PACIFIC COAST
LONGSHOREMEN'S STRIKE
of 1934

Arbitration Before
National Longshoremen's Board

Oral Argument of Herman Phleger, Esq.
in behalf of Waterfront Employers

September 25, 1934

Oral Argument of Herman Phleger, Esq. in Behalf of Waterfront Employers Before the National Longshoremen's Board

May it please the Board:

There is about to be submitted to this Board for decision, the issues involved in the Longshoremen's Strike. That strike commenced on May 9, of this year, and continued until July 30, when the men returned to work under an agreement that issues in dispute would be submitted to this Board for arbitration, and that they would be bound by its decision.

The strike itself lasted 82 days, and seriously affected not only the waterborne commerce of the Pacific Coast, but industries and agriculture dependent upon water transportation. Thousands were injured and many killed. Radicals and Communists seized upon the opportunity to foment class strife and engender class hatreds. In its train it brought on the general strike in San Francisco, an assault upon constituted government.

The responsibility of adjudicating the issues involved, so that there may be a just and lasting peace is a great one, the weight of the responsibility being only equaled by the opportunity which is thus afforded to perform a lasting public service of the highest order.

Perhaps no one is more familiar than I with the complexity and burden of the task that this Board has labored under since its appointment by the President on June 26. Its tireless industry, its ceaseless efforts to preserve peace, its openmindedness, have moved us all. Called from their customary pursuits to perform a

public service, the manner in which the members of this Board, at great sacrifice to themselves, have carried on their duties, is heartening to those who realize that our free institutions can only be successful when supported by the willing and unselfish service of our citizens.

It has been our desire from the beginning of these proceedings to be of help and assistance to the Board; to present fairly and without reservation all facts bearing upon the controversy and to honestly strive for a just settlement. If at times counsel has transgressed either upon the time or patience of the Board, I am sure the Board will realize that such defaults were due to the lateness of the hour, or to the perverse nature of man and will forgive me as readily as I forgive my adversary for similar misdeeds.

The record in this proceeding has reached large proportions. There are more than twenty-five hundred pages of testimony and more than 100 exhibits. The Board has ruled that no briefs are to be filed. It is obviously impossible in the time allotted for argument to cover all of the evidence, or even all of the issues. I shall devote my time to the larger aspects of the controversy, in the hope of assisting the Board in its examination of the detailed evidence, and of eliminating much which seems to me immaterial and unimportant.

ARBITRATION BY THE BOARD.

The members of this Board sit as arbitrators by virtue of an agreement made between the International Longshoremen's Association,[1] Pacific Coast District, and the as-

1. For convenience hereafter referred to as the I. L. A.

sociations of employers at the respective Pacific Coast Ports. That agreement is dated August 7, 1934. It is filed with the Board and specifically defines the issues submitted to it for decision and its powers with respect to such issues.

As provided in the Arbitration Agreement, the decision of the Board is to be based upon evidence submitted to it in formal hearings, by witnesses under oath, whose testimony is taken down in writing. A decision by a majority of the Board in writing is to be final and binding and to constitute a series of separate agreements between the I. L. A. and the employers in the respective ports. These agreements shall continue until September 30, 1935, and thereafter, subject to termination by either party.

Our understanding is that the conditions which existed at the time the strike commenced, as altered or changed by the award of the Board, shall constitute part of the agreements made by the award, and shall continue during the duration of the award unless changed by mutual agreement.

THE ISSUES SUBMITTED.

The issues submitted for decision fall into certain natural groupings, and while they are all interrelated to some extent I will deal with them separately in the following order:

1. What is "longshore work"?

Under the arbitration agreement, any award is applicable only to those who perform "longshore work", so the first task of the Board will be to determine what constitutes "longshore work".

2. The demand for increased wages.

3. The demand for limitations as to hours to be worked.

4. The demand that "the hiring of all longshoremen shall be through halls maintained by the I. L. A."

The position of the employers may be briefly summarized as follows:

Longshore work consists of work performed in loading or unloading ships, for the account of the ship. Depending upon the custom of the particular port it begins and ends, either at ships tackle or at first place of rest on the dock.

The employers further contend that the record shows no justification whatever for the demand for increased rates of pay, or for the artificial restrictions upon hours asked for. They contend that on the contrary the record shows that the base wage rates now in effect on the Pacific Coast (which were the result of a voluntary increase given prior to the first of this year) are the highest in the United States, and as admitted by an official of the I. L. A., that the working conditions on the Pacific Coast are better than in any of the major ports on the Atlantic, where the I. L. A. has been in existence for years, and has had preferential contracts with the employers.

With respect to the demand of the I. L. A. that the employers be compelled to hire all men through halls maintained by the I. L. A., the employers contend that the record is devoid of a scintilla of evidence which would justify the granting of such a demand. On its face it

does not appear to be a demand for a closed shop agreement, but as will be later pointed out it is in effect not only a demand for a closed shop agreement, but also a demand that the actual employment and selection of the men be surrendered to the officers of the I. L. A.

The employers contend that the record is replete with evidence which shows that the granting of such a demand would deprive the employer of his fundamental right to select his employees; would destroy all incentive on the part of the men to be efficient and competent; would take away the work of the regular resident longshoremen, and distribute it to newcomers and others who have no claim on the industry; would turn over to union officials the distribution of work and the filling of jobs; would constitute a closed union shop violative of both the Sherman and Clayton Acts and the National Recovery Act and would in effect constitute a sentence of death upon the stevedoring industry on the Pacific Coast as well as seriously prejudice its waterborne commerce. Nowhere in this country or abroad does such a system exist.

NATURE OF LONGSHORE WORK.

An understanding of the nature of longshore work, and the manner in which it is conducted, is essential to a proper consideration of the issues involved.

Longshore work is the work of loading and unloading ships. In earlier times such work was performed by the crew, but with the exception of the lumber schooners on the Pacific Coast, where the crew assists in the work, it has long been the practice to employ longshoremen for this work. These men are employed at the particular port for the specific work of unloading or loading a par-

ticular ship. Their work is naturally dependent upon the arrival and departure of the ship, for it continues only while the ship is in port. This accounts for the casual nature of the work.

Of recent times, with the operation of large ships on regular schedules, the casual nature of the work has been greatly reduced, with the result that the larger steamship companies are able to afford fairly continuous employment for regular employees.

The original method of employment was for the man desiring work to call at the dock at the expected arrival of a vessel and to be selected there by the employer, the employment to continue until the loading or unloading of the ship was completed.

The casual nature of the work, and the fact that there were no restrictions upon any person desiring work from competing for the work, resulted in what might be called a free labor market, where any person out of work could go to the waterfront and compete with the man who was following longshoring as a regular occupation. Of course, the foreman in selecting his men naturally selected the best men, so that a particular stevedore company soon created a regular following of men. But owing to the constant influx of new men and the departure of old men, it was natural that an unsatisfactory labor situation should develop; unsatisfactory to the longshoreman, for he was constantly exposed to the competition of casual men who were here today and gone tomorrow, and unsatisfactory to the employer in the long run, for while it provided him with a free labor market, it also created labor difficulties due to the fact that there was a constant

labor surplus striving for jobs and creating unrest and uncertainty.

This situation was met in Europe by a plan, which for lack of a better name has been called "decasualisation"—the decasualisation of longshore labor. The basis of this plan is the registration by the employers of the men who have been working as longshoremen at a particular port, and limiting the intake of new men to the needs of the port, thus protecting the regular men from unfair competition by casual workers and newcomers, freeing the port from labor disturbances and providing a reasonable living for the regular men.

Owing to the great fluctuations in the amount of work available, due to seasonal causes in some cases, and in others to the uncertainties of shipping, the number of men required to work the ships varies. It is often either a feast or a famine. This has resulted in little employment in slack times, and much employment in busy times, with the men at such times often working long hours. It has been found that a relatively small number of men at a particular port, with the employers cooperating to see they are used effectively, can take care of the normal needs of a port, leaving the peak demands to be taken care of by casual workers. This leaves the regular longshoremen with adequate work opportunity, and gives to the casual worker, the seasonal worker or the unemployed, an opportunity for the excess work. There is no difficulty in obtaining such casual workers sufficient to meet the requirements, and there is no need of maintaining a constant surplus of men at a particular port to handle peak demands. There is always sufficient casual labor, sailors

on the beach, fishermen, seasonal workers in other lines, and part time workers in other industries, to supplement the regular men in sufficient numbers to care for peak requirements.

The system of hiring longshoremen as practiced in the principal ports on the Atlantic Coast is for the men to form or "shape" at the docks. There are no restrictions whatever upon the right of the employer to select whom he wishes, except that by the terms of a preferential agreement with the I. L. A. he agrees to select members of the I. L. A. so long as there are competent members of the I. L. A. available. There is a great surplus of labor in those ports, and conditions, as reported by government observers, are not satisfactory. Until recently at least the I. L. A. has been opposed to any plan of decasualisation, and thus far no plan of decasualisation has been made effective in any port where the I. L. A. has a contract with the employers.

On the other hand, the employers at Seattle, Portland and Los Angeles formulated plans for decasualisation of longshore labor at those ports commencing in 1920. The longshoremen were registered, the intake of new men was limited to the needs of the port and by a practice of not replacing the men who left, the number of men working as regular longshoremen was reduced to the normal needs of the ports. The result was that the registered longshoremen earned good wages and employment conditions were highly satisfactory.

As stated in an official report made in behalf of the United States Department of Labor by Dr. Boris Stern

in November, 1933, and presented at the hearings on the Shipping Code (Emp. Ex. HH, p. 1302):[1]

> "London which decasualized as early as 1891 has one scheme; Liverpool another; and Antwerp which decasualized in 1929 still another. In this country the system used in Seattle, the first port to decasualise its general longshore supply of labor has a method different from the one used in Portland, which in turn is different from the Los Angeles scheme of decasualisation. * * *
>
> "Unquestionably the employment conditions and the earnings of longshoremen in the decasualised ports of Seattle, Portland and Los Angeles are more favorable than in the ports without decasualisation schemes."

The depression brought about a great reduction in the commerce of the Pacific Coast and in consequence the amount of work available decreased sharply. The tonnage fell off in all the ports at least 25% and in some ports as much as 40% (Long. Ex. 11, Emp. Ex. NN, TT). Naturally, if the same number of men were to be employed, it meant less work and a smaller pay check for each. In addition, men thrown out of work in other industries thronged the waterfront to obtain jobs and there was constant pressure by these new-comers to force the regular men to share their work with them, although the work opportunity of the regular men had already been greatly reduced by the reduction in commerce brought about by the depression.

