THE LEGISLATIVE HISTORY OF THE FAIR LABOR STANDARDS ACT

DISSERTATION

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By

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CHAPTER I

THE REGULATION OF LABOR STANDARDS

Although effective national legislation regulating wage and hour standards was not secured until the advent of the New Deal, efforts to improve the economic condition of the industrial worker began early in the nineteenth century. For many years humanitarian reformers, working mainly on the state level, were primarily responsible for progress in this field. However, those seeking to improve wage and hour standards found themselves at a great disadvantage, not only because the nation accepted the laissez-faire philosophy of economic individualism but also because of a constitutional system which made regulation extremely difficult to achieve on either the state or national level. The forty-eight separate sovereignties seemed to be made to order for the frustration of reforms, while on the national level the industrial status quo was safely guarded by the Supreme Court.

Nevertheless, early in the nineteenth century reformers were able to initiate a program of improvement on the state level, securing the first laws regulating the labor of children and women. During periods of prosperity they were aided by labor unions, but on the whole, labor played a relatively minor role until after the Civil War.

After 1865 the tremendous growth of industry and the rapid change in working conditions that it brought about induced organised labor and increasing numbers of middle class Americans to join the
movement for reform. Growing dissatisfaction with the wage and hour standards of the lowest paid sections of the working population led these groups to intervene on behalf of the worker. However, after a long process of state legislative and administrative experience, they realized that state efforts in this field were largely ineffective, and hence they began the drive for regulation by the national government.¹

This movement was greatly intensified by the depression of the 1930's. As the economy slowed down and unemployment increased, there arose a renewed demand that the federal government find some way to get children out of the labor market and establish a maximum work-week to help reduce unemployment. Reformers based their drive for national regulation of wages and hours upon the principle that the prosperity of the nation depended on a fair return to those who produced the national wealth and also on the humanitarian belief that the laboring population should not be oppressed for the benefit of chiseling employers. The acceptance of these principles by the overwhelming majority of American citizens during those dark years greatly aided the advocates of wage regulation.

Moreover, in their drive for a national wage law, reformers were able to point to a steady growth of state and federal legislation for the benefit of the worker. Federal regulation of wage standards was represented, therefore, as a further development of state and national

legislation of the first two decades of the twentieth century, which was based in turn on laws reaching back to the first half of the nineteenth century.

* * *

Legislative intervention on behalf of workers in the United States actually began with the regulation of the conditions of child labor by the states. Several measures providing for the education of employed children were passed before 1920, and by the middle of the century, laws relating to child labor were enacted in New England and a few states in other parts of the country. This movement continued to spread steadily, and by 1879 nineteen states had fixed a minimum age or had set maximum hours for children at work. Reformers seeking to extend this type of legislation to new states found a natural ally in the Knights of Labor, with its idealistic and humanitarian program of social reform.

The Knights were active advocates of child labor legislation, and the period in which they were at the height of their power coincided with a rapid spread of regulation. During this time, ten additional states passed minimum age requirements, and six new states set maximum

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hours for children. However, the movement lost momentum after 1889, partly due to the decline of the Knights and also to the fact that the American Federation of Labor was not primarily concerned with protective labor laws but devoted its energies to direct action. Only seven states passed their first laws, making a total of twenty-eight that provided some kind of protection by 1900. The typical regulation of this period remained limited in scope to children in manufacturing, generally setting a minimum age of twelve years, fixing maximum hours at ten per day, and containing sektschy requirements for school attendance.4

After the turn of the century, however, the increasing interest of the general public in industrial conditions brought new advocates into the movement and put new energy into the drive for legislation. This new interest led to the organization of city and state child labor committees, which agitated for regulation or sought to improve laws already in force. It was at this time that the condition of children working in southern textile mills aroused the conscience of the southern people and induced them to pass their first laws.5

Meanwhile, leaders of the movement, aware that child labor was a national as well as a state concern, decided to form a national organization to advance the movement on the state level. In 1904 they established the National Child Labor Committee, which was soon active in twenty-two states. It directed investigations of labor conditions,

4Commons, op. cit., 404-05.
5Ibid., 406.
studied the administration of labor laws, published reports, issued a periodical, and formulated standards for a model law. The organizing activity of the Committee and the increased interest of the public led to a great amount of activity in the states, and between 1902 and 1909, forty-three states enacted new legislation or amended existing laws.6

The difficulties encountered in trying to secure uniform regulation in the various states induced the leaders of the movement to consider national legislation. Only nine states had met the standards set up by the National Committee, and the resulting diversity among the states made it difficult to raise standards, since the high standard states were at a disadvantage in competition with lower standard states. Though the National Committee had refused to support a proposed measure for federal regulation in 1906, it came out for national legislation in 1914, apparently convinced by the slowness in improvement of state laws that federal action was necessary. Since the Supreme Court, in approving the Mann White Slave Act in 1913, had declared that the federal government might use its interstate commerce power to protect the public morals, there was less fear that a federal child labor law would be declared unconstitutional, for it could be regarded as a similar attempt to regulate conditions considered to be immoral.7

Sponsored by the National Committee, the Keating-Owen child labor

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6Ibid., 407-09.

bill, introduced in 1914, prohibited the transportation in interstate commerce of goods produced by employees under sixteen years of age working in mines, and the goods made by employees under fourteen years of age working in factories, and it established an eight-hour day and a six-day week for children. The House passed the bill, but conservative opponents were able to delay action in the Senate until 1916, when President Wilson pushed it through. The constitutionality of the law was immediately challenged, however, and in 1918, the Supreme Court held it invalid in *Hammer v. Dagenhart*, on the ground that it was an invasion of the reserved powers of the states in violation of the Tenth Amendment.  

Attempting to overcome these constitutional objections, another child labor bill was put before Congress the following autumn, which utilized the federal government's taxing power as the basis for regulation. Passed in 1919, it contained the same age standards as the first law and laid a tax of ten per cent upon the net profits of any firm employing child labor. In 1922 it was also invalidated by the Supreme Court in *Bailey v. Drexel Furniture Co.*, when the majority held that it was an attempt to regulate a matter reserved to the states and that it was an abuse of the federal taxing power. 

After the second law had been invalidated, it seemed to the advocates of federal legislation that the only way that a national law
might be achieved would be through an amendment to the constitution. Though they were successful in getting the amendment approved by Congress, it ran into powerful opposition from agricultural and business organizations, and up to January, 1933, only six states had ratified it. Federal regulation was, therefore, effectively blocked, though reformers continued to meet with fair success in raising standards in the state child labor laws.\(^\text{10}\)

However, with the collapse of the national economy and the resulting increase in unemployment, reformers, labor leaders, and businessmen demanded that the federal government find some way to outlaw child labor. President Roosevelt was entirely sympathetic to this cause, and his Administration vigorously supported the proposed constitutional amendment. Although he supported it, he nevertheless believed that its ratification would take too long and therefore approved the inclusion of provisions eliminating child labor in the industry-wide codes of fair competition drawn up under the NRA. During the life of the industrial codes, there was a decrease in the number of working children, but after the Recovery Act and the codes were invalidated in 1935, the employment of children increased immediately.

Once again, reformers sought some means of abolishing the evil. Many of them continued to advocate the child labor amendment, while others supported special legislation to be drafted in such a way as to overcome the objections of the Supreme Court. Thus, although advocates

\(^{10}\)Commons, op. cit., 443-49.
differed on the means by which the reform was to be accomplished, there was widespread demand for some form of federal regulation. The problem that the Administration faced, therefore, was not the winning of support, but the drafting of a law that would meet the approval of the Court.

* * *

Apart from child labor, one of the most readily accepted types of state regulation was legislation limiting the hours that women could work. As early as 1847, New Hampshire passed the first general or "legal day's work" law making ten hours the legal working day, and although these laws were not very effective, six other states enacted similar legislation prior to the Civil War. Massachusetts was the pioneer state enacting an enforceable ten-hour law in 1879, with coverage restricted to women and children in the textile industry. The emphasis on this industry was natural, because the employment of women and children in the textile mills made the organization of the workers difficult and also because the hours were especially long. Recommending this legislation, the Governor pointed out that the work was exhausting the workers and that they were growing prematurely old. During the following years, the business depression helped to keep hours well

11 Ibid., 461-64.

below the sixty-hour legal maximum and probably facilitated the enactment by Massachusetts of laws prohibiting night work for women and children.

While the rest of New England was being brought up to the standards of Massachusetts, Chicago reformers in the early nineties became aroused over the condition of women and children in the garment trades in small shops and tenements. Desiring a study, trade unionists asked Mrs. Florence Kelley of Hull House to make an investigation, which in 1893 induced the Illinois legislature to pass a regulatory act. Two years later, the Supreme Court of Illinois, in spite of a favorable precedent by the Massachusetts Court upholding the hours law of that state, invalidated the law. Thus, though there were thirteen women's hours laws in 1896, their constitutionality was in doubt, and all but three were practically dead. Moreover, the decision of the Illinois Court slowed further state action in this field until a favorable opinion by the United States Supreme Court in Muller v. Oregon in 1908 finally established the constitutionality of the Oregon women's hours law. In this case, the Court was convinced that women's hours legislation was a reasonable exercise of the state police power and that women's weak position in society justified state interference with female freedom of contract. 14

Between the Oregon decision and 1917, thirty-nine states passed

13 Muller v. Oregon, 208 U. S. 412 (1908); Commons, op. cit., 466.
14 Kelly, op. cit., 526-27.
some form of legislation, with many of these laws a decided improvement over earlier acts. Though their scope varied widely, almost half of the laws provided for an eight or nine-hour day, rather than the ten-hour standard previously accepted. After World War I, however, the vigor and effectiveness of employer opposition brought about a gradual decline of state action in this field, for only twelve states out of the forty that had laws made any improvements. Thus, at the advent of the New Deal, the movement came to a virtual standstill, with five states still without regulation and the greatest possible variation between the existing laws.15

* * *

As in the fight for child labor legislation and women's hours reform, the campaign for minimum wage laws for women was led mainly by public spirited reformers, who were aroused by the social evils brought about by the underpayment of female workers. The impetus behind this movement was two-fold. First, there was the example of the other nations that were using the power of the state to protect labor from substandard wages. Secondly, investigations in the United States revealed that shockingly low wages were being paid to women throughout the country. Employers were generally opposed to this kind of regulation, but in many states their opposition was not very vigorous. On the other hand,

15 Commons, op. cit., 474, 495-99.
organized labor, which might have been expected to support this move-
ment, was actually opposed to it or gave it only nominal support.16
Labor's opposition was based on the fear that minimum wage regulation
might retard the organization of trade unions among women workers and
that if states were allowed to fix a rate, it might take the right to
compel men and women to work at that rate.17 In that case, the minimum
wage might very well become the maximum.

Prior to 1912, state regulation of wages was confined to acts
setting wages on public works projects and laws prohibiting fraudulent
methods of wage payment by private employers.18 Otherwise, the state
looked upon wages as a matter of contract between the employer and the
employee, or a matter of collective bargaining between the union and
the employer.

The minimum wage movement really got under way in 1910 when the
National Consumer's League and the Women's Trade Union made it part of
their program. Prodded by these organisations, the Massachusetts
legislature authorized a committee to investigate the condition of the
state's women workers. The deplorable employment conditions and the
social evils which they brought about induced the committee to recommend
a law to regulate the wages of women and minors. As a result of this

16Ibid., 506-07.

