; and the safeguarding requirement that industries unable to pay were to be outlawed was specifically negatived by a Policy Board decision, which in effect held that the conditions of an industry were paramount to any requirement that wages should be enough to support a decent standard. In practice wage rates below 25¢ were approved in some 23 codes, including some with rates as low as 15¢ an hour. The principle undoubtedly produced results by direct pressure on the part of the Administration in the direction of raising rates, especially in the low wage industries.

The second main principle required an increase in wage rates. This principle appeared in a number of different forms.

"Increase by a substantial amount" was one form of statement of this principle. Some increase was evidently required under the law. The wording of the clauses applicable to small towns and villages under 2,500 population in the PRA suggests that 20% was considered a reasonable amount of increase. Individual codes provided increases in some cases up to and even in excess of 100 per cent. Data were usually asked for, to show the estimated increase which proposed wage rates would bring about in the industry.

Increase by as much as the industry could bear was another formulation. Two decisions by the Policy Board incorporate this form of the principle. A case where the rate was raised from 40¢ to 45¢ (in the yeast code) because the industry could pay the higher rate suggests that minimum rates should be set at as high a point as industry could reasonably pay.

The formula, to maintain weekly earnings, derived support from the President's statement of policy, and from the general consideration that since one of the objectives of the act was to reduce hours and increase employment, the wage objective was (at least) to secure the same weekly pay as before hours were reduced. The campaign undertaken in March 1934 for further reduction of hours, with maintenance of weekly pay, brings this principle to clear formulation.

To restore 1929 rates or 1929 purchasing power was frequently cited as the objective. This formulation finds support in the discussion over the rate to be inserted in the PRA, and in the subsidiary or corollary principle that code rates should not be less than PRA or PRA substitutions. In a few codes, the so-called 1929 clause was carried over from the PRA; but policy tended to eliminate this form of clause not because

of its being based on 1929 rates but because of its indefiniteness and consequent unsuitability as an enforceable provision of law. In many letters of transmittal of codes, reference was made to the relation between the code rates and the rates paid in 1929. Particularly in low wage industries, the code rates might often exceed the 1929 levels. In many cases these principles might be appealed to in combination.

All these principles were subject to qualifications, chief of which was inability of industry to pay. When industry could prove to the satisfaction of the Administrator of its inability to pay, the above principles might be suspended or set aside, and lower rates approved. Besides inability to pay, the qualification that rates should not be required to exceed rates in competing industries was appealed to the principle exception. Lower rates were allowable also for industries closely allied to agriculture.

Finally, this review of principles suggests the importance of the basic principle that set the conditions for the process of bargaining and negotiation. With so much latitude allowed in the application of principle, so much vagueness in their formulation, and subject to such wide qualifications, the essential feature of the whole plan appears to have been the set-up that allowed the struggle of labor for higher rates and the pressure of the deputies for wage increases to carry out the purposes of NIRA to force wage rates to the point where the circumstances of the industry tended to oppose further increase. The minimum wage rates in the codes must then be characterized not as wages designed solely to aid those lowest in the economic scale to obtain a minimum of subsistence, but rather as wages set at a competitive level by a bargaining procedure designed to increase wages up to the reasonable ability of the industry to pay.

CHAPTER I

INTRODUCTION

I. PRINCIPLES OF POLICY

Did the NRA have a wage policy? What was wage policy under the NRA? These are the fundamental questions to be discussed in the present section of these Labor Studies. They were frequently raised both within and outside the NRA during the period of operation. Answers to these questions are necessary to an understanding of the wage program of the NRA, to an evaluation of its effects, and as a basis for evaluating the NRA experience with respect to any future program of governmental control.

Consideration of these questions calls for a clear understanding of what the term policy means. Policy implies an objective. (*) Given the objectives with respect to wages as set forth in the Act, wage policy was the body of rules, principles or guiding lines by following which the Administration sought to reach these objectives.

Consistent with this sense of the term, policy may be an explicitly formulated, perhaps written set of rules. On the other hand, policy may never be formally or explicitly stated but represent only the common, constantly followed, element in a series of decisions with respect to specific cases or issues, or the guiding principle followed in a single crucial decision. In a rapidly changing situation or in a situation where decisions must be reached under high pressure, the latter type of policy is the more common and the more realistic type. The absence of explicit formulation, therefore, cannot be taken as evidence of lack of policy.

Within the NRA organization during its period of activity policy was often or commonly identified with "established policy". This term denoted the rules or principles established in explicit form to which the deputies were required, except in unusual circumstances, to make codes conform. This concept served the purpose of distinguishing between questions as to which the deputies followed these established rules of policy and questions as to which the discretion of the deputy was presumed to prevail, subject to the discretion and power of approval or disapproval of the Division Administrator, the Administrator, or the President.

In the present survey of what policy was, the word must be understood to include implicit as well as explicit policy. Implicit policy included the principles and rules governing the decisions of the administrator prior to their being formulated in explicit terms, and all principles and rules governing decisions irrespective of whether they were or were not then or subsequently so formulated.

(*) For definition see Statement of Review Officer p. 17 Work Materials #19.

It is by no means to be presumed that because no explicit policy had been formulated that decisions were taken without regard to any principles of policy or without regard to their bearing upon the objectives of the Act. In this view of policy, implicit policy is embodied in the decisions and approvals of codes if not in the words of explanation accompanying the letters of transmittal. What is sought in this survey is to determine the actual rules, or principles, whether written and formulated, or unwritten, which were held in view, in arriving at the decisions made by the Administration in pursuance of the objectives of the Act. (*)

Two points should be made with respect to the point of view adhered to in these pages. In the first place, we are concerned with what policy was and not with what it should have been. The theoretical issues underlying policy are treated in another section of these labor studies reports. During the life of the NRA in deciding upon alternative proposals as to policy, arguments in support of each would doubtless have received thorough and critical attention. But the problem of formulating policy in accordance with given objectives and sound theory as to the effects of various alternatives is not the task here. The present purpose is simply to ascertain what the rules, principles, and guiding lines of policy actually were.

Secondly, we are not concerned here with the theories held by those who decided upon policy. They may or may not have adhered to the purchasing power theory of wages; their theories may have been based on this or that hypothesis or supposition as to facts; their judgments and decisions may or may not have been logically in accordance with these theories. Fortunately, in the present inquiry, it is unnecessary to attempt to explore the minds of those who made the decisions to ascertain what were their processes of reasoning. The sources of information are inadequate for an investigation as to who held what theories, and even if all the data necessary for any such investigation were at hand, their significance with respect to policy is not clear. The important and decisive data are spread upon the record in the specific formulations of explicit policy on the one hand, and in the decisions of approval and disapproval of codes, amendments and similar acts on the other. Again, the point is that this study is concerned with what wage policies were, rather than with the theories, whether sound or unsound, held by those who determined these policies. (**)

(*) This is not meant to exclude rules that are inferable from decisions even though their maker be unaware of them.

(**) This discussion is not meant to imply that the reasoning back of the policies adopted is without significance for these studies. That reasoning is considered elsewhere.

In the development of the phases of policy concerned with different aspects of wage questions, the relative emphasis given to explicit and to implicit policy varies. Thus, with regard to policy on handicapped workers or on apprentices, policy was formulated explicitly and comprehensively. Implicit policy may have preceded this formulation, but the explicitly formulated policy represents the position of the Administration on this question. With regard to differentials, however, there is little explicitly formulated policy. On this matter a study of the decisions approving the early codes reveals the policies that were followed. In developing the story of policy on each of these topics, therefore, the emphasis in the discussion must follow the relative stress which the Administration laid upon explicit and implicit policy, respectively.

II. GENERAL POLICY AS AFFECTING WAGE PROVISIONS

Certain phases of general policy vitally affected the content and scope of wage provisions in the codes. These include (1) policy as to types of codes, (2) policy as to administrative set-up and personnel, and (3) policy as to general procedure to be followed in code negotiation.

A. Types of Codes

The Act provided for more than one possible procedure in writing codes: voluntary codes submitted under Section 3(a), negotiated agreements under 7(b), imposed limited codes of labor provisions under 7(c), and imposed codes under the provisions of Section 3(d). The administration in effect limited the codes to voluntary codes submitted by industry under Section 3(a) of the Act. (*) No codes were at any time in the NRA imposed by the Administration under Section 3(d). Though in one or two cases public hearings were held with a view to imposing codes, no further steps in the direction of imposition were taken. (**) The difficulties of administering imposed codes by means of a code authority comprised of members of the industry opposed to the whole plan may well have appeared insurmountable. In practice no code was imposed upon any industry. (***) So far as concerns

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(*) For discussion of the whole question, see article by Solomon Barkin, Collective Bargaining and Section 7(b) of the Act, in Annals of the American Academy, March, 1936. Note also the comment in Note 10 of that article with regard to the meaning of the word industry. In the following pages, industry is used in the sense of the employers in an industry or trade.

(**) In a few cases changes in codes assented to by industries were made by the order of approval in signing the code.

(***) Nor was any use made in practice of the licensing provisions.

Section 7(b), no use was made of it in negotiating national codes. Its application was restricted to use as a method for determining labor standards for geographical or industrial subdivisions rather than for an industry as a whole. (*) No use was made of the provisions in Section 7(c) for imposing limited codes of labor provisions, after investigation of the facts. As a result of these policies, the expedient of voluntary codes submitted by industry and then, typically, revised after hearings and after negotiations with the Administration is the only one considered here. The absence of an effective alternative to this code-making procedure was an important point for wage policy.

An important decision was that the codes as originally submitted by industries for the consideration of the NRA were to be the work of the industries and wholly within their control. The NRA claimed no jurisdiction or authority over the content of these proposals prior to their submission to the NRA. For these proposed codes submitted by industry, the term "industry" was interpreted, as noted, to mean the employers only. In spite of the emphasis laid in the law upon collective bargaining and negotiated agreements, it was ruled by the Administration that codes as submitted by industry need not represent any kind of negotiation between employers and employees. (**)

B. Administration Set-up and Personnel

The set-up of the Administration included at first an Administrator subject to a Special Industrial Recovery Board. (***) Subsequently

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(*) "Two different uses of this provision were developed. In the first type were included the cases where local trade agreements were recognized and given legal approval and standing but bound only the signers to the agreement. In the second type were those cases where Section 7(b) was applied through specific provisions in the code so as to make the conditions of employment and trade agreements arrived at through collective bargaining the minima for the local area." Barkin Op. cit. In this discussion of policy, these phases are discussed in detail in the sections on "Wages Above the Minimum" and "Differentials".

(**) Cf. General Johnson's statement June 19, 1933, in NRA Bulletin No. 2, Basic codes of fair competition (Washington: Government Printing Office - 1933), "Basic codes containing provisions respecting maximum hours of labor, minimum rates of pay, and other conditions of employment which are in themselves satisfactory, will be subject to approval, although such conditions may not have been arrived at by collective bargaining." (Office Manual, Part V - Appendix V-B-4)

(***) Cf. Executive Order, No. 6173, dated June 16, 1933. NRA Office Manual, V-C-1

the powers of the Administrator were expanded. (*) He was aided by divisional and deputy Administrators and by a number of Advisory Boards,--the Labor Advisory Board representing labor, the Industrial Advisory Board representing industry, the Consumers' Advisory Board representing consumers and in addition Legal Advisers, and the Research and Planning Division, which last was to furnish impartial statistical and economic reports on the problems of industry. (**)

An important question affecting policy was one of personnel criteria in the selection of deputies. Since, in general, the deputies were assigned to particular industries or industry groups, qualifications ordinarily included familiarity with the industrial conditions in the industries to which they were to be assigned. Appointments included Army officers, persons with industrial experience, persons formerly connected with industry, persons with technical, professional and scientific training and experience and a few connected with labor organizations or having labor affiliations.

C. Procedure and Framework of Code Negotiations

For a clear understanding of the place of administrative policy in affecting or controlling the actual provisions of the codes, a brief statement of the process of code negotiation is in point. The reason for this lies partly in the range of discretion allowed to the deputies on many aspects of wage policy, and partly in the fact that policy, in setting up and approving the frame of negotiations, in a real sense determined the content of the code provisions that came up for approval.

The importance of this frame can be set forth by an illustration. Assuming that in a given code a minimum rate of wages anywhere from 35¢ to 45¢ would be approved by the Administration so far as policy was concerned, the question remains what determined the rate actually incorporated in the code. In such a case, the general structure or frame of code negotiations,as set up in accordance with administrative policy on procedure, might well have a determining part in the final rates.

The framework and procedure of code negotiations constituted as it were the arena for the struggle of interest groups and the rules under which these groups fought with one another or with the Administration to determine the actual provisions of the codes.

(*) Executive Order 6205-A, dated July 15, 1933.
NRA Office Manual, V-C-3

(**) The Labor Advisory Board was appointed by the Secretary of Labor, while the Industrial Advisory Board was appointed by the Secretary of Commerce.--NRA Bulletin #1 Statement by the President. . .Outlining Policies of the National Recovery Administration June 16, 1933. NRA Office Manual, V-B-2

As to what these interest groups were and their relative strengths is not here the question. The point of importance here is that the policy of recognizing these groups and arranging for a procedure in which the struggle could come to expression, together with the policy of approving provisions reached as a result of such negotiations, subject to certain reservations, was a vital part of general policy affecting and controlling the actual wage provisions of the codes.

The content of codes in the first instance was determined by action of their sponsoring industries. It was required that the proposed code be presented by a sponsoring group that was "truly representative" of the industry making the application. Over the content of these proposed codes the Administration had no control. So far as minimum wages were concerned, the provisions were doubtless influenced by the publicity given to the standards incorporated in the PRA.

Once the proposed code had been submitted to the NRA, it was assigned to the deputy in charge of the industry group in which the industry fell. Aided by his advisers, representing labor, industry, the consumers, the legal division, and the research and planning division, he entered into negotiations with industry representatives with a view to bringing the code provisions in line with policy. There might be one or more conferences with these industry representatives, at which administration advisers would be present. Often representatives of labor unions in the industry were asked to participate. After the code was in reasonably satisfactory shape and pre-hearing conferences completed, a public hearing was held at which its proponents and opponents were given opportunity to be heard. Post-hearing conferences were then held to iron out any differences that remained. Finally, assent to the "final" code was sought from the representatives of the industry.