---

1. References to employers' exhibits are indicated thus (Emp. Ex. ..). References to longshoremen's exhibits are indicated thus (Long. Ex. ..). References to the record of testimony are indicated thus (T. ..).

The employers, in Seattle, Portland and Los Angeles under these circumstances determined upon a plan of retaining the regular longshoremen, and of distributing the work among them, rather than following the course pursued in most industries of dropping entirely the men not needed. This plan voluntarily adopted by the employers as far back as 1921, is the plan which the N. R. A. has been urging on industry since 1933. But the employers instead of being praised for their voluntary action in aiding the recovery movement by spreading work, have been criticised because as a result of retaining the men required during prosperous times and spreading the work the pay check of the individual employee has been reduced. This procedure has been of no financial advantage to the employer because the total wage payments depend upon the wage scale and hours worked and not upon the number of men available for work or participating in the work.

In Seattle, for instance, the number of registered men is practically what it was at the peak of 1929; no new men have been registered since 1929 save three men who were the sons of deceased longshoremen; and not a single Seattle longshoreman has been forced on public relief.

The record shows that the real cause of the strike was unemployment brought on by the depression. This brought about less work opportunity for the longshoremen—but it also brought to the waterfront the unemployed from other industries who desired to share the work with the regular longshoremen. The national union movement which received its impetus from the N. R. A., has been converted into an agency by which the casual and the newcomer to

the waterfront is seeking to obtain the jobs of the regular longshoremen, this to be accomplished through the agency of compelling the employer to employ all men through the I. L. A. where the union officers will be enabled to parcel out the work to the membership of the unions, a membership which in every port far exceeds the regular needs of the port and includes many newcomers to longshore work. This situation was also seized upon by radicals and Communists who saw in it an opportunity to prosecute their plans. Unfortunately the ending of the strike has left these men still in the I. L. A., many of them in important key positions.

The wage issue has always been a minor one. The basic wage rates on the coast are the highest in the United States. The real objective has been the attempt of union officials to secure control of the job by which they may provide work for all members of the union, at the expense of the employer and of the regular longshoremen.

Union recognition and the right of collective bargaining are not issues, for the employers conceded them before the strike commenced.

The condition in San Francisco was unlike Portland, Seattle and Los Angeles in that there was no attempt to decasualise longshore labor. The hiring conditions are similar to those now existing in New York. Owing to the fact that there are a number of large companies with regular operations, there is steady and regular employment for a large number of men. The difficulty in San Francisco is shown clearly by the following figures:

For first half of 1933 (period for which figures are available) (Emp. Ex. J):

Maximum employed on any day..2463
Minimum employed on any day.... 879
Average number employed.....1719
Number employed by particular companies .....1530 (T. 827)
Number required for needs of port..2300 (T. 804)
Membership of I. L. A. (May 9, 1934) .....4000 (T. 101)

This latter figure of course takes no account of the longshoremen who are not members of the I. L. A.

EVENTS LEADING UP TO STRIKE.

Not only is the background of longshore employment conditions important in a consideration of the issues here presented but the events leading up to calling the strike and the return of the men to work must also be considered.

The I. L. A. was strong on the Pacific Coast from 1909 to 1921. Strikes were frequent. Agreements with the employers existed in most ports, requiring them to employ no one not a member of the union. Attempts were made in Seattle and Portland by the I. L. A. by installing the "list system" to compel the employer to employ men selected by the union. This created controversies which led to a series of strikes, culminating about 1921 in the establishment of open shop conditions and the establishment in Portland, Seattle and Los Angeles of decasualisation programs. These programs included the dispatching of men from employers' dispatching halls, and a form of collective bargaining with the registered men through

representatives selected by them. The basis of these plans was the program recommended by President Wilson's Second Labor Conference. In San Francisco dealings were had with a local union, the San Francisco Longshoremen's Association, popularly called the Blue Book.

Following the enactment of the N. R. A. in the spring of 1933, efforts were begun to organize the longshoremen at Pacific Coast ports into locals of the I. L. A. While the I. L. A. had practically disappeared on the coast after 1921, the Tacoma local continued in existence and furnished the nucleus for this reorganization.

Most of the locals were established in July and August of 1933, and rapidly grew in membership. About the end of 1933, these locals were generally successful in breaking up the form of employee representation that theretofore existed in the various ports.

In October, 1933, hearings were had in Washington on a proposed Shipping Code, which would include longshore labor. Representatives of the Pacific Coast I. L. A. and of the employers attended. The I. L. A. presented various contentions. Dr. Boris Stern, of the United States Department of Labor presented a plan for the Decasualisation of Longshore Labor, somewhat on the plan in effect in Seattle but with government participation. In the preliminary code (Emp. Ex. JJ) which was approved by General Johnson, but which failed of approval by the President, for reasons not pertinent here, a definite program for the decasualisation of longshore labor was made, the plan to be worked out under the supervision of the Code Authority. The code also provided for a 48 hour maximum week averaged over 4 weeks and for a minimum

wage not less than the wage prevailing on February 1, 1934 (Emp. Ex. JJ).

I think the Board will agree that if a Shipping Code had been promptly made effective, the strike probably would not have taken place, as it would have provided machinery for adjudicating disputes of this character.

Becoming restive because of the failure of enactment of a Shipping Code and because the various employers had demanded elections before agreeing to collective bargaining, the I. L. A. membership early in March, 1934, voted to call a strike. The ballot read (T. 108):

> "Members in favor of calling a strike for recognition of the I. L. A. effective 8 a. m. March 23 will vote yes. Members against a strike at that time will vote no. If the employers have agreed to collective bargaining before March 23 this ballot is void."

This is the only strike vote which has been taken by the membership of the I. L. A.

On March 23, 1934, the President intervened and asked the I. L. A. to withdraw its strike order and to accept Federal Mediation. This was done, and mediation started before a Federal Mediation Board, of which Dean Henry F. Grady of the University of California, was chairman.

On April 3, 1934, Dean Grady announced that agreement had been reached, at the same time releasing a document which had been agreed to by both parties in San Francisco and accepted in principle by representatives from the other ports (Emp. Ex. F). It provided for union recognition, the establishment of a hiring hall with a measure of joint control, and mediation on wages.

The employers at once took steps to carry the agreement into effect, calling upon the services of Mr. F. P. Foisie, of Seattle, who had been long experienced in questions of longshore labor, and who had written, at the request of Hon. Wm. H. Davis, Deputy Administrator for Shipping, a volume on "Decasualising Longshore Labor and The Seattle Experience" (Emp. Ex. II), intended to furnish information in connection with the plan for decasualisation provided in the proposed Shipping Code.

Becoming dissatisfied with the progress made in mediation on the question of wages, the San Francisco I. L. A. local on April 30, 1934, served notice that if a satisfactory conclusion was not reached by May 7, the men would strike (Emp. Ex. F).

On May 9, the strike commenced, continuing until the men returned to work on July 31. The ports of Portland and Seattle were closed by picketing, intimidation and violence. San Francisco remained open and carried on operations with a constantly increasing number of men, but because of intimidation of the teamsters by the strikers, cargo could not be moved from the docks except by railroad. Los Angeles remained open and not only handled its own cargo but also cargo destined for San Francisco, Seattle and Portland. No difficultly was experienced in obtaining men at the prevailing wage. Radicals and Communists joined the strikers in increasing numbers.

Shortly after the strike commenced, Assistant Secretary of Labor Edward F. McGrady, on request of western officials, came to San Francisco and used his good offices to effect a settlement. Mr. Joseph P. Ryan, International President of the I. L. A., also came to the coast and par-

ticipated in conferences looking to the termination of the strike. These efforts resulted in the employers making the "May 28 Proposal" (Emp. Ex. G) which International President Ryan said was acceptable to him and which members of the Pacific Coast Executive Committee of the I. L. A. also said was satisfactory. This agreement was in its essentials similar to the April 3 agreement. The May 28 proposal was voted down by the I. L. A. in various ports at open meetings, no secret ballot being taken as was agreed to.

On June 16, 1934, through the efforts of Mayor Rossi of San Francisco, an agreement was executed settling the strike (Emp. Ex. H). It was drafted jointly by Mr. Ryan, International President of the I. L. A. and by Mr. Plant for the employers. It was signed on behalf of the I. L. A. by International President Ryan, and by Mr. Finnegan of the Pacific Coast Executive Committee of the I. L. A. Its performance by the I. L. A. was guaranteed by Michael Casey and John McLaughlin, President and Secretary of the San Francisco Teamsters Union, by Dave Beck, President of the Seattle Teamsters Union, by Federal Mediators Leonard and Reynolds, who stated they were acting on instructions from Washington, and by Mayor Rossi.

The June 16 agreement when executed was not subject to any ratification, but was intended to be final and binding. The agreement, however, was repudiated by various locals in open meeting, but was approved by the Los Angeles local, the only local where voting was by secret ballot.

On the appeal of the National Longshoremen's Board, which had been appointed by the President on June 26, 1934, the employers on July 11, 1934, in writing agreed

to submit the issues involved in the strike to arbitration by this Board and to be bound by its decision.

The longshoremen refused to accept arbitration. Other unions becoming involved, the matter rapidly developed under the leadership of radicals into a general strike in San Francisco which continued from July 16 to July 20. Following the calling off of the general strike, the longshoremen on July 23 voted to submit to arbitration by this Board, and returned to work on July 31.

WHAT IS "LONGSHORE WORK".

The first issue to be determined is what is longshore work, for the decision of the Board is confined by the terms of the arbitration to those persons employed by the employers who perform "longshore work".

We submit that the evidence is clear and uncontradicted that the term "longshore work" as used in the arbitration agreement and as commonly accepted in the ports affected by this controversy and by the parties to it, is confined to the work of loading and unloading a ship for the account of the ship.

The record is clear that the responsibility of the ship begins and ends at ships tackle, and that any work performed beyond ships tackle is for the account of the cargo and not for the account of the ship (Tr. 2153). This rule is subject to variations in different ports, depending upon conditions peculiar to those ports under which longshore work may continue beyond the ships tackle to first place of rest, but the basic principle obtains everywhere.

The reason for the rule which distinguishes between longshore work, which is ship work, and dock work, which

is shore work, is obvious. A ship operates all over the world, and as a result of experience the ships gear, methods of ship's stowage and methods of working cargo have become standard, irrespective of the nationality of the ship. Any longshoreman is at home on any ship. But the port conditions are as various as there are ports. Some ports have docks, others use lighters to land cargo, and the nature of the cargo varies with the ports, as does the method of handling it on shore.

The result is that shore work or dock work varies in every port, and the only wage rate as to which there can be any uniformity as between ports is that work as to which there is uniformity, i. e., "longshore work" or ship work.