17Louis S. Reed, The Labor Philosophy of Samuel Gompers, Columbia
University Studies in History, Economics, and Public Law, New York,

18Phelps, op. cit., 51.
study, Massachusetts passed the first minimum wage law in the United States in 1912. The legislators made use of English and Australian experience in this field, basing their law on the English Trade Boards Act, which was based, in turn, on Australian legislation. The Massachusetts law provided for a state commission which was empowered to establish industrial wage boards that were to recommend rates covering the cost of living for self-supporting women.19

Following the lead of Massachusetts, eight other states passed wage laws in the following year. The constitutionality of these laws remained in doubt, however, even after the Supreme Court upheld the Oregon law in *Stettler v. O'Hara*, a case that was not decisive and did not set a precedent. The movement soon lost momentum as only seven new states passed laws up to 1923, and in that year it received a decisive check when the Supreme Court invalidated the District of Columbia law in *Adkins v. Children's Hospital*, on the ground that the law was a violation of freedom of contract. After this decision, six other laws were declared unconstitutional, and for the most part, the remaining statutes were not enforced. Yet, despite these setbacks, the minimum wage movement has significance in the history of labor legislation, for in these years, low wages were regarded for the first time as a matter of public concern, and an attempt was made to remedy the evil through regulation by the states.20

19 Commons, op. cit., 501-03, 509.

20 Stettler v. O'Hara, 243 U. S. 629 (1917); Adkins v. Children's Hospital, 261 U. S. 525 (1923); Kelly, op. cit., 698; Commons, op. cit., 504-06.
The early state "legal day's work" laws, which led to the development of hours laws for women, also served as a basis for hours laws for other special groups. The early laws, defining ten hours as a legal day's work and limiting coverage to labor employed by the day, were ineffective, since they permitted contractual agreements for longer hours. In spite of these shortcomings, organized labor supported them vigorously in the 1880's and 1890's, and seventeen states enacted laws of this type by 1896. Although these statutes were generally disregarded and state legislatures turned to acts limiting hours of work in specific industries, they did establish two principles which were later included in national legislation. First, they applied to all workers; secondly, they allowed an increase in hours provided that there was an increase in wages. 21

Labor employed on public works was one of the special classes whose workday was regulated by the federal government. Although President Van Buren established a ten-hour workday in government naval yards in 1840, the first legislation setting a ten-hour day on public works was passed in 1853 by New York, and by 1903, fourteen other states had these laws. Meanwhile, in 1868, Congress had been induced by the eight-hour leagues and the National Labor Union to pass a law making eight hours a day's work on federal public works. This act, however, failed

21 Phelps, op. cit., 32-33; Commons, op. cit., 540-41.
to accomplish its purpose because of adverse interpretation by the courts and lack of enforcement by officials. To meet this failure, Congress passed a similar law in 1892, which provided for fines and imprisonment for violators of its provisions. 22

This type of legislation had the full support of labor unions because they believed that maximum hours regulation would be more acceptable to the public and the courts where the government was the employer and because there was doubt as to the legality of strikes against the government. Furthermore, labor thought public works laws would serve as an entering wedge for more hours legislation and would also set an example for private employers. The attitude of the courts toward this legislation was not settled until 1903, when the Supreme Court, in Atkin v. Kansas, sustained the Kansas law on the ground that the state, as an employer, could stipulate the conditions under which the work should be performed and could make such stipulations a part of the contract. After this decision, there was more state activity in this field, so that by 1932, twenty-seven states had laws of this kind. 23

In addition to the regulation of hours on public projects, the state also regulated hours for special groups of men in private industry. The first laws limiting hours for men in a private enterprise were those covering workers operating trains. The relation of excessive hours to


23 Atkin v. Kansas, 191 U. S. 207 (1903); Commons, op. cit., 542-47.
railroad accidents was never seriously questioned, and the chief impetus for these laws was the desire to prevent accidents. To protect the traveling public, Ohio passed a law in 1890 prohibiting an employee engaged in operating trains from working more than twenty-four consecutive hours, and by 1907, twenty-two states had laws of this type. In that year, Congress passed a law applying to all employees engaged in the movement of trains between states, and this act virtually stopped the enactment of new state regulation, since practically all workers engaged in operating trains came under the federal law.24 The next national legislation came in 1916 when Congress passed the Adamson Act to settle a dispute between the railroad brotherhoods and the companies by granting the unions an eight-hour day. This act was upheld by the Supreme Court in 1917 in Wilson v. New, as a legitimate regulation of public transportation by Congress.25

While safety of the public was the chief factor in the passage of laws for railroad workers, safety of miners was the chief impetus for securing state laws to regulate hours in the mines. The success of regulation in this field was largely the result of efforts of organized labor, which actively backed legislation to protect workers subject to dangerous and unhealthful working conditions. Only two states regulated the hours of coal miners in 1896, but beginning with the Utah law of that year, fifteen states passed laws regulating miner's hours.

24 Ibid., 548, 550.
This type of legislation was approved by the Supreme Court in 1898 when it upheld the Utah law in *Holden v. Hardy* as a reasonable exercise of the state police power. By 1921, most of the states that had laws provided coverage for mines, smelters, and reducing operations, although some important mining states failed to pass laws, either because of employer opposition or because an eight-hour day had already been secured by trade union action.  

During this period of concern for railroad workers and miners, the states also began regulating hours for men in other restricted occupations. Several southern states passed laws limited to the textile industry, while Montana chose to give stationary engineers an eight-hour day, and New York regulated the hours of drug clerks, brickyard workers, and bakers. Three states joined New York in protecting bakers, but in 1905 the Supreme Court in *Lochner v. New York* declared the New York law invalid as a violation of the worker's freedom of contract. This decision restricted the field within which the constitutionality of hours regulation in the interest of the worker's health could be regarded as unquestioned. The influence of the *Lochner* decision was effective in this field, even after the Court in *Muller v. Oregon* had upheld the Oregon women's hour law. The *Lochner* decision explains, in part, why there was little new legislation after 1914 in the field of men's hours.  

The early success of the movement for regulating hours for


special groups and the movement for social justice once again stimulated
the demand for general eight-hour laws, and with the adoption of the
initiative and the referendum, it became possible to submit hours
legislation to the electorate. Though the proponents of this method
were optimistic, the results were disappointing, particularly when
eight-hour laws were defeated by the electorate in three western states.
These defeats were primarily due to a lack of labor support. Sentiment
within the AFL was divided, with the weaker unions supporting and the
stronger unions opposing the legislative method. The issue was thrashed
out in the 1913 AFL convention, which recommended that state federations
work for these laws, but in the next two conventions, the Federation
reversed itself and voted against legislative action. This attitude
on the part of organized labor, together with a general reaction against
labor regulation, resulted in a decline in the eight-hour movement.26

Judging by the lack of hours legislation in the period from the
end of World War I to the New Deal, there seemed to be little desire
either on the part of the general public or on the part of labor to use
the power of the state in this field. Apparently, the public was not
particularly interested in hours legislation for men, while organized
labor was afraid that government regulation would weaken labor's role
as bargaining agent. It was, therefore, the failure of labor to conduct
the campaigns necessary to secure this kind of legislation rather than
the opposition of the courts that retarded the movement. Many labor

26 Commons, op. cit., 555-57.
leaders also believed that protection secured for unorganized workers through hours laws would prove illusory. In addition, the failure to campaign for the eight-hour working day in the 1920's might also be attributed to the fact that this working day generally prevailed, though there were wide discrepancies in various industries.29

* * * *

Although organized labor had lost interest in the eight-hour movement after the First World War, the economic collapse of 1929 and the resulting depression brought about a change in its attitude towards the regulation of hours through legislation. The inability of labor unions or the state governments to cope with unemployment and relief problems brought about by the acute decline of the national economy, induced labor and many reformers to support a national law limiting the work-week as a recovery measure. This demand did not come immediately after the crash of 1929, however, for labor seemed too demoralized even to try to exercise any direct pressure on the government. Clinging to the belief that labor-management cooperation could overcome the employment problem, labor sought to induce businessmen to reduce hours without resorting to government regulation.

The first measure proposed by the AFL to meet the unemployment crisis was a plan for the voluntary shortening of hours in all industries,

29Dulles, op. cit., 258-59; Commons, op. cit., 558.
with the maintenance of the same weekly pay. The federation believed that the curtailment of hours by all employers would spread employment without placing a burden on any individual employer. When the White House Conference on Unemployment, held in 1930, failed to adopt this plan or any other co-ordinated program of action, the Boston AFL Convention, meeting in October of the same year, restudied the problem, suggested a reduction of hours of work, and recommended that the President appoint a committee to formulate the proposed AFL program. In spite of this plea, no action other than a limited public works program was taken by the Hoover Administration to cope with unemployment.30

Even after the failure of the Federation to push through its program for the reduction of the work-week, it maintained its opposition to a national hour law. In 1931 the AFL's Executive Council opposed a constitutional amendment which would have given Congress the power to regulate hours of work. The following year, however, Federation leaders found it difficult to maintain their stand in the face of rising unemployment and an increasing work-week in some industries.

Faced with these problems, some unions in the Federation demanded legislative restriction of hours. In May, 1932, Sidney Hillman, president of the Amalgamated Clothing Worker's Union, told the delegates at the International Ladies' Garment Workers Convention that national hours legislation was the only solution to the employment problem, and

30 William Green, Labor and Democracy, Princeton University Press, Princeton, 1939, 54, 137-38; Reed, op. cit., 112-13; Dulles, op. cit., 259.
the Garment Workers thereupon adopted a resolution in favor of a thirty-hour work-week. Although president Green had previously estimated that a thirty-five hour week would have absorbed the unemployed, by August, 1932, he too supported a thirty-hour week. A resolution to establish this work-week was adopted by the AFL Cincinnati Convention of that year and presented to Congress. Thus, labor's inability to cope with national unemployment problems and the failure of its proposal for a voluntary reduction of hours finally induced it to abandon its long opposition to government regulation.31

Three weeks after the adoption of this resolution, Senator Hugo Black (D-Ala.) introduced a thirty-hour bill in the Senate, and Representative William F. Connery (D-Mass.) chairman of the House Labor Committee, introduced a similar measure in the House. Representatives of organized labor, including William Green, Philip Murray, and John P. Frey, supported the bill during the committee hearings, but added one important reservation. Maintaining that labor could handle the wage question, the labor leaders told the committeemen that they were strongly opposed to any attempt to include regulation of wages in the proposed measure.

Though the bill was not enacted during the Lame Duck session, organized labor received assurances that the incoming Democratic Administration would support its efforts to secure a reduction of working hours. In the course of his campaign address in Boston, Roosevelt

31 Milton Derber, and Edwin Young, Labor and the New Deal, University of Wisconsin Press, Madison, 1957, 199-200; Green, op. cit., 1140.
spoke sympathetically about the need for a reduction in the hours of work, pointing out that the benefits of modern industry would be unavailable to workers unless they earned enough to buy the things they produced. The object of his policy, he said, would be the restoration of the people's purchasing power. Hence, labor was assured that Roosevelt favored a shorter work-week and that he would make it a part of his recovery program.\(^{32}\)

The thirty-hour bill was taken up again by the new Congress and was promptly passed by the Senate in April, 1933. However, since the Senate's version failed to provide a minimum wage, its passage would have resulted in a severe wage cut, which would have had an adverse effect upon the economy. Therefore, the President and Secretary of Labor Frances Perkins agreed that minimum wage provisions would have to be included if the Administration was going to support it, and they decided that Miss Perkins would propose minimum wage machinery. The AFL, however, had previously indicated its opposition to government wage fixing, and when the Administration's intent became known, the Federation raised objections. President Green maintained that rates set by wage boards would be so low that they would weaken the possibility of getting higher wages through collective bargaining. In addition to the opposition from labor, the wage fixing proposals raised a storm among industrialists. Finding that the Administration proposals were being

criticised from both sides, Roosevelt decided to sidetrack the bill and try a broader approach to the recovery problem. 33

Convinced by his advisers that it was possible to launch an attack on industrial paralysis through an overall program of government regulation, the President asked several groups to explore such a plan, doing this quietly so as not to antagonize congressional liberals. At a White House meeting in May, 1933, a score of proposals were offered, none of which was able to reconcile the demands of both business and labor. Nevertheless, the Administration worked out a plan and secured the enactment of the National Industrial Recovery Act, which suspended the anti-trust laws, legalized trade associations, guaranteed labor’s right to organize and bargain, and provided for codes of fair competition. The codes were very comprehensive, establishing labor-management industry committees empowered to regulate labor standards and working conditions. It was through the codes that the authority of the federal government over national wage and hour standards was established for the first time. 34

During the hearings on the measure, neither William Green nor John L. Lewis criticized the industrial code section which provided for the setting of maximum hours and minimum wages. The AFL leaders apparently


accepted the wage fixing provisions in the belief that the unions would draft the standards when the codes were drawn up. But when the National Industrial Recovery program got under way, labor played little part in drafting the labor provisions, and certainly did not draw up the wage and hour standards or show any enthusiasm for them. The work-week, when compared to labor's thirty-hour demand, turned out to be a disappointment, and the minimum wage did very little for labor. The AFL, therefore, continued to urge the thirty-hour bill in 1934 and 1935, pointing out that unemployment was still very high and that a further reduction of the work-week would put more people back to work. Moreover, it became obvious that big business was exploiting the codes, using them to prevent strikes and wage increases. And when it was noticed that prices were rising faster than consumer's incomes, the recovery measure was criticized by small business as well as labor.

Undergoing increasing criticism and on the verge of administrative collapse, the Recovery Act was invalidated in May, 1935, by the Supreme Court in Schechter v. United States. The act, the Court held, exceeded the federal commerce power and was, in addition, an illegal delegation of legislative power to the executive. The invalidation of the NRA resulted in the abandonment of its code provisions for shorter hours,

35Derber, op. cit., 204-08.
minimum wages, and the prohibition of child labor, and led to the resumption of wage cutting by many employers. 36

As wages went down and unemployment increased, there were renewed demands from reformers, labor leaders, and some businessmen that the government find some constitutional basis for restoring at least the labor provisions of the invalidated codes. The Administration responded to these demands by passing the Wagner Act, guaranteeing labor's right to organize and bargain, and by proposing legislation to authorize the government to establish labor standards with employers receiving government contracts. The regulation of labor standards in private industry, however, proved to be a more difficult constitutional problem for which the Administration could find no immediate solution.

Although the Administration delayed the introduction of an overall wage and hour bill, it was successful in securing the passage of a measure regulating labor standards for work performed under government contracts. At the request of Secretary Perkins, Charles Wyszanski, Labor Department Solicitor, drew up a bill providing that the government might set wage and hour standards and prohibit child labor in all federal contracts for ten thousand dollars or more. Introduced by Senator David Walsh (D-Mass.), and Representative Arthur D. Healey (D-Mass.), the bill was quickly approved by the Senate but was held up in the House for some months by the House Judiciary Committee, which was not enthusiastic about it. However, since it was strongly supported by

labor, and since it was an Administration "must" bill, it was rushed through and signed in June, 1936.