This "final" draft was then submitted by the deputy in charge of the code to the Advisory boards, labor, consumers', and industrial, and to the legal and research and planning divisions, each of which made a report to him recommending approval, disapproval, or suggesting some change or changes, necessary in their judgment to make the code satisfactory. These recommendations might be accepted by the deputy and made the basis of further negotiations with the industry; or they might be rejected by him: he had to make a definite decision. When the code was believed to be in satisfactory form, the deputy sent the code with his report thereon to the Divisional Administrator. Attached to it were the reports of the advisers. If the Divisional Administrator agreed with the provisions of the code as prepared by the deputy, it was then sent to the Review Officer, who examined the code to see whether it was consistent with "established policy". (*) If so, he forwarded it to the Administrator for approval or for transmittal to the President, with data for a letter of approval or transmittal,

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(*) For definition see Statement of Review Officer Work Materials #19 Page 18, Div. of Review.

and a summary of the code. If not, it was returned to the deputy with a memorandum on points where it departed from accepted policy. The deputy thereupon usually reopened negotiations with the industry; in some cases he might urge that the proposed code provisions were the best that the industry could or would grant. The question of policy involved could in the latter instance be referred to the Policy Group, or later to the Advisory Council. Eventually it would be placed upon the desk of the Administrator, or later be sent to the National Industrial Recovery Board for approval or for transmittal to the President. Within this general outline procedural details might be varied;--for present purposes it is not necessary to detail all the various stages in the process of negotiating. Suffice it to point out that the procedure normally gave ample scope for all parties at interest to present their views. Both labor and the employers had the right to present facts dealing with the issues. Labor was represented by the Labor Advisory Board, and in the unionized industries, the representatives of their unions. Industry was represented by its chosen representatives, aided by the Industrial Advisory Board.

Three points are of especial interest with regard to the determination of wage provisions in the codes. The first is the character of the negotiations. These were typically of three types: (1) those between the industry and the deputy assisted by his labor adviser, where the burden of obtaining a satisfactory wage figure devolved upon the Administration itself insofar as the industry was unwilling or unprepared at the outset to grant it. This pattern was typical of negotiations for codes for unorganized industries; (2) those between industry and the deputy assisted by his labor adviser and representatives of unions in the industry, in cases where the unions had not sufficient strength in the industry to compel direct negotiations, but had sufficient influence materially to aid the deputy to arrive at a figure for minimum wages satisfactory to them, and (3) those between industry and the representatives of the union in the industry, with the official labor and industry advisers on side lines, and the deputy ready to approve the agreement reached, which typically in this type of case would satisfy Administration policy.

An example of the third group of codes negotiated by collective bargaining, may be cited the bituminous coal, dress, fur, and lace industries; of the second group of codes negotiated by indirect representative bargaining by consultations with union representatives, the graphic arts, cigarette, chinaware and porcelain, and structural steel codes; while the vast majority of codes fall in the first class and were negotiated between the industry and the deputy aided only by his advisers.

The second point is the advantageous position of the industry in code negotiations in protecting its interests. The codes were voluntary.(*)

(*) In the sense that it was not mandatory upon industry groups to submit codes, nor to accept them when finally completed; if accepted, their final contract, however, was not always wholly voluntary.

Industry did not have to agree to wage provisions that would place too great a burden upon them. But industry was anxious to secure fair trade practice provisions that would reduce the evils of unfair competition. To obtain these provisions industry might agree to hour and wage provisions to which otherwise they might never have acceded. Moreover, industry executives no doubt were affected by the Blue Eagle publicity campaign for cooperation in meeting the conditions of the depression, and were reluctant to submit to the odium attaching to the payment of unconscionably low wage scales.

The third point is the role of the deputy in these negotiations. In many cases he was able to exert an important influence upon the results. Certain statistical data were always asked for by the deputy to justify his action on the proposals of an industry. These included (1) data showing the increase in wages (and purchasing power of labor) which the proposed minimum would effect, (2) data showing the existing wage rates and wage structure in the industry, and (3) data bearing upon competitive conditions in the industry. The Research and Planning Division in its report upon each code always attempted an estimate of the effect the proposed code would have in raising wages and increasing purchasing power. If this was inconsiderable, or in its judgment insufficient, its recommendations against the proposed code rate might cause the deputy to insist upon raising the minimum.

Very important was the fact that the deputy was in position fully to appreciate the weight of the desire for fair trade practices on the part of industry. In many cases there was a frank bargaining give-and-take of trade practice provisions desired by industry in return for labor provisions desired by the deputy in pursuance of Administration objectives and policy. Each deputy who conducted negotiations with industry on codes of fair competition was responsible for carrying out the general policies of the Administration; each was provided with copies of the Act, NRA Bulletins, Executive and Administrative Orders and all official material issued by the NRA; much was left to his discretion. The discretion of the deputies was subject to the direction and discretion of the divisional Administrators, who were responsible for all matters of policy within their divisions. The fact that the deputy, in general, was under instructions from the Administrator to make the codes conform to policy made him an instrument in giving to code provisions a definite direction, for example, to increase purchasing power.

III. THE ORGANS OF POLICY

The original source of policy was the NIRA itself. The primary sources of administrative policy in carrying out the law were first the President, through official pronouncements, executive orders, official approval of codes, and all other administrative acts for which he was responsible, and second the the Administrator charged with the administration of the law through his official acts in pursuance of the power entrusted to him. After the Administrator was superseded by the National Industrial Recovery Board, final authority was in the hands of the latter, action being taken therefore by the Administrative Officer. All official policy was derived from these authorities.

Within the NRA, in the application of the law and the development of codes for the various industries, policy was developed, interpreted, and applied throughout the whole organization whenever decisions were made on policy questions. The individual deputies interpreted policy and applied it as best they could to the questions which came to them. Divisional administrators were formally in charge of determining policy in their respective divisions. All determinations of policy by divisional administrators or deputies were tentative; and it early became necessary centrally to formulate policy on various specific issues to insure that policy should be uniform throughout the organization. It will be helpful to trace here in this introduction the development of the policy organs that at different periods were active in forming and formulating the guiding principles of the NRA policy.

Two lines of development of policy determination, formulation, codification, and application can be traced. The first was connected with the problem of the review of codes to insure the application of uniform policy concepts. This review led to attempts at codification of policy and to the preparation of the NRA Office Manual. The second was concerned with policy determination, development and formulation and led to the establishment of policy groups, councils, boards, and committees which were entrusted with the task of considering and formulating recommendations on matters of policy.

A. REVIEW

The need for the review of codes coming to the Administrator for approval was early recognized and an arrangement was made for review by personnel attached to the Administrator's office. As more and more codes were completed, this task became more arduous. A special section of the Executive Office was set up to review all codes. Office Order No. 65, dated January 31, 1934, recognized difficulties which had arisen in the review procedure and emphasizes the duties of the executive and code assistants in each industry division for coordination of the work of their divisions and for review of the codes before their reference to the Executive Officer. The whole matter was reorganized a few days later by Office Order No. 68, dated February 8, 1934, which created the Review Division, and charged it with the duty of examining all codes submitted to the Administrator for approval to insure conformity with established policy. Its functions included review of codes and orders submitted to the Administrator for approval, and review of approved codes to suggest amendments to bring them in line with established policy. If changes appeared to be required by policy, the Review Division proposed such action to the division administrator concerned. In case of disagreement, the matter was referred to the Coordination Committee's final decision was of course in the hands of the Administrator.*

Thus, the Review Division scrutinized each code as it passed out of the hands of the Deputy for conformity with established policy. In many cases also, questions were raised on matters on which policy had not been specifically established. **

Another function which the Review Division performed incidentally to the work of review was the compilation of principles of established policy. Such a compilation was of great value in facilitating the scrutiny of codes with respect to policy. In July, 1934 a summary of established principles for the Review Division was prepared as a guide*** for use of the Review Officer.

The Office Manual issued later, incorporated many of these principles in its formulation of model provisions and official policy. There was issued as of June 1935, a final restatement by the Review Officer of policy in effect prior to May 27, 1935, which constituted a proposed revised office manual.**** It should be stated, however, that all of the

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* This proceedure was changed somewhat by office orders 75 & 76.

** See History of the Review Division, February 8, 1934 to June 16, 1935. NRA Division of Review, Work Materials, #19, p.18-20.

*** Loc. Cit. p.19.

**** Policy Statements Concerning Code Provisions and Related Subjects, NRA Division of Review, Work Materials #20. This compilation contains many provisions which are given paragraph numbers in the Office Manual, which never had been issued to the deputies and hence did not exert any influence over the actual writing of code provisions. Also the Model Code included in this volume, apparently was never in the hands of the Deputies in this form during the life of the NRA.

statements of policy issued by the Review Division (*) while serving as a guide to the Review Officer and as an outline of policy for the deputies were not necessarily official nor did they have binding effect. Only approval by the Administrator, or later the N.I.R.B., was effective in actually determining and establishing policy.

B. POLICY DETERMINATION

The second line of development led to the establishment of policy-determining groups. During the summer of 1933, the Administrator met regularly with the principal staff members, heads of divisions, and representatives of the advisory boards and consulted with these staff officers in relation to various questions, including matters of policy affecting the content of the codes. In Mid-September, a policy board was established with functions defined in general terms and not specifically limited to or concerned with the content of code provisions. (**) Early in January, 1934, the Policy Board was reorganized by Office Order No.55 (Jan. 6, 1934) and its functions were defined as being to "advise the Administrator on all matters of general policy arising in NRA and all other questions specifically referred to it." The method of reference to this board of all questions of policy was described in the order. The board concerned itself with comparatively few questions of policy touching the content and form of code provisions.

Late in March, a Labor Policy Board was created by Office Order No.74 (March 26, 1934). The mandate was contained in the following words under the general heading "D. CODE ADMINISTRATION":

> "1. In order to expedite and coordinate decisions of administrative policy (not only as to approved codes in making and general policy questions as well); the following Policy Boards are established. These Boards will make recommendations to the Administrator and will advise Division Administrators on final decisions of policy on problems within their respective fields. The Review Advisory Board is invited to send representatives to attend any or all meetings of these Boards.
>
> (a) Labor Policy Board.
>
> (1) Scope. In general, this Board will consider all problems involving the labor provisions of codes and all questions of labor policy. Typical problems within the field of this Board are those involving hours and wages, differentials, conditions of labor, inconsistencies in codes for similar industries, etc.

(*) They were based upon precedents in approved codes.

(**) Office Order No. 35, dated September 18, 1933. However, a "Policy Memorandum (confidential)", dated October 25, 1933 presented certain decisions made by the Policy Board regarding policy affecting code provisions.

(2) Personnel. Chairman (to be appointed by the Administrator). One representative each from the Labor, Industrial and Consumers' Advisory Boards and from the Legal and Planning and Research Divisions." (*)

A few days later, April 9, 1934, this Labor Policy Board was abolished and the Office of the Assistant Administrator for Policy was created by Office Order No. 83. The Office of the Assistant Administrator for Policy had one section devoted to the subject of Labor Policy, headed by L. C. Marshall, Deputy Assistant Administrator for Labor Policy. A Labor Policy group, including representatives of the Legal Division, Research and Planning, Compliance Division, and Industrial, Consumers and Labor Advisory Boards, was formed to consider the formulation of general policy on labor questions. Besides the function of formulating policy on labor in general terms, the Office of the Assistant Administrator for Policy had to pass upon specific questions of policy submitted to it. (**)

Subsequent changes during this period involved the setting up of the Advisory Council as a body on which each of the advisory boards was represented in order to make unified recommendations with respecy to the approval or disapproval of proposed codes in place of the separate recommendations by each of the Advisory Boards, as well as to constitute a board to make recommendations on policy questions.

With the reconstitution of the Advisory Council, November 14, 1934, Office Memorandum No. 306, the Office of the Assistant Administrator for Policy was discontinued, and questions of policy were referred to the Advisory Council for its recommendations. It was also authorized to make recommendations on policy on its own initiative. (***)

Finally, mention may be made of the Code Planning Committee, an informal group organized April 17, 1935, to consider the questions involved in drafting new model code provisions such as might be followed in revising codes after an extention of the NRA beyond its original termination date.

From the point of view of policy determination, the whole NRA experience may be divided into the formative period, during which policy was gradually evolved as the majority of codes were written, but was not always clearly formulated, and the formulative period, during which policy was formulated, refined and revised, and was the special province first of the Policy Board and the Assistant Administrator for Policy, and later

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(*) Two other boards, The Trade Practice Policy Board and the Code Authority Policy Board were also created but do not concern us here.

(**) See Office Memorandum No.307, March 17, 1934; Office Order No. 83, 83-A, and 74.

(***) Expressions of the Advisory Council in the absences of the approval of the Administrator, or after him the NIRB, were not regarded as determinations of policy, but on doubtful points of policy were strongly persuasive. Work Materials #13 p 17 Division of Review.

of the Advisory Council. The dividing point between these periods may be taken as April 9, 1934, when Office Order No. 83 was issued creating the Office of the Assistant Administrator for Policy with the special function of studying and making recommendations on all questions of policy. This demarcation seems appropriate as the recognition by the NRA that the whole mass of policy questions deserved and required study and analysis by specially qualified personnel.

CHAPTER II

MINIMUM WAGE POLICY

I. THE LAW

The statute contemplated that the codes of fair competition authorized by it might contain provisions establishing minimum wages. Section 7 (a) included, as part of the conditions to be incorporated in each code, the following clause: "Employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President." Section 7 (b) authorized the President to approve agreements entered into between employers and employees containing, among other things, minimum rates of pay. Section 7 (c) further authorized the President, after investigation, to establish limited codes of fair competition including minimum rates of pay. It was thus contemplated that the codes of fair competition for the several industries should include labor provisions and in particular that these provisions should include minimum rates of pay for labor employed in these industries. By implication, and under the administration of the Act, all approved codes had to have labor provisions with minimum wage rates.

With regard to the policy governing the determination of minimum wages, the law contains a general statement of policy and one limitation. The general statement of policy in Section 1 of Title II of the NIRA includes the following phrases: "to increase the consumption of industrial and agricultural products by in creasing purchasing power.. ....." and "to improve standards of labor". These words justify the inferences that wages should be increased as one method of increasing purchasing power, and that minimum wages should be so set as to increase wages. (*)

The only limitation upon minimum wage policy is contained in a clause of 7 (c), as follows: "The President may differentiate according to experience and skill of the employees affected and according to the locality of employment; but no attempt shall be made to introduce any classification according to the nature of the work involved which might tend to set a maximum as well as a minimum wage". This clause prohibiting the introduction of certain classifications seems to have referred more specifically to the skilled wage rates rather than to minimum rates themselves. (**)

(*) These inferences are confirmed by the antecedents and the legislative history of the NIRA.

(**) Aplication was made in some cases to minimum rates when, for example, a minimum group average piece rate was adjudged to be contrary to this principle since it tended to become a maximum for the group.

Lawson, William. Policies on Wages above the Minimum. 45 Section C Work Materials.

The minimum wages contemplated in the law are not minimum-of-subsistence wages. On the contrary, by inference, they are to represent an increase over what has been paid, and lead to increased purchasing power. By inference, they are rates arrived at after negotiations-wages reached by agreement between employers and employees. The rights of labor to collective bargaining are stressed. Section 7 (b) emphasized the duty of the President to favor establishment of minimum wages by mutual agreements between employers and employees. Though the minimum wage rates did not have to be reached by collective bargaining between workers and employers, rates so reached might be incorporated in the codes. In the development of the codes, wage rates were the subject of negotiations between industry and the Administration, in many cases with union representatives as advisers. In respect to the emphasis upon negotiated or bargaining wages, the minimum wages of the codes represent a new development in minimum wage regulation in the United States.

