

Proceedings of Meeting No. 18  
of the  
SPECIAL INDUSTRIAL RECOVERY BOARD

held in

The Conference Room, No. 5842

Department of Commerce

October 13, 1933

PERSONAL AND CONFIDENTIAL

Copy No. 6

For Hon. Frances Perkins

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ATTENDANCE AT MEETING NO. 18

October 13, 1933

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

Hon. Henry A. Wallace, Secretary of Agriculture

Hon. Harold M. Stephens, Assistant Attorney General

Hon. Oscar L. Chapman, Representing Secretary Ickes

Hon. Turner Battle, Assistant Secretary of Labor

Hon. Charles H. March, Chairman Federal Trade Commission

Gen. Hugh S. Johnson, Administrator

Hon. A. D. Whiteside, Deputy Administrator

Hon. John Dickinson, Executive Secretary

Mr. Russell Hardy, Assistant to Judge Stephens

Mr. B. P. Foote, Reporter

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11 A. M.

CHAIRMAN ROPER: General Johnson has accomplished a real feat and we wanted to acquaint you with it right hot from the griddle.

GENERAL JOHNSON: I don't know whether we have accomplished a feat, but the Department of Agriculture, generally speaking, seems to have felt that there should not be any price stabilization agreement in the Grocery Retail Code. I think on the other hand the Department of the Interior desires price-fixing in the Oil Code. Mr. Whiteside has conducted the hearings very patiently--about 148 witnesses, Mr. Whiteside?

MR. WHITESIDE: Yes, exactly that.

GENERAL JOHNSON: And the thing has been up in controversial position for a long while. The pressure to get something out is perfectly tremendous. Our own Committee here of Economists recommended that there be no price plus anything, but Mr. Whiteside, who is closer to it than I am, feels there would be a terrible avalanche of criticism and complaints if they do not have invoice price, plus something. Of course, we are in danger of getting a terrific inconsistency, because we have in our shop the Retail Code and the Retail

Drug Code, which has another price provision in it; and over in the Department of Agriculture, as I said, is the Grocery Code. Mr. Secretary Wallace and Mr. Peek and myself had a long conference yesterday and we thought that in view of the complexity and the highly controverted nature of this question, any solution would be highly conjectural and that a committee should be appointed--I don't think we ever did decide on the size of that committee, but in general terms it would be a committee composed of a certain number of economists, a certain number of practical business leaders not connected with the industry, and then with representatives from each of the affected trades without vote; and they would observe this Code for a period say to February 1st. I think if you don't say that, you will get into the holiday trade situation and that might be very difficult. Then the whole subject could be reheard.

CHAIRMAN ROPER: You mean this would be experimental.

COMMISSIONER MARCH: That is, General, that they do not sell below cost?

GENERAL JOHNSON: The conjectural nature of the whole question is recognized and this committee would be set up to observe the working of the Code to February 1st, and then we would rehear the subject. All three, the Drug Code, the Retail Code and the Grocery Code, are affected.

We probably should not be moved at all by considerations of popular clamor, but we ought to recognize the situation we are running into. In the Drug Code, the provision there

is that they shall not sell at less than manufacturers' price, less 21 per cent. I never have been for that. But the claim is made, and I believe that there is a good deal in it, that the newspaper men think in connection with these proprietary articles that it will raise hell with their advertising if we do not have that in there, and of course that means newspaper clamor; but I think that is about ready to start anyhow.

I would like to have Mr. Whiteside tell what he thinks the effect of it will be if we do not put the mark-up on it.

MR. WHITESIDE: I have literally talked to more than a thousand individuals and representatives of concerns in every part of the United States. The Administration has received telegrams from thousands, literally. We have kept an exact record of those and have a tabulation of the size of the concern that was petitioning us to include or exclude the provision. All the differences of opinion have been in regard to this, and 86-1/2 per cent are definitely and emphatically for this Code. That includes groups of every nature, excepting one or two--the cut rate people and large stores that are not particularly interested. The general reaction is very definitely in favor of it.

