

Proceedings of Meeting No. 17
of the
SPECIAL INDUSTRIAL RECOVERY BOARD

held in

The Conference Room, No. 5842

Department of Commerce

October 9, 1933

PERSONAL AND CONFIDENTIAL

Copy No. 6

For Hon. Frances Perkins

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16. Mr. E. W. Jensen, Assistant Secretary
17. File

ATTENDANCE AT MEETING NO. 17

October 9, 1933

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

Hon. Frances Perkins, Secretary of Labor

General Hugh S. Johnson, Administrator

Hon. Harold M. Stephens, Assistant Attorney General

Hon. Alvin Brown, Assistant Administrator

Hon. Charles H. March, Chairman Federal Trade Commission

Hon. Lewis W. Douglas, Director of the Budget

Hon. John Dickinson, Executive Secretary

Miss Frances Robinson, Assistant to General Johnson

Mr. E. W. Jensen, Assistant Secretary

Mr. B. P. Foote, Reporter

SPECIAL INDUSTRIAL RECOVERY BOARD

AGENDA

Meeting No. 17, Oct. 9, 1933

1. Approval of minutes of meeting No. 16, held October 2, 1933.
2. Discussion concerning major activities since last meeting.
3. Report from the committee studying price-fixing.
4. Request for an allotment of funds for expenses of the National Recovery Administration for the fiscal year 1934 of \$3,120,000.
5. What is the prospect of early submission of an organization chart?
6. Discussion of the need of financing small manufacturers.
7. What is the progress of the personnel classification and Mr. Peck's final report?
8. Is anything further to be done about the suggested survey by some large business group for the purpose of exposing gouging and chiseling?
9. Shall we urge the early trial of one or two strong cases in the courts?
10. Approval of additional appointments.

Proceedings of Meeting No. 17

of the

SPECIAL INDUSTRIAL RECOVERY BOARD

October 9, 1933

3:34 P.M.

CHAIRMAN ROPER: General, we are very glad to see you back, sir.

If we could give you two seats we would do it!

GENERAL JOHNSON: I feel as though I need only half-a-one! (Laughter.)

CHAIRMAN ROPER: Are there any corrections to the minutes?

JUDGE STEPHENS: I have several, but will not take the time of the Board now; I will take them up with the stenographer after the meeting.

CHAIRMAN ROPER: General, before asking you to make a report, we have several communications here, and I think it might be well to read some of these reports so that you may have the full benefit of all that we know and so that you can address yourself to any of the points if you desire. This one is on the Ohio situation and is from O.W.L. Coffin, Representative of Ohio at Washington.

Mr. Jensen then read the following letter:

" State of Ohio
Washington D.C. Office
519 Mills Building
17th and Pa. Ave., N.W.

October 7, 1933.

"The Honorable Daniel C. Roper
Secretary of Commerce
Washington, D.C.

"Sir: Re: Ohio's Statute and Procedure in Relation
to National Plan of NRA.

"As I stated to you Saturday morning, Ohio will have a law, effective October 19, 1933, suspending our anti-trust laws and in other respects conforming with the Title I of the National Industrial Recovery Act. We drafted our law during May and June, as a result of the trend to the signing of the N.I.R.A. Our bill was to aid in effecting the NRA and to cover intra-state businesses.

"As we approach the date when the Act becomes effective, we solicit from you a definition of the future (and possibly permanent) plans of the NRA. Our course, we feel, should be charted with a knowledge of yours.

"What will other States do to effectuate the philosophy and policy of the NRA within their own borders and jurisdictions? Enforcement will become of major importance in addition to public opinion. Will Ohio proceed to plan enforcement in intra-state cases if the national plan does not define its enforcement policy? Some six States have laws similar to our law; what do they plan? Are they believers in the NRA principle, and ready to coordinate all efforts? Can NRA Compliance Boards also be utilized by States having a 'Recovery Act'? How fast are other States falling in line and passing a 'Recovery Act'? Concerted action by all States to secure a uniform, decentralized, back-home effectiveness under gentle NRA guidance may create more lasting and better-understood results than over-centralization.

"Ohio is waiting and ready to regiment itself with the other States in furthering the NRA--but before we dash out with a statement and an organization and a plan, we need to know that it will not be a 'solo' and, further, that Ohio will be in step with your next moves.

"At your early convenience you will, I hope, let me have your further aid on this topic.

Respectfully yours,

(Signed) O.W.L. Coffin
Representative for the Governor of
Ohio at Washington.

"P.S. NRA files in the Legal Department (see Mr. Keating, aide to Mr. Richberg) contain a copy of the Ohio legislation herein referred to--House Bill 705, approved by George White, Governor, July 12, which becomes an act on October 19, 1933."

CHAIRMAN ROPER: This gentleman came in here representing the Governor.

I told him we would have it read at this meeting and get your reaction, or else get you to answer the letter.

Mr. Jensen then read the following memorandum:

"October 9, 1933.

"To: Dr. Thorp, Director.
From: H.K. Sorensen, Philadelphia District Manager.
SUBJECT: Status of N.R.A. Campaign.

"The following memorandum has been prepared in accordance with the Secretary's verbal instructions.

"The P.R.A. phase of the National Recovery Program appears to have reached a critical stage in the territory covered by the Philadelphia District Office.

"The attitude of the public at large seems to be one of increasing apathy and scepticism; the attitude of the employers is one of increasing discouragement and declining faith in the effectiveness of the P.R.A. plan; and the attitude of labor as expressed in its relationship with employers seems to be one of disappointment in the results obtained for labor.

"Two main factors appear to be responsible for this change in attitude from high enthusiasm to pessimism and scepticism.

"(1) The delay in organizing effective machinery to deal with violations of the P.R.A. and the similar delay in providing enforcement of final codes so far signed by the President.

"(2) The labor disturbances which in the Pennsylvania territory are widespread and of a very serious character. These disturbances in general are attributed by employers and by the public in large part to the influence of the N.R.A.

"P.R.A. violations from the beginning have been very numerous and have increased rapidly during the last month. The absence of enforcement machinery has led to 'back sliding' on a large scale. Many employers who complied wholeheartedly with P.R.A. requirements have for weeks seen their competitors 'getting away' with violations or chiseling, without punishment. They have failed week after week to obtain action on complaints which have been filed and have unquestionably in a great many cases finally themselves become violators of the Agreement. The lack of enforcement in connection with final codes is also tending to destroy respect and confidence in the long-range phase of the N.R.A. program.

"Prompt and emphatic compliance action was particularly needed six weeks ago. It is needed even more at present, but

violations and evasions by this time have become so widespread that it is doubtful whether even prompt and vigorous action can restore confidence to the point of two months ago.

"Labor disturbances in this highly industrialized area have become so numerous and so serious in character as to constitute a major obstruction to the success of the N.R.A. program. The strikes are unquestionably in large part an outgrowth of violations and evasions and are thus directly connected with the question of compliance.

(Signed) Harry K. Sorensen,
District Manager."

CHAIRMAN ROPER: Mr. Sorensen was in here about an hour ago and I told him I did not have time to talk to him but if he would put his suggestions in writing, we would consider them.

Is there anything else?

MR. JENSEN: This is an abstract of a report which has come up from the Liaison Office of the Administration:

"The District Offices continue to report that the public attitude toward the NRA is somewhat critical due to the apparent lack of compliance and failure to enforce. The formation of Compliance Boards is having some stimulating effect, but a certain apathy and let-down in enthusiasm is noticeable in certain circles. The labor situation in many sections, with innumerable strikes is adding to the fear that the plan will not be successful."

CHAIRMAN ROPER: Are there any remarks you wish to make, General?

GENERAL JOHNSON: I imagine that this report of Sorensen's is pretty near the fact. It is true that that situation in Pennsylvania is pretty terrible, and I think it is true also that it is largely due to this terrific strike situation.

The Ohio letter is awfully hard to answer. Something has got to be done about it, but we can hardly tell them what the complete chart of the National Industrial Recovery Act is going to be over the term of its life. We have been just acting from day to day as things develop and as we could

see things a little more clearly. I think we ought to make some attempt to answer that.

CHAIRMAN ROPER: You see there (passing the letter to Secretary Perkins who had just arrived) where State laws are coming in for consideration, Madam Secretary, as to what extent the State will assume responsibility under the State laws and how they can be coordinated.

SECRETARY PERKINS: Well, General, I think that step which you asked me to confer about last week on Friday and Saturday and again today (my people are working with your people now) may do a good deal to put the State laws in their proper relationship regarding this whole thing. It is something that has to be studied carefully. In general, it is true that the State law is sovereign. The State officers must enforce the State law, whatever it is; but if we swear some of them in as federal officers they can almost do the same thing under the national law. That has to be carefully worked out.

