

Proceedings of Meeting No. 24

of the

SPECIAL INDUSTRIAL RECOVERY BOARD

held in

The Conference Room, No. 5842

Department of Commerce

Nov. 20, 1933

PERSONAL AND CONFIDENTIAL

Copy No. 6

For Hon. Frances Perkins

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ATTENDANCE AT MEETING NO. 24

Nov. 20, 1933

Hon. Daniel C. Roper, Secretary of Commerce, Chairman

Hon. Henry A. Wallace, Secretary of Agriculture

Hon. Harold M. Stephens, Assistant Attorney General

Hon. Turner Battle, Assistant Secretary of Labor

Hon. Charles Wyzanski, representing the Secretary of Labor

Hon. Charles H. March, Chairman Federal Trade Commission

Hon. F. W. Lowary, Assistant Director of the Budget

Hon. Alvin Brown, Assistant Administrator

Mr. E. Willard Jensen, Assistant Secretary

Mr. Russell Hardy, Assistant to Judge Stephens

Mr. B. P. Foote, Reporter

SPECIAL INDUSTRIAL RECOVERY BOARD

AGENDA

Meeting No. 24, Nov. 20, 1933

1. Approval of minutes of Meeting No. 23, held November 13.
2. Discussion of major activities during the past week.
3. Report of the Executive Committee on the three questions referred to it at the last meeting.
4. Continuation of the discussion of the approval of codes.
5. Consideration of memorandum from Dr. Tugwell with reference to revision of the Model Code.
6. Approval of additional personnel.

Proceedings of Meeting No. 24
of the
SPECIAL INDUSTRIAL RECOVERY BOARD

November 20, 1933
2:32 P. M.

CHAIRMAN ROPER: Are there any changes noted in the minutes? Hearing none, the minutes are approved.

MR. BROWN: The General asked me to say, Mr. Chairman, that the construction reconvened hearing is on today and he felt it important that he be there, but said that if anything came up on which you felt you needed his presence he would be glad to have you send for him.

CHAIRMAN ROPER: Mr. Brown, do you wish to speak on the next point, "Discussion of major activities"?

MR. BROWN: During the past week there were 12 codes approved--those for limestone, cotton garments, hotels, paper and pulp and newsprint--and in addition to the codes there were labor provisions approved for the wholesale and retail food and grocery industry, the Code itself being under the Agricultural Adjustment Administration.

CHAIRMAN ROPER: That was signed?

MR. BROWN: Yes, sir.

CHAIRMAN ROPER: What is the total number of codes now, Mr. Brown?

MR. BROWN: One hundred twenty-two. Including the reference to the construction hearing being held today, I think that pretty well covers the major activities. We draw a line between

national and local codes. Including those that haven't been approved, we have 943 national codes before us now. We have about 3,000 local codes.

CHAIRMAN ROPER: Are these approximately 800 remaining subject to further consolidation?

MR. BROWN: It is quite possible, sir, but very hard to tell. For example, we have about eight codes for buttons. The Deputy Administrator had hoped to have one Button Code. He said just a few days ago he was losing hope of getting the different parts of that industry together and he feared he would have to have a Button Code for each kind of button.
(Laughter)

CHAIRMAN ROPER: It is a real problem isn't it? Are there any questions anyone would like to ask Mr. Brown?

Dr. Tugwell is not here, but the Secretary of Agriculture is. Suppose we drop down now to No. 5. Is there anything to be said about that? It is a matter being taken care of by General Johnson.

MR. BROWN: My understanding was that Dr. Tugwell was to submit a memorandum. I do not know whether he has done so.

SECRETARY WALLACE: I have been given no such memorandum by Dr. Tugwell.

CHAIRMAN ROPER: We will have to let that remain on the agenda, then.

Now coming back to No. 3--"Report of the Executive Committee on the three questions referred to it at the last meeting."

JUDGE STEPHENS: This report is very brief, gentlemen, and I will read it:

"Report of the Executive Committee of the Special Industrial Recovery Board at the meeting held immediately following the regular meeting on Monday, Nov. 13, 1933.