GENERAL JOHNSON: I should say, in this connection, that Mr. Whiteside is President of Dun & Bradstreet, in private life, and he therefore brings a very broad view of business problems.

MR. WHITESIDE: I think the reaction will be very, very serious and very unfavorable.

COMMISSIONER MARCH: What do you include in the cost?

MR. WHITESIDE: We include the cost that the merchant paid for the goods and when we speak of 10 per cent mark-up, it does not mean that we are entering the profit field in any way whatsoever. It is just to protect them a little longer against these predatory interests.

COMMISSIONER MARCH: Do they add the overhead to that?

MR. WHITESIDE: They add nothing to it. There is nothing there that even justifies the thought that a profit might be obtained on any single sale, and that is clearly understood. It has been definitely misrepresented in the newspapers. If it were properly understood I do not think there would be any criticism whatever.

DR. DICKINSON: There is nothing here to prevent a man from advancing his mark-up as much as he wanted to.

MR. WHITESIDE: That is what we are really trying to protect him from. We have never had price cutting on the scale it is at the present time.

DR. DICKINSON: I am thoroughly sympathetic. It is simply a question as to whether this 10 per cent mark-up really goes far enough to accomplish anything and, at the same time, it sets a very bad precedent. The 10 per cent mark-up will not protect anybody. That would require a mark-up of 20 or 25 per cent.

MR. WHITESIDE: It recognizes the change that has got to come into our economics.

DR. DICKINSON: If you admit the principle of a 10 per cent mark-up, it seems to me you would have to admit 25 or 30 per cent.

MR. WHITESIDE: There are stores that are operating as low as 16 per cent.

CHAIRMAN ROPER: Isn't this whole thing predicated on the principle that you are trying to find the answer? Why is there any great danger, then, in working on the basis that the General has outlined here, with the definite understanding that this is being made a subject of study, and out of the experience of that study we will reconsider the matter.

GENERAL JOHNSON: I think Mr. Whiteside feels that he is right. The only reason I brought him up here was because he feels so strongly that there will be a serious and unfavorable reaction.

MR. WHITESIDE: I would appear to be exaggerating, but I think we will have an avalanche of criticism.

SECRETARY WALLACE: From whom, Mr. Whiteside?

MR. WHITESIDE: From the retail trade throughout the United States.

SECRETARY WALLACE: If the policy as stated by General Johnson were followed would they be hurt?

MR. WHITESIDE: Yes, almost as seriously. I personally talked to the men in the A.A.A. whom I considered were the men who could decide the policy, and they informed me they would go along with us and mark up on the food products 7-1/2 per cent over cost, and we certainly gave encouragement to the idea this might be approved. We have had petitions from consumer groups and we have had them from State Boards, and from the largest number that we could possibly expect to get

any reaction from and it is not pleasant at all. They implore us to do it, and they use those very words. I think it would be a very, very great mistake not to do it. I think it would have a very important political and social reaction, which we can hardly realize at the moment.

COMMISSIONER MARCH: How is that going to affect your position, Mr. Secretary?

SECRETARY WALLACE: I am rather interested in finding out who the gentlemen are who make the policy with respect to this matter.

MR. WHITESIDE: I was definitely of the opinion that we would ride along with the 7-1/2 per cent.

SECRETARY WALLACE: I think it is very important that we have a uniform policy.

DR. DICKINSON: In regard to these complaints that came in, don't you think if we put this 10 per cent feature in we would have a great howl from consumers and laboring people that prices were going up on their necessities?

MR. WHITESIDE: You understand the Labor Board are unanimously in favor of this.

GENERAL JOHNSON: Practically all of our Boards are.

CHAIRMAN ROPER: How do you feel about the concrete suggestion of General Johnson? You are in accord with it?