The implications of the law go even beyond this permission or authorization for negotiated minimum wages. The law was designed to "increase purchasing power" and "improve the standards of labor". But even with bargaining between employer and employee existing before the law, wages had been slipping downwards, unemployment had been increasing, and it seemed impossible to halt the downward spiral. The law not only recognized the propriety of bargaining to set minimum wages; it definitely strengthened the position of labor in the bargaining process. Furthermore, by giving to the President discretion in his approval of the terms of the bargain, it authorized the Administrator to take position definitely to assist labor in getting a better bargain and to ask that the code minima as established should actually mean an increased purchasing power of labor. (*) In return, valuable fair trade practice privileges and the suspension of penalties against restraint of trade were granted to industry. At all events, in judging the law and its results, we must keep in mind the psychological situation at the bottom of the depression in which the law was enacted.

No detailed rules or guiding principles for determining minimum wages in the codes are laid down in the law. The only clause bearing upon the question is, "the President may differentiate according to experience and skill of the employees affected and according to the locality of employment", which applies specifically to the limited codes of fair competition prescribed after a study of hours, wages, and conditions of labor in cases where no mutual agreement has been reached. But this provision gives little or no guidance with regard to the basic problems of determining minimum wages, except as it appears to leave the matter in general open to the bargaining process.

II. GENERAL STATEMENTS OF POLICY AND OBJECTIVES

A. BY THE PRESIDENT

(*) Or at least an increase in money wage rates over what labor had been getting.

In NRA Bulletin No. 1, (*) issued June 16, 1933, the President stated.: (**)

> "In my inaugural I laid down the simple proposition that nobody is going to starve in this country. It seems to me to be equally plain that no business which depends for existence on paying less than living wages to its workers has any right to continue in this country. By "business" I mean the whole of commerce as well as the whole of industry; by workers I mean all workers--the white collar class as well as the men in overalls; and by living wages I mean more than a bare subsistence level--I mean the wages of decent living.
>
> "Throughout industry, the change from starvation wages and starvation employment to living wages and sustained employment can, in large part, be made by an industrial covenant to which all employers shall subscribe. It is greatly to their interest to do this because decent living, widely spread among our 125,000,000 people eventually means the opening up to industry of the richest market which the world has known. It is the only way to utilize the so-called excess capacity of our industrial plants. This is the principle that makes this one of the most important laws that ever came from Congress because, before the passage of this Act, no such industrial covenant was possible.
>
> "On this idea, the first part of the act proposed to our industry a great spontaneous cooperation to put millions of men back in their regular jobs this summer. The idea is simply for employers to hire more men to do the existing work by reducing the work-hours of each man's week and at the same time paying a living wage for the shorter week."

According to the President, the minimum wages of the codes were thus to be "living wages". The point is expressly made that an industry or business which "depends for existence on paying less than living wages to its workers" has no right to continue in this country. By living wages he meant more than a bare subsistence level--"I mean the wages of decent living". So conceived, the objective of the Act was much broader in scope than of any previously proposed minimum wage legislation.

B. BY THE ADMINISTRATOR

In Bulletin No. 2, (*) issued June 19, 1933, General Hugh S. Johnson, Administrator for the NIRA, laid down general policies for codes. He emphasized that the codes were to be submitted by associations or groups, and that the initiative rested with industry both as to whether any code should be submitted and as to what it should contain. With regard to minimum wages, the following statement was made:

(*) Basic Codes of fair competition. NRA Office Manual, V-B-3.
(**) Statement by the President... Outlining Policies of the NRA (Office Manual, V - B-1)

"(b) Minimum wage rates should be sufficient to furnish compensation for the hours of work as limited, sufficient in fact to provide a decent standard of living in the locality where the workers reside." (*)

(*) Bulletin No 2, is reproduced in NRA Office Manual, V-B-5.

III. THE FIRST CODE

The first code, approved July 9, 1933 was for the cotton textile industry. It provided minimum wages of $13 and $12 in north and south, respectively, for a 40 hour week; these are equivalent to 32.5 cents and 30 cents per hour respectively. This was the first concrete embodiment of the "decent living wage" in a code of fair competition. It is important, therefore, to note the attitude of the Administrator and the President in regard to it, and to examine the reasons given for approving these rates, with especial reference to the question, to what extent did these rates reflect the policy of the Administration on minimum wages.

The minimum rates of $13 and $12 represented a substantial advance over the wage rates prevailing in the industry. A statement by President McMahon of the United Textile Workers of America, stated, that "wages of $5 and $6 a week are common throughout the industry."

President Green of the American Federation of Labor, stated that:

> "12% of all men employed in the cotton mills studies were receiving wages which averaged below $10 and in some cases below $8 for a 53-54 hour week, (as of 1932)."

He reported the average weekly wage in the cotton goods industry, as of the month of May, 1933, at $10.40. The Research and Planning Division of the National Recovery Administration secured from representative mills in the industry sample payrolls for north and south.

> "These payroll records show that minimum wages as of the low in March-April this year, applicable to between 10% and 20% of the payrolls, even in the neighborhood of $8 to $8.50 for the South for a 50 hour week and $9 and $9.50 for the North for a 48 hour week." (*)

The Administrator stated that the guiding principle was to effectuate the policy laid down by the President.

> "The idea is simply for employers to hire more men to do the existing work and at the same time paying a living wage for the shorter week. This policy sets as an objective and as a norm for the emergency at any rate the restoration of the purchasing power which the worker in the industry had prior to the depression." (**)

(*) Code of Fair Competition for the Cotton Textile Industry as approved July 9, 1933 by President Roosevelt, Code of Fair Competition, Vol. I, p. 9.

(**) Ibid, p. 11.

An attempt was made to justify these minimum rates by showing that the proposed minimum represented an increase in real purchasing power over the rates prevailing in 1929.

> "Now in 1929, the average unskilled weekly wage in the North was $17.60 ($19.47 for male workers and $15.75 for female workers). This average unskilled wage for the forty-eight hour week has in the course of depression declined to a recent low point of $11.76 in April and $11.62 in January this year (for male workers, $13.25-$13.15 for the respective months, and for female, $9.96 and $10.37). During the same period the decline in the cost of living as computed by our Division of Research has amounted to about 30%. Applying the progressive decline in living costs to the original $17.60 of 1929 weekly earnings, we obtain as a 'real' weekly earnings for May this year $12.16; that is, the present required dollars to give the 1929 purchasing power. We have to carry this idea of purchasing power wages one step further. For in a period of price increases living costs tend at first to lag behind the advance in the price level, which has followed in the wage of the end of the liquidity complex and deflation and the synthetic business and price recovery brought about since March of this year."
>
> "To lift up and provide adequate purchasing power, we should adjust 'real' wages to the moving trend of prices and living costs, else we shall be no more effective than trying to catch a train moving out of the station by aiming for where the back platform was when the train was standing still. There has already occurred an advance of between 16% and 20% in certain comprehensive yet not too insensitive indices of wholesale prices. In general the cost of living changes about 6% for each 10% change in wholesale prices due to the inclusion of certain relatively stable and slowly varying elements. It appears necessary then to anticipate and adjust for a rise of 10% in the cost of living which as of May 1933 was 69% of 1929 taken as 100. This gives the figure of $13.21 as the requisite average weekly wages for unskilled male and female workers in Northern mills to produce now on a forty-hour week the purchasing power which they had on a forty-eight hour week in 1929." (*)

(*) Ibid, Vol. I, p. 11.

Finally, the point was made that these increases, which for certain mills would be substantial if not onerous, were about the limit of what could be expected for the industry as a whole.

According to the Division of Research the application of the minimum rates of $13 in the North and $12 in the South will mean that "the average mill wages throughout the country would be increased about 30% and hours reduced over 25%."

> "We are increasing for certain mills unskilled rates enormously and total wage payments by about 20% and lowering hours over 25%. It is about the limit of present practicability."
>
> "Our studies show, however, that any larger wage increase would require such a mark-up as might impair consumption and so react unfavorably on the President's whole reemployment policy." (*)

So far as the "decent living wage" is concerned, the President wrote in his letter of transmittal, "approval of the minimum wages proposed by the Code is not to be regarded as approval of their economic sufficiency." (**)

The approval of the code was limited to a period of four months, after which the wage rates might be raised if the condition of the industry warranted. Review of the case was a device which permitted the Administration to reconsider the whole question if new evidence justified or required an increase in rates. It recognized the importance of evidence as a means of determining what the rates should be. At the same time the device tended to forestall criticism, since it could be urged that the rates were temporary and that if sufficient convincing data could be assembled to demonstrate that an increase in rates was necessary or justified action could be taken promptly to raise them.

These outlines of policy were filled in by later developments. (1) Wage rates must represent a substantial contribution to increased purchasing power, (***) (2) Industry must not be unduly burdened, (3) Decision must be based upon evidence, (4) Low rates might be reviewed and revised after a short trial period, (5) The "decent living wage" remained undefined.

(*) Ibid, p. 12. The rates of increase, 30% and 20%, appear in the published version of the letter of transmittal.

(**) Paragraph 3 of Executive Order approving the code, Ibid., p. 1.

(***) In the sense of increased money wage rates.

IV. POLICIES INDICATED IN THE PRA

The President's Reemployment Agreement was issued July 20, 1933 as a blanket plan for covering all industries in advance of the actual writing of specific industry codes. It had become obvious that delays would ensue before codes for all the major industries could be completed. It was deemed to be important that industry be brought under the code system as rapidly and as uniformly as possible to take advantage of the first enthusiasm for the codes. Delays in codifying some industries while competing industries were operating under codes might lead to difficulties. Furthermore, the precedent already set in the low wage rates of the cotton textile code covering 483,000 employees, might prove embarrassing in obtaining a satisfactory standard wage for industry in general, unless it was offset by some definite pronouncements by the Administrator on the question of what the standard wage should be. Even though the second and third codes had relatively higher rates, 45 cents and thirty-five cents for shipbuilding, (55,000 employees), and 35 cents and 32½ cents for wool textile (151,000 employees), they were relatively much smaller industries and their higher rates would not fully offset the precedent already set and publicized by the low rates of the first code.

From the point of view of policy, therefore, the PRA appears much more important than the actual provisions of the first few codes. Since it was designed to cover all industries, its provisions may be presumed to reflect the general purposes of the Act, as applicable to industry as a whole, in contrast to the situation with regard to a specific code, in writing which the general purposes of the Act may have had to be sacrificed to the particular circumstances of the industry.

The President's Reemployment Agreement consisted of a contract entered into between the individual employer and the President, signed by the employer voluntarily, (*) by which the employer agreed to reduce hours and increase wages, and in return was allowed to display the Blue Eagle as a token of his having signed the agreement. The plan was to cover the period from September 1 to December 31, 1933, at which time, it was hoped, all the codes would be completed. (Subsequently this period was extended to April 30, 1934 (**), and later indefinitely (***) up to the time of adoption of a code for the industry.)

The minimum wage clauses in the PRA were as follows: (****)

> "(5) Not to pay any of the classes of employees mentioned in paragraph (2) less than $15 per week in any city of over 500,000 population, or in the immediate trade area of such city; nor less than $14.50 per week in any city of between 250,000

(*) Though subject to the pressure of public opinion in case of refusal to display the Blue Eagle.

(**) Executive Order No. 6515, issued December 15, 1933, NRA Office Manual, V-C-16

(***) Executive Order No. 6678-A, issued April 14, 1934, NRA Office Manual, V-C-20

(****) In NRA Bulletin No. 4, What the Blue Eagle means to you and How You Can get It, paragraph 5 and 6 interpret these provisions. These require no comment here.

and 500,000 population, or in the immediate trade area of such city; nor less than $14 per week in any city of between 2,500 and 250,000 population or in the immediate trade area of such city; and in towns of less than 2,500 population to increase all wages by not less than 20 percent, provided that this shall not require wages in excess of $12 per week."

"(6) Not to pay any employee of the classes mentioned above in paragraph (3) less than 40 cents per hour unless the hourly rate for the same class of work on July 15, 1929, was less than 40 cents per hour, in which latter case not to pay less than the hourly rate on July 15, 1929, and in no event less than 30 cents per hour. It is agreed that this paragraph established a guaranteed minimum rate of pay regardless of whether the employee is compensated on the basis of a time rate or on a piecework performance."

These provisions, then, embodied the views of the President and his advisers on the substantive content of minimum rates. Forty cents an hour for thirty-five hours was the goal to be set as a general minimum rate for factory workers; this meant $14 a week. (*) This standard was substantially relaxed, especially in the south and also in the smaller towns and villages by the clause that permitted paying the wage rates of July 15, 1929 provided that they were not less than 30 cents an hour. For clerical, office and sales workers the weekly rate for 40 hours was slightly lower than for factory workers and set on a scale varying according to the size of the community; it ranged from $15 in the largest cities to $14 in cities and towns from 2,500 to 250,000 population, while in towns and villages of less than 2,500 population no minimum was set, but it was merely required that wages shall be raised 20 percent provided that this did not require wages in excess of $12 a week.

Even these rates were speedily reduced in the ensuing adjustments to the specific circumstances of individual industries. It was possible for specific industries to sign the PRA and display the Blue Eagle as a token of adherence to the program, and pay less than these minima, provided that they successfully petitioned to substitute other rates for those of the blanket agreement. This procedure required (1) that the industry submit a proposed code to the NRA in which the proposed substitute rates were incorporated, and (2) that the proposed substitution receive the approval of the NRA (**).

(*) 40 hours were permitted for not more than 6 weeks up to Dec. 31, 1933.

(**) A statement of policies governing action on PRA substitutions is contained in Office Order No. 8, dated July 31, 1933. After a code was submitted by an industry containing the clauses to be substituted for the PRA paragraph, it was referred to the deputy to whom the industry or trade was assigned. The deputy "shall examine such Code to determine whether the designated provisions are in line with the PRA and will not authorize unfair competition with signers of the PRA and will substantially increase employment and total wage payments in the trade or industry."

A study of the PRA substitutions shows some 252 cases of changes affecting some part of wage clauses, "(5)" and "(6)". (*) In a few cases, these changes allowed apprentices or learners or others to work for less than the minimum rates. In a considerable number of cases (94) a southern or other geographical differential was applied for and approved. In the majority of cases the substitution reduced the wage rate as given in the PRA. In a few cases (13), the top wage rates were raised above 40 cents. (**) In a considerable number of cases the exemption for 1929 rates down to 30 cents was omitted. Female differentials were allowed in many cases. In practically all cases, therefore, these substitutions represented, in some respect, a reduction of the minimum as set forth in the PRA.

These substitutions, then, raised the same questions that were being raised in the writing of code provisions. In approving these substitutions decisions had to be made on questions of policy. (***) The procedure developed required approval by representatives of the Labor Advisory Board, Industrial Advisory Board, the Legal Division, and the deputy Administrator in charge of the trade or industry involved. The decisions were thus made after consideration of the various aspects of the question as it affected the parties at interest.