The record shows that in Portland, all flour, logs and lumber are landed at ships tackle, and that the ship's contract, and the work of the longshoremen employed to load it, starts and ends there. In Seattle and Tacoma, longshore work is loading and unloading vessels to and from first point of rest except as to logs, lumber and flour, where the rule is the same as in Portland. In San Francisco longshore work is to and from first point of rest. In Los Angeles on the other hand, longshore work is ship work and ends at ship's tackle.

The definition of longshore work contained in the working rules agreed to by the Tacoma I. L. A. (Emp. Ex. PP).

> "Longshore work consists of loading and unloading vessels to and from first place of rest."
>
> "Dock work consists of cargo handling on dock, car or scow, not in conjunction with ships sling."

The agreement between the Columbia River Division of Northwest Waterfront Employers Union and Pacific Coast District of I. L. A., dated August 12, 1919, and introduced by the Longshoremen as Exhibit 20, provides:

> "Longshore work shall consist of:
>
> Loading and unloading vessels, sling to hold and hold to sling.
>
> Sling to first place of rest or cars direct when handled by ship's trucking gang.
>
> From pile or car to sling direct when handled by ship's trucking gang.
>
> Slings to and from lighters, scows, hulks or barges within reach of ship's tackle."

The Standard Practice Handbook in Seattle agreed to by the men's elected representatives and used since 1920, has always contained the following definition (Emp. Ex. II):

> "Longshore work consists of loading and unloading vessels to and from first place of rest."

The definition in the Standard Practice Handbook in use for years in Portland is (Emp. Ex. Z):

> "Longshore work consists of loading and unloading vessels, scows or barges to and from first place of rest."

The definition contained in the Compilation of Wages and Working Conditions—Los Angeles Harbor (Emp. Ex. RR) is that longshore work is work on board ship.

The agreement between the New York Employers and the New York I. L. A. (Emp. Ex. YY) covers "the loading and unloading of ships and the bunkering of same".

It is clear that the term "longshore work" is defined by the definitions and practices mentioned, and the only wage question submitted to the Board for decision is that involved in longshore work as so defined. This may for brevity be termed the "basic longshore wage". It is the only wage as to which there can be uniformity as between the various ports, for conditions as to all other work vary with the port, and this Board is not in a position even if the matter were submitted to it for decision, which it is not, to decide those local questions. Such local matters can only be left to the parties in the respective ports for decision in the course of collective bargaining.

WAGES.

The wage demands of the I. L. A. are set forth in the arbitration agreement. The principal demand is for an increase in the basic wage, from 85 cents an hour straight time, and $1.25 overtime, which now prevail, to $1.00 per hour for straight time and $1.50 for overtime.

Accompanying this demand is a demand for increased wages for handling certain offensive cargo, as follows:

Commodity	Straight time	Overtime
Sacks over 125 lbs. in weight	$1.10	$1.65
Oil in bulk	"	"
Copra in bulk	"	"
Logs and timbers out of water	"	"
Oriental oil in cases	"	"
Creosote and creosote wood products	"	"
Cement, hides, fertilizers	"	"
All frozen or ice packed cargo	"	"
Celite and dusty infusorial earth	"	"
All shoveling jobs except as hereafter provided	"	"
Potash or phosphates in bulk	1.20	1.80
Sulphur in bulk or mats	"	"
Caustic soda in offensive condition and all other offensive chemicals	"	"
Shoveling bones in bulk	1.65	2.25
Explosives or work in compartments containing explosives	2.00	2.00
Handling damaged cargo	"	"

For convenience, I will deal first with the basic wage demands, and secondly with the demands for penalty rates.

BASIC WAGE DEMAND.

At the outset the following evidence of record should be borne in mind:

1. The base wages now prevailing on the Pacific Coast are the highest in the United States.

2. Those wages were voluntarily established by the employers within less than 12 months last past, and rep-

resent an increase of 10 cents per hour in regular time and 15 cents an hour in overtime.

3. That overtime in longshoring does not represent a wage payable for work in excess of 8 hours but is in substance a nighttime rate covering all work performed after 5 p. m. In consequence of the large amount of overtime actually paid, the average wage received by longshoremen is substantially in excess of the base wage, being approximately 95 cents per hour in the various ports (T. 823; Emp. Ex. RR).

The hazard of injury, and the accident rate, is fifty per cent lower on the Pacific Coast than on the Atlantic Coast, due to the voluntary efforts of the employer (T. 841).

WAGES AND COST OF LIVING.

There is almost an entire absence in the record of any evidence introduced by the longshoremen bearing upon the wage scale. Such evidence as has been introduced is predicated upon the contention that commencing with 1914 union wage scales throughout the United States have increased more rapidly than the longshore wage on this coast. As has been pointed out in the testimony, this evidence is fallacious for various reasons. First, it is dependent entirely upon the base rate in 1914, at which time the rates on this coast were substantially higher than those on the East Coast. Second, the statistics used by the longshoremen in their exhibit are not comparable where the union longshore wage is involved for it has been shown that the figures used included differentials and penalty rates in the national figures, which were compared with the basic rate on the Pacific Coast.

The best evidence for determining the reasonableness of the base longshore wage would seem to be the following:

1. Wages paid for longshore work in other ports of the United States.

2. The comparison with cost of living.

3. Wages paid for comparable work in the same locality.

These will be taken up in order.

1. COMPARISON WITH BASE LONGSHORE WAGE IN OTHER PORTS OF THE UNITED STATES.

For the convenience of the Board, we have set forth in summary form in Employers' Exhibit T the base longshore wages paid in all major United States ports as of this date (see also Emp. Ex. XX).

Ports	San Francisco Los Angeles Portland Seattle	New York Boston Philadelphia Baltimore	Galveston	New Orleans	Great Lakes
Offshore					
Straight time	$ .85	$ .85	$ .80	$ .75	
Overtime	1.25	1.20	1.20	1.10	
Coastwise					
Straight time	.85	.75 maximum	.75	.65	.67½ maximum
Overtime	1.25	1.10 maximum	1.10	.80	

From this it will be noted that the rates on the Pacific Coast are the highest in the United States. It should be borne in mind that the rates in New York, Boston, Phila-

delphia, Baltimore, Galveston and New Orleans are established by contracts between the I. L. A. and the employers. Also, that nowhere in the United States, save in San Francisco, are there any limitations on the hours that may be worked in the day, week or month.

2. COMPARISON WITH COST OF LIVING.

In Employers' Exhibit W the basic longshore wage in the various Pacific Coast ports is compared with the cost of living in those ports for the period 1914 to date, the cost of living data being that supplied by the United States Department of Labor.

This comparison shows that using the base wage and living cost of 1914 as a base, the real wage rate has increased beyond the cost of living so that as of June, 1934, the real wage had increased so that we have at present the highest real wage ever paid in the industry. The margin of wage rate over cost of living as of June, 1934, for the following ports is as follows:

	Increase of real wages over cost of living
Seattle	53%
Portland	49%
San Francisco	37%
Los Angeles	29%

An examination of the exhibit will show that there has been a consistent increase in real wages so that as of the present time the real wages paid to the Pacific Coast longshoreman is the greatest in history.

3. COMPARISON OF WAGES PAID FOR COMPARABLE LABOR IN SOME COMMUNITIES.

Employers' Exhibits V, DD and WW show the wages paid for comparable labor in various Pacific Coast ports. Without repeating the entire exhibit, the following wages prove illuminating (Emp. Ex. V):

Base longshore wage	85¢ per hour
Overtime " "	1.25
Actual wage (about)	.95
San Francisco Municipal Railroad platform men	75¢ per hour
Market Street Railway platform men	.42 to .50
Municipal track men	.62½
Construction laborers	.50 to .62½
Handling coal laborers	.40 to .75
Building trades laborers	.62½
Los Angeles	
Teamsters—light trucks	50¢ per hour
heavy trucks	.60
Street railway platform men	.46 to .56
Building material truck drivers	.45
Shovellers	.55
(Emp. Ex. WW).	
Warehouse laborers, shovellers	.55
General Chemical Company men handling, loading, trucking sulphur and chemicals	.40
Pacific Guano and Fertilizer men loading, trucking and handling guano	.40
Proctor & Gamble loading and trucking labor	.40

Portland (Emp. Ex. DD).

Railroad freight handlers	.471¢ per hour
Car stowers	.49
Labor, dock workers	$3.60 for 8-hour day
Auto mechanics	.60 to .70 per hour
Building Trades laborers	.60
Painters	.88
Roofers	.90
Structural Steel workers	.90

The following wages prevail throughout the entire lumber industry in the northwest and the men handle exactly the same cargo handled by the longshoremen (Emp. Ex. V):

Cargo dock labor	.45
Car loading	.50
Jitney drivers	.50
Boom men	.47½

Seattle (Emp. Ex. QQ).

Building labor	.62½¢ per hour
Cabinet maker	.56
Cement finisher	.90
Locomotive firemen	.68½
Car loading	.40
Warehouse	.40
Flour mills truckers	.55

The longshoremen introduced in Exhibit 19 a cost of living budget for Portland. This had been introduced by counsel for longshoremen, in an arbitration held in Portland concerning the wages to be paid employees of the Portland Street car system. We introduced as Exhibit FF

the actual award made in that arbitration in February of this year, in which the material mentioned was introduced in evidence. The award by the Board of Arbitration included the following:

Streetcar platform men—	
First 3 months	.60¢ per hour
Next 9 months	.63
Thereafter	.65
Blacksmiths	.84
Carpenters	.72
Laborers	.52

WAGE RATE AND PAY-CHECK.

Counsel for the longshoremen will, no doubt, urge in support of the demand for increased wages that many of the longshoremen at the end of the month do not receive pay-checks for a large amount. This has nothing whatever to do with the wage rate. It is purely a result of lack of work opportunity. The evidence clearly shows, and the point will be discussed at some length hereafter, that the willingness of the employer to spread work has reduced the earnings of regular longshoremen below what they would have been had the number of men been reduced to the needs of the respective ports. For this they should be commended and not criticized. But under the spread-the-work-program, the earnings of the regular longshoremen have held up remarkably well and, we assert, at a better rate than in other industries where an attempt has been made to spread work.

It should also be remembered that the wage rate and not the amount earned by the individual longshoreman determines the cost of longshore work to the employer,

and it is of no advantage in a monetary sense to the employer to spread the work, or to reduce the number of men applying for work. The wage question must therefore be determined by the wage rate and not by the pay-check. Any lowness in the pay-check can only be answered by an effective plan of decasualisation.