GENERAL JOHNSON: I think it answers several of these questions because, as I said, we have a letter here from the Philadelphia District Manager saying that the respect for the National Recovery Act--the faith in it--has declined markedly in Pennsylvania due to lack of enforcement of the--he says--codes already signed by the President; but I do not think there is anything in that unless he is referring to the coal situation and to our lack of vigorous enforcement of the Blue Eagle Agreement. I agree with that. I think it is literally true; but I also think we should get that thing we are conferring on worked out, for we cannot very well move until it is worked out.

SECRETARY PERKINS: And it would be utter folly to attempt to do that kind of thing in haste; don't you think so, General?

GENERAL JOHNSON: Of course it is true. I am getting very much disturbed on it; because we have never moved on enforcement some people say we are never going to.

SECRETARY PERKINS: Of course we have had a lot of this hysteria, but I think we ought to make it clear from now on that the first or formative period is over, as General Johnson has so often said; and you have to use equally good tactics in bringing people in-to line on compliance, and that you have to have the same kind of conferences on compliance, of course, only in another tone.

GENERAL JOHNSON: A good deal of that is being done through the temporary boards; but we have got to move more vigorously, and our thought has been that when we come up against a court case we want an awfully good one from our standpoint; but when the time comes it will probably be a weak case that we have to go to court on. We have had a lot of trouble with the steel companies on the question of their captive mines. I have sometimes felt they were going to do something along the line of their general representations, but I am beginning to feel that they are stalling on us. It takes a terrific amount of time because you are dealing with the heads of all the large steel companies and they just won't play with anybody.

DR. DICKINSON: General, if you foresee a court case on a rather weak point with them, would it not be desirable to try to get a good one in ahead?

GENERAL JOHNSON: Yes, if we could get a good one. When it comes right up to the trough these people resisted and chiseled; but as I have said very frequently, I do not think we have a case of wilful non-compliance.

SECRETARY PERKINS: You mean in the end they come around?

GENERAL JOHNSON: Yes, we had some we thought were going to be beauties, but we lost them. There is no question that we have got to get straightened out the differences of opinion between us and the Department of Agriculture, and perhaps between us and others right around this table. The farmers come in and say "You take that Eagle down or we won't trade with you." Why? "Because you fellows are getting yours under the NRA, but under the Agricultural Adjustment Act we are not getting ours." That feeling is growing. You can't go along here that way. It is a terrible thing; you have just got to stop it.

CHAIRMAN ROPER: You have to get in step.

JUDGE STEPHENS: I would like to report that the Department of Justice was called upon by Mr. Secretary Ickes to bring some prosecutions in Brooklyn against violators of the Oil Code---specifically prosecutions for selling at other than the posted price and for violations of the wage and hour provisions of the code. We went over the matter very thoroughly with Mr. Secretary Ickes' representatives---Mr. Cummings and myself and one of my assistants---and were unable to convince ourselves in the Department of Justice that the prosecution could succeed for lack of any interference with interstate commerce; and since these are gasoline station prosecutions, which are at the wrong end of

interstate commerce from the standpoint of prosecution, we were very doubtful whether the prosecutions could succeed and we so advised Mr. Secretary Ickes; but he had apparently decided on prosecution. We told him we doubted whether we could win the cases but if he wanted to take the responsibility of going forward we would put them up to the court to the best of our ability.

CHAIRMAN ROPER: Where are those cases?

JUDGE STEPHENS: In Brooklyn, New York.

GENERAL JOHNSON: What about the milk cases?

JUDGE STEPHENS: The milk cases are pending on appeal.

COMMISSIONER MARCH: Did you have some cases down in Texas on the Oil Code?

JUDGE STEPHENS: Not to my personal knowledge.

CHAIRMAN ROPER: If you will notice No.9, that is one Secretary Ickes wanted to bring up but he is not here. We might just postpone further discussion of this question awaiting his arrival; and I wish the Secretary to inquire if he is coming.

JUDGE STEPHENS: I might say with respect to that Ohio letter that we had a similar situation with Missouri. The Attorney General of Missouri came down by special appointment and said their anti-trust laws would interfere with the NRA program locally. We felt as you did, General, that we could hardly plan a campaign with respect to State laws. We did, however, suggest the matter be taken up with the Governors at the Governors' Conference. I also asked them to call on you.

CHAIRMAN ROPER: What would the Board suggest as an answer to that letter?

GENERAL JOHNSON: I think in the first place that whoever is in charge of that ought to talk with Richberg or somebody in his department because they have prepared some of these State laws and discussed them.

CHAIRMAN ROPER: Why shouldn't I turn that over to Mr. Brown?

GENERAL JOHNSON: It is awfully hard to answer that letter.

CHAIRMAN ROPER: If the Board approves of it, we will ask Mr. Brown to take that letter and discuss it with Mr. Richberg and others.

DIRECTOR DOUGLAS (who had arrived a few minutes before): This letter raises the basic question of what you propose to do in the way of permanent legislation?

SECRETARY PERKINS: We just said it is too early for that.

CHAIRMAN ROPER: Will you please let Director Douglas see the letter.

SECRETARY PERKINS: Certainly!

I suppose every officer receives inquiries about the status of the captive coal mines. The Governor of West Virginia is on my trail. There is a sympathetic strike in Weirton. Whether there is in the Weirton Steel Company any violation of the code, I do not know; but I know it is a sympathetic strike. What he wants is something on which to base his communication. He has just had a request by the Pennsylvania Railroad to give them police protection to the tune of 34 special officers to protect some shipment of freight coming in to the Weirton Steel Company. I suppose it is coal; I do not know what else could require so much protection.

GENERAL JOHNSON: If the Board wants to take up the time, I will be glad to tell them about it, but it is a long, sad story.

CHAIRMAN ROPER: I think the Board would be interested.

GENERAL JOHNSON: Of course the Bituminous Coal Code was the most difficult of all. The United Mine Workers were carrying on a vigorous campaign and everybody was in a state of jitters. It required twice as much as all the rest of the work combined. It was finally absolutely solved so far as an agreement between the United Mine Workers of America and the owners of the commercial mines was concerned, and all the time we all knew we were coming closer and closer to the question of the captive mines, because the steel corporation has continually said that if it recognizes the Union that means the immediate organization and unionization of the whole steel industry. As a matter of fact, that is not correct. I know of my own knowledge that the American Federation of Labor could not at this time enter a campaign with the steel industry unless they wanted them to. They might create a lot of bloodshed and trouble but as for going in and organizing the steel industry at this time, they have not the money or the strength to do so; but nevertheless the steel industry feels they are not going to comply with this code. Of course they have never said so, and negotiations with them are now taking up as much time as the coal industry did. They are following a dilatory policy intended to delay in the hope that settlement of the bituminous coal situation will take the pressure off them, and they will get by without making sufficient concessions.

As far as Lewis and his crowd are concerned, I told them I thought the success of the whole recovery program depended

on his living up to that. My report from them and from all over the whole bituminous coal field indicates he is doing his part of this thing one hundred per cent. This is the case, that Lewis' hold on his organization is not too strong and further than that, there is a distinctly antagonistic element which has found this the place for them to concentrate their efforts. Richberg said there is a loose tie between the disturbances in Illinois and those in Pennsylvania. Of course there are a lot of coal miners that have no work and they are being supplied with funds with which to carry on their agitation.

In compliance with the President's request yesterday, one of the last of the commercial mines voted to go back to work. At two o'clock the next morning men began to come in and by dawn they had so many that they actually went out and picketed the men's houses and would not let them come out. What they say to the men is this: "Lewis has sold out and the Federal Government is not going to do anything about this, and the proof is look at the captive mines. They stand out until they have made some move toward bargaining collectively. Don't go back, and if you try to go back we will prevent you." They finally got down to the point where the United Mine Workers asked the steel corporation to recognize them and to put into effect the conditions that existed in the other commercial mines. They promised to do that at one time. I suppose they will say they did not.

Finally, the President got them down and issued a statement that you saw in the papers, the seven-point statement. They

agreed that if there was a disagreement, it would be left to the President. The President told them he would give them every chance, but if it does not amount to carrying this out we would have to act. They said: "We are in this kind of situation; our responsibility is back to our Boards of Directors. If the President orders us to do this we will do it." I said: "What do you mean by that? Do you mean if the President wrote a letter to you that in the interest of the peace of the State of Pennsylvania he demands that you do this you would do it, or do you mean you would require a hearing under Section 4-a on the check-off?" That is why this is the weakest kind of case to go into the courts on. They dodged that question. They told me they were meeting and they would try to devise a formula that would save their face and yet give the men what they wanted. But they are making a lot of trouble and the Governor won't or doesn't do anything to stop them.