SECRETARY WALLACE: Yes, sir, I am in accord with it. The difficulty with Mr. Whiteside's position, as I see it, is a rather minor one; that it would result in the increase of certain costs-- sugar, for instance; but if we follow General Johnson's suggestion, I do not think there will be any unusual increase

except in some cases. There will be some increase over the previous prices. I believe there would be more marked increases if we followed the policy as stated by Mr. Whiteside and it would seem to me much better if we go through the experimental period as described by the General. I think we have to consider the multitude of consumers who are certainly much greater than the people in the retail trade. It seems to me the people in the retail trade are gaining something out of this. The farm people I know are going to object to any further increases in retail prices, and if you have this as a definite act, taken by the Government, I think undoubtedly it will result in rather extraordinary rise in farm sentiment. I think we are going to get it in a considerable degree anyway. The spread that has taken place between what the farmers get and what they pay is going to bring about a rather extraordinary situation the next month or two, especially out in my country in the corn belt. The price of corn and hogs is less than half the fair exchange value. The relationship is more unfavorable than any other large agricultural section. People call up by phone to protest about the situation. This thing here would be just another affair indicating that the Government is more interested in increasing the cost to the farmer than helping the farmer. I think it would have a profoundly unfavorable effect on millions of the farm people. To go the whole way, I think it would be very unfortunate.

CHAIRMAN ROPER: You have to go through a difficult period with hogs and cattle anyway.

SECRETARY WALLACE: We are in for trouble with hogs, cattle and corn.

CHAIRMAN ROPER: How about the Secretary of Labor?

MR. BATTLE: I think the Secretary of Labor is in accord with General Johnson. She was at one time against the 10 per cent mark-up in prices.

GENERAL JOHNSON: That is not what this is; but I think the thing is well out here on the table. We were getting a terrific reaction from Agriculture, partly through misunderstanding that you cannot help. I do not believe there are words in the English language sufficient to make the thing clear. I think we are going to get a kick-back from the newspapers.

MR. BATTLE: The 10 per cent mark-up in prices would give the chain store the same advantage over retail stores that they have now.

CHAIRMAN ROPER: Isn't there a way to handle this thing through your Education or Publicity Units that will create the proper understanding and sympathy for this situation? We are trying to find the answer. We are trying to deal equitably and justly, and are going through an experimental study of this subject. Isn't there a way of telling that feature to the public?

MR. WHITESIDE: There would be in normal circumstances, but I think we will all agree that the retailers determine the newspaper policy. The retailer isn't going to feel friendly except in a few instances and that will unquestionably mold the feeling of the newspapers.

GENERAL JOHNSON: No matter what decision we made, it would be a conjectural decision. Nobody knows what the effect will be. We recognize the controverted nature of the question and we

recognize the conjectural atmosphere. We are going out to get actual experience under the most distinguished observation we can get. We are going to rehear the thing on the basis of this experiment.

MR. WHITESIDE: That was the first suggestion made and it was rejected at that time and with sound reasons.

GENERAL JOHNSON: It was rejected by industry.

MR. WHITESIDE: And we thought it unreasonable too. The first suggestion to set up a retail economic board to decide the question was emphatically rejected.

GENERAL JOHNSON: The people recognize that the President is trying earnestly to see the whole question. Don't you think these retailers would respond to that thought?

MR. WHITESIDE: I think it would do a great deal to mitigate it but I would be remiss to my duty if I did not state the situation as I see it.

MR. BATTLE: Don't you think increased volume will help the retailers?

MR. WHITESIDE: No, not at all, unless it is greatly increased. The profit must come from the mark-up.

GENERAL JOHNSON: I think the trouble has been that they marked their stuff up too much.

SECRETARY WALLACE: There is a rather interesting division of sentiment among the retailers in Iowa. A chap by the name of Johnson told me their folks are doing pretty good business and that they really prefer not to have this thing put into effect.

MR. WHITESIDE: The retailers in rural districts unquestionably exchange merchandise with the farmers.

SECRETARY WALLACE: Some, yes.

MR. WHITESIDE: And I think this will directly help the farmer if it is applied to food products too. I think the farmer would be far better off and I think with the retailer he would soon see that.

SECRETARY WALLACE: I think this plan will precipitate trouble but your plan would bring it in even stronger form.