"The subcommittee was charged with three matters. With respect to them it recommends as follows:

"First: As to the approval of appointments. It was agreed by all members of the subcommittee that Secretary Roper should be relieved of the burden of day to day passing upon proposed appointments; that hereafter appointments shall be made by the Administrator, subject to the veto of the Board. Pay shall commence from the time of appointment, and, if the veto is exercised by the Board and the person appointed thus released, such person shall be paid pro rata from the time of appointment to the time of release. A weekly journal of appointments shall be submitted at the weekly meeting of the Board.

"Second: As to the phrasing of Section 7(c) of Article VI. It was agreed by all members of the subcommittee that Section 7(c) of Article VI shall read as follows, except as hereinafter explained:

'To obtain from members of the trade/industry such information and reports as are required for the administration of the Code. In addition to information required to be submitted to the Code Authority, all or any of the persons subject to this code shall furnish such statistical information as the President (Administrator) may deem necessary for the purposes recited in Section 3 (a) of the Act to such federal and state agencies as the President (Administrator) may designate; provided that nothing in this code shall relieve any member of the industry of any existing obligations to furnish reports to any government agency. No individual report shall be disclosed to any other member of the trade/industry or any other party except to such other governmental agencies as may be directed by the President (Administrator).'

"With respect to the question whether the word 'President' or the word 'Administrator' shall be used at the three points appearing above, the subcommittee recommended that this be left to conference between Madam Secretary Perkins and General Johnson, their decision thereupon to be final.

"Third: As to proposed additions to Sections 2 and 7(a) of Article VI. The subcommittee recommends that there be left to Madam Secretary Perkins and General Johnson, their decision to be final, the question whether there shall be added to Section 2 in parentheses at the bottom the following:

(Ordinarily provision should be made so that labor shall be represented upon the Code Authority.)

"The subcommittee agreed that there should be added to subsection (a) of Section 7 at the end thereof the following:

"But this shall not be construed to deprive duly authorized governmental agencies of their power to enforce the provisions of this code or of this Act."

CHAIRMAN ROPER: You have heard the report, gentlemen. Will you act upon it as a full report or by the items? There are three suggestions or recommendations. What is your pleasure?

MR. BATTLE: How about Mr. Brown? Has he any objection to voting on all three from the standpoint of the General?

MR. BROWN: I have already expressed the objections I had, Mr. Secretary.

MR. BATTLE: Do you object to all three--you don't object to the first, of course?

MR. BROWN: No, I object specifically to the second and third.

CHAIRMAN ROPER: Suppose we act on the first, about which there is no contention. Is there any further discussion on No. 1? If there is no further discussion on No. 1 and you are ready to vote, all in favor of No. 1 indicate it by saying "Aye"; those opposed by "No"; it is adopted.

Now, the other two points: It seems to me that in view of the fact that General Johnson is not here probably they might be turned over to Mr. Brown to bring to the attention of the General--if you have not already done so.

MR. BROWN: I have done so and he was to take them up with the Secretary of Labor.

MR. BATTLE: Mr. Brown was present when the Secretary talked with General Johnson over the telephone, but she left right after the Cabinet Dinner and I did not get a chance to see her again. She did not come back to the office.

CHAIRMAN ROPER: When will she be back?

MR. BATTLE: She will be back tomorrow.

CHAIRMAN ROPER: Is there any objection to letting this lie over until the next meeting?

JUDGE STEPHENS: Most of the matters asked by Madam Secretary Perkins were agreed to by Mr. Brown for General Johnson. It was agreed that Section 7(c) of Article VI should be rephrased to read as follows:

"To obtain from members of the trade/industry such information and reports as are required for the administration of the Code. In addition to information required to be submitted to the Code Authority, all or any of the persons subject to this code shall furnish such statistical information as the President (Administrator) may deem necessary for the purposes recited in Section 3 (a) of the Act to such federal and state agencies as the President (Administrator) may designate; provided that nothing in this code shall relieve any member of the industry of any existing obligations to furnish reports to any government agency. No individual report shall be disclosed to any other member of the trade/industry or any other party except to such other governmental agencies as may be directed by the President (Administrator)."

That was all agreed to except Mr. Brown felt General Johnson would be inclined to insist that the word "Administrator" should be used and Madam Secretary wants the word "President" used.