DR. DICKINSON: What State is that?

GENERAL JOHNSON: Pennsylvania.

SECRETARY PERKINS: They have been doing that in Illinois for two years.

GENERAL JOHNSON: The miners live forty miles out of the town and this picketing business is very easy, because there are forty miles of road. The Governor of Illinois sent a troop into one of the worst districts and disarmed them. This radical movement to prevent men from going back to work is the crux of the whole situation at this time. The thing is not over by any manner of means. In my own opinion it is going to result in absolute defiance of the United States Government, and this whole movement

by the steel companies,--I think they are going to go that far. I have private information that they are.

SECRETARY PERKINS: Lewis and the United Mine Workers have said right along that they believed that they could make agreements with the mine superintendents and that has been prevented by those roving bands.

GENERAL JOHNSON: The agreements have not been prevented. This case that I gave you is one where the men met with local superintendents and then went out and voted to go back to work. That was six o'clock in the evening, and by six o'clock in the morning the roving bands had moved in. It is the same situation in Illinois. For some reason, Governor Pinchot will not police those roads. In fact, he made the public statement he was going to discipline the swine in the steel industry. He is not doing it anyway and that is the crux of the situation.

DIRECTOR DOUGLAS: Then apparently a small minority is preventing the majority from going back to work?

GENERAL JOHNSON: Yes, on both sides. On one side there are 90 per cent who are willing to cooperate; and on the other side there are probably 35,000 of those roving miners and they are preventing going back to work.

SECRETARY PERKINS: There may be 35,000 miners roving, but there are about 150- to 200,000 who will never again be wanted in the industry.

CHAIRMAN ROPER: That is true. Do you think they are not under any special guidance?

SECRETARY PERKINS: There is a strong movement among the miners against John Lewis, and there has been for several years. Miners are

very peculiar creatures. I have never known miners who were not queer. Every miner is an individualist and a miners' organization is always a hard organization to handle. They have had their internal troubles in the United Mine Workers' organization for years. There is one particular group of miners that have for a number of years been anti-Lewis. They have built up a very strong feeling. They say "Don't trust Lewis, come with us." I think that is involved in this movement, don't you, General?

GENERAL JOHNSON: That is exactly what started it.

SECRETARY PERKINS: And in addition to that there were two or three other groups of disaffected miners who would also like to run the situation themselves.

CHAIRMAN ROPER: How can that condition be improved?

SECRETARY PERKINS: Lewis has been treating them as rebels for two or three years. It is rather a hard situation where a Union, through its leader, makes a contract and then does not live up to the contract. The only way to have peace in the industry or any kind of orderly procedure is to back the man who has made the contract and insist on living up to it. There are many things Mr. Lewis has done.

CHAIRMAN ROPER: Is there someone trying to displace Lewis?

SECRETARY PERKINS: Yes, plenty of them, but there isn't a chance.

GENERAL JOHNSON: Not only that, but he controls the American Federation of Labor.

SECRETARY PERKINS: There is a strong element against Lewis, but he has the majority.

GENERAL JOHNSON: This is also true and very interesting. I checked it from both sides. Lewis has lived up to his contract a hundred per cent and there is not one violation in the State of Pennsylvania that was not started by the other group--not one single case.

SECRETARY PERKINS: They have been very provocative. They are slightly fanatical. I have had several delegations come in to see me and they are attractive people. You like them and feel sorry for them. They are old fashioned like the mountaineers, but they are just about as hard to handle as those mountaineers.

GENERAL JOHNSON: I have talked to about a hundred of them and you are quite right as to their attitude and frame of mind.

SECRETARY PERKINS: There are two or three other groups that are hard to handle. It is a very bad situation.

CHAIRMAN ROPER: Is there no way of interesting the leaders of these disaffected groups?

SECRETARY PERKINS: Yes, if you will hire them to work for the Department of Commerce for a large salary.

CHAIRMAN ROPER: I am afraid that would turn this into another big problem.

SECRETARY PERKINS: They want to be the officers and have the salaries that go along with them.

GENERAL JOHNSON: Ninety per cent of the men would go back.

CHAIRMAN ROPER: Isn't there some way of indicating to these leaders how very vital cooperation is this time while we are putting over this great recovery program and how much credit they could get?

SECRETARY PERKINS: A few weeks ago I had some hope that they were going to do that. A group of them said they would do that, that it

was a lost fight anyhow, but apparently their leaders thought differently.

CHAIRMAN ROPER: I take it there is nothing we can do. This discussion, however, has been very helpful to me.

Is there anything else you wish to submit, General, with regard to the activities of your organization?

GENERAL JOHNSON: There are several things going on here, but I have nothing special in mind. I shall be glad to answer any questions, however.

CHAIRMAN ROPER: How about No. 3-- "Report from the Committee studying price-fixing"?

DR. DICKINSON: I have a communication here from that Committee, signed Alexander Sachs, Chairman, by S. M. De Brul, Secretary. I may say that the Committee which was appointed some time ago had a sub-committee on the retail price code, the so-called loss limitation provision of the retail price code, and the main Committee and the sub-committee got together on recommendation which was submitted to General Johnson one day last week and as a result of that interview certain changes were made in the report and recommendations, and I believe that the revised report and recommendations, General, were sent to you. (See Appendix A.)

GENERAL JOHNSON: I never got it.

DR. DICKINSON: I asked Du Brul a few hours ago and he told me it had been sent to you.

CHAIRMAN ROPER: Let the General read the report.

DR. DICKINSON: I will pass copies around; this is the revised report.

CHAIRMAN ROPER: What is the recommendation of the report, Doctor?

DR. DICKINSON: As you probably know, there is a so-called loss limitation provision in the retail price code which was a provision that it would be unfair competition to sell at less than a 10 per cent mark-up above the invoice price. In substance, this substitute recommendation is that the 10 per cent be dropped out and that with exceptions substantially similar to the exceptions contained in the provision it should be regarded as an unfair method of competition to use loss leaders; and the selling of loss leaders is defined as the selling of items at less than the invoice price or the cost of replacement, whichever is lower; and that in any case where a member of the industry is charged with the alleged violation of this section, the burden of proof rests upon him to show that sales below invoice or replacement costs did not involve the use of loss leaders.

There are two changes; one is that the sale at less than invoice price is not made per se unfair competition; it is simply made presumptive of the use of a loss leader and, secondly, that the 10 percent is dropped out. That recommendation of a substitute is supported by this brief which precedes it. The first three pages here constitute an argument as to why, in the opinion of the Committee, the provision as it originally stood with its 10 per cent mark-up is regarded by the Committee as unwise.

I also have here, and I was informed that this had not yet gone to the General, a similar report with relation to the retail

price maintenance provision of the Drug Code, which recommends certain changes there.

CHAIRMAN ROPER: Shall we deal with one at a time? What is your Committee recommending?

DR. DICKINSON: The recommendation of the Committee is that in the general retail code this substitute provision which they head "the loss leader provision" appearing on page 4, Article 8, should be substituted for the present Article 8, which is entitled "Loss limitation provision" in the code as it now stands.

MR. BROWN: Was the Committee's conclusion unanimous, Doctor?

DR. DICKINSON: I am given to understand that it was. I have not myself followed the thing through since our talk with General Johnson, but Mr. Du Brul got together the sub-committee, or as many as he could reach in the interval and as many of the main committee as possible. It has been somewhat difficult to get an assembled meeting of the Committees, but I understand that Mr. Du Brul and Mr. Means have gone about and showed this to all the members of the Committee that they could get in contact with and that it has been approved by all to whom they have showed it consisting of the majority of both committees.

CHAIRMAN ROPER: I take it your Committee would wish the Board to refer this to General Johnson.

DR. DICKINSON: The Committee was appointed by the Board to study this matter and this is the result of the Committee's study, so that I take it whatever the Board would care to do with the report, would be in order.

CHAIRMAN ROPER: I am trying to get a recommendation from you.

DR. DICKINSON: The recommendation is that the provision here be substituted for the provision now in the retail code.

COMMISSIONER MARCH: The report is that you cut out the 10 per cent.

SECRETARY PERKINS: I don't think I understand yet just what the recommendation is. Are you recommending that in the retail code there be a requirement to sell only at cost--that is, not to sell below cost or below the invoice cost?

DR. DICKINSON: Perhaps it would have been clearer if a copy of the Retail Code as it now stands were before us. It is only possible to understand this by laying it side by side with the provisions for which this is a substitute.