COMMISSIONER MARCH: Isn't the write-up to the consumer from the manufacturer and wholesaler ultimately?

MR. WHITESIDE: The retailer has not participated in any important degree in marking up merchandise.

COMMISSIONER MARCH: But the manufacturer and wholesaler have.

MR. WHITESIDE: Yes, they are compelled to. I have made an investigation of textiles and fabrics and I think almost every increase has been justified, except in isolated cases.

COMMISSIONER MARCH: Did you examine the price of overalls?

MR. WHITESIDE: Yes, sir.

COMMISSIONER MARCH: They have written those up 100 percent.

MR. WHITESIDE: They were almost the lowest sweat-shop labor in the United States.

CHAIRMAN ROPER: This being only a temporary experiment, I should think it would really be worth attempting.

Do you gentlemen have any questions to ask Mr. Whiteside before he leaves? I want to say before you leave that I hear most favorable reports of your splendid work.

MR. WHITESIDE: That is very kind of you, sir.

(Mr. Whiteside then left the room.)

JUDGE STEPHENS: Will you state, General, again the difference between your position and Mr. Whiteside's? I came in in the middle of your talk.

GENERAL JOHNSON: Here is the provision of the Code:

"In order to check predatory and destructive price cutting and to minimize retail operating losses resulting therefrom, and in order to assure that the retailer shall be at least partially compensated for the cost of the service rendered the consumer, no retailer shall offer for sale, sell, exchange, or give away any merchandise, except as provided in Section 2 of this Article and in Schedule A, Section 4 hereinafter, below a minimum price which shall be not less than ten (10) per cent above the manufacturer's net invoice delivered price to the retailer on all purchases direct from manufacturers, and not less than seven (7) per cent above the net wholesale invoice delivered price on all purchases made through intermediary channels performing wholesaling functions. It is provided, however, that any retailer may meet any competitor's price in his trade area which is not in conformity with the foregoing provisions."

That is the thing that has been thrashed out for weeks, and that is the language that finally seems to be acceptable to the majority of the industries. My suggestion is that the President state either in an Executive Order or in approving the Code that the question of the mark-ups is a controversial one and that we have to have some actual experience, so we are trying it for a period up to February 1, and that during that time we will have it studied by economists and business leaders, and by men from each affected trade without vote. I do not think they should vote on this, but they will study the operation of the code and this provision for the purpose of seeing how it works out.

JUDGE STEPHENS: The only difference between you and Mr. Whiteside, then, is that he feels it should go into effect now while you wish to give it further study before the final decision

is made.

GENERAL JOHNSON: Yes.

CHAIRMAN ROPER: If this is properly put before the public, I cannot see why it would not appeal to most persons.

MR. BATTLE: In relation to labor, I think we would be situated much better in February, after the Public Works program is well started.

CHAIRMAN ROPER: I am in favor of letting the people know we are experimenting.

COMMISSIONER MARCH: I think it will have a great effect to follow General Johnson's recommendation.

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

MR. CHAPMAN: You are in accord with that, Secretary Wallace?

SECRETARY WALLACE: Yes.

DR. DICKINSON: Do you feel that you can do anything about that quantity discount problem which enables the big retailer to undercut the small retailer?

GENERAL JOHNSON: I do not know that we are prepared to condemn quantity discounts and say that a man who buys a thousand things shall not buy them for less than the one who buys one.

DR. DICKINSON: The quantity discount is an open discount that is offered to everybody.

SECRETARY WALLACE: With no secret rebates.

DR. DICKINSON: Mr. Fly of the Department of Justice contended at great length that the Clayton Act did not mean that.

GENERAL JOHNSON: Here is what happens, for instance, with such firms as Macy. When they go to make a deal they buy cheaper. It is not a question of discount at all.

CHAIRMAN ROPER: They may even take the full output of a factory.

GENERAL JOHNSON: Is it a violation of the Clayton Act if everybody can get the same price? Suppose a man goes out and says, "I want to buy my year's bill of goods. You know the kind of goods I am going to buy and your sales expense is less." Is that kind of bargaining a violation of the Clayton Act?

