

1989

### Prologue

Jack G. Day

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>

 Part of the [Law Commons](#)

---

#### Recommended Citation

Jack G. Day, *Prologue*, 39 Case W. Rsrv. L. Rev. 515 (1988-1989)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol39/iss2/7>

This Symposium is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

# PROLOGUE

*Jack G. Day\**

FOR MORE THAN fifty years the doctrine of "industrial pluralism" has provided a principal, and perhaps the dominant, theoretical basis for labor relations in the United States.<sup>1</sup> The concept was broadly and pervasively applied and tested by the National War Labor Board (NWLB) through formulation and administration of its World War II labor relations policy.<sup>2</sup>

Strongly influenced by University of Wisconsin economics Professor John R. Commons and his student William M. Leiserson,<sup>3</sup> industrial pluralism rejects the inevitability of labor/capital strife. The theory instead posits a virtually mystical faith in collective bargaining as a labor relations problem solving device and treats the collective bargaining contract as the constitution of the private sector work place. This constitution provides governance in matters affecting wages, hours, and terms and conditions of employment,<sup>4</sup> while preserving a proper sphere for management rights.<sup>5</sup> The theory deems a contractual grievance procedure capped by arbitration as an extension of collective bargaining,<sup>6</sup>

---

\* B.S. (1935); L.L.B. (1938); A.M., Ohio State University (1940); L.L.D., Suffolk University (1985); Disputes Director, Region V, NWLB, 1943-45; Vice-chairman Shipbuilding Commission, NWLB 1945; Chairman Region VII, NWLB, 1945-46; Judge, 8th District Court of Appeals, Ohio, 1968-84; Arbitrator; Chairman, Ohio State Employment Relations Board, 1984-88.

1. C. TOMLINS, *THE STATE AND THE UNIONS, LABOR RELATIONS, LAW, AND THE ORGANIZED LABOR MOVEMENT IN AMERICA, 1880-1960*, at xi-xii (1985).

2. The NWLB was established January 12, 1942 by Exec. Order No. 9017, 3 C.F.R. 1075 (1938-1943).

3. Arbitrator; Professor of Economics, Antioch College; Chairman, National Mediation Board; Member, National Labor Relations Board. This is only a sampling of the many and varied academic and official positions related to labor relations occupied by Professor Leiserson. He may have been the single most influential labor relations theorist in the 20th Century.

4. See C. TOMLINS, *supra* note 1, at 74-82.

5. *Id.* at 79-80 (discussing Leiserson's views on management rights); see also Teller, *The War Labor Board and Management Functions*, 21 N.Y.U. L. REV. 319 (1946); cf. Williams, *Note on Management Prerogatives*, in 2 *THE TERMINATION REPORT OF THE NATIONAL WAR LABOR BOARD* 623-24 (1949).

6. Collective bargaining is not confined to the making of an agreement once a year.

generally enabling the parties in conference to interpret and apply the contract and settle issues between themselves. The premise is that problem solving can be effectively accomplished only on an informed, practical basis, and that result is most likely to be achieved by the parties because, presumably, they are in the best position to understand the issues.<sup>7</sup> By implication, there is an admonition to settle at "home" and to avoid courts and lawyers.

The controlling philosophy at the NWLB epitomized industrial pluralism. Collective bargaining and the constitutive contract, including a grievance procedure, were the heart of the matter.<sup>8</sup> Voluntaryism was the consistent theme,<sup>9</sup> democratic process

It is also a day-to-day process and, on this score, the grievance procedure plays a highly important role. The grievance procedure should be set up so as to make unnecessary unresolved disputes over the application of the agreement.

Statement of NWLB vice-chairman Dr. George W. Taylor in Chrysler Corp., 10 War Lab. Rep. 551, 554 (Aug. 27, 1943).

7. See 1 THE TERMINATION REPORT OF THE NATIONAL WAR LABOR BOARD 65-66 (1949).

The experience of the National War Labor Board in the administration of the no-strike no-lockout agreement has shown conclusively that proper grievance procedures under collective bargaining agreements have:

1. Prevented abuse of the no-strike no-lockout agreement.
2. Removed obstacles to high morale and maximum production.
3. Preserved collective bargaining as a basic democratic institution in the total war effort.

These fundamental American values and aids to the successful prosecution of the war can be attained by grievance procedures which provide:

1. That prompt initial attention be given to the grievance by those in the plant who have intimate knowledge of the dispute. The exact steps and procedures for such attention to grievances must be adapted to the needs of the plant and can be best worked out by the parties themselves.

2. That the grievance procedure, whatever be its adaptation to the needs of the plant, should provide for the final and binding settlement of all grievances not otherwise resolved. For this purpose, provision should be made for the settlement of grievances by an arbitrator, impartial chairman or umpire under terms and conditions agreed to by the parties.

Therefore, the National War Labor Board, as the custodian of the no-strike no-lockout agreement, and as a part of the all-out effort to win the war, calls upon the parties to all labor agreements to accept this urgent responsibility and render this patriotic service.