SECRETARY PERKINS: As I understand it, there is a provision which in general is that no member will sell any article at less than invoice cost, plus 10 per cent.

DR. DICKINSON: That is correct.

SECRETARY PERKINS: And this is proposing that they will not agree to sell any article at less than invoice cost?

DR. DICKINSON: With this difference: with the code as it now stands they agree to sell at not less than invoice price plus 10 per cent, subject to the exceptions. Now they do not here, as I understand this, agree not to sell at less than the invoice price. They agreed not to use loss leaders and they say that a sale at less than the invoice price shall be presumptive evidence that the thing is a loss leader, but that if the person who sells it sells at less than 10 per cent, and sustains the burden of proving that it is not a loss leader, then he may go on.

SECRETARY PERKINS: What about selling of end-of-season goods?

DR. DICKINSON: That is provided for, Madam Secretary, at the bottom of page 4, under the heading of "Exceptions." There are various types of sales there, such as merchandise sold as bona fide clearance, perishable merchandise, imperfect or actually damaged merchandise, discontinued lines, merchandise sold upon the final liquidation of a business, merchandise sold in quantity on contract to public, I suppose that is carriers, government departments, hospitals, schools and colleges and other institutions not for resale and merchandise sold or donated for charitable purposes or unemployment relief agencies. There are also two other exceptions. The bulk of these exceptions are contained in the present provision. I think there have been some additions to the exceptions, but the bulk of them are contained in the present provision.

The weight of opinion in the Committee was directed particularly against the principle of the mark-up--percentage of mark-up and the arguments of the Committee are contained on pages 2 and 3. In the first place--and I might point this out because I think it is important--the provision as it at present stands would leave the small independent retailer at a serious disadvantage because it does not take care of the quantity discount problem. In other words, under the code as it at present stands, if a large chain store by one means or another, fair or foul, were able to obtain a given article

by quantity purchase at fifty cents per unit, then by the present provision of 10 per cent mark-up that chain store could sell that at fifty-five cents.

GENERAL JOHNSON: That condition exists anyway.

DR. DICKINSON: No, because this provision contains the following:

"Except as hereinafter provided, sales of items at less than the lower of invoice or replacement cost, without deducting any quantity discounts, cumulative, retroactive or other special discounts, or rebates, not extended and given to the trade generally, shall be prima facie evidence of the use of loss leaders."

GENERAL JOHNSON: That is exactly the condition that exists at this moment.

COMMISSIONER MARCH: It is provided for in the chain store matter.

That is what the chain store has been doing all the time.

DR. DICKINSON: We have attempted to correct it; whereas the code as it stands, Article 8, does not attempt to correct that particular condition, this substitute provision does attempt to prevent it.

COMMISSIONER MARCH: What do the large stores say about this?

DR. DICKINSON: I do not know.

GENERAL JOHNSON: People in the retail trade, large and small, want the 10 per cent mark-up. As I understand our duty under this law, the Government invites these people to come in and say what they need in order to stabilize their industries and they do that in a public hearing. It is something in the nature of an agreement, but not quite. We have taken things that we were not willing to agree to and thrown them out and called the

people back. If we get to the place in the execution of this law where somebody who has some theory can move in, not in the public hearings where the arguments are conducted but some place like up in this room, and begin to change these codes, you just knock the bottom out from under it.

DR. DICKINSON: These people are not moving in as outside interested parties.

GENERAL JOHNSON: But the people have a right to answer it.

DIRECTOR DOUGLAS: It seems to me that the Government, whatever the agency of the Government may be, has a right and it has a mandate to step in and say "We do not care what it is, if it is wrong, you can't have it."

GENERAL JOHNSON: We do that daily. But on a question of this kind which is largely conjecture on the retail trade, they should have a right to be present and argue against this thing in the hearing.

SECRETARY PERKINS: Was any argument made at the public hearing against price-fixing?

GENERAL JOHNSON: I suppose there was. I could not answer that off-hand.

DR. DICKINSON: This is a matter of policy.

DIRECTOR DOUGLAS: Price-fixing is entirely wrong and fixing it at 10 per cent is price-fixing.

GENERAL JOHNSON: It is not price-fixing!

DIRECTOR DOUGLAS: If this thing goes through, mark me and mark me well, the next thing will be a fixed price! You know there are a great many clamoring for a fixed price right now.

GENERAL JOHNSON: That is an argument of conjecture as to the way these things are going to go.

DIRECTOR DOUGLAS: We will call it conjecture if you choose, but I am not going to approve price-fixing!

GENERAL JOHNSON: It is not price-fixing!

DIRECTOR DOUGLAS: I think it is just as wrong as it can be. What you are trying to do is to get at the loss leaders.

GENERAL JOHNSON: We found that the most destructive influence in connection with the coal industry was the principle of low prices at any sacrifice and always the sacrifice was human labor, and that is the thing in this. It doesn't come out of any other source in the world but that. I have had a liberal education on that point and I know there is only one place that it can come from and that is out of the hours and living conditions of labor.

DIRECTOR DOUGLAS: I don't think that follows.

GENERAL JOHNSON: You probably haven't had the experience I have had. I have become a convert to an idea I did not have when I started out.

DIRECTOR DOUGLAS: I think under great pressure people become converts to ideas they would not otherwise adopt.

GENERAL JOHNSON: I am talking about the evidence.

DIRECTOR DOUGLAS: I think it is a basic and fundamental mistake.

DR. DICKINSON: Doesn't your argument lead to a 26 per cent mark-up?

GENERAL JOHNSON: No, I don't think so.

DR. DICKINSON: The actual cost is 26 per cent.

GENERAL JOHNSON: The average is 26 per cent; the minimum cost is above ten. I believe under no possible circumstances would it

guarantee a profit to anybody.

I have a suggestion; I like this substitute except for one thing. I believe you might work out something like this, that nobody will sell for less than cost, plus half the cost of doing business, and in any event not less than cost, plus 10 per cent.

DR. DICKINSON: If you once admit that you have to add something to the cost of doing business, I do not see where you can draw the line.

SECRETARY PERKINS: Isn't it true that we have in recent years provided a good deal of understanding by this cost accounting system which has also greatly complicated our economic situation? And if you are going to add a proportion on cost of doing business to every article sold, aren't you throwing out the whole economic situation? Aren't you throwing out that curious movement of goods which comes from satisfying supply and demand? Some articles cost a great deal more than others do.

GENERAL JOHNSON: You can't make that distinction. I have tried that over and over again.

SECRETARY PERKINS: Why should you arbitrarily put 10 per cent on everything? Some goods sell themselves practically, while others require special salesmanship and other expenses. I am puzzled by this method of cost. When you say invoice cost, that is clear so far as retailers are concerned.

GENERAL JOHNSON: There is no question about that.

SECRETARY PERKINS: Have you gone over it with them to see to what extent their use of loss leaders or their use of the practice of selling below invoice cost actually enters into their wages in retail stores?

GENERAL JOHNSON: It would be very hard to do that, but it is well known that the use of loss leaders is practically driving independent people out of business.

SECRETARY PERKINS: What do you think is the proper thing to do, General?

GENERAL JOHNSON: I have not quite made up my mind. I think the thing to do about this report of the Committee is just to present it to the President along with everything else and let him decide the question.

SECRETARY PERKINS: I mean what is your opinion with regard to the cost and percentage above the cost?

GENERAL JOHNSON: I think the whole story to be gotten out of these hearings is that the practice of entering into competition by means of selling stuff below cost of production is at the very heart of a lot of this disruption.

SECRETARY PERKINS: But that is in manufacturing.

GENERAL JOHNSON: It is here too, in the invoice cost of stuff and in the expense of doing business. One has no income until those are taken off. Let's take a situation that was funny in some ways in connection with this Retail Code: the worst treaters of their workers are these small five-and-ten cent stores. One of the men said to me "You are going to hurt we little fellows with those provisions." But they work their people 65 hours and pay them almost nothing and that is the way they maintain

their competition. That is the most striking thing in the merchandising field. There was a man pleading for the right, saying he sold things to people cheaply. But how? By paying people less than was decent to pay them! He was getting very low cost of distribution.

DR. DICKINSON: There is this difference between the merchandising field and manufacturing. The problem of cost is very much more complicated. Getting at the cost of production is one of the difficulties in the manufacturing field.

CHAIRMAN ROPER: There is a great question of policy involved and I have an idea that the Board would like to have General Johnson's suggestion prevail, namely, that this recommendation go, with any other data any other member of the Board wishes to have attached, to the President at the time he is considering the Retail Code.

GENERAL JOHNSON: Of course we have to take action. I have not quite made up my own mind, but I am going to have a meeting with the people in the Agricultural Department, from which most of this opposition comes and see if we can find some way to compromise views that will come as near as possible to satisfying everybody. I would rather not pass on it if the Board is willing to let it go.