MR. BROWN: May I clarify that position? The Judge's statement is substantially correct, but I would not want to say that I felt the General would insist upon the use of his own title in lieu of the President's. The reason for my objection was that the authority having already been delegated to the Administrator, it did not seem to me that I could concur in removing it from him. I was not attempting to interpret the General's position at all.

JUDGE STEPHENS: I meant to make that clear.

MR. BATTLE: The Secretary of Labor felt that certain agencies mentioned that would collect statistical data do not come under the authority of the Administrator.

CHAIRMAN ROPER: As I understand it, we have not a report as yet from the persons to whom this matter was referred. Therefore, I take it we are not in a position to act upon it. We will keep it, without there is objection, on our agenda for next week with the hope that Mr. Battle and Mr. Brown will endeavor to get a report from the Secretary of Labor and General Johnson by that time.

JUDGE STEPHENS: Do you want to take up the third point? There, you will remember, Madam Secretary Perkins felt there should be some suggestions made that representatives of labor should be considered as members of the Code Authority. She asked

to have added the following:

"Ordinarily provisions should be made so that labor shall be represented upon the Code Authority."

On that point also Mr. Brown felt he should not assume to bind the General, and that was left to the decision of Madam Secretary and the General. The other aspects of the third matter had to do with Section 7(a) of Article VI which reads:

"To insure the execution of the provisions of this Code and provide for the compliance of the trade/industry with the provisions of the Act."

That is to say, the Code Authority was given such power.

Madam Secretary asked that there be added the following:

"But this shall not be construed to deprive duly authorized governmental agencies of their power to enforce the provisions of this Code or of this Act."

The subcommittee agreed that that should be added.

CHAIRMAN ROPER: What is the pleasure of the committee? Do you wish to have this matter also carried over to the next meeting?

JUDGE STEPHENS: I move that both of those items, second and third, be carried over to the next meeting to await the decision of Madam Secretary Perkins and General Johnson.

MR. WYZANSKI: May I say that we have made a cursory examination of the first 110 codes which have been approved and so far as we have been able to find out 98 have provisions for government representation. We understand that of those 98 codes most of them have Code Authorities already in operation. Yet of those 98 on only 12 have government

representatives actually been appointed. In the 12 cases in which government representatives have been appointed, on only 6 can there be said to be labor representation. I thought that matter might be brought out explicitly in order that the Board might have it before it when the consideration is given to the third article in the report.

MR. BROWN: May I speak to the point that it might be concluded that we had been somewhat dilatory in appointing government representatives. I do not recall whether the General has expressed here his thought on how the government should be represented on these Code Authorities. But his thought is that we should secure men from outside the government service to represent the government on these Code Authorities in rotating terms, if that is clear, so as to keep continually bringing fresh viewpoints to the problems that they have. A great many of these codes, of course, have been approved, a large proportion of them within recent weeks, and it is not easy to find such men. The General is somewhat concerned with our failure to get government representation on these Code Authorities and he has instructed the Deputy Administrators to have themselves appointed until we can get the kind of members we want.

CHAIRMAN ROPER: In other words, you have it definitely in mind and are endeavoring to carry it out?

MR. BROWN: Yes, sir.

MR. WYZANSKI: Secretary Perkins appreciates that it may be unavoidable at the present time. However, there are certain cases which have been brought to her attention in which the Deputy Administrator has asked the industry if they wanted government representation and has told them if they did not want it they did not have to have it.

MR. BROWN: That Deputy Administrator is very clearly in error, Mr. Secretary.

CHAIRMAN ROPER: He does not represent the Administration.

MR. BROWN: No, sir.

CHAIRMAN ROPER: We are glad to have this explanation in the minutes and if you wish to have the minutes read at the next meeting we shall be very glad to have that done.

MR. WYZANSKI: Thank you, Mr. Secretary.

CHAIRMAN ROPER: I believe we have passed on this matter of having this kept on the agenda for the next meeting.

Item No. 4 refers to the continuation of the discussion of the approval of codes. I don't know whether "continuation" is the proper word; but that comes about through the suggestion made by Dr. Tugwell when he was here at the last meeting, the language of which is as follows:

"The question whether all codes should be considered by the Recovery Board in advance of their submission to the President has been raised. The regular procedure, as indicated by the terms of reference of the Board, would seem to hold it responsible for approval or rejection. This procedure is not usually being complied with, and the Board would like to have a definition of its responsibilities in the matter."