So far as the substantive elements in the PRA substitutions are concerned, they need not be discussed further, since in general they paralleled the provisions in the codes. In some few cases, it is true, a PRA agreement covered an industry which never came under a code. In such cases, the PRA provisions applied to employers who voluntarily accepted it and its extensions.

Perhaps it will serve to clarify the direction of policy in its further development to mention at this time a few points on which the code provisions departed from the PRA precedent. In the first place, the code provisions in general omitted reference to 1929 rates on the ground that such clauses were unenforceable. To find an employer guilty of paying less than the minimum, if the minimum were defined in terms of rates paid in 1929, would require a statistical investigation prior to bringing complaint. Secondly, and partly in place of the 1929 clause, population and geographical differentials were written into a large proportion of the factory or production worker minimum wage clauses. Thirdly, with respect to the office,

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(*) Most of these substitutions were contained in NRA Bulletin No. 6, Substituted Wages and Hours Provisions of the Presidents Reemployment agreement. Washington-Government Printing Office-1933-others in NRA archives.

(**) In one substitution, all the rates were set at 40 cents or more. Terminal Elevator Grain Industry-NRA Bulletin-No. 6. Substituted Wages and Hours Provisions of t e Presidents Reemployment agreement-p. 213

(***) A Policy Board was set up by Office Order No. 18, August 7, 1933 to pass upon all PRA substitutions.

clerical and sales force group, the code minimum for towns under 2,500 population were written usually in terms of a definite minimum rather than in terms of a percentage increase, although a few codes still followed the PRA form. (*) Finally, the codes in many cases provided for no geographic or population differential for clerical workers and in many cases raised the low rates of the PRA to a flat $16 a week comparable with the PRA rate for factory workers.

(*) For example, some of the retail trade group.

V. LATER NRA POLICY

In the discussion of subsequent NRA policy, the series of official and semi-official pronouncements on the subject from the various organs of policy in the NRA will be reviewed. After this review of explicit policy an analysis will be made both of explicit policy and of implicit policy as developed in the codes to show the position of the Administration on each of the several important formulations of policy principles.

The sources of these enunciations of explicit policy include the Review Division with its Guide (precedents) for the use of the Review Officer, and the Office Manual; the Policy Group and the Labor Policy Group, with The Compendium of Abstracts of Policy and Other Statements, Suggested Labor Provisions for a General Code, and the Tentative Formulation of Labor Policy,(*) and the Advisory Council with its Decisions. After a review of these official and semi-official statements of policy, the discussion will turn to an analysis of each of the important principles of policy, as formulated and as applied in NRA codification.

A. Review Division

As already explained, the Review Division did not originate policy. Its function was, by advice and suggestion, to promote consistency of action throughout the organization.(**) It was responsible, furthermore, for compilations of policies as established in codes or approved in official decisions. These compilations, therefore, form an important source of information on policy.

One of the early questions treated by the Administration, after the Review Division was established(***) was whether it was possible to set up standards for minimum wages. The Review Officer held that such standards could be established and would be helpful in guiding the work of the deputies. The following comment on the subject is contained in a memorandum on labor policy, dated February 13, 1934. No standards as regarding minimum wages were officially set up.

> "Colonel Lea, Dr. Wolman and Mr. Barrett were of the opinion that no standards for wages could well be adopted, but that on the contrary, each case must be considered on its own merits. Mr. McGrady believed that standards should be adopted, and will make recommendations to General Johnson. Mr. Brown believed that standards should be adopted for the guidance of the organization."(****)

(*) Mimeographed Documents in NRA Archives.

(**) History of the Review Division, work material #19, pp. 18-20.

(***) Office Order No. 68, February 8, 1934. NRA Archives.

(****) Memo by Alvin Brown, Policies on Labor Provisions, February 13, 1934. Letter from Alvin Brown, Review Officer, to Hugh S. Johnson, Administrator.

The Guide for use of officers of the Review Division in their review of codes submitted to them by the deputies prior to approval by the Administrator or transmittal to the President, contained certain principles on wage policy. This Guide, (*) prepared in June 1934, and added to intermittently, embodied principles and policies developed during the previcus NRA experience. (**)

The following pronouncements on the subject of minimum wages are found in the Guide:

(1) The minimum wage should as a basic ideal in pursuance of the Act, provide a decent standard of living.

(2) It should not, except in unusual instances, be less than the PRA or substituted PRA provision.

(3) It is desirable that such basic rate, as far as is practicable, approximate the minimum rate of 1929.

(4) A minimum hourly rate less than 25 cents, except in rare instances, falls short of these basic requirements.

The ability of the industry to pay is suggested in this statement:

(5) An industry whose labor costs are low in proportion to the total value of the product, is in a more favorable position to increase minimum wage rates than an industry where the labor cost is high.

Departures from these standards might be permitted in certain cases:

(6) It is permissible to allow a minimum wage rate, otherwise objectionable, becauseit is substandard, if industries under approved codes, with like or similar provisions, are related with the applicant industry for the reason that any other action might work an unjustifiable hardship on the applicant industry.

(7) It is suggested that where minimum wage provisions are substandard but the condition of the industry precludes too great a change, that the Order of Approval provide that the Code Authority, through a committee, make a study of wages and hours in the industry looking toward measures which will enable an improvement in standards and shall report such study with recommendations to the Administrator within a reasonable period.

(*) Mimeographed Document, NRA Archives.

(**) See History of the Review Division, February 8, 1934 to June 16, 1935. NRA Division of Review, Work Materials No. 19, p. 22. The date of formulation of each of these principles does not appear in the Guide.

Except as these pronouncements were used as guides by the Review Officer, they had no official standing; they were never approved as such by the Administrator or by the National Industrial Recovery Board, nor were they even issued as Administrative or Executive Orders. Nor were these "guides" rigorous.(*) The codes which fell short of these requirements might be returned to the Deputy, but he was at liberty to return them accompanied by argument and evidence to support his position that the provisions in question were the best obtainable. Thereupon the Review Officer might recede from his position, or pass the matter along with his recommendations to the Administrator, or later to the National Industrial Recovery Board.

The Office Manual was prepared by the Communications & Control after the middle of the year 1934. As the different sections were completed, they were issued to the deputies for use within the NRA. Up to the time the Supreme Court decision was rendered, the section of the manual on minimum wages contained no statement of principles governing the setting of general minimum rates of pay.

The model code provision in the Manual took the form:

"No employee shall bepaid in any pay period less than at the rate of _____cents per hour, except as otherwise herein provided." (**)

At the time of the Supreme Court decision, the Review Officer was engaged in preparing a revised office manual, which, issued under date of June 12, 1935, contained the following clauses on minimum wages: (***)

"Standard for minimum wage

The requirement of a minimum wage is that it affords to the employee a decent standard of living. This guide is, of course, incapable of exact application. It will vary according to considerations of geography, population, and price levels. Other factors will be pertinent in particular cases. No absolute calculation is practicable. The wage actually paid in 1929 will be of considerable significance in most cases as a test of the application of the standard." Ibid, p. 21

(*) The specific guides, as distinguished from general formulation, were based upon precedents in definite cases approved by the Administration: these precedents when applied to cases with substantially identical circumstances would be rarely upset.

(**) Office Manual, Part II, Sec. 1311.11

(***) Policy Statements Concerning Code Provisions and Related Subjects. NRA Division of Review, Work Materials #20.

"Amount of minimum wage

Analyses of present conditions show that minimum wages of 40 cents per hour or $15 per week for 40 hours conform reasonably to this standard. There is therefore a presumption in favor of these rates. For departure from them for whatever reason the burden of adequate showing is on the proponent. (Model, 401, 402)."
Ibid, p. 21.

"Wage rates in allied codes

Where rates have been established in one code, there is a presumption for similar rates in the codes of allied industries, both because of the finding of fact in the first instance, and because disparate rates would be discriminatory." Ibid, p.21.

"Industries allied to agriculture

Since it is recognized that living costs in agricultural communities are relatively low, there is a presumption of propriety of lower wage rates in industries allied to agriculture."
Ibid, p.22.

The same publication also contained a Model Code with clauses as follows on minimum wages:

"Minimum wages

Section 1. No employer shall pay any employee in any pay period less than at the rate of 40 cents per hour, except as otherwise herein provided." Ibid, p 53.

"Office and clerical employees

Section 2. No employer shall pay any clerical or office employee in any pay period less than at the rate of $15 per week."
Ibid, p.53.

It has been noted that this revised and amplified Manual was not in the hands of any deputy or officer of the NRA during the formulative period and hence did not influence policy. Its value, therefore, consists in its being a summary of the policies as understood by the Review Officer.

So far as concerns the 40 cent rate recommended in the manual and in the "model code" draft above referred to, this constitutes a "standard" such as official policy had repeatedly refused to sanction. No other model code contained any definite standard of hourly rates. This standard of 40 cents cannot be regarded, therefore, as part of officially approved and formulated policy.

B. The Policy Group

From the Compendium of Abstracts of Policy and Other Statements Issued by the Policy Group, (*) the following statements on minimum wage policy are pertinent:

> "Labor provisions to conform with NRA policy must restore employment and increase purchasing power to such an extent as can be reasonably borne by the industry involved in relation to competing and similar industries and in relation to other costs. If this test has been met, in no situation is any particular figure for minimum wage or maximum hours so contrary to what policy ought to be that we should disapprove it. Discretion of the Division Administrator in charge of the code as guided by his Deputy is the controlling factor in such situation, unless there is evidence of abuse of discretion." (**)

This general statement of policy is perhaps the clearest statement up to that time (May 17, 1934) on the policy of the NRA on measuring the minimum wage of codes. The position thus taken is that the minimum rate must depend upon the situation in each industry, or more specifically, upon the ability of industry to pay as judged by Competitive position. If the minimum rate means a substantial increase in wages and as much as the industry can reasonably be expected to bear, it would be approved by the Policy Board as fulfilling these purposes of the Act. It should be noted that this completely nullfies the "decent standard of living" doctrine as part of minimum wage policy.

The statement of policy on this point is amplified by the following statements:

> "Where it can be shown by the deputy that the labor provisions substantially improve the lot of workers and are the most stringent that can be obtained by the deputy, the matter is within the realm of administrative discretion and the Division Administrator should be entitled to determine an issue of detail." (***)

> "The policy requirement on minimum wages is that the industry contribute purchasing power as much as can be reasonably borne. Any arbitrary figure considered as minimum for living purposes may be too high relative to conditions in a particular industry." (****)

(*) Mimeographed Document in NRA Archives.

(**) To Administrative Officer, May 17, 1934, re Code for Alcoholic Beverage Wholesale Industry, Compendium, Page 15. Since the code rate for this code was 45 cents, the issue raised was evidently on the question of policy with respect to minimum wage rates over 40 cents.

(***) To Division Administrator, Division Six, May 24, 1934, re Code for Bottled Soft Drink Industry, Compendium, Page 16.

(****) To Administrative Officer, May 17, 1934, re Code for the Cotton Pickery Industry, Compendium, Page 15.

A decision bearing on the question of revision of the wage rate at a later date contains the following:

> "The wage rate should be reconsidered at a later date, if it appears that the industry is not contributing to the purchasing power of workers to the extent that might be reasonably expected." (*)

A later statement on the same question is as follows:

> "Ordinarily, the question of the proper minimum wage rate should be within the discretion of the Division Administrator, but when it is agreed that the proposed rate is not likely to effectuate the purposes of the NIRA, it is a policy issue whether or not it should be allowed to stand. Serious consideration should be given to an upward revision of the rate but if, because of the status of code negotiations, it is deemed too late to undertake revision, the order of approval should provide for revision of the code at the end of three months and should include a clear statement to the effect that changes in the code to bring it in line with policy will be made at the end of three months unless the industry produced evidence that such changes would not be warranted." (**)

One decision relates to the form of wage statement as follows:

> "Wage provisions referring back to 1929 wages should be stricken from the code." (***)

It is clear from these statements issued by the Policy Group that the determination of minimum wages in each code was in general based upon a showing that the proposed minimum rates were actually such as to effectuate the purposes of the Act, namely, to contribute to increasing purchasing power of workers subject to the special conditions prevailing in the particular industry. Wide discretion was given to the division Administrator and the deputy in accepting evidence as presented with respect to the industry seeking a code. With regard to the

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(*) To Administrative Officer, May 16, 1934, re Code for Bicycle Manufacturing Industry, Compendium, Page 15.

(**) To Acting Division Administrator, Division Three, September 14, 1934, Compendium, Page 21.

(***) To Division Administrator, Division Four, August 8, 1934, re Code for Paper Dress Pattern Industry, Compendium, Page 20.

bottom limit of minimum wages, the Policy Board refused to set a minimum even for decent living and indicated that the special conditions of the industry were of paramount importance. This statement of policy appears to negate the statement by the President (in NRA Bulletin No. 1) that, "it seems to me to be equally plain that no business which depends for existence on paying less than living wages to its workers has any right to continue in this country".

The statements of the Policy Group had no official standing until approved by the Administrator or issued in Executive Order or Administrative Orders. They constituted recommendations which, however, tended to determine policy within the organization until they were overruled by appeal to the Administrator or the President.

C. The Labor Policy Group

During this period the Labor Policy Group was engaged in preparing a draft of a model code. A draft dated June 2, 1934 contained the following clause on minimum wages:

> "No employee shall be paid in any pay period less than at the rate of $13 a week except in _____, _____, _____, _____, and _____, in which states no employee shall be paid in any pay period less than at the rate of $12 per week."

A memorandum of the Labor Advisory Board commenting on this draft states:

> "Section 5. The weekly quotation is delusory; the rate should be hourly. It should be more than $13 which is 32.5¢ per hour. The blanks constitute an incitement to Southern differentials."

Under date of June 8, 1934, a draft of Suggested Labor Provisions for a General Code was prepared. The minimum wage clauses are presented here to show what was being suggested for consideration.

"ARTICLE II. WAGES

> "Section 1. Minimum Wages: The clause to be used for this purpose might appropriately take any one of three forms. These three forms are given below in the order of the preference of the Labor Policy group.
>
> (A) A clause to be worked out thus: The suggested provisions in the codes still to be approved should be studied from the point of view of the relationship of these industries to industries in which codes have already been approved; and minimum wage provisions should be drawn which will be harmonious with those of the existing related codes. It would probably require then days or two weeks to complete such a study and, as is evident, this procedure would result in varying minimum wage provisions in the codes still to be approved. If the exigencies of the situation do not permit the utilization of this method, the group recommends the use of Clause B or Clause C below.

Administration, to provide a decent standard of living.

2. The basic minimum rate, as stated in the codes, is typically to be applied to unskilled workers. Common labor is a case in point, without being the only possible case.

3. It is desirable that the basic minimum rate approximate, so far as is practicable, the corresponding rate of 1929.

4. The minimum wage should be stated clearly and definitely. It is contrary to policy to state it in terms of a relationship to some prevailing wage as of the year 1929 (or other date), since such method of statement introduces uncertainty of meaning and spells difficulties in compliance.

5. The minimum rate should not, except in unusual circumstances, be less than the P.R.A. or substituted P.R.A. provision.