CHAIRMAN ROPER: That is, after we get the Retail Code we will have a further talk. I have a copy of it now.

GENERAL JOHNSON: There is an absolutely cognate question right now.

DR. DICKINSON: The same question, food and groceries.

CHAIRMAN ROPER: Are you suggesting that we invite the people over from Agriculture for a special meeting?

GENERAL JOHNSON: I tried to talk that out with them. I think it would be a terrible thing for us to come out with a diverse decision on that point.

COMMISSIONER MARCH: In this report there is something said about large and small stores. That is not to be dealt with?

CHAIRMAN ROPER: Will it be acceptable to the Board to hold this matter in obedience for further consideration until a special meeting of this Board Thursday afternoon?

GENERAL JOHNSON: I think we ought to leave it open and say just as soon as we can, subject to call.

CHAIRMAN ROPER: Will that be satisfactory? If that is satisfactory this matter will be held in obedience subject to a special meeting to be called by the chairman.

Now, what about the drug memorandum?

DR. DICKINSON: There is no need to go into that.

CHAIRMAN ROPER: Very well. The next item is one of sustenance---request for an allotment of funds for expenses of the National Recovery Administration for the fiscal year ending June 30, 1934. Perhaps you better read this letter by General Johnson.

Mr. Jenson then read the following letter:

"September 30, 1933

"Hon. Harold L. Ickes
Administrator of Public Works
Washington, D. C.

"My dear Secretary Ickes:

"This is to request an allotment of funds for expenses of the National Recovery Administration for the fiscal year 1934 of \$3,120,000.

"There is attached a statement indicating the basis of estimating this requirement. The first column shows the actual obligations for the first quarter. The second column shows the rate of expenditure at September 30, these figures being of equal significance in the case of an expanding organization. The third column shows the estimated requirement of expenditure to June 30, 1934, based upon the data above referred to. From the total of this column is deducted the sum of the interim allotments already made.

"Personnel. The requirement for the fiscal year is estimated at an amount somewhat greater than the current rate of expenditure. This is because --

- "(1) It has been possible in the initial stages of operation to secure much valuable service either free or at compensation substantially lower than worth. This agreeable situation cannot be expected to continue indefinitely. Ultimately these services must be paid for.
- "(2) The personnel requirement for the writing of codes and their subsequent administration is still expanding. Early completion of codes, and efficient administration after completion, are vital to the recovery plan. It is submitted that there should be no reluctance to engage the personnel reasonably required for these purposes. This requirement will be offset only in measure by the termination of other special endeavors, such as the Blue Eagle Campaign.

It must be remarked that the estimate for personnel is a conservative one, within which it is hoped that expenditure may be confined without hazard to the program. The considerations expressed in (2) above will indicate that the estimate may prove inadequate.

"Per diem expenditures are chiefly to obtain for limited periods technical advisers to the three advisory boards in connection with the analysis of codes.

"Field Personnel. Personnel services in the field are almost entirely at district offices of the Department of Commerce in connection with the handling of the President's Reemployment Agreement and complaint of violation thereof.

"Printing and binding. The substantial portion of these expenditures has been devoted to the Blue Eagle campaign. A substantial additional amount will probably be required for a campaign to stimulate buying. Beyond that, the estimate is largely for printing codes and for stationery. Necessarily this estimate cannot foresee the requirements of special educational programs which may arise in the future.

"Furniture and Fixtures. Every effort has been made to locate and obtain surplus furniture and fixtures elsewhere in the Government Departments, and purchases have been made only after such supplies have been exhausted.

"Other Objects. The Division of Press Intelligence is attached to the Administration only for administrative purposes.

"It is believed that other items of expenditure are self-explanatory.

Very truly yours,

(Signed) Hugh S. Johnson,
Administrator.

APPROVED:

Special Industrial Recovery Board

Chairman."

EXPENDITURES

NATIONAL RECOVERY ADMINISTRATION

<u>Objects</u>	<u>Obligations June 16, 1933 to Sept. 21, 1933</u>	<u>Annual Rate of Expenditures at Sept. 21, 1933</u>	<u>Proposed Allotment to June 30, 1934</u>
Salaries	\$332,322.02	\$2,056,655.00	\$2,500,000.00
Salaries Per Diem	75,724.12	501,232.00	300,000.00
Travel Expenses	18,123.99	66,912.00	50,000.00
Printing & Binding	374,353.87	1,381,200.00	800,000.00
Furniture & Equipment	52,418.69	193,540.00	100,000.00
Press Intelligence	2,218.93	20,835.00	50,000.00
Field Salaries and Expenses	129,033.81	528,000.00	350,000.00
Miscellaneous	37,013.07	136,000.00	100,000.00
TOTAL	<u>\$1,021,208.50</u>	<u>\$4,884,574.00</u>	<u>\$4,250,000.00</u>
Deduct Allotment Already Made			<u>\$1,130,000.00</u>
Allotment Now Requested			<u>\$3,120,000.00</u>

DETAIL OF PAYROLL
(EXCLUSIVE OF PER DIEM PAYMENTS)

NATIONAL RECOVERY ADMINISTRATION

ANNUAL RATE ON SEPTEMBER 15, 1933.

	<u>Annual Rate on Sept. 15, 1933</u>
National Industrial Recovery Board	\$ 9,640.00
Executive Offices	42,712.00
Advisory Boards	120,375.00
Industry Divisions	416,149.00
Legal Division	141,160.00
Research & Planning Division	187,404.00
Public Relations Division	99,544.00
Code Analysis Division	39,960.00
Blue Eagle Division	295,026.00
Correspondence Division	101,320.00
Chief Clerk's Section	128,548.00
Mimeograph & Publications	253,201.00
Central Records Files & Mail	171,340.00
Personnel Section	31,640.00
Unassigned	18,636.00
Press Intelligence Division	17,680.00
TOTAL	<u>\$2,074,335.00</u>

CHAIRMAN ROPER: This report, as you see, carries an expenditure up to this time, or rather expenditures already provided for, of \$1,130,000. General Johnson is asking now for \$3,120,000 to complete this fiscal year to June 30, 1934, when the total, including both these provisions, would amount to \$4,250,000. What is the pleasure of the Board?

COMMISSIONER MARCH: I move that it be approved.

DIRECTOR DOUGLAS: Has that been budgeted?

GENERAL JOHNSON: As far as it can be budgeted. It is really not worth a cent as indicative either way. It is just impossible to tell. I thought a long time ago that we would do this on a million and a half dollars. I hope the whole of industry is in with these codes. Each one of the codes requires an immense amount of investigation. We are certainly getting everything out of the people they have. They are all working night and day. I would like to say I think there will be a marked decline before very long, but in the meantime all kinds of things are being suggested and added on.

SECRETARY PERKINS: I think if it had not been such a success it would have cost less.

DIRECTOR DOUGLAS: I did not ask that question as a criticism. What I am trying to do is to get a complete picture of the increase in the national debt.

GENERAL JOHNSON: I am in sympathy with you, and if there was any way in the world I could answer that question with accuracy I would do it.

DIRECTOR DOUGLAS: All I am trying to get from the various emergency organizations is a picture of the expenditures.

GENERAL JOHNSON: It hurts me all over every time we spend a nickel.

DIRECTOR DOUGLAS: There was no criticism in that. Are you sending
in an apportionment sheet for the Treasury?

MR. BROWN: For what has been allotted already.

DIRECTOR DOUGLAS: And this would go in on the apportionment sheet?

MR. BROWN: Yes.

DIRECTOR DOUGLAS: It is very difficult here and in the R.F.C. and in
the Public Works to make any kind of estimate of what the
expenditures will be, and yet somebody has got to paint a
picture of what the figures in the national debt will be.

GENERAL JOHNSON: We try to use existing agencies. There is a project
now for a national organization that will serve all of these
administrations.

CHAIRMAN ROPER: You have the motion and the second. Is there any
further discussion of this matter of approving this request?
If there is no further discussion by anyone, will all in
favor indicate it by saying "Aye"; those opposed by "No."
It is so ordered.

We now pass on to the next item which refers to the
organization chart mentioned last week.

GENERAL JOHNSON: Everybody is interested in that I know. The question
is simple enough, but this matter of enforcement and com-
pliance has got to be worked out with other Departments of
the Government, and I do not think we ought to attempt to
publish an organization chart until we get that settled.

SECRETARY PERKINS: I think it is very near completion.

CHAIRMAN ROPER: Then we are not ready to study the chart at this time.