The Walsh-Healey Act, in addition to being a "yardstick" for private industry, established the forty-hour week for employees of contractors working for the government, directed the Secretary of Labor to determine minimum rates under government contracts, prohibited child labor in their performance, and established a procedure in the Labor Department for the enforcement of the labor provisions. 37

Although the Walsh-Healey Act raised wage and hour standards for those employees working on government contracts, the overwhelming majority of workers were still subject to wage cutting practices utilized by many employers to reduce costs and maintain profits. The demand that such practices be curbed induced Roosevelt soon after the NRA was invalidated to initiate special studies of the recovery program and industrial conditions.

To aid him in the consideration of proposals for industrial regulation and to prepare the way for a new standards law, he established in 1935 a Committee of Industrial Analysis and a Council for Industrial Progress, both of which were directed to study industrial problems and recommend suitable legislation. The Committee confined its investigation to the administration and effects of the NRA. Its report, showing that

37 Dulles, op. cit., 274; Dorber, op. cit., 208-10.
the codes had brought about a great improvement in working standards, was transmitted to Congress by the President in 1937. The Council, on the other hand, established a number of labor-management committees which studied national industrial problems and then appointed a special committee charged with drafting industrial legislation along the lines suggested by the other committees.

In March, 1936, the Council, under the direction of George L. Berry, Roosevelt's Coordinator for Industrial Cooperation, submitted the reports of its committees. The report of the Committee on National Industrial Policy affirmed the general principles of individual initiative, the profit motive, and the competitive system, but stressed the necessity for a sufficient amount of government control over enterprise to preserve social justice and fair dealing. It also declared that consumers should be assured of sufficient income to purchase the products of industry and that the industrial policy of the nation should be designed to increase buying power through the maintenance of adequate wages. In addition, it recognized the need of production control under emergency conditions, of curbing unfair trade practices, and of establishing a permanent advisory council to study the national income. Finally, it advocated a policy of minimum wages and overtime payment for hours in excess of a reasonable work-week, in the belief that this would increase purchasing power and aid re-employment.

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While the Industrial Policy Committee considered industrial conditions broadly, the Committee on a Maximum Work Week, General Wage, and Child Labor, headed by F. A. Cosgrove, of the Johnson and Johnson Company, and John P. Frey, of the AFL, dealt specifically with labor standards. It recognized the necessity of finding work for the jobless and the need for a shorter work-week and higher wages. It also noted the tendency, since the invalidation of the NRA, toward both a longer work-week and a reduction of wages, and it asserted that such conditions created unfair competition, unemployment, and low consuming power.

... long working hours, inadequate wages and employment of children in industry creates unfair competition in the flow of commerce ... and is detrimental to the general welfare of industry and the Nation; and that Congress should create commissions empowered to regulate such unfair and detrimental practices.40

The Committee therefore suggested that commissions be established to set the minimum ages at which children might be employed, determine the minimum wage to be paid by each industry, and set the maximum work-week in each industry without allowing a reduction of the worker's earnings.

The Council's recommendations, including the minimum wage regulation proposals, received the official approval of the AFL.

40Ibid., 8.
Commenting favorably on the report in March, 1936, the Federation stated that the establishment of minimum wages and maximum hours was necessary to take labor costs out of the competitive field and bring about a more equitable distribution of income. It insisted, nevertheless, that wages above the minimum could best be protected by guaranteeing the right of collective bargaining in all industry.\(^1\) Two months later, the AFL stoutly defended federal wage-fixing from the criticism that it would end the competitive system. The claim that such a humane regulation would destroy the system, said the Federation, was nothing but "tommyrot." To acknowledge the power of the employer to pay starvation wages, it declared, was to admit that the system was not only uncivilized but was wholly unwarranted in a country dedicated to freedom.\(^2\) Hence, in 1936 the AFL seemed to have abandoned its long-standing opposition to legislative minimum wage regulation.

In the meanwhile, the Democratic party included a wage and hour plank in its campaign platform, declaring that the regulation of standards could not be adequately handled exclusively by forty-eight state legislatures. It promised to seek a solution which would not violate the Constitution, but if this were not possible, it declared that it would favor a constitutional amendment that would make a federal

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\(^2\)Ibid., May 9, 1936.
act possible.\textsuperscript{43} The President reaffirmed this pledge, promising a cheering crowd at Madison Square Garden that his Administration would strive to improve working standards and raise purchasing power.\textsuperscript{44} Roosevelt's overwhelming victory was seen, not only as an endorsement of his New Deal policies, but also as a mandate on the party's pledges, including the promise to enact a new wage measure.

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As the year drew to a close, therefore, the prospects for a new law to regulate wages appeared encouraging. Although the Supreme Court remained a formidable obstacle, the measure's chances were enhanced by a number of favorable developments. In the first place, the President had asked representatives of labor and management to undertake a joint study of industrial problems and draft a plan upon which both groups could agree. This was a considerable undertaking, but by December, 1936, it seemed that they had reached a general understanding on basic principles and were close to the completion of their task. In addition to this achievement, organized labor seemed to accept, not only nation-wide regulation of hours but also the principle of federal regulation of minimum wages. Perhaps the most significant development, however, was the overwhelming endorsement of the New Deal by the American people.


\textsuperscript{44}Rosenman, \textit{op. cit.}, V, 571.
people and the election of a huge Democratic majority to the new Congress. At the time, these two factors appeared certain to ensure favorable consideration of a national wage law. And finally, the fight against the sweatshop was enhanced because reformers, labor leaders, and many businessmen considered it a continuation of the humanitarian struggle for social justice and a further step in the regulation of labor conditions by the government for the benefit of oppressed workers who were unable to protect themselves. The great majority of Americans, therefore, agreed with the President that substandard labor conditions were beyond the power of individuals, unions, or the states to handle and that it was time for the federal government to act.
CHAPTER II

THE GENESIS OF THE BLACK-CONNERY BILL

In his second Inaugural Address of January, 1937, the President once again affirmed his intention of completing his New Deal reform program. Calling on Congress to aid the "one third of a nation ill-housed, ill-clad, ill-nourished," he proposed measures for public housing, tenant farmers, broader social security, and executive and judicial reform. However, he felt that he would be unable to ask Congress to consider new farm or wage legislation until the constitutional crisis that confronted the Administration had been resolved.

This crisis had been brought about by a series of Supreme Court decisions invalidating New Deal reform legislation and denying the federal government jurisdiction over manufacturing and agriculture. Having nearly paralyzed the national government, the Court, in Morehead v. New York ex rel. Tipaldo, went on to deny the states the right to regulate wages. This decision, nullifying the New York state minimum wage law for women and children, created a "no-man's land" in which no government power could protect laboring women. The language of the opinion was so broad and inclusive that it seemed hopeless for any state to try legislation of this kind. With the Court blocking both state and federal reform legislation and with a
clear mandate from the people to continue his program, Roosevelt became convinced that he would have to reform the Court.¹

Believing that the trouble was not with the Constitution itself, but with the justices on the Court, he decided upon a plan that provided for the addition of younger justices, who would bring new experience and new outlook to the bench. The introduction of this plan led to a bitter fight, which alienated many liberals and split the Democratic Party. In the midst of this struggle, however, the Court completely reversed itself on reform legislation. Just nine months after denying the power of a state to pass a minimum wage law for women, the Court in West Coast Hotel Co. v. Parrish decided to uphold this power. And in April, 1937, in National Labor Relations Board v. Jones and Laughlin Steel Corp. it gave the interstate commerce clause an interpretation wholly commensurate with the realities of modern industrial conditions, laying down principles for federal control of interstate commerce which would permit the government to meet the social problems confronting the nation. It was after these two decisions that the Administration finally introduced its new labor standards measure.²

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²West Coast Hotel Co. v. Parrish, 300 U. S. 379 (1937); National Labor Relations Board v. Jones and Laughlin Steel Corp., 301 U. S. 1 (1937); Rosenman, op. cit., ix-lxii.
While the President was considering plans to resolve the Court problem, his Council for Industrial Progress was attempting to come to an agreement on the provisions of a new wage and hour bill. In November, 1936, Coordinator Berry wrote to P. A. Cosgrove, chairman of the Committee on a Maximum Work Week, urging that the Committee review its March report. The March report had recommended the establishment of minimum wages and maximum hours, called for commissions to determine rates and hours, and declared that wages above the minimum should be maintained by collective bargaining. Berry requested that the Committee consider whether the bill should not provide for collective bargaining, with mandatory power exercised by an agency only as a last resort. He also asked that it consider the public interest, suggesting that the measure might promote monopoly, which would be detrimental to the general welfare. The December report of the Committee, however, merely affirmed its March declaration and proclaimed that no agency should have the power to review labor's right to organize and bargain or establish wages and hours.³

Shortly after the committees' December findings had been turned over to Coordinator Berry, the Legal Committee held its first meeting to draft legislation along lines suggested by the reports. The Legal Committee, composed of equal representatives of labor and management,

was requested to have its preliminary work ready on January 6th. In the meanwhile, Sidney Hillman, Roosevelt's labor advisor, conferred with him at the White House about the breakdown of wage and hour standards and urged him to support new legislation. After Hillman left, the President declared that something would have to be done about long hours and starvation wages. However, he was unable, he said, to make any specific recommendations to Congress because of the Court's hostility to such legislation.

Roosevelt's announcement of his intention to seek wage and hour legislation induced Coordinator Berry to urge his Legal Committee to reach a final conclusion on the matter by January 11th, the date set for its final meeting. In addition, the Council urged Donald Richberg, former NRA administrator, to give the Legal Committee the benefit of his experience and knowledge.

Although the Council had spent over a year studying the problem, the Committee was unable to agree on either the principles or the provisions to be incorporated in the new measure. It considered the Ludlow bill of 1935, which would have created a Federal Industrial

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4 Letter, George L. Berry to Congressman Michael J. Bradley (Fa.), December 22, 1936; Letter, E. J. Tracy, to William Green, December 31, 1936, (15A-19B), RG 9, National Recovery Administration, Coordinator for Industrial Cooperation.

5 Rosenman, op. cit., V, 624.

6 Letter, George L. Berry to Siegfried Hartman, January 8, 1937; Letter, E. J. Tracy to Donald Richberg, December 31, 1936, (15A-19B), RG 9, National Recovery Administration, Coordinator for Industrial Cooperation.
Commission to stabilize employment, and the Walsh bill of 1933, which would have empowered the Federal Trade Commission to encourage industry planning, and rejected both of them. Four drafts submitted by its own members were also debated, but none was considered satisfactory. The Committee, therefore, resolved to submit to the President the bill of David Dreschler, of the Clothing Manufacturer's Association, and that of Siegfried F. Hartman, counsel for the Retail Tobacco Dealers. Coordinator Berry was directed to seek the President's permission to place them in the hands of Stanley Reed in the Justice Department, with the request that the best constitutional lawyers in the Department work with the sponsors of the bills in order to perfect them. Charlton Ogburn, counsel for the AFL, requested that his bill be presented to the Department in the same way.  

At the same time that the Legal Committee was holding its final meeting on the new measure, William Green called on the President to offer the AFL's plan and urge that standards be established for "sweated industries," where workers lacked bargaining protection. The Federation's plan would have enabled Congress to create a federal commission to promote labor-management conferences empowered to set wage and hour standards. Although Congress would not set the standards, the AFL proposed a thirty-hour work-week with flexibility allowed for various

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7Minutes of the Correlating and Legal Advisory Committees, January 11, 1937, (15A-198); Letter, Charlton Ogburn to George L. Berry, January 11, 1937, (5A-50), RG 9, National Recovery Administration, Coordinator for Industrial Cooperation.
industries. If the industry groups were unable to agree on standards, the commission would be empowered to fix them, and violations of the commission-fixed rates would be classified as "unfair labor practices." Green emphasized that under the AFL plan, Congress would not be arbitrarily setting standards for industry.

Shortly after receiving the Federation's plan, the President received from Coordinator Berry the two proposals submitted by the Legal Committee. The Hartman and Dreschler drafts both declared sweatshop standards to be "unfair trade practices" and called for their elimination through labor-management agreements approved by an enlarged Federal Trade Commission.9

Although both drafts approached the problem from the point of trade practices, Hartman's draft was the most comprehensive and well developed. The New York lawyer briefly reviewed four possible methods by which Congress might regulate standards and disposed of them as either unconstitutional or certain to fail. A constitutional amendment, he said, was an admission of bankruptcy by legal scholarship. A statute defining interstate commerce as including the production of all articles transported across state lines and declaring sweatshop standards to be unfair competition was sure to fail in the courts. A law empowering a commission to determine whether wage standards affect interstate commerce


and allowing it to set rates was also doomed to fail for the same reason. And regulation through federal licensing of corporations, he declared, was clearly unconstitutional.\textsuperscript{10}

He therefore submitted a comprehensive Fair Competition Act prohibiting unfair business methods in interstate commerce, including all forms of deception, all forms of competition legally unfair, and other practices recognized as contrary to standards of fairness. Under the provisions of his plan, Congress would not, he believed, be fixing wages but would simply be regulating the competitive use of goods made under sweatshop conditions to secure competitive advantages.\textsuperscript{11}

Specifically, Hartman's draft suggested that Congress find certain acts a burden and restraint on interstate commerce and that it enlarge the field of legally prohibited unfair competition to eliminate them. His plan proposed that Congress declare it illegal to engage in such acts as price cutting, sales below cost, or the maintenance of unjust labor conditions which created an unfair advantage over employers maintaining decent standards. An agency would be created which would be empowered to approve agreements made by a majority of any industry. Such agreements would be restricted to matters relating to unfair competition, and where labor was concerned, would guarantee its right to bargain collectively. Employers would be required to abide by the

\textsuperscript{10} Memorandum Re Annexed Bill, Siegfried Hartman, (2H), RG 9, National Recovery Administration, Coordinator for Industrial Cooperation.