Small pay-checks received by casual workers are of no evidentiary value and their showing is not helpful in a solution of the problem. The low pay-checks shown are for casual workers who have no claim upon the industry and it would be as valid to urge that because an unemployed man in the building industry could obtain but one or two days' work a week in that industry, that the wage rates for the building industry should be increased. It is purely a question of work distribution on the one hand and unemployment on the other and this matter should be clearly distinguished from wage rate.

HAZARD AND SAFETY.

The longshoremen presented oral testimony designed to convince the Board that longshore work on this coast was particularly hazardous due to a claimed "speed up" by the employers.

It cannot be denied that work aboard ship has hazards beyond that of some other kinds of work. For instance, a man working upon the dock is far less subject to hazard than a man working aboard ship, and office work is less hazardous than dock work. The testimony shows (T. 2154) that the insurance rate for dock workers is less than one-half of that for ship workers.

The evidence shows conclusively that the employers upon the Pacific Coast are entitled to commendation for

their pioneer and effective efforts in reducing the hazard of accidents, and that the claim of hazard made by the longshoremen is entirely without foundation. The record shows that the first organized effort in the United States to reduce accidents among longshoremen was undertaken in 1927 by Pacific Coast employers and that as a result of their voluntary efforts, accident frequency has been reduced so that at the present time the hazard and accident frequency upon the Pacific Coast are far less than obtains in ports on the Atlantic Coast (T. 841).

The effect of the employers' safety work is shown in Employers' Exhibit E. There it is shown that the number of disabling injuries per 1,000,000 man-hours is as follows:

San Francisco	
1927	400
1928	220
1933	100
Los Angeles	
1928	300
1929	235
1933	100-
Columbia River	
1928	400
1929	320
1933	120

There exists in favor of the Pacific Coast longshoreman, what is in effect a wage differential in his favor as compared with longshoremen from other parts of the United States, in that he is subjected to far less hazard and risk of accident than is the longshoreman on the Atlantic Coast.

The record shows the pioneer efforts of the employers to provide first aid training. In Los Angeles more than 2000 men have been given first aid training and comparable work has been done in other ports (T. 660). First aid stations are maintained at strategic points on dock wharves in all of the ports.

PENALTY RATES.

There is an entire absence of evidence in the record on the part of the longshoremen to justify any increase in penalty rates, or indeed to justify the continuance of penalty rates.

The record shows that penalty rates in theory were intended to provide additional compensation to workmen who performed extraordinary labor or endured physical discomfort as a result of their work (T. 1846).

The origin of these rates is historical and as shown by Employers' Exhibit XX varies with every port in the United States. Some of the penalties had their origin in sailing ship days, and the reason for them has long since ceased to exist.

The only testimony in the record is to the effect that penalty rates are not justified, but that the men should handle cargo as it comes, the good with the bad, at the base wage (T. 847, 1280, 1471, 1846). It shows that in other industries where these commodities are handled no penalties are paid. This is shown by the figures above mentioned with respect to the handling of sulphur, chemicals and guano by factories in Los Angeles handling these commodities (Emp. Ex. WW).

There is also no justification whatever for paying penalty rates to members of the gang not affected by the

handling of the cargo, such as deck men, nor is there any justification for pyramiding penalties, that is to pay overtime on a penalty rate. It is no more difficult or offensive to handle penalty cargo at night than in the daytime.

It is submitted that an examination of the record will convince the Board that the penalty rates now in existence have no justification and that any attempt to increase those now existing will cause untold confusion.

Penalty rates have a historical origin and vary with every port (as shown by Emp. Ex. XX) for reasons peculiar to the particular port.

For instance, there is no penalty now in existence in Portland for handling sacks of over 125 pounds weight. Testimony shows that the great bulk of flour handled in Portland is in sacks weighing 140 pounds. The imposition of a penalty in that port would therefore greatly increase stevedoring costs on one of the most important commodities handled there (T. 1280). On the other hand, this penalty now exists in Seattle, where the testimony shows almost all flour is handled in 100 pound sacks. The entire absence of testimony in support of these penalty demands and the fact that they are local in their nature and would require months of investigation for their proper consideration should convince the Board that if it does not do away entirely with penalty rates, it should make no attempt whatever to alter those now in effect or attempt to make penalty rates uniform along the coast.

The evidence also shows that there is no justification for many penalties, such as handling explosives. The testimony, without contradiction, is that there is no known record of an accident on this coast occurring while

handling explosives which was due to the character of the explosive, and also that the work is much easier than ordinary longshore work (T. 849, 1283).

As shown on Employers' Exhibit XX, more penalty rates already exist on the Pacific Coast than in any other part of the United States, and no two ports on the Pacific Coast have the same penalty rates.

THE MIS-CALLED 6 HOUR DAY.

The second demand is for the mis-called 6 hour day.

The demand is set forth in the Arbitration Agreement as "6 hours shall constitute a day's work; the first 6 hours worked between the hours of 8 a. m. and 5 p. m. shall be designated straight time * * * all work time in excess of the 6 hours which is designated as straight time * * * shall be designated as overtime".

Ostensibly, the 6 hour day demand is advanced as a means of spreading work. As will be apparent, the way to spread work is by an intelligent decasualisation program and not by imposing arbitrary restrictions. Nowhere in the United States does there now exist in longshore labor any comparable restriction (Emp. Ex. T).

Analysis of the mis-called 6 hour day demand shows that it is merely an artifice to obtain overtime for the hours between 3 p. m. and 5 p. m. This is obvious from the fact that a 6 hour day does not apply in any period except during the straight time period from 8 a. m. to 5 p. m. If the men were actually desirous of a 6 hour day, the only fair proposal would be that any 6 hour period of work during the 24 hours should be paid at straight time. But it is significant that there is no such proposal.

The evidence, including Employers' Exhibits CC and OO, shows that in most instances men go to work at 8 a. m. and work approximately 8 hours. For instance, in Exhibit CC where working hours of 5 regular gangs were shown, out of a total of 140 starts the work extended beyond 6 hours regular time in 72 instances, the excess varying from ¼ hour to 11¼ hours. The excess in most instances averaged not in excess of 2 hours. To compel the changing of the gang at the end of 6 hours (to-wit: at 3 p. m. or 4 p. m.) would, in most instances, require the employment of a new gang for from ½ to 2 or more hours, in most instances, only for 2 hours.

The I. L. A. fails to realize that when there is an excess of men available for work, the logical and efficient way to distribute work is to hire the men for alternate jobs, or on alternate days and that when work is brisk, to require gangs to be changed at the end of an arbitrary six hour period would mean either that one working gang would merely exchange places with another working gang, or in other words, take in each other's washing, or it would be necessary to bring a great number of additional men to a waterfront already overcrowded.

The impracticability of getting gangs to go to work at three o'clock in the afternoon for one-half hour, one hour or two hours, is obvious. The fact that an employer must employ a gang for a minimum of two hours means that where the excess work is of less than two hours' duration, the employer will be penalized by putting on a new gang. The net result of the proposal if it were made effective would be to draw additional men to the waterfront at peak periods, thus resulting in a condition of

permanent unemployment for all, decrease the earnings of the steady gangs by not less than 25 per cent (T. 1958), and increase the overtime paid by the employer. We sincerely believe that the record is entirely without support for this demand and that the men themselves are not in favor of it. Whatever justification there might be for a six hour day in factory or shore employ, it is totally inapplicable when ship work is concerned.

THIRTY HOUR WEEK.

This demand as set forth in the Arbitration Agreement is "30 hours shall constitute a week's work averaged over a period of four weeks". This should be compared with the provision in the proposed Shipping Code for a maximum of 48 hours of work averaged over a four-week period (Emp. Ex. JJ).

Nowhere in the United States does any such restriction obtain for longshore work (Emp. Ex. T). Indeed, nowhere in the United States is there any restriction on the hours of longshore labor save in San Francisco, where the employers have voluntarily agreed prior to the strike to a 48 hour maximum week and a 15 hour maximum day.

The record contains no evidence justifying this demand. On the contrary the record is replete with evidence showing its inapplicability and undesirability as applied to this industry (T. 857, 938, 1357, 1414). Artificial restrictions of this character may be suited in some instances to factory or regular employment, but the uncertainties of longshore work make it highly undesirable both from the standpoint of the men and the employers. A 30 hour, or 120 hour maximum, cannot constitute a 30 hour or 120 hour average, and this restriction inevitably spells lower

earnings for the regular longshoremen. It will seriously cripple the operation of the ship, and conflict with affiliated industries, existing trades and customs, including existing codes.

No doubt counsel will urge that in some of the ports the imposition at this time of the 30 hour week would not seriously affect employment, as the average employment is now not in excess of 30 hours per week. If such is the case, it demonstrates that no such restriction is necessary, for the work is already distributed without this restriction. The Board will realize that with any revival of commerce the regular longshoremen will be given greatly increased work opportunity and that if, at that time, any restriction such as the 30 hour week is in effect it will greatly prejudice the ship as well as the men and result in calling into the industry additional longshoremen who have no just claim to longshore work and whom the industry cannot support in slack periods.

The seasonable character of the work in many of the ports must be borne in mind. The longshoreman must make hay while the sun shines. He must work longer hours when there is much work opportunity in order that his average earnings over the year may be reasonable. To restrict his ability to work when work offers at peak times will only result in decreasing his earnings.

The absurdity of the suggestion is best demonstrated by the situation which exists in the smaller ports. There the work is infrequent. The men must work when the ships are in port. The number of men available is necessarily limited and this restriction would seriously hamper the ship operation without any commensurate benefit to the men.

All in all it is submitted that this demand is wholly unsupported either by principle, logic, or by the evidence of record.

THE SO-CALLED 6 HOUR DAY AND 30 HOUR WEEK ARE NOT DIRECTED AT REDUCING THE PERIOD WORKED AT A STRETCH.

Counsel in his argument almost tearfully referred to the length of time some of the gangs occasionally worked at a stretch, and attempted to have the Board believe that the men's demands for the so-called 6 hour day and 30 hour week was directed at the elimination of long stretches and would effectively eliminate them. The fact is that not a single demand of the union is directed at the restriction of the hours worked in a stretch, and there is not an I. L. A. agreement in the United States where there is any restriction on the hours that may be worked at a stretch (Emp. Ex. T).

The record is conclusive on the point that long stretches are not the ordinary practice, but only occur in times of emergency. It makes equally clear that not a single employer believes in long stretches. Every one who testified on the subject stated he did not believe it in the interest of the employer to work men in excess of 15 hours and that if in case of emergency they were worked in excess of that time, it was because the men desired it. I can safely state that the employers are willing in the course of collective bargaining to agree to any reasonable limitation on the length of a stretch, but the cold fact is that the men have not asked it. Their so-called 6 hour day is only a device to obtain additional overtime and the 30 hour week is on its surface intended only to result in spreading work.