GENERAL JOHNSON: The chart would be incomplete without the compliance organization.

SECRETARY PERKINS: And they are working on that very intensely today.

GENERAL JOHNSON: We are administering the codes in four divisions and have the four best Deputies working on them.

CHAIRMAN ROPER: We do not need to discuss this further now because there is no chart before us. I have been giving some thought to the Foreign and Domestic Commerce Division of this Department and it seems to me that something worth thinking about would run like this: that the Bureau might be divided into two divisions, a Foreign Commerce Bureau and a Domestic Commerce Bureau and the Domestic Commerce would be this, General.

GENERAL JOHNSON: Yes.

CHAIRMAN ROPER: And appointed at the head of that Bureau, if you please, would be the very strongest and best equipped man for the purpose, and he would have under him the several Deputies who would handle the various units and endeavors that might be charged to this Department. I say it seems to me that might be worth thinking about in connection with the chart.

GENERAL JOHNSON: I think that undoubtedly the eventual resting place is the Department of Commerce.

CHAIRMAN ROPER: I am thinking of the final situation.

GENERAL JOHNSON: I have never given any thought to it.

CHAIRMAN ROPER: You can see how that would keep this work in a state so that there would not be confusion and stepping on toes and

duplication in personnel and perhaps in expenditures. I just throw that out as something we might be thinking about.

GENERAL JOHNSON: Will you state it again?

CHAIRMAN ROPER: We have a Bureau of Foreign and Domestic Commerce. The Domestic Commerce part of the Bureau has never been, in my opinion, adequately developed. We have given far more attention to Foreign Commerce. Do you see the point?

GENERAL JOHNSON: Yes, I see it.

CHAIRMAN ROPER: Now, if an important segment of this work is to drop into the Department of Commerce, then this gives an opportunity of organizing the Bureau of Domestic Commerce and would enable the Department, it seems to me, to develop a very weak cog in the Department as I see it. Mr. Hoover and all concerned, as you know, generally looked primarily to the Foreign Commerce. It just looks to me that there is a very interesting field there.

The next item is discussion of the need of financing small manufacturers. Chairman March wanted to say something on that.

COMMISSIONER MARCH: I have had a great many complaints about small manufacturers not being able to get any money. They cannot get it from banks and it is very hard to get it from the R.F.C. One concern had orders by the thousand that they could not fill. There are two reasons why they cannot finance themselves; one is the codes. The paper people provided that they would not give longer than thirty days' credit. I believe that before

they were giving six months to a year credit. Then the labor question comes in and they have to pay more for their labor and the hours are shorter and some of them say they will just have to close up.

GENERAL JOHNSON: They have orders on the books?

COMMISSIONER MARCH: Yes, they have.

GENERAL JOHNSON: Why don't they get the money from the banks?

CHAIRMAN ROPER: The banks don't seem to back them. One firm told me this morning they would have to close down if they didn't get a loan. It seems to me the financing of these organizations has a great deal to do with the success of the Codes.

GENERAL JOHNSON: That is a very, very critical situation.

COMMISSIONER MARCH: It is really pathetic for manufacturers to be required to close down through no fault of their own.

DIRECTOR DOUGLAS: Isn't it in essence that the Government be asked to finance the deficit of the manufacturers?

COMMISSIONER MARCH: That is what they were going to do, but it seems difficult to get it done.

DIRECTOR DOUGLAS: That is what they are asking the Government to do. They are operating at a loss, so the Government is asked to finance the deficit.

COMMISSIONER MARCH: Oh, no, if they took these orders and filled them there would be a profit on these orders.

SECRETARY PERKINS: But they have been operating on a loss.

COMMISSIONER MARCH: But they have plenty of collateral to put up.

DIRECTOR DOUGLAS: If that be true, I think there is a pretty good reason for the protection of credit in certain areas and to have

a deposit insurance fund that goes into effect on the 1st day of January. A good many banks--a good many thousand banks--are not in a position where they can qualify so they are not extending any credit.

GENERAL JOHNSON: That is one of the most serious things we are up against.

COMMISSIONER MARCH: It is the worst thing we are up against.

DIRECTOR DOUGLAS: I feel that if the Government steps into the field of financing manufacturers, we won't know exactly where we are going. I think it is a mistake personally, but if it is going to be done, I think we ought to have our eyes open.

GENERAL JOHNSON: I think there is already mechanism like that being set up to do some of those things.

DIRECTOR DOUGLAS: What is the agency?

COMMISSIONER MARCH: The R.F.C.

DIRECTOR DOUGLAS: What sort of manufacturers would the R.F.C. finance?

COMMISSIONER MARCH: Those that could not be financed by the banks.

DIRECTOR DOUGLAS: I think there is no authority for the R.F.C. to extend such credit. What they have attempted to do is to loan money to banks at a certain rate of interest and let the banks extend that to manufacturers.

GENERAL JOHNSON: The way it was announced in the press was that the R.F.C. was going to set up a bank which was going to extend credit to manufacturers.

DIRECTOR DOUGLAS: I don't think that has been done, and I don't think it is going to be done.

COMMISSIONER MARCH: The law provides that they can loan to banks, loaning companies or trust companies. They put these loans through loan or trust companies or banks and then the R.F.C. takes them.

DIRECTOR DOUGLAS: I am sure that has not been started.

COMMISSIONER MARCH: Did you see the rules the R.F.C. adopted to that effect?

DIRECTOR DOUGLAS: I saw the newspaper report.

COMMISSIONER MARCH: I saw the rules.

JUDGE STEPHENS: We have been making a very thorough investigation as to the possibility of setting up a National Bank in which the R.F.C. will take control of all the stock, for the purpose of discounting paper directly, making loans on cotton and purchasing gold; but I have been unable to convince myself that the legal setup authorizes it. It has not come to a conclusion I am sure. It is still under study.

CHAIRMAN ROPER: I am sure this matter is being given thought.

No. 7 on the agenda is about the classification of personnel. Do you wish to make a report on that today?

MR. BROWN: There is not much of a report to make. Mr. Peck has classified most of our personnel and I believe he expects the remainder will be completed by October 16. We have been waiting for an Executive Order before this can go into effect. We expect it will go into effect on October 16.

CHAIRMAN ROPER: No. 8--General, in your absence, this question came up--I believe I raised it myself--as to what this large group of business men that we consider officers could do by

way of assisting in creating support, public sentiment and public opinion in connection with our program. It seems to me that when you get your enforcement worked out it might be well to get the business men who are in accord with us to take hold of it in a very definite manner.

GENERAL JOHNSON: I am sure that as far as those men down in the Industrial Advisory Board are concerned they all will.

CHAIRMAN ROPER: This is a group of 50. I think they might, by being so well distributed over the United States, give great moral support to the Administration.

Between meetings of the Board the Chairman has approved, subject to your approval, 19 appointments to be added to General Johnson's personnel. There are no large salaries involved, the largest being \$3600 to Charles H. Winship, Jr., Liaison Officer, and \$3420 to Joseph Earnest Briscoe, Assistant to Deputy Administrator. The others range from \$2400 down to \$972. Will you approve of the action?

JUDGE STEPHENS: I move that it be approved. (See Appendix B.)

COMMISSIONER MARCH: I second the motion.

CHAIRMAN ROPER: All in favor say "Aye"; it is so approved.

Is there anything else to be brought up?

SECRETARY PERKINS: I would like once more to make inquiry about the collection of statistical information which I think we discussed at one time, and at that time I represented my view that it would be both cheaper and better to have the necessary information with regard to code conditions and code compliance

on hours and wages as resulting from the code collected through the usual channels rather than having a separate inquiry made, and I wonder if any final action has been taken on it. I have just learned today of another situation where it is proposed in the Emergency Relief Administration to make a very large and elaborate study of unemployment, which I now learn they have been planning for sometime. We, in the Department of Labor, have been spending quite a lot of time and thought on this and expected to invite their cooperation when we got through; but I find they have taken somebody on their payroll to do the same thing. I know there has been discussion of the collection of statistical material through the NRA, and I think it was the result of a questionnaire that was to be distributed by letter carriers. That is exactly the work the Department of Labor has done for years, and it could enlarge itself on a temporary basis to do some extra work if there is an extra item needed--an extra coverage.

GENERAL JOHNSON: As I understand this resolution about gathering statistical information, I think we have done everything that everybody wanted.

SECRETARY PERKINS: You are collecting it; why not let the Department of Labor collect it?

GENERAL JOHNSON: As I recall the resolution it was to be done by the NRA so that there would be no duplication.

SECRETARY PERKINS: The questionnaire is all right so far as I know.

GENERAL JOHNSON: I found last night that you had written me a letter.