We turned over that question to General Johnson for report. As I take it from the phraseology here, the Board is not contending for anything. It is simply seeking its responsibility in this matter. In other words, is the President expecting us to pass on these codes? And as General Johnson says in his message here to me, that might result in a considerable delay. Certainly none of us want delay. We want to expedite these things. But here is the question which the Board has, in good faith, raised: What is our responsibility in the matter? Now do you wish to have this matter also passed over until General Johnson comes again, or is Mr. Brown in a position to give us any knowledge as to what General Johnson's desire is?

MR. BROWN: I feel I can state General Johnson's viewpoint.

CHAIRMAN ROPER: I think it might be well to have that.

MR. BROWN: It is simply this, that to require all codes to be submitted here would involve too complicated administrative machinery to do his job with the dispatch that is expected of him.

CHAIRMAN ROPER: Is it the pleasure of the Board, then, to accept at this time the situation, namely, that it would delay the administration too much for this Board to pass on codes and so acquaint the President, making it very clear as Dr. Tugwell presented the matter at the last meeting, or will you accept the situation now and hereafter be relieved in mind, as we have been actually, of passing on these codes? What is the pleasure of the Board?

SECRETARY WALLACE: Might it not be better to delay passing on this until the General himself is present?

COMMISSIONER MARCH: What would be the wish of the President in the matter?

CHAIRMAN ROPER: That is what we are trying to get at. We prefer to have General Johnson make that contact for us. Therefore, we made no contact with the President, leaving it entirely to General Johnson. We assume that he will do so and that General Johnson will relieve the Board of passing on it or else to the contrary.

JUDGE STEPHENS: I would like to present, for the consideration of the Board in respect to that matter, that the Department of Justice certainly does not invite further responsibility in the matter. It has plenty to do and is in no sense at all contending for such additional duties. But I have been a little concerned, and I think Mr. Cummings shares my view on the subject although I have not discussed it with him since last week, over things of this sort. Suppose some Deputy Administrator who, for lack of information concerning the actual effect of the code provisions, gets into a code a provision which permits monopolistic practices. That would be quite easy to do. It might be quite easy even for one as experienced as yourself or General Johnson. There are, however, in the Department of Justice experienced antitrust lawyers who know from long experience what is the actual effect in operation of provisions innocuous upon their

face. I have been a little concerned that if codes are not submitted for the approval of the Board, there might inadvertently get into a code a provision which is clearly illegal and against the NRA itself, not because there was any intention on the part of anyone, but because it might not be known what would be the effect in practice of such a provision. If such a provision should get into the code and be signed by the President, it would be very difficult indeed for the Department of Justice to prevail in the courts, under those circumstances. On the other hand, it would be clearly against the Recovery Act to have such a provision in it. There are many monopolistic practices being suggested and there are also a great many price fixing provisions being suggested. Some of them look harmless on their face, but as the Antitrust Division and the Federal Trade Commission know, many of them are dangerous. We are doing our very best to guard you against that thing by sending you memoranda. Of course our work is, to a certain extent, unavoidably hit or miss because we do not know all of the suggested provisions. That phase of the thing has worried me. I appreciate fully the dangers of delay, but in view of the announcement of the President himself that he desired not to have any monopolistic provisions or any provisions which oppress the small enterprises, I have not been sure that we could keep them out unless we saw the codes.

CHAIRMAN ROPER: Is there a representative of the Department of Justice in your final consideration of these codes?

MR. BROWN: There could not very well be a representative in the final consideration, I think, Mr. Secretary, because there is too much involved. We have a Legal Division that has about 25 lawyers in it. They are constantly engaged in working on these codes. You can't let a code get through to the final stage and then pick out something wrong with it. You have to do your best to catch those things as the code goes through. That is why we have a Legal Division. Of course our Legal Division may be inept, as any other division may be. We hope it is a good one. We hope it will protect us against these things Judge Stephens is afraid of.