Counsel was particularly unfair in his remarks with respect to the attitude of the employers on this subject. He attempted to cover the absurdity of the demands actually made, by representing them as directed at the length of the stretch. He remarked that until yesterday, when he heard that a 48 hour week limitation was in effect, he had not heard of any employer agreeing to any restriction on hours. Counsel is neither familiar with the record in this case, or with working conditions in San Francisco, for the 48 hour week and the 15 hour maximum on any stretch have been in effect in San Francisco since April. Mr. Plant testified (T. 717) that following the April 3 agreement, the men and the employers met and agreed upon maximum work periods, saying:

> "The specific periods agreed upon were as follows: 48 hour maximum work in any one week: 15 hours maximum work in any one shift: 8 hours minimum rest period between shifts where there are substantial work periods. The I. L. A. committee had to refer the acceptance of the employers proposal to its membership and in about a week's time they came back and said they were satisfied. The employers then made these hour rules effective.
>
> Question. "And they have been effective ever since have they?"
>
> Answer. "They were effective up to the time of the strike, and they have been effective, so far as possible since the strike was called off on July 31."

Long stretches of work are always broken up by fresh gangs in decasualised ports. Dispatching rules require it. Common sense calls for it. Testimony to the contrary was of earlier years, vaguely timed, and a check of years of

payrolls by I. L. A. counsel failed to show such alleged long shifts.

Under a port plan of distributed work there is no incentive to men to work long shifts. And the employers know they lose by such shifts.

THE NOON MEAL HOUR PERIOD.

The demand is made that the noon meal hour shall be "from 12 noon to 1 P. M." The practice in all ports, one that has existed for many years, is that the noon period shall be one hour at any time from 11 A. M. to 1 P. M., excepting in Portland where it may extend to 2 P. M.

The evidence clearly shows that in actual practice the men go to lunch between 12 and 1 with few exceptions (Emp. Ex. CC). Those exceptions are only for cogent reasons such as the shifting of a ship during the noon hour, or the working of a long hatch during the noon hour by a gang which has the short hatch. The testimony shows without contradiction that the privilege of the employer to send men to lunch where necessity arises, other than during the 12 to 1 period, is beneficial to the men and to the ship (T. 1274, 1353, 1843). Wherever both the men and the ship can be benefited without hardship to either, this should certainly be done.

CONTROL OF THE HIRING HALL.

The final demand is that "The hiring of all longshoremen shall be through halls maintained by the International Longshoremen's Association, Pacific Coast District."

It will be noted that the only strike vote by the I. L. A. membership made no mention of this issue and was for recognition of the I. L. A. (T. 108). Such recognition was

accorded by the employers before the strike started. The demand that the employer be forced to hire his men through I. L. A. halls is one advanced by the officers of the I. L. A. Recognized in its full implication, it is an attempt not only to impose the closed union shop but goes far beyond that and is an attempt by the I. L. A. to control the actual hiring of men, and to force the employer to employ men selected by union officials.

Well may counsel say that the wage and hour demands are unimportant when compared with this demand, for if it were granted the I. L. A. would have such control over the situation that it could enforce any demand upon the employer. Once granted, wages and hours would be at the dictation of the I. L. A.

It is not too much to say that the granting of this demand would constitute almost a death blow to the shipping industry upon this coast. No such practice is in effect in any port in the United States. Indeed in no port in which the I. L. A. has contracts with the employers does a hiring hall of any description exist except in Tacoma. There, as the record shows, there was only an implied agreement with the I. L. A. and the hiring hall was maintained under a temporary understanding with the employers, to which I will refer hereafter (T. 1894, 1900).

The only hiring halls of any character existing in the United States are those established by the employers at Seattle, Portland, Los Angeles and some of the smaller ports, in an effort to carry out on their own initiative a program of decasualisation. I am using the term hiring hall throughout my statements in the sense of a dispatch-

ing hall where decasualisation is being attempted or practiced.

The term "hiring hall" is a misnomer. The halls in question are properly called "dispatching halls" and provide a convenient method for the dispatching of men to employers who then employ them at the place of work. The term "control of the hiring hall" as used by the union really means "control of hiring", the right to prescribe for the employer whom he may employ.

IS HIRING HALL DEMAND, A DEMAND FOR A CLOSED SHOP?

Despite many attempts, notably one at Portland, the employers have been unable to obtain in this record any clear statement of the objections of the men to the dispatching halls now operated by the employers, or any statement of what the men desire or plan if they were to be granted their demand.

The demand on its face does not include any demand for a closed shop agreement and we therefore take the position that it is beyond the power of this Board to grant either directly or indirectly what would amount to a closed shop contract. If the men's demand amounts to a closed shop contract in substance, then we must insist that the granting of such demand is beyond this Board's power.

Mr. Peterson, a member of the Executive Committee of the I. L. A. testified (T. 2055) as follows:

> "Q. Mr. Peterson, do you think that any man who is working on the waterfront and who is qualified in this work, should be prevented from working because he does not belong to the I. L. A.?
>
> A. Absolutely not.

Q. Do you think a man should be entitled to work whether or not he is a member of the I. L. A.?

A. Absolutely. I have always held that. I am on record as stating that to the employers of this port at our joint meetings."

And later he testified (T. 2064):

"Q. You said a moment ago that you believed that a man who was qualified to work on the waterfront can be permitted to work there whether he belongs to the Union or not; that is correct, is it not?

A. Yes.

Q. What chance do you think such a man would have if he were dispatched through a Union hall? Do you think he would get a fair break?

A. Under a definite hiring system, the man could get nothing except a fair break."

* * * * * * *

(T. 2067):

"Q. So that the demand which you yourself presented before the Federal Mediation Board on March 28, 1934, was that the hiring of longshoremen shall be through halls maintained by the I. L. A. Pacific Coast District, and that it contemplated that non-union men should be hired through those halls on a parity and equality with members of the I. L. A. Is that correct?

A. It is not specifically so stated there but I guess that is what it means.

Q. But you are speaking now as a member of the Executive Committee of the Pacific Coast District?

A. Yes."

If this is the correct interpretation of the hiring hall demand, and it must be, because it is an interpretation of the demand by the very officer of the I. L. A. who

originally presented it, then there is no closed union shop demand before the Board, and as stated before, the Board is without power in substance or in form to bring about such a condition. The so-called "preferential agreement" is of course a closed shop agreement.

The utter absurdity of expecting that a non-union man could be dispatched on an equality out of a union hall is so apparent as hardly to deserve comment. The actual condition existing in Portland where non-union men are subjected to such threats and intimidations as to require their being dispatched from a separate hall on the suggestion of this Board, would seem to be conclusive proof on this point. If any additional evidence were required it is furnished by the testimony of officers of both the Portland and Seattle I. L. A. that no non-union men would be dispatched through a union hall unless all available union men were already at work. As the memberships of the respective unions far exceeds the requirements of any of the ports it is obvious that non-union men would never have an opportunity to work. In San Francisco where no hiring hall exists, the I. L. A. is endeavoring to make it impossible for a non-union man to work upon the waterfront. To compel a non-union man to seek employment through a union hall in San Francisco would be to write his death warrant.

OSTENSIBLE BASIS OF MEN'S DEMAND.

On its surface, the I. L. A. demand seems to be predicated upon the theory that work opportunity should be spread among members of the I. L. A. and that the spreading of such work should be left to the officers of the I. L. A. This totally ignores two fundamental rights:

—first, the right of the employer to select his employee, and second, the right of an employee to secure employment without discrimination on account of union or non-union membership.

The men seem to forget that employment is afforded by the efforts of the employers, who have their capital at risk, and to deprive them of the right of management involved in the selection of employees is to attack a fundamental right without which business cannot exist. After all, the needs of the industry must be given consideration for it is the industry which employs both the capital and the labor. The employee is the agent of the employer who is responsible for the employee's acts, and he must of necessity select him. This does not mean, that as part of a program of collective bargaining the employers may not circumscribe their right, or agree to a program of decasualisation, but this fundamental right of selection must be preserved. This fundamental right was recognized in the award of the National Adjustment Commission appointed by President Wilson in 1918, which prescribed the conditions for longshore labor in the Columbia River District. This award for the Columbia River District, which was the basis of a preferential agreement with the then existing I. L. A., is shown at page 1211 of the record and contains the following statement (T. 1213):

> "Employment of Labor—The privilege of the employer, his foreman or agent, to hire and discharge employees of all classes, to regulate the size and composition of all gangs, sling and truck loads, and to direct the work of employees shall be maintained. Any action taken by the employer or his foreman or agent, to regulate the size or composition of gangs,

> the shifting of men from one gang or job to another, the selection of sub-foreman or any other action deemed necessary to properly expedite the work, will not be questioned by employees either in spirit or in fact."

We submit this states a fundamental principle which must govern this Board in the making of any award, and should be incorporated in the award.

DECASUALISATION.

If the I. L. A. demand for control of the hiring hall is not a covert attempt by the I. L. A. to secure a closed union shop, the right to select the employee and in substance to run the employer's business, then it must be assumed to find its support, if any it has, as an honest attempt to effect a program of decasualisation.

I have shown why the demand must fail if it is a covert attempt to secure a closed shop agreement and control of the job. It is equally unjustified if its objective is decasualisation.

Decasualisation in its proper sense is impossible of accomplishment through an I. L. A. hall.

Decasualisation has two major phases or principles. The first is a limitation on the intake of the men in a port to the needs of that port, and second, the distribution of the work according to the requirements of the ships, coupled with the needs of the men. Neither of these objectives can be accomplished through an I. L. A. dispatching hall.

WHY THE I. L. A. CANNOT ACCOMPLISH DECASUALISATION.

The I. L. A. has been opposed to decasualisation and its history shows that prior to 1920 in Portland and Seattle its efforts were limited to the development of the list system which disregarded the primary requirement of a limited intake of men, and totally destroyed the employer's right of selection (T. 1329). It is interesting to hear counsel's attempt to twist Dr. Stern's report so that it would seem that the decasualisation plans in Seattle and other Coast ports were initiated by the employers there, for the purpose of breaking the I. L. A. The true fact, as stated by Dr. Stern, is that no decasualisation program was possible where the I. L. A. was in power owing to its opposition. What Dr. Stern did say was (Emp. Ex. H. H.):

> "Unquestionably the employment conditions and earnings of the longshoremen in the decasualized ports of Seattle, Portland and Los Angeles are more favorable than in the other ports without decasualization schemes." * * *
>
> "The principal difficulty with the existing schemes in Seattle, Portland and Los Angeles is not the scheme per se. It is due primarily to the fact that the plan was promulgated and carried out by the employers against the strong opposition of organized labor. In fact the schemes may be considered as the result of the protracted fight between the employers associations on the west coast and the International Longshoremen's Association, which culminated in the almost complete elimination of the union from the west coast. This is the primary reason why the International Longshoremen's Association, the dominant labor organization in the longshore field, has been so

violently opposed to any suggestion of decasualisation in the other ports."