6. The basic minimum wage may properly vary as among the different classes of workers. In general, for manufacturing industries in the North a rate of forty cents per hour for production employees has come to be regarded as a reasonable basis; just as a minimum hourly rate less than twenty-five cents per hour in any district has come to be regarded as falling short of basic requirements and to be approved only in rare and unusual circumstances. For clerical or office employees a wage stated at the rate of fifteen dollars per week has come to be regarded as an appropriate wage in Northern districts.

7. It is standard practice to provide that "this Code establishes a minimum rate of pay which shall apply irrespective of whether an employee is compensated on a time rate, piecework, or other basis."

8. Although piece-rate workers may properly be protected by a provision that they shall not get less than the minimum wage, it is contrary to policy to insert piece rates in a code except under unusual circumstances. Typically, piece rates are attached to work requiring a higher grade of skill than applies to the minimum wage; and, typically they are an appropriate subject for collective bargaining rather than specific fixing by code.

9. If the condition of a particular industry is such as to preclude, for the present, a minimum rate which may be characterized as standard, the order of approval may properly provide that the Code Authority, through a committee, shall make a study of wages and hours in the industry, looking toward measures which will bring about an improvement in standards. Such a study, with recommendations to the Administrator, should be reported within a reasonable, specified period.

10. For a given applicant industry it may sometimes be permissible to allow a sub-standard minimum wage rate if industries already under approved codes, having a similar provision, are so related to the applicant industry that any other course of action would clearly work an unjustifiable hardship on the applicant industry. In such event, however, these substandard provisions should be allowed only until a change is effected in the code of the other industry or industries, and procedures should be set up looking toward bringing about this change." (*)

The document was mimeographed and circulated in the NRA for comments and criticisms. Many comments were received from the Advisory Boards and Deputy Administrators. Nothing further was done with this Tentative Formulation of Labor Policy; the Labor Policy Group disappeared with the appointment of its chief member to the National Industrial Recovery Board, and the Advisory Council took over the functions of the Policy Group. No official approval was given to this tentative formulation.

D. The Advisory Council

The decisions of the Advisory Council contain certain pronouncements and recommendations on minimum wages. One dealt with the minimum wage rate in the jeweled watch industry. The rate in the proposed code was thirty-five cents; the Labor Advisory Board and the Review Division recommended forty cents. The representatives of the industry stated that piece rates were commonly paid in the industry and that such piece rates were set so as to enable skilled workers to earn thirty-eight cents an hour. A code for a competing industry, the Assembled Watch Industry, provided a minimum rate of forty cents. After hearing the deputy in charge of the code and obtaining the evidence of the Research and Planning Division, the Advisory Council recommended that the proposed rate of thirty-five cents be disapproved. As to how much the rates should be, the Council considered that they did not have sufficient

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(*) Tentative formulation of labor policy (mimeographed document in NRA Archives, pp. 5-6.

factual evidence to determine that question. (*)

Another case was the question of the rate in the Pecan Shelling Industry. The code as presented set a minimum of sixteen and one-half cents for the north and fifteen cents for the south. On the ground that proposed rates represented a considerable increase over those prevailing in this highly seasonal industry, the Advisory Council recommended the immediate approval of the code in order that they might be made effective for the current season. They recommended also that investigation be made and a report be prepared within 120 days. (**)

The Advisory Council's recommendations, like those of the Policy Group, had no official standing unless approved by the Administrator or the National Industrial Recovery Board or unless issued as executive or administrative orders. Nevertheless, within the organization these recommendations were considered as definite statements of policy formulated for the guidance of deputies and division administrators.

E. Code Planning Committee

This recital of the work of group concerned with labor policy would be incomplete without reference to the Code Planning Committee, an organization formed in April 1935, with the purpose of drafting a model code that should meet requirements for revision and redrafting of all codes contemplated or in prospect under new legislation which Congress was expected to enact. This committee held a number of meetings, but its deliberations did not go far because they were interrupted by the decision of the Supreme Court. Its formulations were still in the tentative stage, and while some of them were submitted to the Advisory Boards for their opinions, none of them has reached the stage when they could be considered as carrying the stamp of approval of the Administration itself.

A memorandum of the Labor Sub-Committee of the Code Planning Committee made the following recommendation on the "decent standard of living":

> "It is our recommendation that the NRA set up a separate board with power to render decisions and to have this board establish, in the public interest, a single standard of decent living, applicable to unskilled labor at a cost of maintaining that standard in different areas of the country. This board shall be removed as far as possible from industry, labor and politics.

(*) Advisory Council Divisions, Vol.1, p. 48.
Decision No. 53, October 19, 1934.

(**) Advisory Council Divisions, Vol., p. 49
Decision No. 54, October 20, 1934, Pecan Shelling Industry.
The Code was approved by the N.I.R.B. Oct. 23, 1934.

"It should make a preliminary estimate for immediate use which should be subject to revision as rapidly as data can be obtained. Industry, labor and consumers should be allowed to submit to such a board at any time factual evidence showing that the costs should be changed.

"It is also our recommendation that this board utilize people who have had experience in this work at least for writing the original tentative determination. Also cooperation with the F.E.R.A. should be facilitated as they have a parallel problem." (*)

(*) Memorandum of Labor Sub-Committee of Code Planning Committee on Labor, May 23, 1935, in N.R.A. Archives.

F. Statements on Policy by the President, the Administrator, or the N.I.R.B.

Comparatively few formal statements on minimum wage policy were issued by the President, the Administrator, or the NIRB subsequent to the PRA and the first code. In the letters of transmittal and approval of codes, after the first, comments on policy are few. As more and more codes were prepared, the letters of transmittal tended to become stereotyped; of those that included more than the brief form letter, some contained a summary of code provisions, others included a discussion of the economic effects expected under the code, with in a few cases a statement bearing upon policy. In the next section such policy statements, as well as the provisions of codes, will be analyzed and summarized in so far as they throw light upon policy. Apart from these letters of transmittal and approval, the following statements on minimum wage policy are worthy of mention.

At a general public meeting, or hearing, held February 27, 1934, General Johnson in his address laid stress among other things upon the need for "uniformity of wages and hourly rates in competitive industries" and "further reduction in hours per week and further increase in hourly wages." (*)

Early in March, 1934, a series of meetings of industry code authorities and trade association code committee members was held. In order to promote further reemployment, the proposal was made to reduce hours of labor by an additional ten percent, substituting a 36 hour week for the standard 40 hour week. All codes already written or in progress were to be revised in accordance with the new standards. Weekly wages were to be maintained, notwithstanding this reduction of hours. The reduction of ten percent in hours was to be accompanied by a corresponding ten percent increase in wage rates. This proposal thus embodied a principle of maintaining weekly pay.

The address of the President to the general conference, March 5, 1934, contained this statement:

> "We must now consider immediate cooperation to secure increases in wages and shortening of hours...Reductions in hours coupled with a decrease in weekly wages will do no good at all..."(**)

(*) "Before we open this hearing, it may be appropriate to say what we already know from all these sources need immediate attention.

"3. Uniformity of wages and hourly rates in competitive industries.

"5. Further reduction in hours per week and further increase in hourly wages."

Address delivered by National Recovery Administrator Hugh S. Johnson, before opening session of General Public Meeting, February 27, 1934, 11 A. M., Department of Commerce Building Auditorium, Washington, D. C.,Broadcast over National Broadcasting Co. Network. NRA Release No. 3507, p. 4. NRA Archives

(**) Address of the President of the United States, General Conference, on March 5, United States News, Vol.2, #11, March 16, 1934, Extra NRA Edition.

A statement by General Johnson shows the details of the proposal.

> "There are some industries that couldn't do what I tentatively suggested about wages and hours....But there are many that obviously can--and ought to--meet the suggestion to work on a 10% decrease in hours per week and a 10% increase in hourly wages." (*)

This effort to shorten hours and increase pay met with little success. Its importance for policy lies in its emphasis upon the maintenance of weekly earnings.

In connection with hearings on the employment provisions of the codes, a statement of policy issued by the NIRB, January 17, 1935, is perhaps worthy of mention, though the paragraph relating to minimum wages contributes little beyond an endorsement of the idea of minimum wages. The position of the board at that time was stated to be

> "That a minimum wage structure is socially beneficial not only as a safeguard to the worker but also as a wage floor for the operation of the competitive system and therefore should be maintained. It would seem, however, that greater simplicity and uniformity, especially as among related industries, could be brought about in the minimum wage provisions of the codes. These matters, together with the general level of the minimum wage structure and the considerations which should govern in setting that level, are appropriate subjects for the presentation of evidence."

VI. SUMMARY OF PRINCIPLES OF POLICY

In summary, the principles of policy followed in fixing minimum wages may be grouped under two general heads: first, a standard of decent living, and secondly, increase in the wages of labor.

A. The Decent Living

Though the decent standard "the wages of decent living"- was mentioned definitely by the President in his first pronouncement on the subject of wages in codes, there is little evidence that it was a factor in setting actual rates. The attitude of the Review Division was indicated by its characterization of this standard as a basic ideal.

> "The minimum wage should as a basic ideal in pursuance of the Act provide a decent standard of living." (**)

(*) Ibid, p. 18. Address of National Recovery Administrator Hugh S. Johnson.

(**) See above p. 29.

The concept was never defined either in terms of the substantive content of the standard or in terms of how much money it would require to maintain it. (*) No official pronouncement was ever made to the effect that any given sum was sufficient. In the letter of approval of the Cotton Textile Code, the President disclaimed that the rates of $13 and $12 set in that code were regarded as economically sufficient to maintain decent living. (**)

To declare that any given hourly rates, without reference to the time actually to be worked during the week, were sufficient for decent living would have been open to serious objection. It was presumably accepted policy not to set any definite sum as "sufficient" for decent living. Such an announcement might have operated to fix an upper limit to minimum wages; it might even have been interpreted as suggesting a principle that labor was not entitled to more than a "decent living" as thus recognized.

While no official definition of "decent standard" was given, in practice Administration pressure to raise wage rates on the ground that they were so insufficient for "decent living" as to cause criticism of NRA policy was not in evidence in cases of minimum wages of 40 cents an hour or more. In other words, the presence of the 40 cent rate in the PRA and in the majority of codes might be regarded as evidence that the insistence upon the principle of a decent standard in the NRA did not play any part in raising minimum rates above 40 cents. This view of 40 cents as a "reasonable basis" is expressed in one of the statements issued by the Labor Policy Group and quoted above. (***) The Revised Office Manual of June 12, 1935 also includes an inference to the same effect. (****) (*****)

The principle of "the decent living" finds application where proposed wage rates were considered insufficient for decent living. During the NRA period, the Review Division guide for review officials included a statement to the effect that "A minimum hourly rate of less than 25¢, except in rare instances, falls short of these basic requirements." of the "decent living" standard. However, rates as low as 15 cents an hour actually were approved in codes in certain cases. Four codes without differentials had rates below 25 cents, while of the codes with differentials, 19 had rates for at least one area below 25 cents besides 11

(*) Except as noted below,

(**) See above, p. 23.

(***) Page 36 Paragraph 6. This had no official approval.

(****) See above, p. 31. This had no official approval.

(*****) An allied question arose with regard to differences in the cost of decent living in different sections of the country. This problem raises the issue whether the principle of decent living is to be interpreted as meaning that labor in each section is entitled to no more than the decent living, or to no more than the same percentage of the decent living in different sections of the country. This question will be treated under the subject of wage differentials.

codes with no lower limit set in the codes. (*)

Exceptions merely meant that the principle was not applied.

The President's statement, in NRA Bulletin No. 1, and quoted above p. 00, that,

> "no business which depends for existence on paying less than living wages to its workers has any right to continue in this country",

expresses a policy that would give the principle of the decent living real meaning. In practice it was negatived by the Policy group's pronouncement which in effect recognized the economic condition of an industry as the governing element in the situation. (**) "Any arbitrary figure considered as a minimum for living purposes may be too high relative to conditions in a particular industry." And the Advisory Council in its decision on the Pecan Shelling Industry recommended approval of the code with 15 cents in the south and 16⅔ cents in the north, on the ground that these rates represented a substantial increase in rates actually paid.

As a principle for determining minimum wages, the decent standard was not effective. Approval of codes did not signify that their minimum rates were considered to be sufficient for decent living. As an influence, the importance of the principle lay in its reinforcing by its appeal to conscience the significant principle of increasing the wages of labor subject to the ability or inability of industry to pay.

At the same time, the importance of the concept in strengthening the position of the Administration in demanding increases in wages where they were low should not be underestimated. This was a very real force. Its effect is shown in repeated cases where prevailing low rates were raised by much larger percentages than were required in industries with prevailing high rates. The low wages in the south received larger percentage increases under codes than the higher wages in the north. Low wage industries in a number of cases reported increases in wages under the codes of 100 per cent or more. Even though the minimum rates in the code judged by the standard of decent living, were still low, the substantial gains reveal the influence of the concept in raising low wages proportionately much more than high wages.

(*) Eleven codes in Retail and Wholesale Trade and Finance provided no lower limit in towns of less than 2,500; in these towns wage rates were to be increased 20% provided that this did not require an increase to over $12 a week.

(**) See above, p. 33.

B. Increase in Wages

Other principles directed toward the increase of purchasing power of labor and raising the standards of labor may be grouped under the general heading "increase in wages". How much of an increase in wages, whether an increase in weekly wages or in hourly wage rates, was required, the limits of increase and the qualifications limiting the application of the principles are problems of definition of policy on minimum wages. The actual fixing of the rates was left, in general, to the discretion of the deputies, subject, of course, to the approval of the division administrators and to review. The principles followed by the deputies in determining the rates and by their superior officers in reviewing and approving them are the principles sought. In practice, this discretion gave to the deputies the power to decide as between different and partially contradictory principles in their application to the particular case. In addition it probably included a certain range of arbitrary power to approve rates that may not have coincided with any of these principles.

These principles have both positive and negative aspects, the positive side stating the principle for raising wages, the negative the limits and qualifications to the application of the principle. In final analysis, these principles must be related to the living standard of the worker, and to the market or competitive determination of the wage. The role of negotiation in reaching the final adjustment must also be borne in mind.

1. By A Substantial (Satisfactory) Percentage

(a) Some Increase Essential

Some increase in wage rates appeared to be essential under the law. (*) If minimum rates as incorporated in the code did not mean any increase in wage rates, they were subject to legal objection that they were not in accordance with the act. The act specified increase in purchasing power, but a mere sharing the available work with a larger number of employees at the same hourly rates would not increase payrolls. Evidence that this was a principle actually followed would consist of cases where proposed codes were sent back and refused approval because of failure to raise wage rates. This principle in fact was often appealed to during the course of negotiations by the deputies and by labor advisers or by representatives of Research and Planning.