JUDGE STEPHENS: Doesn't it depend on the fact it is lessening competition?

COMMISSIONER MARCH: If it creates a monopoly, it does.

GENERAL JOHNSON: That is the way it is done.

DR. DICKINSON: I would say that if that wasn't covered by the Clayton Act, Section 2 of the Clayton Act did not go very far.

JUDGE STEPHENS: That is probably the answer, that it does not go very far.

CHAIRMAN ROPER: How about the purchase of the entire output of a mill. There is no competition there.

GENERAL JOHNSON: We are on a hot question. We have done a lot about fair practice in selling but nothing as to fair practice in buying. Henry Ford gets them out on a limb and says "Now we will look into this price situation." Sears Roebuck & Company does the same thing.

COMMISSIONER MARCH: Perhaps that American Can case will hit this situation. They give a special discount or a special price. They make a regular contract at a special price. The Supreme Court held that was a violation of the Clayton Act.

GENERAL JOHNSON: That is a little different.

COMMISSIONER MARCH: The way you state it, I do not think it is a violation of the Clayton Act unless, as the Judge says, it would create a monopoly.

DR. DICKINSON: Of course it does tend to create monopolies, for it helps the big concerns to gradually get more and more business into their hands.

GENERAL JOHNSON: I have seen a very large company just ruined by that--maybe three or four of them.

CHAIRMAN ROPER: Let's get back to this question. Are we not all in accord with the view that this experiment is worth making?

JUDGE STEPHENS: I am thoroughly in accord with the General's suggestion as I now understand it. I thought of making this suggestion with respect to publicity. We found in the Department of Justice that there is an enormous amount of price fixing, some of it legal that we cannot touch and some interstate commerce that we cannot prove. I wonder if, in your publicity, it might be a good plan to state that this does not mean that people can agree on these prices at all.

CHAIRMAN ROPER: It has to be entirely open.

JUDGE STEPHENS: They have to do their own establishing. They cannot agree with a lot of other people to do it.

GENERAL JOHNSON: This whole thing is sort of an agreement with the Government.

SECRETARY WALLACE: You are really exempted under your Act from the anti-trust laws, aren't you?

GENERAL JOHNSON: To the extent that they act in accordance with these codes, but no farther.

JUDGE STEPHENS: We should not give the impression that there can be an agreement on these prices.

COMMISSIONER MARCH: And we should avoid giving out any publicity that we are setting prices.

GENERAL JOHNSON: We are not in any case.

CHAIRMAN ROPER: Are we ready to vote? All in favor of confirming General Johnson's suggestion, let it be known by raising your hand. It is unanimous, General.

DR. DICKINSON: How about this discount question? Is there any possibility of putting in something along that line?

GENERAL JOHNSON: Yes, I am all for that. I think what we ought to do now is to draft this provision that we want and have it down on paper.

CHAIRMAN ROPER: And get your committee.

DR. DICKINSON: I would suggest that there was a good deal of thought given to the drafting of that clause in the report we brought in here by those economists, and you might be able to use that as something to work with.

GENERAL JOHNSON: I will turn this thing over to Du Brul and anyone else you want.

DR. DICKINSON: Mr. Means worked on that.

GENERAL JOHNSON: Let's let them work out a draft.

SECRETARY WALLACE: You will have Du Brul get in touch with you?

GENERAL JOHNSON: I will tell Du Brul to get in touch with Means.

SECRETARY WALLACE: I think we better have somebody from George's organization on that.

GENERAL JOHNSON: The selection of that committee is of enormous importance.

SECRETARY WALLACE: I think you better call George up on that. I would like to have Means on that committee for certain reasons.

DR. DICKINSON: He should be on the committee anyway.

SECRETARY WALLACE: He is an economist and I think you better have George send over somebody who has had connection with this grocery matter.

CHAIRMAN ROPER: If there is nothing further, I take it we are ready to adjourn.

GENERAL JOHNSON: What are we going to do about the committee?

CHAIRMAN ROPER: Do you want to discuss the committee at this time?