If the English language means anything, this means that the I. L. A. was so violently opposed to decasualisation that it was necessary that it practically go out of existence in order that a decasualisation plan could be effective. It was not that the plan of decasualisation was conceived to fight the unions, but the union fought the plan of decasualisation. The statement also means that in November, 1933, when Dr. Stern made his report, the I. L. A. was still violently opposed to decasualisation. This is borne out by the fact that in no port where the I. L. A. has a contract is there a plan of decasualisation in effect. Is it reasonable to expect that an organization which has always fought decasualisation can now suddenly put a decasualisation plan into effect?

I. L. A. DEMAND NOT A DECASUALISATION PLAN AT ALL.

Though counsel constantly refers to the I. L. A. demand that all men be hired through an I. L. A. hall as a decasualisation plan, an examination of the demand shows it is nothing of the kind. The hall demand reads:

"The hiring of all longshoremen shall be through halls maintained by the International Longshoremen's Association, Pacific Coast District. If any grievance should arise over the method of conducting said halls or if any employer believes that he is being discriminated against in the operation of the hiring hall, his complaint shall be referred to a committee of two members of the International Longshoremen's Association and two members of the Employing Stevedores. In the event they are not able to agree

> they shall choose an impartial fifth party to render judgment, the decision of this party to be adhered to by the International Longshoremen's Association."

To claim that this is a program of decasualisation is absurd. It grants to the I. L. A., as was its evident intention, complete control over hiring, and deprives the employer of all right of selection. The only right the employer has is that if he has a grievance over the method of conducting the hall, or if he believes he is discriminated against, he may submit the matter to arbitration. Instead of it being a program for joint operation or for supervision by a joint committee with right of supervision, it is a complete cession to the I. L. A. of all control over hiring, the initiation of methods of despatch and full control of the job.

The demand simply means that the I. L. A. desires to obtain the right to distribute the employers' work as it sees fit among the I. L. A. members at the various ports. The presence of at least a fifty per cent surplus of members of the I. L. A. beyond the demonstrated need of the several ports, means that this could only lead to a system of work rotation among members of the I. L. A. without regard to the needs and rights of the employers, and without any regard to the rights of bona fide longshoremen who do not belong to the I. L. A., and it can only mean a system of work rotation to the point where the regular longshoreman is rotated out of his job in favor of the newcomer who belongs to the I. L. A.

THE I. L. A. HIRING HALL DEMAND WOULD VIOLATE THE SHERMAN AND CLAYTON ACTS AND THE NATIONAL RECOVERY ACT.

If the I. L. A. demand amounts either in form or substance to a closed shop agreement restricting the employers to employ only members of the I. L. A., then such an arrangement would violate both the Sherman and Clayton Acts and the National Recovery Act. Without arguing the subject I will merely cite the following cases:

Anderson v. Shipowners Association, 272 U. S. 359;

Bayonne Textile Corp. v. American Federation of Silk Workers, 168 Atl. 799;

Lichtman & Sons v. Leather Workers Ind., 169 Atl. 498.

THE I. L. A. BY REQUIRING HIRING THROUGH AN I. L. A. HALL CANNOT ACCOMPLISH DECASUALISATION.

For reasons which must be already apparent to the Board it is impossible from a practical standpoint for the I. L. A. by requiring that hiring be only through an I. L. A. hall, to accomplish decasualisation. I will summarize the reasons for this briefly under separate subdivisions:

(1) THE I. L. A. HAS ALWAYS OPPOSED DECASUALISATION.

As has already been pointed out, the I. L. A. has always vigorously opposed any decasualisation program. Dr. Boris Stern points out that the I. L. A. opposition to decasualisation in the Pacific Coast ports was so great that decasualisation could not be accomplished while the unions continued. I. L. A. resistance to decasualisation has continued to the present day and the best evidence of its attitude is found in the fact that in no port

where the I. L. A. has a contract with the employers has decasualisation been accomplished. To expect a subdivision of a nation wide union with such a record and having such an attitude to actually accomplish decasualisation is out of the question.

The very demand made here, and the critical and sneering attitude of I. L. A. counsel towards the efforts of the employers to effect decasualisation speaks louder than words as to the true I. L. A. attitude and intentions.

(2) DECASUALISATION CANNOT BE ACCOMPLISHED UNDER I. L. A. CONTROL.

As the testimony with respect to Tacoma and Seattle shows, the dispatcher in an I. L. A. hall is an elected official, being elected annually by vote of all of the members (T. 1704). His qualifications are naturally those of a politician rather than a trained specialist. An elected dispatcher would be subjected to such pressure for political reasons that it cannot be expected that he could discharge the duties of his position fairly or with satisfaction. His every effort would be to satisfy everyone and this would inevitably result in a rotation system.

(3) LACK OF INFORMATION, MATERIAL AND EXPERIENCE.

Not only has the I. L. A. no experience in decasualisation, but it lacks the information and facilities necessary to the successful accomplishment of a decasualisation plan. Payroll records, personnel records and other confidential records of the employers must be readily available if such a system is to be effective, and it cannot be expected that employers would furnish such information to an I. L. A. hall, nor could they be expected to intrust to

an I. L. A. hall its payroll funds for distribution. Central payment can only be accomplished through an employer's hall.

(4) I. L. A. DISPATCHING WOULD INEVITABLY LEAD TO THE ROTATION SYSTEM.

The political considerations above mentioned and the pressure to provide work to all who belonged to the I. L. A. would inevitably result in a rotation or other similar system. This would mean that the poorest workman would be on an equality with the best and would inevitably discourage all initiative on the part of the better men.

(5) NON-UNION MEN COULD NOT BE DISPATCHED THROUGH AN I. L. A. HALL.

As I have already pointed out the I. L. A. demand is not in form a demand for a closed union shop. Mr. Peterson has testified that such is not its purpose, but that non-union men are to be dispatched through the I. L. A. hall on an equality with I. L. A. men. This of course is impossible. I. L. A. dispatching means a closed union shop, for it would be absolutely impossible, as the Board well knows, to dispatch non-union men through an I. L. A. hall. They can only be dispatched through an employer-controlled dispatching hall.

(6) LACK OF RESPONSIBILITY OF I. L. A. OFFICIALS AND THEIR INABILITY TO CONTROL THEIR MEN.

An unanswerable argument against the I. L. A. demand is the thoroughly demonstrated lack of responsibility of its officers and lack of discipline among its membership. The record shows that the Pacific Coast locals have grown from a membership of approximately 1000 in July of

1933 to in excess of 12,000 at the present time. With no background of experience in collective bargaining and with lack of opportunity to create discipline and responsibility among its membership, it is but inevitable that we should have witnessed the scenes of violence and disorder that existed during the strike and the almost daily violation of the arbitration agreement since the return of the men to work.

The course of the negotiations prior to the calling of the strike, the negotiations for its settlement and the violations since the arbitration agreement was executed, all show that it would be almost a death warrant to the employer to grant the I. L. A. demand.

The repudiation of the April 3rd agreement, the refusal to accept the May 28th proposal, after it had received the approval of International President Ryan, and finally the repudiation of the June 16th agreement, executed in behalf of the I. L. A. by its International President and guaranteed by leading labor union and public officials, demonstrates the irresponsibility and lack of discipline in the Pacific Coast locals of the I. L. A.

Only last week the San Francisco local elected to the office of President by a large majority Harry F. Bridges, the alien who was the leader of the strike committee during the strike. His holding of the office is in direct violation of a provision of the I. L. A. constitution, which prevents anyone not a citizen of the country in which the I. L. A. operates, from holding office. Bridges is a citizen of Australia and is therefore ineligible to office, but evidently there is such lack of discipline in the I. L. A. organization that he holds his office in defiance to the provisions of the constitution.

The Board will take judicial notice of the fact that it was Mr. Bridges who since the execution of the arbitration agreement issued a circular to the members of the San Francisco local, advising them to strike on the job to accomplish their demands.

Responsibility and discipline are attained as the result of experience. Surely no one can fairly urge in the light of experience that the I. L. A. and its officials should be given control of hiring.

THE TACOMA HALL.

During the taking of testimony and in argument, counsel for the I. L. A. has referred to the operation of the I. L. A. hall in Tacoma as an example of what might be expected if the I. L. A. demand were granted. I believe that the Board's visit to the Tacoma hall and the testimony respecting its operation leaves no doubt in the Board's mind as to what would happen if the condition in Tacoma were to be made effective in other ports. But even there the conditions are not comparable, for a substantial local has existed in Tacoma continuously since 1909, while the locals in the other ports came into existence only last year.

One of the I. L. A. witnesses testified that the operation of the I. L. A. hall in Tacoma might be classed as a program of decasualisation. The record shows that it is nothing of the sort. As stated by Dr. Boris Stern in his book on Cargo Handling and Longshore Labor Conditions (Emp. Ex. N, p. 94):

> "In Tacoma all of the longshoremen are organized into two union locals affiliated with the International Longshoremen's Association * * * although the two

> locals restrict their membership to a definite number of men, the Port of Tacoma cannot be classified among the decasualised ports."

The record shows that no attempt of any kind was made by the I. L. A. to spread work in Tacoma prior to 1931, or probably until the spring of 1933. Prior to 1931, the employer had free and unrestricted selection of his employees (T. 1893). Thereafter and up to April, 1933, the employers and the I. L. A. cooperated in a program of spreading work, which preserved, however, to the employer freedom of selection. Mr. Stocking, president of the Tacoma Waterfront Employers, testified that after an agreement to this effect had been made the union, without consulting the employers, imposed by union rule a restriction preventing any man who had earned more than $6.00 from reporting to work until every other man in the union had earned $6.00 (T. 1897). These conditions were so intolerable that in March, 1933, the employers demanded a return to the previous conditions of unrestricted selection (Emp. Ex. LL).

Counsel suggests that this protest was immediately acceded to by the I. L. A. and that an agreement was made settling the difficulty (Long. Ex. 52). He cites with emphasis the signature of Mr. Stocking to the plan of April 12, 1933, as a showing of Mr. Stocking's complete satisfaction with the Tacoma situation.