A statement of the Policy Group refers to this point:

"Ordinarily, the question of the proper minimum wage rate should be within the discretion of the Division Administrator, but when

(*) The phrase in the law was "increase in purchasing power." Merely sharing available work among a larger number of workers at the same rates per hour would not increase purchasing power. For this objective an increase in rates per hour was indicated. On the other hand, too high an increase in wage rates might reduce employment so much as to reduce total purchasing power. In certain circumstances any increase in wage rates might conceivably diminish total purchasing power, and it might even be argued that in some cases a decrease in rates might increase total earnings. The latter view had few, if any, adherents in the Administration.

it is agreed that the proposed rate is not likely to effectuate the purposes of the NIRA, it is a policy issue whether or not it should be allowed to stand." (*) NRA, Archives, p. 21 - (Mimeographed document)

(b) Increases Under the First Code

The letter of transmittal of the first code suggests that the minimum rates of the code would increase average mill wages throughout the country by about 30%. (**) On the basis of sample studies of wage earnings in the Cotton Textile Industry made by the Bureau of Labor Statistics, it is estimated that 85% of the workers were receiving at or less than the minimum rates in the code. (***) Mention is made that during the low in March - April of 1933, wages of $8 - $8.50 for the south for a 50 hour week and $9 - $9.50 for the north for a 48 hour week were applicable to between 10 and 20 per cent of the payrolls. The code minimum for a 40 hour week of $12 for the south and $13 for the north may be said to represent a substantial increase for these minimum rate groups. Arguments justifying the proposed rates include other points to be mentioned below. The letter of transmittal gives the impression that the increases obtained were substantial enough to satisfy the Administration.

(c) Increases Under the PRA and PRA Substitutions

Under the PRA, the blanket wage of 40 cents an hour was modified by a series of approved substitutions, granting, in most cases, lower rates than the standard. This complicated system of minimum rates makes it difficult to determine how much of an increase in wage rates the PRA as a whole obtained. But in the provision for wage rates for clerical, office, and sales employees in terms of less than 2,500 in lieu of a minimum rate, the requirement was made that all wages be increased by 20 per cent, provided that this did not mean an increase to over $12 a week. This suggests that a 20% increase in wages was deemed comparable in amount with the other increases expected.

A review of the work of the PRA Policy Board, written in October, 1934,--i.e., a year or so after the Board was dissolved--states that in passing upon petitions for substitution,

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(*) To Acting Division Administrator, Division Three, September 14, 1934. Compendium of Abstracts of Policy and Other Statements Issued By the Policy Group, p. 16.

(**) See above.

(***) Estimated from data in A. F. Hinrichs, Wage Rates and Weekly Earnings in the Cotton Textile Industry 1933-34. Monthly Labor Review, Vol. 40, No. 3, March 1935 - p. 618.

"a 25% increase in wages (i.e., wage rates) and a 25% decrease in hours over July 1933 was considered satisfactory." (*)

A memorandum from Robert K. Straus, Executive Secretary of the PRA Policy Board, states,

"5. The PRA Policy Board having established in its own mind what its outside limit of approval would be, examined each individual application for substitution on the basis of two questions:

(a) What was the percentage wage increase proposed, whether on an hourly or weekly basis, as compared with 1929 and July 1, 1933;

(b) What was the reduction in weekly hours proposed, as compared with 1929 and July 1, 1933.

We considered that a twenty-five per cent increase in wages and a twenty-five per cent reduction in hours as compared with July 1, 1933, was satisfactory." (**)

(*) Memorandum from W. D. Boyd, Assistant Secretary to the PRA Policy Board, to L. C. Marshall, on the subject, PRA Policy Board, dated October 5, 1934, p. 3. N.R.A. Archives

(**) Memorandum from Robert K. Straus to Helen Doyd, dated October 4, 1934, "in response your inquiry for a brief summary of the work of the PRA Policy Board for the benefit of the Executive Secretary of the NIRB." N.R.A. Archives.

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(**) Memorandum from Robert K. Straus to Helen Dodd, dated October 4, 1934, "in response your inquiry for a brief summary of the work of the PRA Policy Board for the benefit of the Executive Secretary of the NIRB." N.R.A. Archives.

(d) Increases in Codes After Code No. 1.

Many letters of transmittal mentioned the estimated increase that the codes minimum wage rates were expected to produce. The following quotations may serve as illustrative data:

> "Proposals by the Southern lumber industry to increase minimum rates to 22½¢ per hour represented an advance of practically 100 per cent from average of 11.6¢ per hour in 1932...and 350% above minimum wages paid in the month of April, 1933."(*)

> "The percentage of increases of wages under the Code will approximate from 10 per cent to 12 per cent above the current rate of wages."(**)

> "The wage provisions of the Code will immediately raise the wages an average of 35 per cent for practically 90 per cent of the unskilled labor in the industry."(***)

> "Increases from the level of the first quarter of 1932 will be required of as much as 50 per cent in the South and over 30 per cent in the North." (****).

The case of the yeast manufacturing code is interesting because it throws light upon the Administration idea of what was regarded as an insufficient or unsatisfactory increase. In the order of approval, the rate of 45 cents was substituted for the original rate of 40 cents. The data submitted showed that the minimum wage provisions of the code represented an increase above their June 15, 1933 wages applicable to but approximately fifteen per cent of the employees. Weekly earnings of office workers, however, it was estimated, would be increased by approximately 8 per cent. (*****) These increases evidently were deemed insufficient in the circumstances.

The use of the term "substantial" in the above formulation may appear to give the principle more meaning than the facts warrant. But the word is not defined; without definition the principle merely reflects the general attitude of the deputies toward their task--- that they were obligated to require an upward adjustment of wages that would be satisfactory to the Administration.

(*) Lumber and Timber Products Code. Codes of Fair Competition, Vol. I, p. 103.

(**) Motion Picture Industry, Ibid, Vol. I, p.300

(***) Luggage and Fancy Leather Goods Industry, Ibid, Vol. I, p. 521.

(****) Boot and Shoe Mfg. Industry, Ibid, Vol. I, p.543.

(*****) Codes of Fair Competition, Vol. XII, p.198. No statement was made as to the percentage of increases of wages for all factory workers.

A complete analysis of the effects of the codes in raising wages would be necessary--and extremely valuable--to show what the code increases actually accomplished, and would give real meaning to the word "substantial". Unfortunately, statistics are wanting for any complete report of this kind; however, a summary of available data will be presented in another part of these studies of wages. Furthermore, so far as this particular principle is concerned, the qualifications under which it was applied must be borne in mind in any appraisal of the principle of upward adjustment by a substantial percentage. In the remarks below on the alternative formulations of the principle of upward adjustment, further light is thrown upon the concrete meaning of "substantial" and "satisfactory".

2. As Much As The Industry Can Reasonably Bear.

This formulation of the limit for raising wages is found in a statement of the Policy Group issued under date of May 17, 1934,

> "The policy requirement on minimum wages is that industry contribute purchasing power as much as can be reasonably borne."(*)

Also, in another decision in the same group, the following phraseology is employed:

> "The wage rate should be reconsidered at a later date, if it appears that the industry is not contributing to the purchasing power of workers to the extent that might be reasonably expected." (**)

In approving the code for the yeast manufacturing industry, the President substituted a rate of 45 cents for the original rate of 40 cents. This was based upon the statement in the letter of transmittal of the code to the President:

> "From the information submitted, it would appear that this industry can pay a higher hourly rate than forty cents (40¢) per hour as provided in this Code. The Order of Approval approving this Code is drawn, therefore, to increase the rate from forty cents (40¢) per hour to forty-five (45¢) per hour."(***)

The words "can pay" suggest that the ability of the industry reasonably to pay more is sufficient warrant for increasing the rate.

Comparatively few citations on this positive phase of the "reasonable burden" principle can be made, though many are available on the negative aspect where higher rates could not be asked for because they would prove an unreasonable burden.

(*) See above, p. 32.

(**) See above, p. 32.

(***) Codes of Fair Competition, Vol. XII, p. 199.

In the first code the argument is advanced,

> "Our studies show...that any larger wage increase would require such a mark-up as might impair consumption and so react unfavorably on the President's whole reemployment policy...It is about the limit of present practicability."(*)

Striking examples of application of this principle may be found, especially in the cases of industries with minimum rates in excess of 40 cents or with at least one regional rate above 40 cents; the principle, of course, finds application throughout the range of rates. Of the 280 codes with no differentials, 23 had rates of over 40 cents, while of the 298 codes with differentials, 28 had the higher rates over forty cents. Of the 23 with flat rates, one had a minimum rate of 75 cents, 4, minimum rates of 50 cents, 14, minimum rates of 45 cents, 2, of 42½ cents, and 1, of 41 2/3 cents.

The wrecking and salvage industry code had a minimum rate of 70 cents for the New York City metropolitan area, and 50 cents for Chicago.(**) In the south, the minimum was set at 30 cents. The letter of transmittal states,

> "During the past four years, according to the Industry, minimum wages have ranged from as low as seven and one-half (7½¢) cents to twenty-five (25¢) cents per hour."

The bituminous coal code, with rates ranging from .689 cents to 40 cents in different regions is an example of a strong union organization obtaining rates through direct bargaining and having the results incorporated in the code.(***)

The highest minimum rate of any code was in the print roller and print block code, with a minimum of 75 cents.(****) This industry is highly unionized and the rate was fixed by collective bargaining procedure between the union and the industry.

These illustrative examples show that minimum rates were by no means kept at 40 cents or less. Other examples could easily be given of industries where union pressure raised the rates to much higher levels than would otherwise have been attained. The flat rate minimum of 40 cents in the construction code is a case in point. It is obviously impossible within the brief limits of the present discussion to attempt any complete exposition of this phase of the subject; all that can be done is to outline and give illustrative examples of the forces at work and the principle that emerged from the results.

(*) Ibid, Vol. I, p. 12.

(**) Codes of Fair Competition, Vol. VII, p. 460-461.

(***) Ibid, Vol. I, p. 325-6, Vol. X, p. 431-3.

(****) Codes of Fair Competition, Vol. VIII, p. 341.

One major difficulty involved in the broader application of this principle was the difficulty of determining the upper limits of an industry's ability to pay. It might require a mass of statistical evidence which was not available. In practice, the usual procedure, especially if labor unions entered into the picture, was to demand more, with the knowledge that at or before the point where the burden became unreasonable, after industry had obtained its fair trade practices, industry would balk and refuse to agree to the rates. In the yeast manufacturing case already cited, the statistical evidence at hand indicated that proposed rates were markedly less than the industry was able to pay and led therefore to action by the Administration increasing the rate.

3. To Maintain Weekly Earnings (As Of the Pre-Code Period (June 1933)

In connection with the program of reducing weekly hours, the maintenance of weekly earnings might offer a test of maintaining purchasing power. This would require an increase in the minimum hourly rate in any industry proportionate to the reduction of hours. Since in many industries reductions in hours of 20 per cent were not uncommon, this principle would require an increase in the wage rate per hour of 25 per cent to maintain weekly earnings.

This principle found application in certain of the wages-above-the-minimum clauses, a topic which will be discussed fully in another place.

The statement of the President in NRA Bulletin No. 1, June 16, 1933, may perhaps be regarded as embodying this principle.

> "The idea is simply for employers to hire more men to do the existing work...and at the same time paying a living wage for the shorter week."(*)

However, this form of statement leaves the effect uncertain until the definition of the living wage is known. If existing weekly wages were equal to the living wage, it meant maintenance of weekly pay; if less, advance in weekly pay; though if more, the gate was open to reduction in such weekly pay.

The principle was set forth specifically in the discussions of March, 1934, when a campaign was initiated to reduce hours an additional 10%, maintaining weekly wages at the same time. This formulation received its clearest enunciation in its application to the proposed program. If this had been the sole basis for determining the rate of minimum wages, a formula could easily have been developed for calculating the minimum in terms of pre-code rates. A reduction in hours of one tenth would require an increase in wages of one-ninth; a reduction in hours of one-fifth, would require an increase in wages of one-fourth; etc.

But the codes did not specify minimum rates in this fashion, but always placed the actual minimum rate in the code. The evidence cited in

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(*) Quoted in the letter of transmittal of the Cotton Textile Code, Codes of Fair Competition, Vol. I, p. 11.

the codes does not furnish any clear basis for the conclusion that the principle was in fact effective. It neither set a maximum limit to wage increases, nor did it set a limit that was always attained, though in many codes the principle was satisfied.

4. To Restore 1929 Rates Or 1929 Purchasing Power.

This formulation was discussed in detail in the letter of transmittal of the first code in which an elaborate calculation is presented to show that the minimum rates proposed in the cotton textile code would actually somewhat increase purchasing power as of 1929, did not always clearly distinguish between 1929 rates and 1929 purchasing power. Usually the term 1929 rates was used; but in view of the decrease in cost of living, 1929 rates would mean more than 1929 purchasing power, provided that the decrease in hours had not been so great as to offset it. In most cases the decrease in hours was substantial.

(a) PRA Provisions in Relation to 1929 Level of Wages.

The PRA provision for a basic 40 cent an hour rate was adopted after considerable discussion of its relation to the rate prevailing in 1929. From the minutes of the staff meeting, the following notes are pertinent:

> "General Johnson...pointed out that in many instances a minimum rate of 40 cents per hour was far in excess of the 1929 minimum hourly rate.
>
> "Mr. Richberg pointed out that there was a real problem as to whether the minimum wage should be adjusted to provide: (1) the same hourly rate as in 1929, or (2) the same weekly pay envelope.
>
> "After considerable further discussion it was finally agreed that the formula should be to establish a 35-hour week in manufacturing industry and to set a minimum hourly rate of 40 cents, except in those cases where the hourly rates as of December 31, 1928 was below 40 cents, in which cases the rate as of December 31, 1928 will be used, provided however that in no case shall a minimum hourly rate of less than 30 cents be permitted."(*)

This discussion indicates that the 1929 rates were very much in mind in fixing the standard PRA rates. Changes made in the final provision were to set 40 hours as the basic week in manufacturing in lieu of 35 hours, and to use the date July 15, 1929 in place of December 31, 1928.

The PRA provision for factory workers allowed rates below 40 cents down to thirty cents, provided that the 1929 rate for the same type of work was less than 40 cents. No rates below 30 cents were permitted under the basic PRA provision.

(b) Code Provisions Not Less Than PRA Or PRA Substitutions.

(*) Reports of NRA Staff Meeting, July 15, 1933 (mimeographed) NRA archives.

Code provisions were not necessarily governed by the PRA general rate. The principle was early enunciated that code rates should not be approved below the PRA rate or the PRA substitution.(*) In so far as the general PRA rate reflected the NRA idea of the general 1929 wage, this meant that the industries which did not seek PRA substitutions--or presumably those that could well pay the 40 cent rate--should have at least 40 cents in their codes. Industries unable to pay the 40 cent rate of the PRA, on the other hand, generally applied for substitutions permitting a lower rate.

PRA substitutions were generally allowed on the basis of evidence presented by the industry and compared with data prepared by the Research and Planning Division of the NRA and other sources, showing the effect of the proposed substitution on wages and what they were able to pay. As noted, above, a showing that wages would be increased 25% was considered by the PRA Policy Board to be satisfactory. The objective of the PRA in respect to wages is described in a memorandum by the assistant secretary of the board as being "to raise wages to the equivalent of real wages in 1929". If the industry accepted the ruling of this board on its petition, a substitution was issued.