DR. DICKINSON: I thought that matter of the questionnaire had been settled. I think that was approved by Dr. Lubin.

SECRETARY PERKINS: The questionnaire was all right.

DR. DICKINSON: The Central Statistical Board appointed a Committee of which Dr. Lubin was a member. They threshed the thing around for several days and my impression from talking with Lubin was that the whole thing had been settled.

SECRETARY PERKINS: I think he would have no objection to the questionnaire. The question I am raising is whether or not these statistics should be collected by the permanent Department of the Government which has been handling the matter in the past.

GENERAL JOHNSON: I gave instructions that the questionnaire was to be sent over to the Board.

SECRETARY PERKINS: The questionnaire is all right. I think we may be getting into a serious situation if we do not use the permanent Government.

MR. BROWN: We are only sending out the questionnaire; we do not propose to compile it.

SECRETARY PERKINS: You are sending it out and the returns will come to you.

MR. BROWN: No, to the Bureau of the Census.

SECRETARY PERKINS: We have a mandate from Congress to collect this kind of information year in and year out whether the Census Bureau does it or not. We can expand it or we can make it a smaller coverage. It seems to me it would be a mistake to ask the Bureau of the Census to do what we are supposed to do.

DR. DICKINSON: The material collected would still have to be tabulated by the Census, because they have the machines for that kind of work. It goes to them simply for purposes of tabulation in the same way it would go if the questionnaires had been sent out by Dr. Lubin himself.

SECRETARY PERKINS: Would it not be a good idea to collect all information through the permanent institutions of Government in order to build up the permanent service so it is more adequate and also to keep the psychology of the public in the same habit of reporting to one agency of Government and not to many?

CHAIRMAN ROPER: Why not turn that over to Dr. Lubin and Dr. Dickinson?

SECRETARY PERKINS: I am merely raising it as a question whether or not we should not try to the very last item to use the permanent agencies of Government.

CHAIRMAN ROPER: Of course we are doing that in the Census.

SECRETARY PERKINS: Congress has passed a law in which it lays upon the Department of Labor the responsibility of collecting statistics concerning wages, hours and other working conditions. That is the proper duty of the Bureau of Labor Statistics of the Department of Labor. I naturally wish to see that Department strengthened by every experience--every worthwhile experience--which it can have. It would have to be temporarily enlarged in order to do this larger coverage. I do not want the manufacturers to get into the habit of reporting to the Department of the Census.

GENERAL JOHNSON: Does not the Department of the Census gather information on manufacturing?

SECRETARY PERKINS: Once in two years they take a census of manufacturers which is somewhat different from our report on hours and wages.

DR. DICKINSON: They were to perform this additional function because they have the machines for tabulating this material.

SECRETARY PERKINS: If you will refer that to Dr. Dickinson and me I think we can work it out.

GENERAL JOHNSON: This was merely a sporadic survey.

CHAIRMAN ROPER: If there is nothing else, the Board will stand adjourned, subject to call.

The meeting adjourned at 4:15.

APPENDIX A

October 9, 1933

Honorable John Dickinson
Secretary, National Recovery Board
Washington, D. C.

Dear Secretary Dickinson,

The Price Policy Committee herewith submits the attached report on the Minimum Price Fixing clause in the Proposed Retail Code.

Sincerely yours,

Price Policy Committee

Alexander Sachs, Chairman
by S. M. Dubrul, Secretary

October 9, 1933

FROM: Price Policy Committee
TO: National Recovery Board
SUBJECT: Price Fixing Clause in the Retail Code.

1. The Price Policy Committee which was appointed by the National Recovery Board has been considering the problems assigned to it at great length with particular reference to the question of the policy which the Administration should adopt with respect to the minimum price clause in the Retail Code submitted by the Deputy Administrator to the Administrator under date of September 30th. This clause reads as shown in Appendix A, herewith attached.
2. This clause is a direct form of minimum price fixing. It is not optional for the retailer, except for purposes of disposing of surplus stocks, etc., to price his goods at less than invoice cost plus 10%.
3. The retail trade has maintained that this clause should not be looked upon as "price-fixing" but only as a means of reducing the loss-leader evil. It is the feeling of the retail trade that such a limitation on selling price is required to abate this evil which, according to them, has contributed seriously to the demoralization of the retail trade in the period of the depression.

As we understand it, the loss-leader is an article, the price of which is deliberately reduced below the prevailing price of the same article in other stores in the same area, with the intention of creating an impression that all other goods in the store are equally attractively priced, and that the losses on the leader will be recouped out of sales of other items with higher mark-ups which will be purchased by customers attracted to the store by the loss-leaders.

4. While the loss-leader, as above defined, is an admitted evil, we question the wisdom of sanctioning minimum price fixing as a proper method to be employed in reducing it for the following reasons:

A. We feel that the provision as stated would leave the small independent retailer at a serious disadvantage compared to his larger competitors. In other words, the benefits which the small retailers expect would result for them under this provision appear to be largely imaginary, since under this provision large stores enjoying more favorable discounts than small stores could still run loss-leaders at prices within the terms of the code to the continued disadvantage of the small stores.

For this reason we question whether the provisions as herein stated will go far in the direction of abating the loss-leader evil.

B. This Committee objects seriously to the clause in its present form on the ground that it introduces the principle of minimum price fixing in that form which seems the most likely to develop into extensive price fixing in all lines of industry,--namely, the form of a percentage of mark-up. The dangers, both economic and social, inherent in price fixing of any kind are great and should be resorted to, if at all, only where an important public end is to be achieved and where no other means is at hand to deal with the problem. It is particularly important at the present time to avoid those forms of price fixing which will tend to produce results inconsistent with the ends of the recovery program and likely to defeat its effectiveness. The recovery program requires the restoration of a normal volume of operations above all else and should avoid efforts by means of price fixing to maintain prices above a decent minimum level since such prices necessarily introduce additional rigidities into our economy and impede the difficult process of adjustment which is needed to produce the increase in volume upon which recovery depends. This is particularly true if price fixing is permitted at all stages in the economic process, including both manufacturing and wholesale and retail distribution. As we understand it, the original intention of the N.R.A. was to prevent competition at the expense of labor or through the waste of natural resources, and to eliminate destructive competitive practices in order to increase the effectiveness and soundness of competition. We are convinced that these ends can be achieved by direct specific code provisions without resorting to general price provisions which might abate these specific evils but would also interfere with the social benefits of regulated competition in the interests of greater industrial efficiency. We also feel that the burden of administering the codes will be tremendously reduced if they are so framed as to place well-founded reliance upon such regulated competition.

The establishment in the retail code of a minimum price fixing provision in the form proposed will also establish a precedent which will make it difficult, if not virtually impossible, to prevent the inclusion of similar provisions in future codes, or to avoid the interpretation of the "selling-below-cost"

clauses in codes already approved so as to make them essentially minimum price formulae. The rigidity already referred to as objectionable will inevitably ensue if the minimum prices established in each separate code are allowed to be pyramided at each stage of the economic process.

C. In the third place, your Committee believes that the form which the minimum price-fixing provision of the retail code adopts, namely a percentage of mark-up, is objectionable. Once the principle of a percentage of mark-up is admitted, it becomes difficult to control the amount of the percentage against the inevitable and repeated attempts which are bound to be made to increase it. Your Committee is convinced that this mark-up will prove disappointing in practice to its proponents in that it will not produce a stable and efficient system of distribution. It is likely to lead to a situation, therefore, where this disappointment, plus the genuine need for further correction of evils will take the form of pressure for a constantly higher percentage of mark-up. We have had abundant experience with the tariff to illustrate the evils of this sort of development.

5. The Committee feels that the fact that the retail trade desires this clause and has brought and is bringing so much pressure for its adoption constitutes no valid argument for the inclusion of the price mark-up clause in the code. The Committee has been pressed with arguments that retailers will not be satisfied with anything less than this provision and that responsibility for the failure of the provision to correct the evils at which it is directed rests, consequently, entirely upon them. It has also been brought to the attention of the committee that the 10 percent mark-up granted in this case is far less price protection than has apparently been granted already in many manufacturing codes, and that the retailers consequently are entitled in fairness to such small protection as they request.

These arguments appear to us to be based entirely on expediency rather than valid considerations of broad public policy. The changes which the codes are introducing into our economic structure are of such far-reaching importance that we cannot afford to adopt provisions on the ground of expediency if those provisions do not meet the test of economic soundness.

6. Your Committee, therefore, recommends the rejection of the loss limitation clause of the retail code as it now stands.