GENERAL JOHNSON: If we are going to have any publicity.

CHAIRMAN ROPER: How many do you propose to have on the committee?

GENERAL JOHNSON: I think the smaller the better.

CHAIRMAN ROPER: What do you think about the committee, Mr. Secretary of Agriculture?

SECRETARY WALLACE: I agree with the General that it ought to be small.

GENERAL JOHNSON: I would suggest three economists, like Gerald Swope; three from the general retail trade; three from the drug trade and the food trade and let them select one who will not have a vote on it but will be represented.

SECRETARY WALLACE: The economists would come from our organizations?

GENERAL JOHNSON: Yes, I think that would be best.

SECRETARY WALLACE: You would furnish two and we furnish one?

GENERAL JOHNSON: That doesn't matter.

DR. DICKINSON: How about one from the Federal Trade Commission?

SECRETARY WALLACE: I think that would be a good plan. How about the representation of labor?

DR. DICKINSON: Those three units would be about right as far as economists are concerned.

CHAIRMAN ROPER: That would bring it up to about nine.

DR. DICKINSON: Not all will come.

GENERAL JOHNSON: Two or three men are going to do all the work anyway.

CHAIRMAN ROPER: How would it do for the men around this table to submit a list of names and you endeavor to make the selection from those suggestions?

GENERAL JOHNSON: All right.

MR. BATTLE: We have made a study of the cost of living; we make monthly reports on it, and we are making quite an extensive study of the Federal employees and there might be information from that Bureau that might be of value.

SECRETARY WALLACE: Why not one from each of us?

DR. DICKINSON: I think one from each unit would be sufficient.

CHAIRMAN ROPER: That is three. How about the Department of Justice?

Judge, how do you feel?

JUDGE STEPHENS: I do not know that we would be very fruitful in suggesting members for that committee. We have not many economists, and as far as our contract with representatives of the trade is concerned, that is not very close either.

DR. DICKINSON: Would three economists and three business men--

GENERAL JOHNSON: Three outstanding business men.

DR. DICKINSON: Like Swope.

GENERAL JOHNSON: Yes, and then each trade select one.

JUDGE STEPHENS: Would you let the trades select their own?

GENERAL JOHNSON: Yes, the retailers, druggists and grocers.

COMMISSIONER MARCH: One from each.

GENERAL JOHNSON: Yes, and then comes this question of the economists-- whatever number we set here--and then I think Consumers and Labor.

CHAIRMAN ROPER: Yes.

COMMISSIONER MARCH: Three Consumers?

MR. BATTLE: I think one from Labor is enough.

COMMISSIONER MARCH: You would get 15 that way altogether.

GENERAL JOHNSON: Cut the Consumers down to one and Labor down to one.

COMMISSIONER MARCH: That would be 11.

SECRETARY WALLACE: I would like to know just what these people are going to do.

GENERAL JOHNSON: As far as this Retail Drug Code is concerned, they have here a Code Authority that contains an Economic Board. They are going to sit in with that Code Authority; and they would have authority to bring anybody before them and receive

any report and representation the industry may want to make. They will sit in as they wish for the purpose of observing the operation of this Code and its effect.

CHAIRMAN ROPER: I believe you would get better results with 7 members.

COMMISSIONER MARCH: How about 1 business man?

GENERAL JOHNSON: That would make it just a technical committee.

JUDGE STEPHENS: I think you ought to have 3 outstanding business men.

CHAIRMAN ROPER: Yes.

DR. DICKINSON: Is there any necessity to have these representatives from the trade who have no vote on the committee itself?

GENERAL JOHNSON: Probably not.

DR. DICKINSON: That would be 8 then.

CHAIRMAN ROPER: Are we in accord with that? If so, you might submit a list of 8 persons from which General Johnson can make his selection.

GENERAL JOHNSON: Three outstanding business men.

COMMISSIONER MARCH: One representing Labor.

DR. DICKINSON: And 1 Consumer.

JUDGE STEPHENS: And 3 Economists.

Meeting adjourned at 11:55.