\textsuperscript{11} Ibid.
maximum hour and minimum wage provisions in such agreements. This
approach, Hartman believed, would be clearly distinguishable from
the wage laws previously declared unconstitutional. The distinction
must be clear, he said, between a statute under which the government
specifically fixes wages and one that adjusts them only for the
purpose of maintaining competitive conditions so far as labor is con-
cerned. 12

After receiving these proposals from the AFL and the Council,
Roosevelt began a series of discussions with Administration leaders,
labor officials, and businessmen. Following a conference with Senator
Hugo Black and Representative William P. Connery, he saw John L. Lewis,
Sidney Hillman, and Charles P. Howard, president of the International
Typographical Union. Later he met with Harper Sibley, president of
the Chamber of Commerce, Robert Fleming, treasurer of the Chamber,
and George Mead, business advisor to the Secretary of Commerce. Finally,
he conferred with William Green and Charlton Ogburn of the AFL. 13

Few details were revealed by any of the participants, but the
President disclosed that the regulation of child labor, minimum wages,
and maximum hours had been the topic of business during all of the
conferences. Apparently no conclusions had been reached, and there

12 A Bill to Prohibit and Prevent Unfair Competition and to Amend
the Anti-Trust Acts, Siegfried Hartman, (2H), RG 9, National Recovery
Administration, Coordinator for Industrial Cooperation.

was no mention of legislation to curb the power of the courts over congressional legislation. Senator Black left the White House declaring that he would renew the fight for his thirty-hour bill and that he favored using every method to carry out the party's campaign promises, including a constitutional amendment, if necessary. Lewis declared that the legislative program of the CIO had not crystallized because the Administration did not know what it was going to do about a constitutional amendment. 14

Not a great deal, therefore, was known about the President's plans during the latter part of January. It was rumored, however, that he was considering a single statute based on a congressional definition of interstate commerce, containing provisions allowing industry to protect itself from unfair competition. It was reported that such a plan would re-establish the provisions of the NRA codes through direct enactment by Congress, giving the Supreme Court an opportunity to find a distinction between the plan and the NRA. The President was believed to be considering the NRA "blanket code" labor standards, with modifications to make them flexible. These reports coincided with a declaration by Donald Richberg, former NRA administrator, in opposition to wage and hour fixing, and a statement from Roosevelt that his mind was still open as to legislation dealing with unemployment. 15

Meanwhile, there was a growing demand in Congress that the


issue be resolved by a constitutional amendment. In a nation-wide
radio address on February 1, Senator William E. Borah (R-Idaho)
demanded that the Administration appeal directly to the people to carry
out its reform program by submitting an amendment to the country.
His argument was the people should be consulted on the issues
arising between the courts and the other two branches of the government.
He therefore placed himself on the side of those who demanded a frank
approach to the problem through the submission of an amendment. This
position was also taken by Donald Richberg, reportedly the chief
sponsor of the amendment plan, who conferred with the President for
two hours on the issue. Regardless of this growing demand for a
constitutional change, Roosevelt refused to open the question, preferring
to seek some other quick and definite action to spread employment.16

The President went ahead, therefore, with his plans for simple
legislation, continuing his discussions on method. He revealed that
no plan had been adopted, that hours, wages, and child labor were his
primary concern, and that fair trade practices were of secondary
importance. The question of fair trade, he said, had not been considered
seriously and could be taken up after labor standards were settled. He
indicated that he would let Congress decide whether the two questions
were to be included in the same bill. It was rumored that he preferred
a plan whereby Congress would define its powers over interstate commerce
and enact labor controls directly.17

16 William E. Borah, "Our Supreme Judicial Tribunal," Vital
Other approaches to the problem were suggested by Hugh S. Johnson, former NRA administrator, Senator Joseph G. O’Mahoney (D-Wy.) and Representative Henry Ellenbogen (Pa.). General Johnson proposed that a series of excise taxes be levied on industry to control long hours, low wages, the speed-up, and the increase of machinery operations. The taxes would not be designed to be penalties but would be used to provide revenue for relief. Though the details of the operation of the plan were vague, the forty-hour week was suggested, and an agency would have to be created to determine the standards to be used as a basis for the tax. The proponents of the tax plan, maintaining that there could be no constitutional objections to the congressional power to tax, declared that the barriers to such a scheme would not be as great as they were to the NRA. Moreover, since the extent of excess of hours and low wages would govern the rate of "re-employment tax," the measure would not fix rigid rates and might, therefore, be flexible enough to get by the Court. 18

Approaching the problem in a completely different way, Senator O’Mahoney revived an old scheme to permit corporations to engage in interstate commerce only when licensed by the Federal Trade Commission. Under this plan, corporations would have to secure licenses, which would contain broad guarantees for the protection of labor and provide for the abolition of child labor and the establishment of minimum wages. This measure was given a strong recommendation by the AFL. William Green

18Ibid., January 30, 1937.
supported it, declaring that the proposed regulations were essential to safeguard the welfare of investors, consumers, labor, and the public interest. 19

While Johnson's and O'Mahoney's plans were broad approaches to the problem, Representative Ellenbogen's was confined to a single industry. Seeking to stabilize the chaotic textile industry, he introduced a series of bills providing for the establishment of a national textile commission to regulate the textile business. 20 Among other things, his bills sought to rehabilitate labor conditions, prevent unemployment, abolish child labor, and set wage and hour standards. His plan provided for the licensing of textile manufacturers and stipulated that every license should prescribe a thirty-five hour week and a fifteen-dollar minimum wage for unskilled labor, with wages above the minimum to be determined by the textile commission. His proposal was supported by both the Textile Workers of America and the AFL. 21 This movement for a "little NRA for the textile industry" received a setback in 1936 when the Supreme Court invalidated the O'Uffey Coal Act, a similar measure regulating the coal industry. Although


20 U. S. Congress, Congressional Record, 74th Cong. 1st Sess; 74th Cong. 2nd Sess.

Ellenbogen maintained that his bill was not affected by the decision, it was sidetracked and remained in committee throughout the spring of 1937. These plans, as well as those the President had received from his advisors, were abruptly shoved into the background by a proposal that astounded official Washington and the rest of the country as well. On February 5th, Roosevelt introduced his Judicial Reorganization plan.

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Little did the Supreme Court justices who attended the President's dinner in their honor know that he was about to introduce his attack upon the Court. Yet three days after the dinner, he presented his bill to Congress and revealed to the press his long-awaited blow to break the deadlock between the New Deal and the Court. The President, in his message to Congress, proposed to eliminate congested calendars, make the judiciary more elastic by transferring justices to courts in arrears, assist the Supreme Court to supervise the lower courts, and eliminate uncertainty and delay. His bill contemplated no limitations on the Court's power but instead called for younger men to assist the older justices in their work. He therefore proposed adding up to fifty new justices, with no more than six to be added to the Supreme Court. The vital need, he said, was not altering the fundamental law but harmonizing legislative and judicial action. Since

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he had not taken Democratic Congressional leaders into his confidence, his plan took Congress and the country completely by surprise. Only the most rabid New Deal papers and Congressmen supported his program, and opposition developed within his own Party almost immediately. 23

Though bitterly opposed by conservatives, his proposal received the endorsement of the AFL, on the ground that economic advancement would be more readily secured through the acceptance of the President's recommendations than through the slow process of a constitutional amendment. 24

Nevertheless, the introduction of the Court issue further complicated the progress of the New Deal legislative program. Many congressional liberals of both parties, while willing to support New Deal social legislation, could not accept a reform plan which appeared to be an attack on the very foundations of the government. The issue, therefore, served to alienate those who would otherwise have been sympathetic to the Administration's program. In addition, all new legislation was held up, either because Congress was absorbed with the Court fight, or because the Administration wanted assurances that the reform bill would be enacted. It was claimed by the opposition that the Administration was using the promise of new farm, business, and labor legislation to win down votes for the bill. 25

23Rosenman, op. cit., VI, 35-66.
In spite of strong opposition, Roosevelt pressed the Court fight through February and March, attempting to win over the powerful Senate Judiciary Committee. Late in March, however, the issue took a completely new complexion when the Supreme Court reversed its 1936 decision on the New York minimum wage law by upholding the Washington women's wage law. The decision, made possible by the shift of Justice Owen J. Roberts to the liberal side of the bench, also specifically overruled the Court's holding in the Adkins case, which had invalidated the District of Columbia minimum wage law.26

The majority opinion took notice of the depression and of the resulting loss in wages, which the taxpayers had to make up in the form of relief payments to the unemployed. The Court therefore held that the legislature was entitled to adopt measures to eliminate the exploitation of workers at wages so low as to be insufficient to meet the bare cost of living. It also stated that nothing could be closer to the public interest than the health of women and their protection from unscrupulous employers.27 Though this decision was expected to give impetus to state action, Roosevelt indicated that he believed state legislation to be inadequate and that he had not changed his position in favor of national wage and hour legislation.28

In April the Court revealed a further change in its attitude

26Ibid., March 30, 1937.

27West Coast Hotel Co. v. Parrish, 300 U. S. 379.

toward New Deal labor legislation when it upheld the Wagner Act in a
series of cases involving the National Labor Relations Board. The
Court held in National Labor Relations Board v. Jones and Laughlin
Steel Corp. that when industries were organized on a national scale,
making interstate commerce the dominant factor in their activities,
they could not maintain that their industrial relations were a forbidden
field into which Congress could not enter to protect commerce from
industrial strife. This decision seemed to give the government
regulatory powers over labor conditions and indicated that future
labor legislation based on the commerce clause might be upheld. 29

Yet, men of both views on the President's plan declared that
the Court had given no clear approval to national wage and hour
legislation. Senator Robinson said that no one could determine the
true status of state or federal labor laws because of the changes in
the Court's rulings, and Senator Walsh maintained that the Court's
recent holdings were not broad enough to bestow on Congress the power
to regulate standards without a constitutional amendment. Representative
Connery declared that wage and hour legislation, as well as other
measures, would be withheld until Congress had acted on the reorganization
plan. Hence, the President, unwilling to trust future measures of
social and economic reform to a Court whose liberal decisions depended
on one man, held fast to his reform bill. 30

29 Douglas, op. cit., 493.

30 R. Moley, "After the Wagner Decisions," Newsweek, April 24,
In spite of Roosevelt's determination to carry on the fight against the Court, these decisions greatly reduced the chances of his success. If the Court had remained hostile to reform legislation, the cry would have been raised against it once more. But the decisions seemed to reduce the great debate over the reform plan to an all but academic question, since the wish for labor legislation had been one of the immediate reasons which led many liberals to support the President. His position was further weakened in May when Justice Van Devanter resigned, indicating that Roosevelt might soon gain control of the Court without congressional intervention. Nevertheless, early in May, he continued to chill any hope of retreat or compromise, conveying the impression to many Democrats that they were betraying him behind a show of loyalty. Rumors were circulating that his New Deal supporters, deploiring his stand on the Court and the strike situation, were in open revolt, with Vice President Garner working to loosen his grip on Congress.  

For several weeks in May, his congressional leaders tried to convince him that his plan was headed for almost certain defeat. When polls revealed that the Senate was so evenly split that Vice President Garner might have to break a tie, his Senate leaders reportedly asked Postmaster General Farley to urge him to accept a compromise. Not until June, however, would Roosevelt believe them and agree to compromise.  

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31 *Time Magazine*, April 19, 1937; *Newsweek*, May 8, 1937.  
32 *Time Magazine*, May 24, 1937.
In the meanwhile, many liberal Senators, concerned about the failure of the required number of states to ratify the child labor amendment and impatient over the delay of the Administration's labor standards bill, sought to secure the abolition of child labor through either a revision of the amendment or by a new federal law. The issue was brought to a head in March, 1937, when the Connecticut legislature rejected the child labor amendment, thereby practically ending all hope for its ratification that year.\(^{33}\) The failure of the proposed amendment induced Senator Borah to suggest the lowering of its age limit to fourteen, but his proposal would not have won the approval of organized labor.\(^{34}\)

In addition to Borah's scheme, separate bills were introduced by Senators Johnson, Barkley, Clark, and Wheeler, and a joint measure was prepared by Wheeler and Johnson. The Wheeler and Clark drafts provided that goods produced by child labor should be labeled and that such goods would then be subject to state laws prohibiting their importation. These proposals were drawn along the lines of acts prohibiting the transportation of prison-made goods into states in which their sale was illegal. The Johnson and Barkley measures,

\(^{33}\)Tbid., March 29, 1937.

\(^{34}\)New York Times, April 4, 1937.
on the other hand, specifically prohibited the entry of goods produced by child labor into interstate commerce, without regard to the laws of the states in which the goods were made or to which they might be shipped. The Wheeler-Johnson bill embodied both theories, with the hope that if one were invalidated, the other would sustain the law. The consistency of this approach was questioned, but proponents of the bill claimed that there was no diversity between the prohibitory feature and the labeling provision.