The rule that code rates should not fall below the PRA or substitutions for it, merely means that the fact that industry had agreed to pay a particular rate in the summer of 1933 could be accepted as prima facie evidence that that rate was not beyond its ability to pay. The rule formed, therefore, a useful check for the guidance of NRA deputies.

(c) The So-Called 1929 Clause in the Codes.

Code provisions following the PRA model in the form of excepting below 40 cents or whatever the code rate was, provided that less than that amount was paid in 1929, were relatively infrequent. On grounds of policy there was objection to the vague form of statement; since the rate was defined in terms of a 1929 prevailing rate it was difficult to enforce, since to determine the 1929 rate was a requirement preliminary to ascertaining whether any violation of the code had occurred.(**)

Only 33 codes incorporated the so-called 1929 clause, and in 4 of these the clause was subsequently deleted by amendment.

(d) Code Provisions in Relation to 1929 Rates.

The appeal to 1929 rates was made in a number of letters of transmittal of codes as justification for approval of rates. Commonly when

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(*) Rule No. 5 in Tentative Formulation of Labor Policy, see above, p. 36.

(**) See above, p. 36 No. 4. "The minimum wage should be stated clearly and definitely. It is contrary to policy to state it in terms of a relationship to some prevailing wage as of the year 1929 (or other date), since such method of statement introduces uncertainty of meaning and spells difficulties in compliance." See also Decision of the Policy Group, dated Aug. 8, 1934, quoted above, p. 33.

mention was made of 1929 rates, it was used to justify approval of rates which otherwise would seem below NRA objectives.

A direct statement of policy bearing upon the relation between the code minimum and the 1929 rate is contained in the Tentative Formulation of Labor Policy #3.

> "It is desirable that the basic minimum rate approximate so far as is practicable, the corresponding rate of 1929."(*)

This appears to imply not only that code rates should be at least as much as, but also should not exceed the 1929 rate. So far as the latter meaning is concerned, the statement of policy is in error, for there was never any rejection of a rate agreed to by industry on the part of the NRA Administration on the ground that it was either too high or in excess of the 1929 rate. In fact, in a number of codes, attention was drawn in letters of transmittal to the fact that the code minimum was in excess of the 1929 rate. The letter of transmittal of the lumber and timber code, for example, states that "After careful consideration of the evidence... it was concluded that wage rates at least equal to those paid in 1929 were desirable and possible."

Eighty per cent of the total employees received less than 30 cents in 1929. The provision adopted in the lumber and timber code provided for an increase in the 1929 rates where less than 30 cents by a percentage varying from 0% at 30 cents to 15% at 20 cents.(**)

On the other hand, the Iron and Steel Code had code rates that in relation to 1929 varied from a decrease of 16 per cent in the East, a decrease of 10 per cent in Pittsburgh, Great Lakes and the Middle West, to an increase of 13 per cent in the South.(***)

(e) Relation to 1929 Rates in Low Wage Industries.

Finally, the point should be made that the Administration pressure for raising rates was greatest and most effective when the rates in the industry were low. In cases of rates below 30 cents, even the 1929 level would not satisfy the Administration, but an increase considerably above that level might be required; between 30 cents and 40 cents, definite pressure was brought not only to substitute definite rates for the vague description in terms of 1929 wages, but also to raise them as high as the circumstances of the industry would permit. On the other hand, above 40 cents, it is probable that Administration pressure for raising rates was distinctly less, and if labor was satisfied, the Administrator might approve rates that did not equal the 1929 level. Again, for a complete exposition of the relation of the code minimum to the 1929 figures, statistical data would be required that are not available.

(*) See above, p. 36.

(**) Codes of Fair Competition, Vol. I, p. 126.

(***) Codes of Fair Competition, Vol. I, p. 175.

5. Combinations of Principles.

The point should be emphasized, finally, that the several principles thus far presented agreed in favoring upward adjustments of wages, and differed among themselves merely in the limits to which wages should be raised. In principle, there was no upper limit to wage minima except as noted in the qualifications discussed in the next section. In these circumstances, the pressure of the labor groups seeking increases, and of the Administration seeking to realize the objectives of the Act tended to support upward movements of wages up to the limits set by the ability of the industry to pay. And the important point is that this pressure for upward adjustment of wage minima was greater when several of these principles seemed to be involved and much diminished when one after another seemed to have been satisfied. Fundamentally, therefore, the pressure backing the wage increases, and the principles setting the conditions for exerting this pressure were determining factors in fixing the final rates.

C. Qualifications

Any or all of the foregoing principles might be modified in their application to a specific case by certain qualifying or limiting considerations. These were three in number, (1) the inability of the industry to pay this being the negative aspect of the principle embodies in the phrase "as much as the industry could reasonably bear," (2) lower rates in competing industries, and (3) lower rates for food industries closely allied to agriculture.

1. Inability to Pay.

If industry could show that it was unable to pay rates that the deputies, acting under the general instructions, asked for, rates lower than those that normally would be satisfactory might be accepted. The ruling consideration was the economic position of the industry. The Policy Group statement, already quoted, set forth this principle in clear terms:

> "Any arbitrary figure considered as minimum for living purposes may be too high relative to conditions in a particular industry."(*)

Points relevant to the question of the ability of the industry to pay minimum rates include a series of economic factors, such as whether the industry was highly competitive, whether the product was subject to elastic or inelastic demand, whether the product was a necessity or luxury, whether substitutes for the product were available or could easily be placed on the market, the effect of the proposed increase in wage rates upon increases in unit costs, whether the industry as a whole was making money, the relative proportion of capital equipment in the industry, and other similar factors.

(*) See above, p. 32.

The deputies had general discretion on the question in first instance. The general statements of official policy to raise rates of pay were their guiding principles. They might be influenced by union or labor pressure, by the pressure of industry representatives, and by statistical materials prepared and presented by industry, labor, the Research and Planning Division of the NRA, or other agencies. They were in position also to weigh the desire of the industry for its fair trade practice provisions and to drive a bargain up to the ability of the industry to pay. But if industry was unwilling or unable to pay, the industry representatives might refuse to concede the wage rates demanded, and having intimate knowledge of the facts of their situation were in the best position to present evidence to substantiate their claims.

A number of specific problems bear upon this subject of ability of industry to pay. In some industries certain establishments were well able to pay more than other establishments. Should the rates be set on the basis of the ability of the marginal firm or how should the ability of the industry be appraised? In the pretzel industry, special minimum rates for hand operatives (32½¢ and 30¢) were set below the rates for machine operatives, (40¢). (*) In the baking industry, the hand craft shops, though handicapped in competition with machine equipped shops on bread products, enjoyed a differential in hours but had no advantage in minimum wage rates. (**) The cigar manufacturing industry had a problem of adjustment between hand and machine production, the more skilled hand worker receiving less than the less skilled machine worker. (***). In these cases the special handicaps of the establishments employing an economically less profitable technique were taken into consideration.

In many industries, establishments in certain sections were less able to pay than those in other sections. These differences in relative ability to pay were taken care of in many cases, at least in part, by geographic and population differentials. The whole problem of geographical and populational differentials, though closely related to the problem of the minimum, is discussed in all its ramifications in another place. (****)

(*) Codes of Fair Competition, Vol. XV., p. 89
(**) Ibid, Vol. XI, pp. 4-5.
(***) Ibid, Vol. XII., p.64.
(****) Certain aspects of differentials appear to present the same issues as the single minimum. At first thought it might seem as if the problem of setting minima in South and North, using North and South as typifying the general problem of differential rates, in an industry extending over both sections was the same as that of setting minima in separate industries each confined to one section. But in the problem of differentials each section or division was interested not only in the minimum rates but particularly in the relative position of the rates in the several sections or divisions. In industries where competition between the sections or divisions was a vital factor, the determination of minimum rates in each section could not be made solely upon the criteria already discussed as applicable to the general problem of determination of minimum rates. The additional criterion is important; that the rates as established for each section should be equitable as between the different sections of the industry, that they sh should not favor one section as against another, nor impair the competitive position of any section. Because of these and other special considerations affecting the determination of the minima with differentials, this whole subject is treated in a separate section.

In still other industries, divisions within the industry made it probable that difficulties in compliance would arise if the rates set, were too high. This aspect of the case reinforced the tendency to allow claims of industry that they were unable to pay and led to the approval of rates lower than the general standards called for.

2. Lower Rates in Competing Industries.

A second basis for qualification of the principles previously described was the existence of lower rates in competing industries. This principle was early recognized. Under the PRA, it was part of the procedure to keep substitutions to related industries as uniform as was . . . practicable.(*) At the same time, when substitutions had been granted upon too lenient a basis or without justification in evidence, the P.R.A. Policy might refuse to grant the same terms to other industries, unless to refuse would create "an unfair competitive situation."(**)

In the Code of Fair Competition for the Underwear and Allied Products Industry, the letter of transmittal states:

> "The labor provisions in this code are substantially the same as the labor provisions in the Code for the Cotton Textile Industry...
>
> "To establish any differences in the minimum wage or the working hous for employees in the manufacture of underwear would cause difficulty in the labor conditions."(***)

In the letter of transmittal of the Textile Bag Industry Code, the following statement appears:

> "Because of the fact that a number of Textile Bag Manufacturers operate their own mills, that many of bag manufacturing plants are located in textile areas and that the class of labor in the textile bag industry is similar to that in the Textile Industry, it is clearly evident that the labor provisions should be substantially the same."(****)

(*) Memorandum of H. B. Bond to Dr. L. C. Marshall, dated Octover 5, 1934, p. 3. NRA General Files.

(**) "In almost no case was the Board prevailed upon to change its decision by this argument unless the industry in question was so closely related to the industry to whom a lenient substitution had been granted, that more stringent provisions would have created an unfair competitive situation." Ibid, p. 3.

(***) Codes of Fair Competition, Vol. I., p. 312, Underwear and Allied Products Code, No. 23, Approved September 18, 1933.

(****) Codes of Fair Competition, Vol. I, p. 363.

The situation came to further expression at the time of the general conference of code authorities and trade association committees in March, 1934. In his address introducing the subject, General Hugh S. Johnson remarked that one of the conditions needing immediate attention was the problem of uniformity of wages and hourly rates in competitive industries. This statement recognized the principle that codes for competitive industries should have uniform wage rates, but left open the question of the appropriate remedy, whether the lower rate was to be raised to the level of the higher, or the higher rate lowered to the level of the lower, or some intermediate level determined by way of compromise.

This problem was still acute at the time of the Supreme Court decision in the Schechter case. The lack of uniformity of wage rates in competitive industries was one of the obstacles in the way of consolidation and simplification of the codes.

3. Lower Rates in Industries Allied to Agriculture.

A third qualification was that in industries allied to agriculture, lower minimum rates might be conceded. The first code in which the situation arose was apparently the fertilizer code. The letter of transmittal states:

> "While the absolute wage rates provided by the Code still are not high, it is believed that this industry with its close interlock with agriculture can be affected only adversely if higher minimum wages are required.(*)

The proposed Office Manual, as revised June 12, 1935, carried the statement already quoted(**) adverting to the resumed propriety of lower rates in industries allied to agriculture, in view of the lower living costs in agricultural communities. This formulation leaves much to be clarified. The phrase "Industries allied to agriculture" seems vague: what was meant were industries concerned with the handling and first processing of agricultural products, utilizing unskilled labor of the same type as found employment in agriculture. The cotton pickery industry, raw peanut milling, pecan shelling, and loose leaf tobacco warehousing, were industries of this class.

The justification adduced - the relatively low living costs in agricultural communities - was not the sole or even the principal ground for lower rates. (***)

(*) Codes of Fair Competition, Vol. II., p. 122, Fertilizer Code No. 57, Approved October 31, 1933.

(**) See [illegible], p. 31. No statement on policy covering industries allied to agriculture is to be found in the official pronouncements by policy determining agencies prior to the Supreme Court decesion. This formulation had neither official approval nor was it issued to Deputies during the NRA period.

(***) The whole question of cost of living in relation to wage rates will be discussed in the section on differentials.

The relative inefficiency of the type of labor employed was often alleged as a ground for lower rates for these industries. In certain of these industries, a large proportion of the unskilled labor was Negro. Though no open racial differential or discrimination was admitted in any NRA code, a low rate might be demanded by industry employing largely Negro labor as requisite to its continuing innoperation. In some cases the fact that the labor was light repetitive work and was carried on largely by female workers, in some cases Negro and Mexican female labor, was advanced by industry as a reason why it could afford only a low rate.

An important factor in this situation was the relationship between NRA and AAA. A brief statement of the nature of this relationship is therefore in point. The AAA was established to aid agricultural recovery, with special reference to the farmer rather than to farm labor. At the outset all the food industries were transferred to code purposes to the jurisdiction of the Secretary of Agriculture, except that the NRA retained jurisdiction over the labor provisions for these codes.

In so far as the direct influence of AAA over wage rates was concerned, officially it had no jurisdiction. Negotiations on wage rates were entirely in the hands of NRA deputies designated to handle these matters.

The severance of the negotiations over wages from those over fair trade practice provisions constituted a severe handicap to the deputies' bargaining position. Fair trade practice provisions were in the hands of AAA officials. It was not possible in these situations for the NRA deputies to bargain with industry, offering a more lenient trade practice provision in return for a better wage rate. No effective cooperation on this question was evolved or developed between AAA and NRA deputies. One explanation for lack of cooperation may have been a fundamental divergence in points of view. Even had there been cooperation between the two administrations on the question, a divided power of negationation would have been relatively less effective than the unified responsibility in NRA codes.

Not only were the negotiations over fair trade practice provisions severed from the negatiations over labor provisions, but the policies of AAA in regard to these fair trade practice provisions operated, in some instances, to discourage industries from seeking codes. In particular, the AAA insisted upon the incorporation in the codes of the so-called "books and records" clause, giving the Secretary of Agriculture the right to inspect the books and records of all members of the industry.

The practice, followed in all except a few cases, of holding the labor provisions of the codes until the fair trade practice sections were

ready for approval resulted in delays in codification.(*)

The result of this division of responsibility was that up to January 8, 1934, only six codes for food industries had been approved. On this date an Executive Order transferred back to NRA the major part of the food industry group--all industries subsequent to the first processing. A second group of "reserved" codes was transferred back to NRA subject to the reservation that the Secretary of Agriculture must approve any fair trade practice provision concerned with price, production control, and a few other emunerated topics in which the farmer had a special interest. A third group of industry codes was left under joint jurisdiction as before.(**)

So far as the food codes were concerned, especially those that remained under joint jurisdiction, labor was, in the main, unorganized, and hence was not an important factor in bringing pressure to bear to secure minimum wages up to the usual standard. These factors then tended to strengthen the position of the industry spokesmen in refusing to agree to the "standard" minimum rates in their codes. Though not bearing upon the specific issue of the inability of the industry to pay more, these elements in the situation weakened the bargaining position of the deputies.