JUDGE STEPHENS: I am not suggesting for a moment that your Legal Division is inept, or that we might do a bit better in the Department of Justice. The only difference might be this: I have been in the Department of Justice about six months and yet I would not feel myself competent to be sure that I knew all the provisions of the codes were harmless in the respect mentioned without consulting the lawyers in my division who have been in that work for a great many years. They have a background that no newcomer can hope to have. I apprehend that may be the situation with most lawyers in government service, including your Legal Division. I am not attempting to criticise or asking for further responsibilities. If General Johnson and the President are satisfied that such

precautions are being taken as are necessary to keep out of the codes those provisions, we will certainly be happy about it.

MR. BROWN: I do not want Judge Stephens to think I belittle the force of his observations. If there is any uncertainty about it, I am sure General Johnson will be glad to know it. I don't suppose that Judge Stephens would be willing to give us the Antitrust Division; I don't believe we can send those codes through him and act with the dispatch we understand we are supposed to act with. Let me say, I think General Johnson would be the last man to say that we cannot possibly make a mistake. I think he would be the first one to say we are bound to make them; but we want to keep them down to a minimum. Then, too, I think we should realize that the President has the power to modify any code. If we find anything particularly bad in a code which has been approved, we can immediately have it modified.

JUDGE STEPHENS: Yes, we can, I think that is true.

MR. BROWN: The language of the Act says the President may modify any order. The code is the creature of the order.

CHAIRMAN ROPER: Assuming now that there is no way of having this Board pass upon these codes without undue delay, would it not be well to have a copy of the codes sent to Judge Stephens as soon as they are approved?

MR. BROWN: Aren't you on our regular mailing list?

JUDGE STEPHENS: I think so, yes.

CHAIRMAN ROPER: It seems to me they should be sent not on a regular

mailing list but going to him personally in his office so he might look them over from the standpoint of the critical points of the law. Then they would not go to the library and be filed perhaps as codes approved, but be brought to the attention of the Judge as quickly as possible for approval so that he might, within a few hours, review the code with a view to checking up anything that would be important in that connection at the very earliest possible moment. I am just trying that out as a suggestion.

You have heard the motion and I believe it was seconded. Is there any further discussion? All in favor of passing over this matter of approval of codes until the next meeting of this Board in the hope that General Johnson will be with us at that time, indicate it by saying "Aye"; those opposed by saying "No"; it is so ordered.

Now, we come to this matter which Mr. Francis brought up--the advisability of coordinating the administrative program as between the NRA and AAA in the interest of expedition: "It would seem as though the administrative program, whatever it may be, established to administer the NRA codes, should be able to serve also those codes formulated by the AAA." This is Mr. Francis of our Industrial Advisory Board. He is giving this as the expression of his Industrial Advisory Board that we should not overlook the necessity of keeping these two related administrative programs tied in to each other. I presume, Mr. Brown, that is having attention, is it not?

MR. BROWN: The division of duties is governed by Executive Orders.

To the extent that we come in cooperation under the Executive Orders I think we are acting very closely together.

CHAIRMAN ROPER: What about it, Mr. Secretary of Agriculture? Anything you wish to say in this connection?

SECRETARY WALLACE: Of course we have passed on very few codes over there until recently. Our ideas about the approval of codes are somewhat different from the ideas of the NRA, and as a result of our much slower inspection of codes we have not been faced yet with the enforcement of code provisions under the AAA. We have been faced with the problem of enforcing agreements under the AAA. As I understand this memorandum of Mr. Francis, it deals solely with the joining of forces on the enforcement of codes, not the joining of forces on the enforcement of agreements. It applies to codes only. It has not been a problem with us yet, but there might be something to be gained by joining forces. The matter should be gone into at once.

CHAIRMAN ROPER: If you do not object, I will just turn this over to Mr. Brown to follow up.

We have now before us a personnel sheet for your approval. Mr. Secretary, will you read these.

MR. JENSEN: There is only one appointment over \$5,000; that is Byres Holiday Gitchell, born in Horseheads, New York, on April 19, 1881. He has had 25 years of business experience. He is married and has one son. He finished eight years of grammar

school and four years of high school. His salary is \$5,780 net, and he is in Division IV as Deputy Administrator.