After the Senate Committee on Interstate Commerce had studied all the measures, it appointed a subcommittee to draft the best possible bill from all the proposals. The Committee accepted clarifying and broadening amendments to the Wheeler-Johnson bill and recommended it to the Senate, where it was sidetracked temporarily when the Administration's measure was introduced.

While the Senate considered proposals to outlaw child labor, deliberations on the Administration's labor standards measure continued in the White House and in the Justice and Labor Departments. From the many proposals and suggestions that Roosevelt had received, his legal


36U. S. Congress, Senate, Committee on Interstate Commerce, Regulating the Products of Child Labor.
advisors drew up tentative drafts which served as a basis of discussion at conferences with businessmen, labor leaders, and government officials. It appeared that many businessmen were reconciled to a revival of the NRA in some form and were willing to meet government and labor proposals half way, including a forty-hour work-week and a reasonable minimum wage. They probably would have objected to a work-week of less than forty hours as uneconomical, but little opposition was expected to wage minimums slightly above the rates fixed under the NRA. In February, most trade association executives seemed more concerned with fair trade agreements than with wage and hour legislation.  

The President's Business Advisory Council, working through Commerce Secretary Daniel C. Roper, adopted a program calling for efforts to create additional employment and to carry out the sound principles of the NRA. The Administration's business advisors submitted a plan providing for mandatory standards in interstate commerce and for the improvement of trade practices. It proposed that a new board, administratively connected with the Federal Trade Commission, would prescribe standards for industry and that another agency, probably within the Commerce Department, would outlaw unfair trade practices. Although Roosevelt had indicated that he was not primarily concerned with trade practices, it was reported that he was favorably disposed to the plan.


Late in February, the President sent Congress a report on the NRA prepared by the Committee of Industrial Analysis, a group composed of Cabinet members and businessmen. The Committee found that the NRA had generally rejuvenated the economy of the country, raised wages, reduced child labor, and increased employment. The report, after setting forth the causes for the failure of the Recovery Act, stated that the experience gained under it would be valuable for any future program of regulation and would point the way to the solution of many vexing problems. Although Roosevelt had provided for the study shortly after the NRA had been invalidated, its submission to Congress, coupled with the President's fight against the Court, led some observers to believe that the Administration would introduce a bill with regulatory provisions similar to those in the Recovery Act.

In addition to the plan submitted by the Business Advisory Council, Secretary Perkins revealed that she had presented a labor standard measure, upon which her Department had been working for some time. Charles Gregory, Labor Department Solicitor, had prepared a bill whereby the Secretary of Labor was empowered to appoint wage boards, when after investigation, it was determined that wages below subsistence levels were being paid in any industry. The boards were authorized to conduct hearings and recommend to the Secretary appropriate

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minimum rates and maximum work weeks. In February, Secretary Perkins declared that she had a tentative draft that included not only flexible control of wages and hours but also regulation of working conditions and provision for accident prevention. It served, she said, as a basis for discussion, and although frequently altered, included wage and hour provisions approved by labor leaders with whom she had been conferring. The problems of trade practices, she stated, had been taken up by another group.

While the Administration was studying the plans suggested by the President's business and labor advisors, Justice Department lawyers were redrafting the proposals submitted by the Council for Industrial Progress. In April, Siegfried Hartman, whose bill had been presented to Roosevelt in January, revealed to the Senate Judiciary Committee his part in drafting the Council's measure and alleged that the Justice Department might make a pronouncement on it "within a few weeks." Hartman also presented the Committee with a text of his measure, stating that it would be able to stand a test by the Supreme Court. The Committee learned that his proposal was based on the commerce power, covered all forms of competition, and empowered Congress to outlaw unfair competition, including substandard labor conditions. He assured it that although the jurisdiction of the federal government over business would be vastly increased, his plan would overcome the

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1Perkins, op. cit., 254-57.

Court's contention that manufacturing and production were local undertakings not within the scope of interstate commerce. 43

At the same time that the President was chilling any hope of compromise on the Court reform issue and the Supreme Court was revealing a change in its position on labor legislation, his legal aids were attempting to reach an agreement on the basic provisions of the new measure. Justice Department lawyer Walter Pope and his associates, who were working with Hartman, prepared a preliminary and confidential draft, which was confined to wages, hours, and child labor and did not touch on trade practices at all. The separation of the two problems avoided the issue of an expanded Federal Trade Commission and labor's insistence upon representation on the Commission if it were to administer any law dealing with labor standards. 44 Another very much more comprehensive draft, which was studied by the Council for Industrial Progress, was prepared by Administration lawyers Thomas Corcoran and Benjamin Cohen, and there developed a rivalry between the Department of Justice and the two lawyers over the bill. To one of the Council's officials, the Corcoran-Cohen draft appeared "foolhardy." 45


After weeks of deliberation, during which the proposals were examined by experts in the Labor Department, Roosevelt named a special committee to work through his son James in the preparation of a final draft of the measure. In addition to Corcoran and Cohen, this group included New Deal lawyer Donald Richberg, Assistant Attorney General Robert Jackson, and John Winant, former chairman of the Social Security Board. The news that the final draft of the bill had been written by Corcoran drifted over to Congress, where it reportedly upset some Congressmen who considered themselves the mainstays of the Democratic Party.46

In the meanwhile, Congress marked time, speculating upon the outcome of the Court struggle, unable to proceed with any other labor legislation, and ignorant of the Administration's intentions in regard to the new bill. Every day fascinating rumors seeped out to the press on the nature of its provisions. Early in May, news that the President was considering a plan whereby a wage board would fix standards apparently upset some labor leaders, who thought they could do better through collective bargaining, and some southerners, who opposed the abolition of differentials. Neither of these groups, however, was expected to fight the measure openly, while northern industrialists and even some southerners thought that the effects of the proposal would be beneficial.47

When it was revealed that the new bill would specify a statutory forty-cent minimum and a forty-hour work-week, the AFL became alarmed

over the safety of labor's bargaining rights. Labor, according to William Green, feared that the proposal would result in a lowering of standards already established as employers cut costs by lowering high wages to compensate for increased minimum rates. It was also afraid that statutory minimum wages might lead to the setting of maximum rates.48

Like labor, the National Association of Manufacturers was also concerned over the measure's provisions. Calling it "new restrictive and experimental legislation," which would threaten the nation's progress towards recovery and re-employment, the NAM declared that government regulation was unnecessary, since manufacturing employment was at or above 1929 levels. It asserted that nation-wide standards would inevitably lead to confusion during a time of recovery and that increases in wages and decreases in hours would have to be added to the costs of production. Although it declared that the regulation of standards would not solve the unemployment problem, it supported the regulation of child labor by Congressional enactment.49

When the drafting of the bill was in its final stages, Congressional leaders were kept in doubt as to the President's intentions until his return to Washington after a vacation in the South. However, his leaders kept the calendar clear of other industrial and labor legislation, sidetracking the Ellenbogen textile industry bill and the Miller-Tydings price agreements measure. The latter legalized state resale contracts

48Ibid., May 22, 1937. 49Ibid., May 24, 1937.
and conflicted with the principle of federal, nation-wide legislation and was, therefore, pigeonholed. Representative Connery, admitting that he was holding off other legislation and alleging his ignorance as to the form of the Administration's bill, reported that his Labor Committee would approve a labor standards measure covering all industry. The country learned of the President's decision a week before the bill was sent up to Capitol Hill, when Senate Leader Robinson, Speaker Bankhead, and Majority Leader Rayburn were called to the White House and presented with a "must calendar" for the rest of the session, which included legislation for the regulation of labor standards.

On May 21st, copies of the measure were placed in the hands of Senator Black, who agreed to substitute it for his own thirty-hour proposal, and Representative Connery, who had been responsible for New Deal labor legislation since 1933. The same day, Roosevelt conferred with William Green, who left the White House declaring that his organization preferred a flexible law. Following this, the President held last-minute conferences with Rayburn, Connery, Robinson, and Black, and with Hillman and Lewis, after which he spent the rest of the week-end drafting his wage and hour message. Although both labor leaders commented favorably on the bill, it was later revealed that the

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Administration made a last-minute decision to drop the measure's forty-cent minimum and forty-hour work-week standards. 52

Hence, the legislation, which had been contemplated for two years and drafted by the best New Deal lawyers after six months of study, was finally turned over to Congress. It was entrusted to two of the Administration's most able and respected congressional leaders, who were known to be enthusiastic advocates of labor legislation. If the bill's provisions did not have the complete endorsement of the NAM and AFL, the regulation of labor standards seemed to be accepted in principle by an overwhelming majority of labor leaders, businessmen, and reformers. And most important of all, it had the President's immense prestige behind it. Administration leaders, therefore, thought that they would be able to secure its enactment in the short time remaining before Congress adjourned.

CHAPTER III

AN ANALYSIS OF THE BILL

While the President was fishing off Port Aransas, Texas, during May, he had plenty of time to think about the refusal of Congress to accept his Court plan and about the means to get his reform program moving again. Rumors were circulating that he had decided not to wait for Congress to act on his Court proposal and that he had started working on his wage and hour message. Many doubted, however, whether he would be able to get Congress moving again before it adjourned. The seventy-fifth Congress, slated to be a reform body, had passed only two major measures, leading some observers to believe that the rest of the important legislation - housing, executive reorganization, crop insurance, and wage and hour regulation - would either be passed up or whipped through at session's end.

Outwardly, the issues of Court reform and government economy appeared to be the causes of congressional stalling. But for all the dissatisfaction and disagreement on these issues, it also seemed that Congress had been led so long that it lacked the ability to proceed under its own power. Drift from White House domination had apparently progressed so far that many wondered whether it would respond to Roosevelt's leadership when he returned to press his program. There
were increasing signs that it had a disposition to quit altogether during the summer months.¹

Nevertheless, as Roosevelt's train rolled up from the South, Congress received a warning of his intentions when he announced that he had decided to continue the drive for the aims outlined in his Madison Square Garden campaign speech. A few hours after his arrival, Speaker Bankhead, Floor Leader Rayburn, and Senate Leader Robinson were summoned to the White House for a briefing and left declaring that the fight would go on. The prospects for his program were not altogether favorable, however, since Roosevelt was in his second term, elections were distant, congressional discontent was deep, and the feelings against his Court plan were running high. The reform proposal, which had put Congress in a negative, do-nothing attitude, was headed for defeat, and the President had been advised to compromise. This was the situation when his wage and hour message, which opened the new drive, was sent to Congress.²

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On May 24, after the reading of the President's wage and hour message, the long-awaited measure was finally introduced by Senator Black and Representative Connery. Calling upon Congress to extend the

¹Time Magazine, May 17, 1937.
²Ibid., May 24, 1937.
frontiers of progress, Roosevelt declared that social justice was often fought by a small minority of those who wanted the government to take a holiday and that it had been advanced only by state and national legislation. Once again he reminded Congress that:

... you and I are pledged to take further steps to reduce the lag in purchasing power of individual workers and to strengthen and stabilize the market for the farmer's products... Our nation... should be able to devise ways and means of ensuring to all our able-bodied working men and women a fair day's pay for a fair day's work. A self-supporting and self-respecting democracy can plead no justification for the existence of child labor, no economic reason for chiseling worker's wages or stretching worker's hours.3

In addition to his appeal for social justice, the President also boldly asserted that Congress had the authority to regulate working conditions. Though he recognized that it could not interfere in local affairs, he declared that when goods entered the channels of interstate trade they became subject to the power of Congress, which could exercise its power over such goods to protect the fundamental interests of labor. Citing the dissenting opinion of Justice Holmes in Hammer v. Dagenhart, he declared that the power of Congress over interstate commerce gave it power over child labor, wages, and hours in industries producing goods entering interstate commerce. To safeguard the interests of free labor and a free people, he proposed:

... that only goods which have been produced under conditions which meet the minimum standards of free labor shall be admitted to interstate commerce. Goods produced under conditions which do not meet rudimentary

3Rosenman, op. cit., VI, 209-10.
Although he insisted that the federal government had the authority to set standards, he recognized that they could not be made uniform immediately without creating economic dislocations and declared that reasonable standards would have to be built up with due regard for local and geographical diversities. Nevertheless, he asserted that there were a few rudimentary standards which should be observed and that failure to observe them should be regarded as socially and economically oppressive. In addition to recognizing local diversities, he pointed out that the federal law would not cover all commerce and urged the states to take the responsibility for labor conditions with which they could effectively deal. The President concluded by expressing the hope that the government would be able to establish standards which would permit maximum employment and bring the people a maximum of goods and services.\(^5\)

The bills introduced in the House and Senate by Connery and Black were identical, with the important exception of the section in Connery's draft dealing with imported goods. While the Black version sought to regulate only goods produced in this country, Connery's would have prohibited the importation of goods produced under lower standards than those set in the United States. Not only would this provision have been extremely difficult to administer, but it also conflicted

\(^4\)Ibid., 212. \(^5\)Ibid., 214.
with the reciprocal trade treaties negotiated by Secretary Hull and was not, therefore, supported by the Administration. Its inclusion is explained by the fact that Representative Connery came from a state and section that was suffering from severe competition from foreign leather goods and shoes.  