In a few cases, notably the stockyards and livestock commission agency codes, the Secretary of Agriculture had authority, under the Packers and stockyards Act, over the rates which the industry was allowed to charge. The industry represented themselves as willing to raise pay to labor, provided that they could raise their charges. Here a direct conflict of interest between the farmer and the labor in these industries rendered negotiations for raising wages difficult.

(*) The labor provisions for the beet sugar code were approved October 27, 1933, before the fair-trade practice provisions were prepared. Industry was willing to accept them in this coase because of favors expected from tariff legislation. No fair trade practice provisions ever were approved for this industry.

Certain of the alcoholic beverage codes were approved in advance of their labor provisions, in order to set up the Federal Alcohol Control Administration. Labor Provisions for these were subsequently prepared and approved. In these industries union labor is a predominating influence.

(**) Executive Order No. 6551, dated January 8, 1934. The list of industries is given in Exhibit A of the Order. NRA Officer Manual, V-C-19.

III. SIGNIFICANCE OF PRINCIPLES

The significance of these principles in their relation to the actual rates incorporated in the codes has become clear from the preceding discussion. As the story of the development of the principles has progressed, more and more importance is seen to be attached to the forces and pressures operating to raise or lower wages. The principles of policy on minimum wages operate not as rigid requirements, but as objectives or goals to be attained. Only is the presence of effective pressure from unionized groups, or when competitive conditions in the industry were favorable, do these principles come to full expression in code rates. And, as has been explained in the preceding pages, perhaps the most significant principle of all is that which set the rules for the bargaining process between industry and labor where labor was strongly organized, and between industry and the administration aided by labor advisers, where labor was weak or unorganized, and authorized the approval of the rates reached in this process.

The gaps between principles and their realization in many cases must have been considerable. Failure of the deputies to appreciate the meaning of the principles they were expected to incorporate in the codes, lack of sympathy with these objectives of the Act, undue sympathy with industry, acceptance of claims without proof, and lack of necessary statistical evidence each of these considerations helps to account for divergences between principles and practice.

Even for industries with the most complete statistical evidence, it is difficult enough to determine where the rates should have been set to accomplish the purposes of the Act; how much more difficult when the statistical data were largely or entirely wanting. In most cases the industry group knew the facts from intimate first hand knowledge, while the deputies were dependent for their knowledge upon general statistics or upon special assistants with technical experience. Industrial interests were willing to make concessions [illegible] the public interests of individual members of the industry began to be affected, but beyond that resistance to further concessions increased. This fact emphasizes again the essentially bargaining nature of these proceedings for setting minimum rates in the codes, in which the Administration sought to assist labor in obtaining the increased purchasing power contemplated by the statute.

APPENDIX I

I. Methodology

The primary method employed in the study is examination of the various sources of policy. These included, as described in the text, the official utterances of the President and the Administrator, the official and semi-official pronouncements of policy-determining organs within the NRA, the letters of transmittal in the codes and the code provisions themselves.

The technique of determining what was policy from an examination of the code provisions is a difficult one. In general, the code provision should embody principles of policy. However, a code provisions may depart from policy because of the exercise of discretion by the deputy beyond the range justified by policy. Furthermore, the code provision may embody the compromise reached in case of conflicting policy principles. A case where examination of code provisions is important for ascertaining what was policy, is when a particular industry group was singled out as entitled to special consideration. A case in point is the case of industries closely allied to agriculture.

II. Points for Further Research

A. Case Studies of Individual Industries, with Especial Reference to Types of Negotiation.

One source for material on policy, especially with regard to the methods of applying it, is the code histories. These histories review in detail the course of the negotiations for codes from their initial presentation by the industry through the various conferences held by deputies and their advisers and with labor representatives and show the changes made in the original code provisions to conform with policy or in response to pressure. The letters and pronouncements by the deputies incorporated in these code histories furnished an additional source for ascertaining policy as understood and interpreted by the deputies, who were responsible in first instances for putting principles into the codes. They are valuable also for the light they throw upon the influence of labor organizations in obtaining better minimum wage rates than industries at first presented. The contrast in the code histories as between different types of negotiations should furnish a very interesting study of policy in action.

The original plan for studies of this section included a number of detailed studies of negotiations and experience with minimum wages in selected industries.

B. Statistical Evidence.

An important line of attack is in the analysis of statistical evidence available for each industry. Such an analysis is essential in order to appraise the degree to which policy was actually carried out and embodied in code provisions. If policy required that the minimum

wage raise existing rates in the industry, statistical evidence is needed to prove that the minimum wage adopted actually did raise rates to any considerable extent. In the absence of evidence, industry might present a rate which, according to its claim was sufficient to carry out the purposes of the NIRA. Such a rate agreeable to the industry and accepted by it in its conferences might in fact not represent any increase in rates. To judge whether and to what extent the rates actually reflected the policies followed by the deputies and the Administration requires statistical evidence.

Statistical evidence is needed also for appraisal of the "ability-to-pay" principle. In many cases, industry claimed not to be able to pay a given minimum rate. An examination of the evidence would be necessary to demonstrate this point.

C. Discretion

A study of the discretion allowed the deputies would be of interest. Did the exercise of discretion by the deputy mean the development of policy in its application to special circumstances or did it often mean disregard of the principles of policy? Failure to carry out policy might be due, for example, to (1) failure on the part of the deputy to understand policy, (2) incompetence, (3) a mistaken idea that he was carrying out policy when he was being deceived by industry's claims or by inadequate or erroneous statistics, (4) bias in favor of the industry, or (5) subservience to pressure from industry.

D. Relation to Administrability

A study of the relation between high minimum rates in codes to administrability is important. The specific question here is how far questions of administrability entered into or modified policy. If difficulties in enforcement were expected and foreseen, lower rates than would otherwise be grated might be approved, in order that the rates adopted might have a better chance of being observed by industry and of being enforceable.

E. Policy on Ancillary Points.

In addition to the subject of minimum wage, itself, policy on a number of topics ancillary to minimum wages should be covered in separate analysis. These include: (1) Definiteness of statement of the rate--policy required that rates be stated in definite terms and that indefinite terms such as the 1929 clause and the indefinite minimum should be frowned upon. (2) Form of rates, whether hourly or piece rate--policy required in general that all codes have an hourly minimum, even in cases where rates were also placed in the codes. (3) Piece rate policy--the whole problem of policy governing piece rates requires separate study. (4) The safeguarding clause on the applicability of the minimum irrespective of the method of compensation.

OFFICE OF THE NATIONAL RECOVERY ADMINISTRATION

THE DIVISION OF REVIEW

THE WORK OF THE DIVISION OF REVIEW

Executive Order No. 7075, dated June 15, 1935, established the Division of Review of the National Recovery Administration. The pertinent part of the Executive Order reads thus:

> The Division of Review shall assemble, analyze, and report upon the statistical information and records of experience of the operations of the various trades and industries heretofore subject to codes of fair competition, shall study the effects of such codes upon trade, industrial and labor conditions in general, and other related matters, shall make available for the protection and promotion of the public interest an adequate review of the effects of the Administration of Title I of the National Industrial Recovery Act, and the principles and policies put into effect thereunder, and shall otherwise aid the President in carrying out his functions under the said Title. I hereby appoint Leon C. Marshall, Director of the Division of Review.

The study sections set up in the Division of Review covered these areas: industry studies, foreign trade studies, labor studies, trade practice studies, statistical studies, legal studies, administration studies, miscellaneous studies, and the writing of code histories. The materials which were produced by these sections are indicated below.

Except for the Code Histories, all items mentioned below are scheduled to be in mimeographed form by April 1, 1936.

THE CODE HISTORIES

The Code Histories are documented accounts of the formation and administration of the codes. They contain the definition of the industry and the principal products thereof; the classes of members in the industry; the history of code formation including an account of the sponsoring organizations, the conferences, negotiations and hearings which were held, and the activities in connection with obtaining approval of the code; the history of the administration of the code, covering the organization and operation of the code authority, the difficulties encountered in administration, the extent of compliance or non-compliance, and the general success or lack of success of the code; and an analysis of the operation of code provisions dealing with wages, hours, trade practices, and other provisions. These and other matters are canvassed not only in terms of the materials to be found in the files, but also in terms of the experiences of the deputies and others concerned with code formation and administration.

The Code Histories, (including histories of certain NRA units or agencies) are not mimeographed. They are to be turned over to the Department of Commerce in typewritten form. All told, approximately eight hundred and fifty (850) histories will be completed. This number includes all of the approved codes and some of the unapproved codes. (In Work Materials No. 18, Contents of Code Histories, will be found the outline which governed the preparation of Code Histories.)

(In the case of all approved codes and also in the case of some codes not carried to final approval, there are in NRA files further materials on industries. Particularly worthy of mention are the Volumes I, II and III which constitute the material officially submitted to the President in support of the recommendation for approval of each code. These volumes

set forth the origination of the codes, the sponsoring group, the evidence advanced to support the proposal, the report of the Division of Research and Planning on the industry, the recommendations of the various Advisory Boards, certain types of official correspondence, the transcript of the formal hearing, and other pertinent matter. There is also much official information relating to amendments, interpretations, exemptions, and other rulings. The materials mentioned in this paragraph were of course not a part of the work of the Division of Review.)

THE WORK MATERIALS SERIES

In the work of the Division of Review a considerable number of studies and compilations of data (other than those noted below in the Evidence Studies Series and the Statistical Material Series) have been made. These are listed below, grouped according to the character of the material. (In Work Materials No. 17, Tentative Outlines and Summaries of Studies in Process, the materials are fully described).

Industry Studies

Automobile Industry, An Economic Survey of
Bituminous Coal Industry under Free Competition and Code Regulation, Economic Survey of
Electrical Manufacturing Industry, The
Fertilizer Industry, The
Fishery Industry and the Fishery Codes
Fishermen and Fishing Craft, Earnings of
Foreign Trade under the National Industrial Recovery Act
- Part A - Competitive Position of the United States in International Trade 1927-29 through 1934.
- Part B - Section 3 (e) of NIRA and its administration.
- Part C - Imports and Importing under NRA Codes.
- Part D - Exports and Exporting under NRA Codes.

Forest Products Industries, Foreign Trade Study of the
Iron and Steel Industry, The
Knitting Industries, The
Leather and Shoe Industries, The
Lumber and Timber Products Industry, Economic Problems of the
Men's Clothing Industry, The
Millinery Industry, The
Motion Picture Industry, The
Migration of Industry, The: The Shift of Twenty-Five Needle Trades From New York State, 1926 to 1934
National Labor Income by Months, 1929-35
Paper Industry, The
Production, Prices, Employment and Payrolls in Industry, Agriculture and Railway Transportation, January 1923, to date
Retail Trades Study, The
Rubber Industry Study, The
Textile Industry in the United Kingdom, France, Germany, Italy, and Japan
Textile Yarns and Fabrics
Tobacco Industry, The
Wholesale Trades Study, The
Women's Neckwear and Scarf Industry, Financial and Labor Data on

Trade Practice Studies

Labor Studies

Administrative Studies

Legal Studies

9768--4.

THE EVIDENCE STUDIES SERIES

The Evidence Studies were originally undertaken to gather material for pending court cases. After the Schechter decision the project was continued in order to assemble data for use in connection with the studies of the Division of Review. The data are particularly concerned with the nature, size and operations of the industry; and with the relation of the industry to interstate commerce. The industries covered by the Evidence Studies account for more than one-half of the total number of workers under codes. The list of those studies follows:

Automobile Manufacturing Industry
Automotive Parts and Equipment Industry
Baking Industry
Boot and Shoe Manufacturing Industry
Bottled Soft Drink Industry
Builders' Supplies Industry
Canning Industry
Chemical Manufacturing Industry
Cigar Manufacturing Industry
Coat and Suit Industry
Construction Industry
Cotton Garment Industry
Dress Manufacturing Industry
Electrical Contracting Industry
Electrical Manufacturing Industry
Fabricated Metal Products Mfg. and Metal Finishing and Metal Coating Industry
Fishery Industry
Furniture Manufacturing Industry
General Contractors Industry
Graphic Arts Industry
Gray Iron Foundry Industry
Hosiery Industry
Infant's and Children's Wear Industry
Iron and Steel Industry
Leather Industry
Lumber and Timber Products Industry
Mason Contractors Industry
Men's Clothing Industry
Motion Picture Industry
Motor Vehicle Retailing Trade
Needlework Industry of Puerto Rico
Painting and Paperhanging Industry
Photo Engraving Industry
Plumbing Contracting Industry
Retail Lumber Industry
Retail Trade Industry
Retail Tire and Battery Trade Industry
Rubber Manufacturing Industry
Rubber Tire Manufacturing Industry
Shipbuilding Industry
Silk Textile Industry
Structural Clay Products Industry
Throwing Industry
Trucking Industry
Waste Materials Industry
Wholesale and Retail Food Industry
Wholesale Fresh Fruit and Vegetable Industry
Wool Textile Industry

THE STATISTICAL MATERIALS SERIES

This series is supplementary to the Evidence Studies Series. The reports include data on establishments, firms, employment, payrolls, wages, hours, production capacities, shipments, sales, consumption, stocks, prices, material costs, failures, exports and imports. They also include notes on the principal qualifications that should be observed in using the data, the technical methods employed, and the applicability of the material to the study of the industries concerned. The following numbers appear in the series:
9768—5.

Asphalt Shingle and Roofing Industry
Business Furniture
Candy Manufacturing Industry
Carpet and Rug Industry
Cement Industry
Cleaning and Dyeing Trade
Coffee Industry
Copper and Brass Mill Products Industry
Cotton Textile Industry
Electrical Manufacturing Industry
Fertilizer Industry
Funeral Supply Industry
Glass Container Industry
Ice Manufacturing Industry
Knitted Outerwear Industry
Paint, Varnish, and Lacquer, Mfg. Industry
Plumbing Fixtures Industry
Rayon and Synthetic Yarn Producing Industry
Salt Producing Industry

THE COVERAGE

The original, and approved, plan of the Division of Review contemplated resources sufficient (a) to prepare some 1200 histories of codes and NRA units or agencies, (b) to consolidate and index the NRA files containing some 40,000,000 pieces, (c) to engage in extensive field work, (d) to secure much aid from established statistical agencies of government, (e) to assemble a considerable number of experts in various fields, (f) to conduct approximately 25% more studies than are listed above, and (g) to prepare a comprehensive summary report.

Because of reductions made in personnel and in use of outside experts, limitation of access to field work and research agencies, and lack of jurisdiction over files, the projected plan was necessarily curtailed. The most serious curtailments were the omission of the comprehensive summary report; the dropping of certain studies and the reduction in the coverage of other studies; and the abandonment of the consolidation and indexing of the files. Fortunately, there is reason to hope that the files may yet be cared for under other auspices.

Notwithstanding these limitations, if the files are ultimately consolidated and indexed the exploration of the NRA materials will have been sufficient to make them accessible and highly useful. They constitute the largest and richest single body of information concerning the problems and operations of industry ever assembled in any nation.

L. C. Marshall,
Director, Division of Review.

9768--6.