The total number of employees now is 1,378 to November 17. There were 7 separations and 31 additions. There were no reassignments to positions at \$3500 or more during the week. The remainder of the appointments run from \$3825 to \$918. Do you wish to have the full list read?

MR. BATTLE: I move the approval of the list, sir, without being read.

CHAIRMAN ROPER: Are there any remarks? All in favor let it be known by saying "Aye"; those opposed by the contrary sign; it is so ordered. (See Appendix for full list.)

Mr. Lowary, inasmuch as you are a new addition which we appreciate, is there anything you would like to say to us?

MR. LOWARY: No, sir, there is nothing until I get better acquainted with the work. At the present moment I could not contribute anything.

CHAIRMAN ROPER: Mr. Brown, is there anything further you would like to say?

MR. BROWN: No, sir.

CHAIRMAN ROPER: Anything further anybody would like to say? If not, we will stand adjourned.

APPENDIX

NATIONAL RECOVERY ADMINISTRATION PERSONNEL JOURNAL

No. 81
covering 31 names

and bringing the total up to 1378

<u>Name</u>	<u>Position</u>	<u>Salary</u>	<u>Bureau, Div., or office</u>	<u>Effective</u>
Gitchell, Byres H.	Deputy Administrator	\$5780 net	Division 4	11/1/33
Scott, Joseph	Assistant Deputy	3825 net	Division 1	11/6/33
Myers, Alfred S.	Aide Grade-A	3060 net	Division 2	10/30/33
Emelianoff, Ivan V.	Stat. & Economist	3060 net	Labor Advisory Bd.	10/23/33
Collins, Henry H. Jr.	Associate Economist	3060 net	Labor Advisory Bd.	11/2/33
L'Engle, Claude	Aide Grade B	2210 net	Division 2	11/1/33
Jones, George A.	Statistician	1955 net	Res. & Plan.	10/2/33
Himebaugh, John O.	Dictator	1700 net	Corres. Div.	10/30/33
Rumsey, J. Witmer	Dictator	1700 net	Corres. Div.	11/2/33
Lawyer, John E.	Office Assistant	1660 net	Nat'l. Labor Bd.	9/30/33
Casey, Helena	Secretary	1530 net	Executive Office	10/25/33
Nadolney, Stanley J.	Stat. Clerk	1377 net	Comm. of Labor Stat's.	11/10/33
Watt, Merrill W.	Stat. Clerk	1377 net	Comm. of Labor Stat's.	11/4/33
Young, Louise B.	Stat. Clerk	1377 net	Comm. of Labor Stat's.	11/6/33
Akin, Carolyn L.	File Clerk	1260 net	Nat'l. Labor Bd.	10/21/33
Boeding, Genevieve	Steno-Typist	1224 net	Personnel Div.	10/27/33
DiFrancesco, Maria	Stenographer	1224 net	Blue Eagle Div.	11/8/33
Buchalter, Esther C.	Stenographer	1224 net	Blue Eagle Div.	11/3/33
Sadler, Laney Payne	Clerk-Typist	1224 net	Blue Eagle Div.	11/2/33
Somes, Tess W.	Stenographer	1224 net	Corres. Div.	11/7/33
Anderson, Gladys I.	Stenographer	1224 net	Fourth Div.	11/7/33
Abel, Alberta C.	Stenographer	1224 net	Fourth Div.	11/10/33
Fuschine, Maude M.	Stenographer	1224 net	Fourth Div.	11/13/33
Gray, Julia C.	Newspaper Clipper	1200 net	Press Intel.	10/9/33
Handley, Frank G.	Mimeo. Operator	1071 net	Duplicating Div.	11/10/33
Reuling, Phil	Mimeo. Operator	1071 net	Duplicating Div.	11/4/33
Moseley, Theodore F.	Mimeo. Operator	1071 net	Duplicating Div.	11/3/33
Walker, Lowell A.	Messenger	918 net	Mails & Files Div.	11/1/33
Tate, William J.	Messenger	918 net	Control Div.	11/6/33
Wiley, Claude E.	Messenger	918 net	Mails & Files Div.	11/9/33
Sanchez Venustiano C.	Messenger	918 net	Print. & Pub. Div.	11/8/33

No reassignments to positions at \$3500 or more during this week.