Although it was generally understood that the Administration’s draft contained provisions for a forty-hour work-week and a forty-cent minimum wage, these provisions were struck out after a last minute conference at the White House, and Black and Connery announced that they would ask Congress to fix the work-week at not less than thirty nor more than forty hours. It was reported that the President had urged this action in order to prevent opponents from condemning the legislation because of its standards. This move also made the measure more attractive to the AFL, which was pressing for a thirty-hour work-week.

The measure presented to Congress by Black and Connery was the product of six months of legislative drafting by Administration lawyers and was composed of thirty sections in forty-eight pages. The first four parts of the measure, consisting of eleven sections, contained the legislative declaration, provided for the establishment of standards, and eliminated substandard labor conditions affecting

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interstate commerce. Part five spelled out the general administrative provisions. 8

The legislative declaration stated that the employment of workers under substandard conditions in the production of goods for interstate commerce placed burdens on both the workers and interstate commerce. Specifically, it stated that substandard labor conditions in interstate commerce 1) spread conditions detrimental to the economic and physical health, efficiency, and well-being of workers; 2) burdened the free flow of goods; 3) created unfair methods of competition; 4) caused industrial dislocations directly obstructing commerce 5) led to labor disputes interfering with the free flow of goods; 6) caused undue price fluctuations impairing the stability of prices; and 7) interfered with the orderly and fair marketing of goods. Congress was therefore required to correct such abuses by prohibiting the shipment of goods produced under substandard labor conditions and by eliminating substandard labor practices in occupations affecting interstate commerce. 9

The recitation of seven conditions burdening interstate commerce indicated that the Administration was utilizing various judicial interpretations of the federal commerce power to establish the constitutional basis of the bill. A number of different types of

8 U. S. Congress, Senate, 75th Cong. 1st Sess., S. 2175, A bill to provide for the establishment of fair labor standards in employment in and affecting interstate commerce, and for other purposes, Washington, 1937.

9 Ibid., Section 1.
regulation had previously been upheld by the Supreme Court on several distinct constitutional theories. All of these hopeful approaches to constitutionality had been consolidated in the measure, each complete in itself, so that if any one fell, the rest would still serve to maintain the law. This consolidation had resulted in some overlapping of the bill's provisions, but it was alleged that there would be no inconsistency in the law's operation or its objectives.  

Taking the position that Congress was as free as the states to recognize the fundamental interests of labor, the Administration defined the different theories of the commerce power upon which the bill was based, citing in each case the decisions upholding each power. It declared that Congress had the power to 1) regulate the movement of goods when they offended a sound national policy; 2) regulate competition in interstate commerce; 3) eliminate labor conditions leading to labor disputes that obstructed commerce; 4) prohibit the transportation of goods into states in violation of state laws; 5) eliminate "conditions" affecting the movement or price of goods in interstate commerce; 6) and regulate "conduct" affecting the movement of goods across state lines.

Each of these powers over commerce was backed by established judicial precedents defining the right of Congress to regulate interstate trade. Since the bill was based on all of these powers, it could not be reduced to one simple formula, and the provisions were

bound to overlap. The Administration had willingly sacrificed
simplicity in order to draw a constitutional bill.\textsuperscript{11}

After the legislative declaration of intent, there followed
a long section defining various terms in the measure, including the
phrase "oppressive child labor." Child labor was defined to be the
employment of children under the age of sixteen, with the provision
that the Chief of the Children's Bureau might also ban the employment
of children under eighteen in any occupation judged hazardous or
detrimental to their health. Another prohibition, inserted in a
subsequent section, made it unlawful to transport goods made by
employees under the age of eighteen into any state in violation of
any state law prohibiting the receipt of goods made in violation of
its labor standards. Although the latter prohibition conflicted
with the outright ban, the authors of the bill intended to provide
two prohibitions so that if one were struck down by the courts, the
other would still be effective.\textsuperscript{12}

Though the Administration considered one plan providing for
supervision of labor standards by an expanded Federal Trade Commission
and another establishing industry management-labor committees, it
abandoned both approaches in favor of regulation by an independent
Labor Standards Board. The President was authorized to appoint,
taking industrial and geographic regions into consideration, a five-

\textsuperscript{11}Ibid., 3, 4.

\textsuperscript{12}U. S. Congress, Senate, 75th Cong. 1st Sess., S. 2475,
Section 2, 7.
man Standards Board. It was given broad powers to vary wage and hour standards to maintain the physical and economic health, efficiency, and well-being of the employees, without, however, unreasonably curtailing the earning power of the employees. Specifically, it was empowered to conduct investigations of labor standards in industries producing goods sold in interstate commerce, and if it found that substandard conditions existed, it might establish fair wages and hours for such industries.¹³

When establishing a fair wage, the Board was required to take into consideration 1) the cost of living and all other relevant circumstances affecting the value of services rendered; 2) the same data as a court would use in determining the value of services rendered; 3) the wages established for work of a similar nature by collective bargaining; 4) and wages paid by employers voluntarily maintaining fair wage standards. But it could not establish a wage which would give employers an annual wage in excess of $1200 or an hourly wage in excess of eighty cents.

In arriving at a fair work-week, the Board was to consider 1) the health, efficiency, and well-being of the employees; 2) the number of persons available for employment; 3) the hours established for like work by collective bargaining; 4) the hours established by employers voluntarily maintaining a reasonable work-week. The work-week below which the Board could not go, however, was left blank in the draft for Congress to determine.¹⁴

¹³Ibid., Section 3, 4. ¹⁴Ibid., Section 5, 6.
Although the statutory standards had been left blank, the administration anticipated that provisions establishing a forty-cent rate and work-week between thirty and forty hours would be written into the measure. The eighty-cent maximum provision was designed for seasonal trades where an annual basis could not be computed, while the $1200 annual wage was intended to govern the regularly operating industries. In order to keep the standards flexible, provision was made for overtime payments at one and one-half times the regular rate, and the Board was allowed to make exceptions for learners and apprentices, for the disabled, and for those employed in seasonal activities.¹⁵

After declaring that it was unlawful to transport in interstate commerce goods made under substandard labor conditions, the measure empowered the Board to order employers to discontinue substandard labor conditions and made it unlawful to employ workers in violation of such orders. In addition, when the Board found that substandard labor conditions in any industry not in interstate commerce gave employers unfair advantage over employers in interstate commerce maintaining fair standards, it could order employers enjoying such competitive advantage to discontinue substandard labor practices.

Substandard practices could be eliminated by the Board if it found that they 1) led to labor disputes obstructing trade; 2) affected the movement, price, or marketing of goods; 3) diverted or affected the movement or price of goods. The employment of workers and the

¹⁵Ibid., Section 6.
transportation of any goods in violation of the orders of the Board was declared unlawful. 16

The remaining sections of the bill covered the administration of the foregoing provisions and provided for enforcement and penalties. Before issuing an order, the Board was required to hold a hearing and was empowered to make investigations, take testimony, or appoint an advisory committee to gather data and submit a report on its findings. All investigations were to be made through the Secretary of Labor and the Chief of the Children's Bureau, and every employer engaged in interstate commerce was required to keep records of wages and hours. The right of employees to organize and bargain collectively was specifically protected, and the bill provided that none of its provisions should be construed to invalidate any contract or collective bargaining agreement where the wage was in excess of the standards required by the proposed measure. Any person engaged in an activity declared to be unlawful by the bill would be guilty of a misdemeanor and subject to a fine of $500 and imprisonment for six months. Finally, the measure was to go into effect immediately upon its passage, except that the provision requiring the maintenance of fair labor standards would not take effect until 120 days after enactment. 17

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16Ibid., Section 8, 9, 10, 11.
17Ibid., Section 14, 15, 18, 23, 27, 29.
Comment on the Administration's proposal by the press, Congressmen, management, and labor was generally favorable, with criticism directed more at the means by which the reform was to be accomplished than at the goal itself. Editorial comment in the country's key newspapers was mixed, but most of the papers supported the President's social philosophy, if not the measure itself.

The San Francisco Chronicle (R) thought the regulation of child labor and wage standards reasonable but warned that the President's message outlined a program intended to give Congress the power to coerce the states without limit in domestic legislation. The proposals, declared the Boston Herald (R) were so sound in principle that they were not likely to cause much opposition. The President, it said, had obviously learned something from the NRA. The New York Herald Tribune (R) found a new note of reasonableness in Roosevelt's arguments and suggested that he had abandoned the intolerance that had characterized his pronouncements on social problems. Finding his measure forceful and convincing, the Philadelphia Inquirer declared that he had outlined admirable objectives and that it was up to Congress to authorize the means for their fulfillment. The Cleveland Plain Dealer (D) thought the country was ready to extend the frontiers of social progress, and the Portland Oregonian (Ind.) agreed that the elimination of child labor and the regulation of wages and hours were worthy objectives. 18

On the other hand, the Providence Journal (D) thought that Roosevelt had given Congress a large order to fill and could not imagine ten northeastern and fifteen southern Senators agreeing on differentials fair to both sections. The Baltimore Sun (D) was afraid that the very classes that the President sought to help would be condemned in increasing numbers to idleness and relief by the attempt to regulate standards by Washington fiat. There was no doubt, said the Hartford Courant (R), that the proposed legislation would establish a system which would substitute a static for a dynamic economy and fix the standard of living at its existing level. And the editors of the Los Angeles Times (R), completely swept away, declared that Roosevelt was paying off his campaign debt to John L. Lewis, that the labor leader would become the dictator of American industry, and that he would be dominant on the new Board. Moreover, the Times warned that Lewis, Perkins, and "the rest of the semi-communist crew are hidden behind the fair words of the President."19

Notwithstanding this fear of labor domination by the Los Angeles Times, the newspapers generally agreed that Roosevelt's social philosophy was admirable, his message moderate, the need for regulatory legislation apparent, but at the same time, recognized that the measure might possibly lead to abuses or prove economically unsound.

Some critics who were not opposed to the basic aims of the

19Ibid.
legislation took the position that the Labor Standards Board had received an unwarranted grant of power and that it would be incapable of fixing wages and hours for every business in the country. They suggested that the employers would have to bear a higher labor cost and that federal price fixing would ensue. The bill, they declared, was a challenge to the Supreme Court on the NRA decision and was, therefore, plainly unconstitutional. General Hugh S. Johnson, while supporting the bill, was among those who thought it was unwise to delegate "almost unlimited power" to the Board. Critics were afraid that the Board would become some kind of a "roving commission," which would be engaged in modifying the theoretical standards in the measure.

On the other hand, one commentator discounted these fears, predicting that the Board would be of value if it raised the lowest wages and that it would be crushed if it attempted to crusade. Although he recognized that there would be a tendency toward a leveling of wages and that the bill would fall more heavily on little business than large industry - which was already meeting the proposed standards, he maintained that wages would not go up perceptibly and that moderate results would come of the measure.

Other supporters of the legislation agreed that the country had

20 "This Job is Too Big," Business Week, June 5, 1937.
21 Newsweek, June 5, 1937.
nothing to fear in national regulation through the Board, pointing out that state legislation was badly drafted and that states which needed regulation the most were the least likely to act. The measure to stop "runaway shops" was essential, they asserted, to bring wages in backward sections into line with gains already made elsewhere. They maintained, however, that the proposed law would not abolish unemployment or raise the standard of living throughout the country, alleging that any attempt to deal with the problem as a whole would have to include controls to keep prices down while wages advanced. And they also declared that there was no danger of the measure lowering productivity, since few industries were working more than forty hours. More jobs would be created by an increase in purchasing power, they predicted, than would be lost through improvement of standards.

The concern over the effect of the measure and the powers granted to the Board, as expressed by commentators in the nation's press, was also shared by many Congressmen and by representatives of management and organized labor. Senator McGarron (D-Nevada), said that he was sympathetic to the measure but that it raised questions requiring careful study and that it might be best to let it go over to the next session. He referred to criticism from the AFL as a reason for giving the proposal a thorough review. In addition, Senator King (D-Utah), long an opponent of the NRA, claimed that the bill went too far.

23 Nation, June 5, 1937.
infringed on the rights of the states, and was worse than the NRA. Comparing it with the plan instituted in Italy by Mussolini to bring all labor under one head, he said that the proposed standards would concentrate too much power in the federal government. Many other Senators, while not hostile to the proposed reform, were "sitting on the fence," waiting to see what figure would be written into the draft before definitely committing themselves.  

Secretary Perkins, though supporting the measure, was also critical of several of its provisions. Testifying during the hearings on the Ellenbogen textile-industry bill, she declared that she favored specific wage and hour treatment for the steel, coal, auto, and textile industries and that boards be established for each of them because of their peculiar problems. And she was opposed, she said, to the establishment of independent boards, preferring that wage regulation be placed under the supervision of the Labor Department so that it could be coordinated by a department reporting directly to the President.  