Counsel overlooks the testimony of Mr. Stocking with respect to that agreement (T. 1900). In the first place, that agreement by its terms was temporary and to be effective for a trial period of only sixty days. In the second place, Mr. Stocking testified that after its execu-

tion, continued modifications of the plan by action of the I. L. A. without consultation with or consent by the employers, has resulted in a highly unsatisfactory condition. This condition is so unsatisfactory that the employers had determined shortly before the strike was called to demand the return to the original system of free selection (T. 1901, 1904).

Mr. Stocking testified categorically, and his cross-examination did not alter his testimony one iota, that the employers in Tacoma named by him, and he named practically all of them, were violently opposed to the existing Tacoma method of operation (T. 1904). He testified also that the I. L. A. without consulting the employers had imposed the five-hour, ten-hour and fifteen-hour plan of rotation, the actual operation of which the Board saw on its visit to the Tacoma hall.

The Board on its visit could not but be impressed by the age of the men in the hall, which makes more vivid Mr. Stocking's testimony that the men dispatched to the employers in Tacoma were made up in a large degree of men no longer qualified to work because of age (T. 1904).

DECASUALISATION CAN BE SUCCESSFULLY ACCOMPLISHED ONLY THROUGH A DISPATCHING HALL OPERATED BY THE EMPLOYERS—COLLECTIVE BARGAINING.

Actual experience in Seattle, Portland and Los Angeles shows that decasualisation can be accomplished through halls operated by the employers. They are in a position to successfully operate such a hall, because of their experience, their desire and the various facilities which they possess. Beyond this lies the fundamental reason that the employers can voluntarily cooperate in the selection of

employees, thus permitting a spreading of work impossible where the employee has any right of selection of men to be registered.

Employers would not be human if there were not some defects and abuses that could be shown over a period of some twelve years, but it must impress the Board that with a membership of thousands the I. L. A. was unable to produce a single instance of a genuine abuse of the decasualisation programs in Portland, Seattle and Los Angeles. Nothing is perfect, of course, and collective bargaining between the employers and the I. L. A. will no doubt result in improvement, but the criticisms which have been levied at the plans now in effect are superficial only and are not substantial.

OBJECTIONS URGED BY I. L. A. TO EMPLOYERS' PLAN OF DECASUALISATION.

Various objections have been urged to the employers' plan of decasualisation. One is that the various employers' associations have no disciplinary powers over their members. Counsel need have no fear on this subject, for each of the individual employers is a party to this arbitration and will be bound by the decision of this Board as a matter of contract. The experience of the last few years would indicate that even this provision is unnecessary for while counsel has produced one or two instances of claimed violations of the Seattle plan by employers, the fact remains that the record in this case shows that the employers fairly lived up to all of its provisions.

Another objection urged is that the employers' associations do not employ all of the longshoremen at the various ports. The record shows clearly that practically

all of the longshore labor employed at the respective ports is employed by the members of the respective associations. The constant insistence of the I. L. A. that the various employers' associations deal with them as associations seems to demonstrate that this claimed objection is of but recent origin.

REASONS FOR EMPLOYERS' PLAN OF DECASUALISATION.

Counsel is not generous enough to give the employers any credit for originating and making effective in Portland, Seattle and Los Angeles the only plans of decasualisation in effect in this country. He seeks finally to ascribe the inauguration of this plan to an attempt by the employers to control hiring so as to obtain constantly new and efficient workers. The record shows that the ages of the men on the registered list in the decasualised ports are in the high brackets, and beyond those common to most any other industry, and indicate a willingness and practice of the employer to keep his employees. The records in this respect of the Seattle hall, the Portland Stevedoring Company hall and the Pacific Lighterage are extraordinary, and show how ungenerous counsel's suggestion is. In the Seattle hall 83.6% of the registered men were 41 years of age or over (Emp. Ex. MM).

In his attempt to belittle the employers work of decasualisation, counsel has been hard put. Decasualisation does not help the employer save in an indirect way, by providing a more stable group of workmen and eliminating strife and unrest. The total wages actually paid are the same in a decasualised port as in one that is not decasualised.

It must be remembered that the employers' halls have been operated under a program where policies have been

determined jointly by the employers and the representatives of the employees. The agreement of the employers to bargain with the I. L. A. collectively means that the I. L. A. will be substituted as the means for collective bargaining in the determination of these policies. There is, therefore, already in effect and waiting only cooperation by the I. L. A. a program for the joint control of the dispatching halls.

Pretending that the I. L. A. desires decasualisation, counsel should be generous enough to give the employers credit for their work.

EMPLOYMENT BY INDIVIDUAL EMPLOYERS.

Counsel for the I. L. A. attempts to lead the Board to believe that because certain individual employers such as Pacific Lighterage Company in Seattle and the Portland Stevedoring Company in Portland, employ their men directly and not through the general employers' hall, that this violates the plan of decasualisation. The testimony shows clearly that this is not so (T. 1973). There is no inconsistency between a single employer employing regular employees and the operation of a port decasualisation plan, if the employers cooperate in the handling of the reserve of men. The results effected both in Portland and in Seattle by individual companies are extraordinary and call for commendation. An individual employer whose operations are extensive may maintain a group of regular employees, whose regularity of employment will be greater than that of the employees employed through a general hall. The Board must bear in mind that there are at least six employers in San Francisco, whose operations are of such an extensive character that they today employ regu-

larly approximately one thousand men. In any plan of decasualisation for San Francisco these companies must be afforded the opportunity to hire and dispatch directly their own regular employees.

Counsel is constantly complaining that longshore labor lacks close relationship between employer and employee, and also that the longshoremen suffer from lack of steady employment. The instances of company employment mentioned are a complete answer to both of these suggestions, and instead of objecting to them counsel to be consistent, should welcome them. These practices are certainly to the best advantage of the men.

THE BORIS STERN REPORT (EXHIBIT HH).

Counsel has devoted much time to discussing the Boris Stern reports. At the expense of some repetition I will contrast counsel's statement regarding the reports with statements from the reports themselves (Emp. Exs. N, HH).

Counsel says that no port on the Pacific Coast is decasualised.

Stern states that Seattle, Portland and Los Angeles are decasualised. He says (Emp. Ex. HH, p. 1302): "Unquestionably the employment conditions, and the earnings of longshoremen of the decasualised ports of Seattle, Portland and Los Angeles are more favorable than in the other ports without decasualised schemes".

Counsel states that the earnings in Los Angeles are not distributed.

Stern says at page 101 of Exhibit N "Although the truckers earn much less than the permanent gangs and

the casual men considerably less, the average earnings of the longshoremen in the port of Los Angeles are undoubtedly higher and more equitably distributed than in any other port in the United States".

Counsel states that Stern favors rotation, foreman organizing permanent gangs to be registered with the Board for rotation work.

Stern actually says that these gangs would be merely the reserve gangs and that Emp. Ex. HH p. 1304) "The employers shall be entitled to have as many permanent gangs as they deem necessary so long as the workers allotted to them are given employment averaging over a four week period not less than two-thirds of the maximum weekly hours set in the Code". The guaranteed hours would therefore be two-thirds of 48 hours or 32 hours as a minimum. This may be contrasted with the I. L. A. demand for a 30 hour maximum.

Counsel attempts to create the impression that Stern is opposed to hiring by the foreman.

Stern actually states (Emp. Ex. HH p. 1304): "The employers shall also have the right to appoint their own foreman and otherwise control the work of their men, provided they comply with the regulations of the Code and of the collective agreement with the union".

GOVERNMENT PARTICIPATION.

Counsel's efforts to escape the Boris Stern report while seemingly praising it are humorous. He agrees with its principles but shies away from it because it provides that the dispatching hall should not be run by the union. He pretends not to object to governmental control or

government dispatching, but states that it is not acceptable because the employer would at the end of the arbitration contract period, to use counsel's words "kick it out the window".

The employer's position with respect to governmental participation is plain. They do not believe that the actual operation of a hall should be by a government representative. They do believe that the participation of the government in the position of guarantor against discrimination is most important to the success of a decasualisation program on this Coast and they here and now request this Board to continue in existence during the period of the award for the purpose of seeing that the award is fairly carried out, or if this is impossible on the part of the Board, that some appropriate agency act in the same capacity.

COLLECTIVE BARGAINING WITH THE I. L. A. WAS CONCEDED BEFORE THE STRIKE COMMENCED.

The employer assumes that collective bargaining will continue during the continuance of the award of this Board and it feels confident that if the I. L. A. lives up to its obligations and shows any ability to control its membership that peaceful bargaining can go on for an indefinite period beyond the termination of the award. Counsel and the Board may rest assured that any government participation in the nature of a guarantee of fair operation of the award of this board will be welcomed by the employers. In fact they ask it.

CHARGES AGAINST THE EMPLOYERS.

There have been so many loose charges made against the employers and these charges have been so clearly

shown to be unfounded that little space will be devoted to their discussion.

It would not seem difficult in an industry of this size, employing so many men, to secure a large number of persons who would testify to alleged abuses and to find that some of them at least were justified. For however fair an employer may be, some abuses must always occur. It is notable that despite the many witnesses and the great space devoted to their testimony that the charges made should prove so unsubstantial. Some of the charges proved to be almost ludicrous. Counsel yesterday cited one complaint which he said was evidently so valid that I did not even cross-examine the witness. Examination of the record proves that I cross-examined the witness long enough to show that the act he complained of occurred in 1929 (T. 1788). I did not feel it necessary to consume further time of the Board in investigating a complaint which was at least five years old.

Another almost typical incident was the pitiful story told by Richard Pape (T. 1687). Mr. Pape, under skillful examination by counsel testified that he had been unable for many months to secure employment at a regular wage and claimed that he had been discriminated against. On cross-examination it developed that Mr. Pape was 72 years of age; that he had a son who had been educated at the University of Washington by Mr. Pape on his longshoreman's wages (T. 1694); that Mr. Pape had suffered from heart disease for ten years and was now unable to work, and finally that after he was unable to do heavy work, the employers had voluntarily given him light work in order that he might earn a subsistence.

Another instance is the complaint of a witness from Astoria who testified that the employers' dispatching hall was in a poolroom. Cross-examination developed that the I. L. A. headquarters were in the same poolroom (T. 1097).

Instances of this kind might be multiplied almost indefinitely. We intentionally refrained from extensive cross-examination or the production of witnesses whose testimony was along those lines, in order to save the time of the Board. I believe that the Board will agree with me when I say that despite the many witnesses, no real testimony of employers' abuses are shown of record.

The alleged abuses may be grouped under the headings of the discounting of brass checks, pay delays, saloon appendages to hiring halls, and favoritism in dispatching. These will be discussed in that order.

BRASS CHECKS.