7. Your Committee feels that there is a method of dealing directly with the loss-leader evil which is not open to the objection urged above, and which will be very much more effective for the protection of small retailers. Your Committee believes that the loss-leader evil should be dealt with, if at all, by a clause aimed directly at the evil and with emphasis upon the intent of seller. We suggest, therefore, that the clause set forth below be substituted for the clause now under consideration. This substitute is drafted in such a way as to prohibit the deliberate reduction of prices on goods with the intention of creating a

false impression in the minds of the public with respect to prices on other articles sold by the same merchant and at the same time permits the maintenance of efficient forms of retail competition. Such a provision is no more difficult of enforcement than the provision now in the retail code or than a host of other provisions already approved in previous codes. The substitute provision recommended by your Committee is as follows:

ARTICLE VIII
LOSS LEADER PROVISION

Section 1. Loss-leader provision.

The use of "loss-leaders" is an unfair method of competition. Except as hereinafter provided, sales of items at less than the lower of invoice or replacement cost, without deducting any quantity discounts, cumulative, retroactive or other special discounts, or rebates, not extended and given to the trade generally, shall be prima facie evidence of the use of loss-leaders. In any case that a member of the industry is charged with the alleged violation of this section, the burden of proof rests upon him, the vendor, to show that such sales below invoice or replacement cost, whichever is lower, did not involve the use of loss-leaders.

Section 2. Exceptions.

(a) Notwithstanding the provisions of the preceding Section, selling under the following conditions shall not be regarded as the use of loss-leaders: merchandise sold as bona fide clearance, if advertised, marked, and sold as such; highly perishable merchandise which must be promptly sold in order to forestall loss; imperfect or actually damaged merchandise, or bona fide discontinued lines of merchandise, if advertised, marked, and sold as such; merchandise sold upon the complete final liquidation of any business; merchandise sold in quantity on contract to public carriers, departments of government hospitals, schools and colleges, clubs, hotels, and other institutions, not for resale and not for redistribution to individuals; and merchandise sold or donated for charitable purposes or to unemployment relief agencies.

(b) Nothing in the provisions of the preceding Section shall be construed to prevent bona fide farmers' or consumers' associations engaged in purchasing supplies and equipment for their membership from making patronage refunds to their membership.

(c) Where a bona fide premium or certificate representing a share in a premium is given away with any article the base upon which the invoice or replacement cost of the article is calculated shall include the cost of the premium or share thereof.

October 9, 1933

Honorable John Dickinson
Secretary, National Recovery Board
Washington, D. C.

Dear Secretary Dickinson,

At the request of General Johnson, the Price Policy Committee has prepared the attached memorandum of criticism and suggestions on the Resale Price Maintenance clause in the proposed Retail Drug Code.

Sincerely yours,

Price Policy Committee

Alexander Sachs, Chairman

by

S. M. DuBrul, Secretary

October 9, 1933

TO: NATIONAL RECOVERY BOARD

FROM: PRICE POLICY COMMITTEE

SUBJECT: RESALE PRICE MAINTENANCE CLAUSE IN RETAIL DRUG CODE

1. The Retail Drug Code contains a prohibition against the sale of standard trade-marked drug products at less than its retail price set by manufacturers minus 21%, with certain provisions for the protection of the retailer in the disposal of excessive stocks. The Retail Drug Stores request this provision to minimize losses on such branded or trade-marked articles which are the favorite "loss leaders" in the Retail Drug trade.

2. This is a form of concealed resale price maintenance which your Committee rejects entirely unless made open and above board. If we are to allow manufacturers to maintain advertised retail prices or retail prices marked on the carton, the maintained price should be the stated price and not a variable price fluctuating within a range of 21% of the stated price. We would insist first, then, that the 21% provision be entirely deleted before the clause as a whole merits serious consideration.

3. While not desiring at this time either to subscribe to, nor to disapprove of, retail price maintenance in principle, this Committee admits that retail price maintenance does not present the same economically objectionable features as the minimum markup provisions of the general Retail Trade Code.

4. So long as price competition between competitive products remains entirely free and unrestricted, retail price maintenance may have a tendency to stabilize the price structure in the public interest and also reduce the use of trade-marked articles as "loss leaders."

5. The argument that resale price maintenance will increase distribution expenses has considerable weight. However, the Committee feels that in most cases the competition of lower priced competitive products will have the effect of preventing uneconomic increases in the prices of articles sold at resale prices fixed by the manufacturers.

6. Resale price maintenance is already widely practiced by manufacturers operating their own retail outlets. The proposed Retail Drug Code merely extends this same privilege to manufacturers selling through independently owned stores, provided they assume the same responsibility for keeping the retail inventories of their products balanced with their current demand as manufacturers selling through their own stores must assume. This might have a wholesome effect on the retail trade generally, since it would contribute to the solution of one of the most difficult problems in retailing, namely, overstocks which must be "dumped" to be moved.

7. This Committee feels that it would not be against the public interest to approve an experimental resale price maintenance clause in the Retail Drug Code, provided it clearly brought out the standard quality of the branded products. We would suggest that a clause along the following lines be substituted for the present clause in the Retail Drug Code:

It shall be an unfair method of competition for any retailer of any division of the retail trade to sell standard trade-marked drug products, as hereinafter defined, at less than the minimum price or prices determined and advertised by the manufacturer to the trade and public or indicated on the goods, their packages or containers, so long as the manufacturer of the article maintains an open offer to re-purchase on demand by the retailer any undamaged stocks at the retailer's cost thereof. The failure of the manufacturer to repurchase such goods on demand shall release all retailers from the responsibility for maintaining the minimum prices set by the manufacturer and the articles may be repriced by the retailers, subject only to the limitations of Article VIII above.

"Standard trade-marked drug products" as used in this section mean only proprietary products of a medicinal or cosmetic nature and related branded preparations or appliances used in the treatment or prevention of disease, or for personal hygiene, and so trade-marked, trade named, branded, or advertised as to be readily identified by the consumer, which conform to grades and/or standards established therefor by the United States Bureau of Standards and/or the United States Pure Food and Drug Administration, and which are marked on the immediate container thereof in such manner as may be prescribed by the above institutions, and advertised in conformity therewith; provided further that if the manufacturer of such a product shall so change the product as to lower its grade and/or standard as above established, and continues the use of the brand or trade name under which the product was previously sold, it shall cease to be a "standard trade-marked drug product" within the meaning of this section.

8. This proposed substitute eliminates the 21% discount from the manufacturers' resale price, but still permits the manufacturer to establish a price range for his product to allow for the differences in service rendered by different stores, if he so desires.

It also limits the privilege of resale price maintenance only to products of manufacturers who conform to the standards of quality determined by governmental agencies in the light of the best public interest. In this way, it will become an honor to be able to maintain resale prices in the drug field and should contribute to the current effort to eliminate many worthless products in this field.

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APPENDIX B

NATIONAL RECOVERY ADMINISTRATION PERSONNEL JOURNAL

Nos. 47-49
covering 19 names

<u>Names</u>	<u>Position</u>	<u>Salary</u>	<u>Bureau, Div., or office</u>	<u>Effective</u>
Briscoe, Joseph E.	Asst. to Dept. Adm.	\$3420	A. D. Whiteside	10/2/33
Powers, J. N.	Asst. to Dept. Adm.	2400	Philip C. Kemp	9/27/33
Kuhn, Fentress H.	Code Analyst	1800	Res. & Planning	9/15/33
Turner, Evelyne H.	Legal Steno.	1620	Blackwell Smith	9/26/33
Winship, Charles H. Jr.	Liaison Officer	3600	W. H. Davis	9/20/33
Givens, Dorothy E.	Statistical Computer	1400	Res. & Planning	10/2/33
Beard, Kirke	Newspaper Clipper	1320	Press Intelligence	9/25/33
Kausch, Ernest F.	Steno.	1296	Corres. Division	9/29/33
Thompson, Christine A.	File Clk-Typist	1296	C. C. Williams	9/30/33
Waite, Grace M.	Steno.	1296	Malcolm Muir	9/29/33
Long, William M.	Typist	1140	Corres. Division	10/3/33
Dick, John L.	Messenger	972	Res. & Planning	9/28/33
Muilenburg, Paul L.	Messenger	972	Recep. & Info. Div.	9/29/33
Miller, Camille	Sec'y-Research Asst.	2050	Leo Wolman	9/5/33
Allen, Effie G.	Statistical Steno.	1458	Res. & Planning	9/29/33
Brown, Yaeger	Steno.	1296	Malcolm Muir	9/30/33
Lindsay, Grace M.	Steno.	1296	Corres. Division	9/28/33
Shuman, Reva	Steno.	1296	Steno. Pool	9/28/33
Watson, Jeanette T.	Steno.	1296	Steno. Pool	9/29/33