Further criticism of the bill and its provisions came from trade associations and the Chamber of Commerce. Southern manufacturing association executives believed that the proposal would result in cost increases in the South but that it would not seriously affect northern industry. They were concerned, therefore, about the lack of any mention of wage differentials and urged that an effort be made to

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have them included. While the southerners were alarmed about the loss of differentials, the Chamber of Commerce, calling the legislation complicated and incomplete, urged a careful study of the bill. Maintaining that it raised the same questions involved in the outlawed NRA, the Chamber suggested that business had already demonstrated a willingness to improve labor standards and had made "extraordinary progress" in attaining those objectives. 27

Like many progressive businessmen, the AFL accepted federal regulation of labor standards in principle, but made reservations as to the provisions of the new bill. It was very much afraid that the Board's power to set standards would prejudice the role of labor unions as collective bargaining agents and thereby weaken the position of organized labor. While emphasizing the importance of bargaining as a principle of democratic justice, the Federation recognized that there would be many eventualities before the right to bargain was established in all industries. Nevertheless, the right to bargain collectively, said Green, imposed upon the public an obligation not to use the power of the government against those pressing for the use of that fundamental principle of industrial justice. Those responsible for administering government, he declared, must adjust their thinking so that all action will be controlled by the acceptance of that right as a keystone of democratic institutions. 28

28 American Federationist, July 1937, XLIV, 700.
Hence, after the Executive Council of the AFL considered the Administration draft during its Cincinnati meeting in May, it accepted the measure subject to the adoption of amendments safeguarding collective bargaining and limiting the scope of government regulation to those fields where bargaining was ineffective. Consequently, before hearings on the proposal began, Green revealed that his organization would be willing to accept the Board's standards only in those industries where there was no collective bargaining and that it was preparing amendments which would make the wages and hours fixed by bargaining in any part of an industry the standards for that whole industry. He maintained that those proposals would further bargaining, alleging that employers would rather make contracts with unions than be subject to federal regulation.

While the AFL was plainly critical of the regulatory powers delegated to the Board, the leaders of the CIO appeared to be in favor of the bill's broad, general coverage. Commenting on the workweek, Hillman said that they felt that a quick limitation of hours and the establishment of a minimum wage would bring the country closer to a thirty-hour than a forty-hour week. Announcing his support, Lewis declared that the shortening of hours was a vital necessity for providing security in any program. His group, he said, was for a

reasonable approach and a flexibility that would protect employers and consumers. Going further, he warned that the return of prosperity, with increased sales and profits, might lead to increased unemployment if employers turned to new labor-saving machinery. The labor leader saw in this threat one of the major questions that the country had to face if it was to maintain economic stability.  

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In addition to this general criticism of its provisions, the bill was also frequently compared to the NRA and was occasionally called "the new NRA." One reviewer correctly maintained that the measure was "another step towards the piecemeal restoration of parts of the old NRA," in that it proposed to do what the old wage and hour codes had tried to do.  

Many commentators found a similarity between the new proposal and the employment sections of the old codes and speculated as to whether the Supreme Court would be able to find a distinction between the two. They recalled that the government had previously been denied the authority to regulate labor standards on the ground that production was a local activity. But they pointed out that the Administration, hoping to avoid the constitutional trap that had

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31 Ibid., May 23, 1937.

killed the NRA, had provided for a Board to answer the Court's criticism that code-making by private industry was unconstitutional. The reviewers also noted that the President was hoping for a more favorable ruling because of the Court's increasingly liberal interpretation of the commerce clause. The decisions upholding the Wagner Act were cited to indicate that for the first time nationwide industries were subject to the regulatory power of Congress, even though their products were manufactured locally. Hence, many reviewers came to the conclusion that for the first time the federal government seemed to have the power to pass a national wage and hour law. 33

On the other hand, one critic, who called the bill "a mess which will require time and patience to disentangle," was not at all sure that the provision for a Board would make the measure acceptable to the Court. Granting that wages could be fixed by Congress under the interstate commerce clause, he declared that the proposed Board had been empowered to make exceptions so numerous as to amount to legislation. Even after wage floors and hours ceilings were filled in by Congress, the Board would still be too powerful. Its five members, he said would be entrusted with the economic and social order of the entire country and would constitute some kind of a "roving commission," to which even the liberal members of the Court would be hostile. Though

he granted that there would be a law and a commission, he urged the acceptance of a measure with the least delegation of legislative power.  

While the bill's provisions aroused considerable speculation as to its constitutionality, its effect on the nation's labor standards also was a matter of conjecture. Since exact standards had not been written into the law, and since its coverage would depend upon the activity of the Board, no one seemed to know how large a part of industry or how many workers would be subject to its provisions. It was estimated that the national work-week averaged around forty hours and that the average hourly rate in leading interstate industries was between sixty and sixty-three cents. Hence, it appeared that the proposal, with a forty-cent minimum and a forty-hour work-week, would change conditions in relatively few industries and affect a small number of workers. The lowest standards existed in the cotton, silk, rayon, canning, and box-making industries, where the Board would find its first field of action. Though any attempt to estimate the number of industrial workers who would be benefited was pure guesswork, the consensus of opinion was that a forty-cent wage would bring extra pay to two million, that industry might absorb from two to four million additional workers, and that one hundred thousand children would be affected.  

35 Newsweek, June 5, 1937.
During the week that the bill had been introduced, before it had been thoroughly studied and before hearings began, it was given a good chance of passing. One commentator predicted that the only way the opposition could stop it was to convince the farmers that it was another labor bill which would increase the cost of goods that they bought. And others pointed out that there was no sign that opposition would be as formidable and determined as that which the President's Court proposal had encountered. 36

Although the measure had been introduced late in the session when Congress was anxious to go home, there were strong indications that every effort would be made to drive the legislation through before Congress adjourned. Senators Robinson and Black revealed that they planned to expedite its consideration, and Representative Connery declared that his House Labor Committee, having taken considerable testimony on labor conditions at various times, would complete its hearings within one or two weeks. 37 Hence, the hearings were set for June 2, and the bill got under way with only a few minor clouds on the horizon.


During the first weeks of June, the American citizen found in his favorite newspaper many exciting and fascinating events much more interesting than the relatively prosaic hearings held by the combined House and Senate Labor Committees on the wage bill. Reports of labor strife and industrial conflict, news of congressional insurrections, and rumors of compromise on the Court issue competed for the attention of the reader. In South Chicago striking steelworkers met violent death in a battle with police outside the Republic Steel Plant, while in Detroit hoodlums employed by the Ford Company were pictured beating up United Auto Worker organizers at the River Rouge Plant. Prominent labor leaders condemned each other publicly when the AFL began purging unions supporting the CIO, opening labor's civil war on a dozen fronts.

In Washington, the famous "Nine Old Men" were pictured meeting together for the last time, while Senator Robinson revealed that compromise on the Court issue was possible for the first time. That the President realized his defeat seemed to be indicated when he placed the whole matter in the hands of his Senate leader. On the other side of the Capitol, the country was treated to the spectacle of House leadership filibustering against an Administration relief
bill that had been loaded with amendments by members impatient with
Relief Administrator Harry Hopkins. Floor Leader Rayburn had to promise
the insurgents that he would bring about a fair adjustment on relief
appropriations to quell the uprising. This incident and the
impending compromise on the Court issue indicated how far the
congressional revolt against Roosevelt had gone when the hearings on
the wage bill began.¹

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Senator Black and Representative Connery arranged for an
extensive group of government officials, businessmen, labor leaders,
and reformers to testify on the measure. Due to the fact that they
were all heard within two weeks, many were allotted a very short time,
others read statements and answered a few questions, while some appeared
only to request an exemption from the bill's provisions. Although
testimony from labor leaders was not wholly favorable, nor that of
businessmen uniformly critical of the legislation, both groups went
on record as approving the abolition of child labor and sweatshop
working conditions. Similarly, the measure's administrative provisions
were both condemned and supported by representatives of labor and
management. The bill's effect on the tariff, differentials, monopoly,
and child labor also raised issues, none of which, however, appeared

¹Time Magazine, June 7, 14, 1937.
to be insuperable obstacles endangering its success.

The legislation was ably explained and defended by Assistant Attorney General Jackson, Secretary Perkins, and other administration officials. Jackson read a prepared statement spelling out the purposes of the bill, analyzed it section by section, distinguished it from the NRA, and patiently explained its provisions to the Committee. Comparing it with the NRA, he maintained that the only thing that the two measures had in common was the attempt to eliminate unfair labor practices, and he assured the members that it would not plunge the country into a policy of rigid regulation. Pointing out that it did not touch union trade practices at all, he said that there was no delegation of power to private industry to establish industry-wide codes.²

Maintaining its constitutionality, Jackson declared that the Supreme Court had upheld various types of regulation on several distinct constitutional theories, all of which had been utilized so that if one were invalidated, the remainder would still sustain the law. There was nothing in the Constitution, he said, forbidding Congress from making a delegation of its power. Pointing out that such prohibitions were purely judge-made, he assured the Committee that the Court rarely found fault with a Congressional delegation of power.

He also asserted that the Fifth and the Fourteenth Amendments

would not prohibit the regulation of labor standards in the interest of the public welfare, stating that the guarantee of due process demanded only that the law should not be unreasonable, arbitrary, or capricious. Since the reasonableness of regulation depended on the relevant facts, there could be no objection to delegating power to an administrative board to investigate them. The fairness of standards to be established by the bill would be assured, he said, by the provisions which required the Board to grant exemptions from wage and hour regulations as the need appeared. The fair employer would, therefore, find the law his chief protection against the undermining of his market by chiseling employers.3

Answering arguments that the child labor prohibition should be introduced as a separate measure, Jackson asserted that the prohibition standing alone would be more difficult to sustain in court and that \textit{Hammer v. Dagenhart}, which had invalidated the first federal law, could be reversed. All unfair practices, he said, were related and were utilized for the purpose of gaining an unfair advantage in competition. Inclusion of the child labor prohibition with other illegal practices made it plain that the law was a genuine exercise of the power to regulate interstate commerce on a broad front. He also pointed out that the \textit{Hammer} decision had been promulgated by a bare majority of the Court and that legal scholarship had criticized it. The time had come, he declared, to challenge the ruling, giving

3\textit{Ibid.}, 1-10.
the Court the opportunity to correct its error. Alleging that the bill did just that, he maintained that it could reasonably be hoped that the decision would be reversed.

Jackson also defined the measure's provisions in relation to intrastate commerce and collective bargaining. When Representative Hartley (R-N.J.) asked if its provisions applied to retail stores that moved goods across state lines but sold in a local market, Jackson explained that the Board would have to find that such selling affected interstate commerce to a substantial degree. If it did, the employer would be covered by the bill's provisions. Representative Griswold (D-Ind.) felt that there would be a conflict between rates reached through collective bargaining and those set by the Board, and Jackson told him that Board decisions would take precedence over bargaining contracts. But he could see no objection to this, since the Board was required to take bargaining into consideration when setting rates, thereby protecting labor and bargaining agreements. He attempted to assure the Committee that there was no possibility of the Board ever lowering wages fixed by collective bargaining and that there was no danger of the minimum wage becoming the maximum. In concluding his testimony, he stated that the law, far from being hurriedly thrown together as some critics had claimed, was the result of a very careful study, which accounted for the unavoidable overlapping of some of its provisions. 4

4 Ibid., 24, 39, 54.
Secretary Perkins vigorously supported the measure, revealed how low standards were unsettling business, cited her Department's experience under the Recovery Act, and lauded British trade legislation. The bill would, she said, limit economic fluctuations and provide security to industry, labor, and investors. Submitting a chart entitled "Business Goes to the Wage Cutter," she declared that the charge that many industries adopted unfair labor practices after the invalidation of the NRA was well-founded and pointed out that a minority of employers might demoralize an entire industry. She asked the Committee not to be deterred by criticism that the proposal was one-sided in that it contained only provisions for working standards. One of the lessons of the NRA experience, she asserted, was that it was not necessary to bestow upon private industry the right to fix prices and limit production. It was a mistake to think of wage regulation as exclusively a labor measure, necessitating the grant of corresponding privileges to industry. The NRA showed, she said, that labor regulation was a general economic measure that stabilized competition and working conditions.

She also told the Committee that she doubted the wisdom of inserting specific standards in the measure and that while the child labor prohibition was commendable, she nevertheless favored the child labor amendment. Foreseeing a difficult task in fixing a basic standard, she felt that the Board might set it by utilizing the same machinery established for the determination of wages above the minimum. As to child labor, she declared that it should be eliminated from all employment, whether interstate or intrastate in character. She believed,
therefore, that efforts should be made to secure the ratification of the amendment no matter what action Congress took on the bill. Moreover, she opposed exempting industries employing only a few workers, pointing out that they were the ones that brought about inequitable competition. And she warned that there should be limitations on the Board's right to establish geographical differentials, because it would not be in the best interests of the country to have people in one section looking enviously at people elsewhere who were getting better wages. Finally, she assured the members that all industrial nations had attempted to regulate working standards, and she praised the Trade Boards Act which had helped Britain weather two severe depressions.\(^5\)

Confirming the testimony of Secretary Perkins, Leon Henderson, former director of research and planning for the NRA, told the Committee that twelve million workers would be affected by the bill. Citing a study of the NRA, he declared that after its invalidation the employers who abandoned code standards had profited greatly, making the marginal worker the victim of cut-throat competition.\(^6\) Estimating that three million were receiving below forty-cents per hour and that six million were working in excess of forty hours per week, he claimed that a rigid forty-hour work-week without overtime would put at least a million and a half people back to work and that a rigid thirty-hour work-week would create jobs for between seven and eight million. When questioned

\(^{5}\)Ibid., 173-90.

as to whether geographic wage differentials would induce industry to migrate to sections where wages were lower, he expressed strong doubt. The NRA, he said, had halted migration by narrowing differentials, making it less profitable for industry to move. He claimed that in most cases movement was going on before the NRA and that conditions inducing industries to move usually had nothing to do with the standard provisions of the codes. In closing, he warned that the country faced a deficit in purchasing power unless some form of the proposed law was enacted.