The discounting of brass checks is obviously impossible in those ports where those checks are not used. In Seattle and Los Angeles among the larger ports, no brass checks are used and in none of the ports other than Portland and San Francisco were they even mentioned. The brass check is merely a means of employee identification. It has been used from time immemorial in longshore work and is in common use on Atlantic ports where the I. L. A. exists. It is used extensively in many other industries such as mining. Some of the employers testified that they had carried brass identification checks for years. The Board will perhaps recall that during the War, metal identification checks were compulsory with all who entered the military service, officers as well as men.

Criticism of the discounting of brass checks was confined exclusively to San Francisco and Portland. In no port, including San Francisco and Portland was this discounting related to the employers in any way, but on the contrary it was shown that employers attempted to discourage this practice and prevented it in so far as this lay within their power. Borrowing on longshore pay claims is particularly unnecessary because of the rapidity with which men get their pay shortly following each job.

PAY DELAYS.

Criticism in delays of paying off longshoremen is particularly unfounded because pay is more rapid in longshoring than in any other industry. Moreover, the central pay service inaugurated in all of the decasualised ports makes the collection of pay easy, rapid and certain for the man. Nowhere under I. L. A. agreements on the East Coast is there a central pay service. Longshoremen are notorious for being "hot after their pay". Some employers pay as the men come off the ship. Many more pay within 24 hours, and all pay shortly following each job or at least within the week. In no field of criticism of employer halls is there so little foundation for just criticism by the longshoremen as in paying off.

SALOONS.

Both during the strike and during the testimony loose charges were leveled against employers' dispatching halls charging that saloons existed in or alongside them; that card games were carried on; that the halls were unfit. In no port on the Pacific Coast is there a saloon within an employer's hall. In all places near where men congre-

gate for employment there is likely to be a restaurant, and card room. This is quite as true of I. L. A. headquarters as of employer halls. It is true of the Tacoma I. L. A. hall and of the Astoria I. L. A. headquarters. Nowhere is such restaurant or card room conducted by the employers any more than by the I. L. A. The Board's visits to such places amply confirm the statement that the employer's halls are fit places, provided at substantial expense to the employers, without any charge whatsoever to the men for their great convenience, and without gambling, saloon or other alleged abuse. It is in order to point out to the Board that wherever it can examine at first hand the I. L. A. charges, they stand completely exploded.

FAVORITISM.

Wherever men are employed the charge of favoritism is certain to creep in. The earliest recorded instance is in the Bible and is related to the employment of workers in the vineyard. The answer to the loosely charged and repeatedly hurled claim of favoritism is the earnings records of the employer's halls which have always been open to the men; the limited intake of the men; the record of years of distributed work; and the government endorsement of the Pacific Coast employer dispatching halls as sound labor employment programing. Differences in earnings occur quite as regularly in those limited instances where the work opportunities are rotated as where they are distributed. The explanation lies in the differences in willingness to work, in seeking jobs, in the ability to do more than one kind of work.

The charge of abuses of the employer operating hiring halls is answered perhaps most effectively by what the I. L. A. has failed to allege against such halls.

For instance, where has the charge been leveled of too many men? The employers have restricted registration in Portland, Seattle and Los Angeles; the I. L. A. has not.

Again it would have been natural to charge the employers with breaking down the wage scale, hours and working condition standards during the depression.

The reason these charges have not been made is because there is no basis for them. It is to the credit of the industry that standards have been adhered to with remarkable uniformity throughout this depression in large and in small ports alike; with wage cuts made later than in most industries, lighter in severity and restored more quickly.

Perhaps the commonest charge leveled against employers is that of discrimination against union men where no union agreement has existed. Yet this charge has hardly even been mentioned in the testimony, only insinuated, and nowhere substantiated.

These evidences of a high standard of conduct of the employer dispatching halls on the Pacific Coast in fields where charges naturally would be leveled against the employers, is the best negative evidence against the charges that have been made without supporting evidence.

WITNESSES UNDER OATH.

Counsel's objection to the requirement that testimony be under oath is perhaps to be understood when the results of such witnesses' testimony are considered. Cross-

examination in almost all instances completely refuted the implication of the direct testimony. Had the witnesses not been under oath I venture to suggest that much of the oral testimony in the record would not be entitled to credibility.

The Board will remember the suggestion of Andrew Furuseth at the open hearings when he said that the truth would never be arrived at unless the witnesses were sworn. Our experience in this case certainly confirms the truth of this statement.

Counsel has told of his difficulty in securing witnesses because, so he says, the witnesses are fearful of employer discipline. I feel quite sure that no such instance is recorded, nor will any such incident occur. On the other hand, the Board will realize that it has been impossible for the employer to produce longshoremen who will testify that they do not agree that the demands made by the I. L. A. are to the advantage of the men themselves. The employers have literally received dozens and dozens of letters to this effect, but all such information has been given under pledge of secrecy, for the writers state that if it were known that they were opposing the I. L. A. program their safety would be endangered. I submit that logic alone will convince the Board that many of the proposals made by the I. L. A. are not in the interest of the regular longshoremen.

CONCLUSION.

I have dealt at some length with the three major issues involved in this arbitration. Counsel for the I. L. A. states that the demand for higher wages and for the 6-hour day and 30-hour week are not very important. I do not be-

lieve they have been seriously urged by the I. L. A., but its entire objective is control of hiring.

The demand for I. L. A. control of hiring is of fundamental importance and I can well see how the I. L. A. would willingly abandon its wage demand if it could secure its hiring hall demand for then it could impose at its leisure any wage or working conditions that it saw fit. I submit that there is no evidence that would justify any of the three demands and on this record the Board should deny each and every of them.

A consideration of the record must result in the following conclusions:

1. The base longshore wages now paid upon the Pacific Coast are the highest in the country and there has been a constantly increasing margin of this wage over cost of living.

Instead of meeting these facts directly, counsel for the I. L. A. has attempted to mystify the Board by statistical computations designed only to confuse the unalterable fact that longshoremen on the Pacific Coast are better paid than in any other place in the United States and at the highest real wage in their history.

2. Working conditions on this coast are better than those existing on the Atlantic Coast. This is shown in the Stern report and was admitted by Mr. Peterson, a member of the Coast Executive Committee of the I. L. A., in his testimony (T. 2069).

3. Decasualisation has been practiced in Seattle, Portland and Los Angeles against opposition by the I. L. A. This work has met the approval of Stern and largely fur-

nished the basis upon which decasualisation was proposed to be incorporated in the Shipping Code.

Decasualisation exists in no other ports in the United States. It results in no monetary benefit to the employer. Central pay service exists in Portland, Seattle and Los Angeles and in no other ports. Despite the evident benefits of decasualisation to the men, the efforts of the employers instead of meeting with the approval of counsel for I. L. A., who pretends to favor decasualisation, meets only with disapproval.

4. Longshoremen on the Pacific Coast work under better weather conditions and incur less hazard of injury than in any other port of the United States, owing to safety measures inaugurated by the employer. This record of safety accomplishment has met only with the sneers of counsel. Conditions, of course, are not perfect and we hope that as a result of collective bargaining they may be improved.

This strike was unnecessary to accomplish any legitimate aims of the men. As has been pointed out, on April 3, before the strike commenced, the employers had made an agreement with the I. L. A. providing:

1. Recognition of the I. L. A.;
2. Collective bargaining;
3. Decasualisation;
4. Mediation of wage demands.

They can have no legitimate demands beyond this and their rejection of the April 3 agreement must be credited to the irresponsibility and lack of discipline in the I. L. A., or the desire of certain elements in the I. L. A. to accom-

plish through its hiring hall demand an absolute control of the filling of longshore jobs on the Pacific Coast.

REQUEST FOR FINDINGS.

The employers request of this Board the following specific findings:

1. That longshore work, or longshore labor, consists of the work of cargo handling in the loading and unloading of vessels for the account of the ship;

2. That the wage rates now in effect are reasonable and that the demands for increased wages (including penalties and differentials) are not supported in whole or in part by the evidence and should not be granted in any amount.

3. That the demand for the 6-hour day and the 30-hour week is not reasonable, is not supported by the evidence and be not granted;

4. That the I. L. A. demand that all hiring shall be through I. L. A. halls is not supported by the record is not justified, and be not granted;

5. That conditions vary so greatly between the various ports, that it is impossible on this record, or within the issues, to consider or adjudicate anything other than basic longshore wages, and that matters of local concern should be left to local collective bargaining;

6. That if the Board is not satisfied with the dispatching system now in vogue at Pacific Coast ports that it may prescribe such changes or modifications as it may deem appropriate to effect a plan of decasualisation observing, however, the principle set forth in the decision of the National Adjustment Commission that (T. 1213)

"The privilege of the employer, his foreman or agent, to hire and discharge employees of all classes, to regulate the size and composition of all gangs, sling and truck loads, and to direct the work of employees shall be maintained. Any action taken by the employer, his foreman or agent to regulate the size or composition of gangs, the shifting of men from one gang or job to another, the selection of subforemen or any other action deemed necessary to properly expedite the work will not be questioned by employees either in spirit or in fact";

7. That the conditions existing prior to the strike shall continue during the period of the award, except as altered by the award, or during the period of the award as modified by mutual agreement;

8. That the due and punctual performance of the award by both parties shall be supervised either by this Board or some appropriate agency.

This Board cannot but be aware of the extent to which men of radical beliefs have filtered into the ranks of the I. L. A. and the extent to which these elements have become an important influence in the I. L. A.

To turn over to the I. L. A. the control of hiring would be to consolidate in the ranks of the I. L. A. these elements which would be sure to use this extreme and newly gained power for their own ends.

We feel that it is the duty of the I. L. A. to rid its ranks of these elements and that sound and permanent industrial relations in this industry cannot be accomplished unless and until this is done. For the Board in any award to vest in the I. L. A. and by so doing put into

the control of these elements the power of controlling the job would not only be a death blow to the employer but I honestly believe a blow at our free institutions. I firmly believe that it would not be in the interests of the I. L. A. for it could only lead ultimately to the self-destruction of the I. L. A. on this coast.

The issues that are submitted to this Board for decision are indeed important but of almost equal importance is the attitude of the parties to this arbitration toward its decision. No mechanical formula that this Board may prescribe will constitute a just and permanent settlement of existing differences unless they are accepted in whole-hearted spirit by the contending parties. Permanent industrial peace will depend as much upon the good faith, discipline and responsibility of the respective parties as upon the award of this Board. In behalf of the employers I wish to assure the Board that they will carry out to the fullest, both in letter and spirit, any award which it may make.

I wish to state again in concluding, our sincere appreciation of the industry patience and public service of the Board. I turn again to our companions on our tour of the circuit to say that no statements I have made are directed at them personally, but have been made because I believe it to be my duty to fairly and fearlessly speak the truth. May we meet again under happier circumstances.