1. To install adequate procedures for the prompt, just, and final settlement of the day-to-day grievances involving the interpretation and application of the contract.

2. To make the full functioning of the grievance procedure a major responsibility under the no-strike no-lockout agreement for maximum production to win the war.

*Id.*

8. *Id.*

9. See Taylor, *Voluntaryism, Tripartism and Wage Stabilization*, in 1 THE TERMI-

the avowed method.<sup>10</sup> It is not without significance that among the principal architects of NWLB structure and policy were William H. Davis,<sup>11</sup> George W. Taylor,<sup>12</sup> Lloyd K. Garrison,<sup>13</sup> and Edwin E. Witte.<sup>14</sup> They were all pluralists whether they specifically ascribed their labor relations approach to pluralist tenets or not.<sup>15</sup>

Certainly not all employers have agreed with the pluralist dogma, and, just as certainly, a sizable segment may reasonably be said to have strongly disagreed with it before, during, and after World War II. However, war imposed a consensus. When labor/capital took the "no strike/no lockout" pledge early in the war and agreed to substitute peaceful adjudication for economic power confrontations, the NWLB came into being.<sup>16</sup>

One of the Board's virtues was the provision for a relatively serene procedure for resolving those basic contract issues which the parties could not bargain out. Executive Order 9017 gave the NWLB broad authority to "finally determine the dispute, and for this purpose . . . use mediation, voluntary arbitration, or arbitra-

NATION REPORT OF THE NATIONAL WAR LABOR BOARD xv-xxi (1949)(the voluntary no-strike no-lockout pledge served as the groundwork of the national war-time labor policy).  
10.

The task of settling labor disputes in wartime was entrusted to a Board of twelve men, four representing the public, four industry, and four labor. The idea was simple. *The vexing problems of labor relations can best be met by threshing out conflicting points of view and by reconciling them as far as possible around the conference table.* The issues would, in any event, be finally resolved by majority vote of the Board. Let me emphasize that in the War Labor Board representatives of labor and of industry participate in all cases and each has an equal vote with the public representatives in finally determining cases. *The democratic process is the solid rock upon which the National War Labor Board has been built.*

Address by Dr. George W. Taylor, Vice Chairman of the NWLB at Swarthmore College, Swarthmore, Pennsylvania (December 6, 1942), *reprinted in* 2 THE TERMINATION REPORT OF THE NATIONAL WAR LABOR BOARD 502 (1949)(emphasis added).

11. Chairman, NDMB, First Chairman, NWLB.

12. Professor of Economics, University of Pennsylvania; Arbitrator; Vice-Chairman, NWLB; Second Chairman, NWLB.

13. Dean, University of Wisconsin Law School; Public Member, NWLB; Vice-Chairman, NWLB; Third and last Chairman, NWLB.

14. Chairman, Department of Economics, University of Wisconsin; Chairman, Detroit Regional War Labor Board XI; Public Member, NWLB.

15. *See supra* notes 6-10 and accompanying text for a demonstration of the philosophical debt.

16. The experiences of the National Defense Mediation Board (NDMB) contributed materially to developing policies fundamental to the accomplishments of its successor the National War Labor Board. *See Davis, The Influence of the National Defense Mediation Board's Experience on the National War Labor Board*, 1 THE TERMINATION REPORT OF THE NATIONAL WAR LABOR BOARD xii-xv (1949).

tion under rules established by the Board."<sup>17</sup> Necessity, however, perhaps even more than pluralist convention, stimulated NWLB use of its grievance/arbitration authority. For it has been estimated that there were hundreds of thousands of negotiations during the War resulting in collective bargaining contracts.<sup>18</sup> Clearly, without private grievance processes to settle minor but important adjustments in contracts of this quantity, the NWLB dispute system would have been inundated. Thus, necessity was at least one parent of the policy supporting private grievance procedure settlements. In addition, grievance procedure capped by arbitration was frequently ordered into contracts whose terms the Board was called upon to settle in disputes cases.<sup>19</sup> While the NWLB certainly did not invent grievance procedures and arbitration, it powerfully stimulated the spread of both.

Most of the prime actors in NWLB history are dead. Thus, the number of persons still available and qualified by direct knowledge to discuss the policy considerations and implementing decisions which accounted for the proliferation of grievance/arbitration under NWLB auspices is probably not greater than ten. Professor Aaron, Mr. Gill, and Mr. Garrett are three of that small group. In that order they will discuss the origins of NWLB policy on grievance procedure and arbitration.

---

17. Exec. Order No. 9017, 3 C.F.R. 1075 (1938-1943).

18. See BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, BULLETIN 1009, PROBLEMS AND POLICIES OF DISPUTE SETTLEMENT AND WAGE STABILIZATION DURING WORLD WAR II, at 53 n.36 (1952).

19. See *supra* note 7.