Two Labor Department officials, Isador Lubin, Commissioner of Labor Statistics, and Katherine Lenroot, Chief of the Children's Bureau, also endorsed the bill. Lubin told the members that competition had failed to work the way economists had prophesied and had resulted in a chaotic system under which unscrupulous competitors forced employers to adopt policies detrimental to industry and society. The legislation was therefore necessary, he said, to preserve the competitive system, provide decent living standards, and protect the welfare of the nation. Minimum standards would, he asserted, prevent chiselers from attaining economic success at the expense of the health and living standards of other human beings. Lubin supported his arguments with a wealth of charts and statistics on wages, hours, and the cost of living throughout the country. Miss Lenroot testified that the number of children working had risen sharply since the invalidation of the NRA codes and that a large proportion of them were employed

in intrastate industries. As the proposed prohibition would cover only about twenty-five per cent of the children working in industry, she urged that the movement for the child labor amendment be continued. 8

* * *

The Committee also heard from a large number of representatives from industry, trade associations, and national business organizations, the great majority of whom expressed agreement with the legislation's objectives, even though many criticized or condemned its provisions.

None of the business representatives seemed willing to go on record as opposing the abolition of child labor or sweatshop labor conditions. Most of them however, criticized the scope of the bill and the powers of the Board and predicted that the proposal would upset industry and result in government bureaucracy. The National Association of Manufacturers was represented by its counsel, James A. Emery, its economist, Noel Sargent, and by Robert B. Dresser. Emery submitted a list of forty-one state and local manufacturing associations opposed to the bill and then criticized it section by section. Condemning the constitutional principles upon which it had been drafted, he said that his organization supported state regulation of labor and was, therefore, opposed to the "ocean of authority" granted to the five-man federal Board. He capitalized on the current industrial strife,

8Tbid., 309-10, 381-89.
asking the Committee if the time had not come for Congress to require
labor to accept limitations on its conduct in the public interest,
and he concluded by predicting that the country would be threatened
by rising costs, falling production, and a dislocation of the economy
if the measure were passed.

Although Sargent approved the basic objectives of the legislation,
he too warned the Committee that it would undermine the country's
economy. Maintaining that it was too complicated and that it attempted
to cover too much, he said that it contained no "yardstick to fix
wages," would be impossible to administer fairly, favored big business,
would increase living costs, raise imports, reduce exports, and worsen
the depression. Robert Dreser also declared that he approved the
legislation's objectives but opposed the provisions of the bill.
Calling it a step towards the all-powerful state, he alleged that its
concept of spreading work, creating employment, and raising purchasing
power was a proven economic fallacy.9

While business and trade association representatives were
generally critical of the measure's provisions, many individual
businessmen supported it, and one even recommended standards higher
than those contemplated by Congress. John Q. Paine, who had served
as chairman of the management group of the Council for Industrial
Progress, endorsed the bill's objectives and expressed the Council's
pleasure at finding it so similar to the drafts submitted to the
President by Coordinator Berry in January. The members of the Council,

9Ibid., 623-86.
he said, felt that the similarity between its draft and the bill was abundant reward for the eighteen months that it had devoted to the study of the problem. Paine also maintained that the record of the Council reflected a unity of opinion on labor-management questions that was unique in the industrial history of America. Robert Johnson, president of Johnson and Johnson, surprised the Committee by recommending a thirty-hour week and a $16 weekly minimum for as much of industry as was capable of operating under such a plan. The members were also startled when Johnson, who owned several textile plants in the South, opposed the geographical wage differential as a penalty on southern labor.

* * *

Like the businessmen, labor leaders endorsed the legislation's basic aims but were openly critical of its provisions. Although the AFL and CIO had launched a bitter campaign against each other, the leaders of the two groups found themselves in agreement on the dangers of wage regulation by the proposed five-man Board. On May 27 the AFL's Executive Council had endorsed the bill, subject to a series of amendments which it proposed to submit to the Committee. It accepted a forty-hour work-week, with the Board empowered to reduce working hours downward to thirty, and insisted that government regulation be withdrawn as collective bargaining expanded to cover the regulated

10 Ibid., 91-125, 128.
field. The Federation objected to the Board's power to supersede
privately negotiated wage contracts, where negotiated wages were
lower than minimums proposed in the bill, and Green warned that it
would oppose any government attempt to supplant labor unions in
setting wages. The act, said Green:

... does not deal ... with the fixing of general
minimum wage standards ... Any such proposal to deal
with the fixing of general minimum wage standards by a
government fiat for men in private industry would be
strenuously opposed by the AFL as contrary to our
conception of democracy, and as violating the cardinal
principles of self government in private industry ... 11

To make sure that labor's collective bargaining rights were
protected, Green offered six amendments providing that

1) the act should encourage collective bargaining agreements covering
wages and hours;

2) every wage and hour regulation should contain a finding that such
standards should not be considered maximum wages or minimum hours
and should not prevent collective bargaining for higher wages or
shorter hours;

3) wages and hours fixed by collective bargaining and found by the
Board to be the standards prevailing in a substantial portion of
the industry concerned should be used as the standard for such
industry, unless a higher standard was necessary to prevent unfair
competition;

4) in every determination of standards, those fixed by collective
bargaining should be taken to be the minimum wages and maximum hours;

5) when the Board found that an occupation was a craft employment,
it had to deal with craft employment as a separate classification;

6) where regulations differed from those fixed by collective bargaining,
the agreements should be subject to such regulation only to make
it effective, and otherwise should be in full force as if such
regulation had not been issued.

11Ibid., 219.
Collective bargaining agreements were so sacred that the AFL preferred to work under them, even though they provided for longer hours and lower wages than those that might be stimulated in the bill or by the Board. The Federation, said Green, would rather preserve the principle of industrial democracy than yield the Board the right to interfere in the free exercise of bargaining, and he assured the Committee that if Congress set wages and hours there would be no negotiated agreements providing for lower standards.

When it was suggested that some bargaining agreements might not be honestly made, Green replied that, in any event, it would be better to preserve the principle of collective bargaining than to grant the Board authority to determine whether an agreement was genuine. In addition, he said that although the AFL did not consider the $16 per week minimum an adequate family wage, it was a step in the right direction. In closing his testimony, he declared that the AFL was strongly opposed to geographical differentials.\(^{12}\)

The CIO's John L. Lewis, though approving the legislation's objectives, placed himself alongside Green in opposition to the wage-setting provisions in Section 5 of the measure. Not only did he oppose the Board's right to abrogate bargaining contracts with standards below those set in the bill, but he suggested that the legislation would be greatly simplified if Section 5 were eliminated altogether.

Testifying that the real aim was a declaration that no employer pay

\(^{12}\)Ibid., 219-36.
less than forty cents, a standard that was simple and of easy application, he maintained that anything else amounted to wage-fixing by a government agency. He also recommended a thirty-five-hour work-week, which might be expanded to forty or reduced to thirty, though he admitted that $14 per week, while it would help thousands, would be a calamity if construed as a living wage.  

Although the bill's wage setting provisions were criticized by the two labor chiefs, they were supported by two large garment industry unions. Merle D. Vincent, legislative counsel for the International Ladies' Garment Worker's Union, told the Committee, not only that the dress industry was operating on a thirty-five-hour week but that the shortening of the work-week in that industry had been accompanied by an increase in production per worker. Defending the bill's $1200 per year maximum wage, he referred to a survey of living costs which showed that $1260 was the annual minimum income upon which a family of four could exist, even without the inclusion of an adequate allowance for clothes and cultural development. And he also declared that the differentials between the North and the South in the dress industry were not as great as those between plants within states in either section. His union, therefore, supported the standards proposed by the bill and opposed geographical differentials. Vigorously supporting the measure, Sidney Hillman, president of the Amalgamated Clothing Worker's Union, told the members that he favored

13 Ibid., 271-88.
a forty-hour week and a forty-cent minimum, that he opposed geographic differentials, and that he approved of the Board and its powers. Criticizing differentials, he declared that differences between sections in the cost of living and the cost of production were not so great as many believed. There was, he said, as much cut-throat competition within the South, even within the same states in the South, as there was between the South and other sections. Moreover, he alleged that Congress did not have the ability to pass on a question of fact and write differentials into law.

Flatly contradicting the opinion of John L. Lewis, Hillman maintained that the omission of Section 5 would emasculate the bill. Not only would that section aid bargaining, he said, but without it a shorter work-week would be impossible, if annual income were cut in the process. It was obvious, he declared, that if the Board were deprived of the power to fix standards, it would be unable to protect employers from unfair competition. When Senator LaFollette asked about the conflict of testimony on this point, Hillman explained that his experience in the garment industry and with the NRA had been different than that of his chief. He also assured the Committee that he found no conflict between the bill and the Wagner Act and that he considered them two parts of the same program. 11

11Ibid., 262-68, 943-57.
In addition to this testimony from businessmen and labor leaders, the Committee heard from the representatives of a wide variety of organizations, who criticized or praised the bill, requested exemptions, or gave advice. Officers of railway maintenance workers, oil field laborers, truck drivers, and seamen sought to have their unions, covered by other legislation, exempted from the bill's wage and hours standards. Witnesses representing jewelers, apple growers, citrus fruit farmers, sawmill operators, and turpentine producers, to mention a few, sought exemption from one or all of the measure's provisions. Representatives from educational, religious, racial, and reform organizations praised the bill, while many big and little businessmen and local and state trade and farm associations requested exemptions or condemned it. There was also evidence, as the hearings closed, that the lobbyists were at work. Senator Black told his colleagues that he had received telegrams from various sections of the country, seeming to be wholly unconnected with each other, but all coincidentally stating that the committee should not act hastily until industry had time to study the bill. 15

The activity of the lobbyists was not the first indication of a growing sentiment for a careful study of the legislation. The day after the hearings began Senator McCarran (D-Nevada) advised the Senate that Congress should proceed on the proposal with extreme caution. While the bill's philosophy was appropriate, he said, they should approach the plan with great care, because in such a "revolutionary

15Ibid., 1081-96.
movement" they were "fixing laws for generations to come. A few days later, Senator Vandenberg (R-Mich.) blasted the measure, declaring that industry needed a breathing spell from new experimental statutes. The acceptance of the plan, he said would entrust the power of life-and-death over industry to an all-powerful bureaucracy. Before establishing wage and hour regulation by government fiat, he suggested that the whole related economic problem had to be studied. Federal wage fixing, he warned, might drive consumer prices upward, upset agricultural parity, and in government price fixing, and drive the country closer to an authoritarian state, with oppressive government monopolies. Declaring that there was no pressing emergency and no assurance that the proposal would contribute to solving the employment problem, he proposed a joint study of the wage and hour question by the Labor Committees of both Houses during the congressional recess.

The bill's prospects were further complicated by an attempt to make it the vehicle for an attack on monopoly and by a movement to empower the Board to alter the tariff. Senator Borah (R-Idaho), long-time foe of monopolies, announced that he would introduce an amendment to the measure to close interstate commerce to manufacturers guilty of monopolistic practices. If it were possible to exclude goods made by child labor or at wages below a fixed minimum, Borah declared, then products manufactured in violation of the country's

17 Ibid., June 6, 1937.
monopoly laws could also be excluded. Such a ban, he asserted, could easily be included in the pending legislation by a brief amendment. Borah's proposal was immediately condemned by the President, who, though not opposed to legislation against monopolies, did not welcome amendments which might complicate the bill's passage. And Senator Black announced that he intended to keep the bill clean of amendments, asserting that he would not hesitate to oppose it, if unwelcome amendments were accepted.\(^1\)

A controversy over the measure's child labor provisions arose when some advocates of the prohibition, resenting its inclusion in the bill, sought the passage of a separate law banning the evil. The provisions in the Administration's proposal were similar in many respects to those in the Wheeler-Johnson bill, which was reported to the Senate while the hearings were in progress. In addition, Senator Bridges (R-N.H.) announced that he would offer an amendment to take the child labor sections out of the Administration's bill and that he would also introduce a separate measure.\(^1\) Proponents of the prohibition claimed a definite advantage in a separate measure not requiring a discretionary body like the Board. Critics of the wage bill declared that it was unfair to opponents of child labor and to working children to insist on a proposal making it impossible to get rid of the evil without accepting unparalleled federal control over the hours and wages of all kinds of labor.\(^2\)

Another indication that the measure was headed for trouble was the movement, led by Representative Connery and Senator Ellender, to expand its coverage to imported goods. It was reported that a large group on the Joint Committee favored granting the Board authority to restrict imports if manufacturers were threatened by foreign goods as a result of increased labor costs. The regulation of imported goods threatening industry might result in a high tariff wall and lead to a policy that would cut across the Administration's reciprocal trade program and incur the hostility of Secretary Hull. Nevertheless, protectionists proposed that the Board be given authority to change tariff rates or even embargo foreign imports entirely, and Representative Connery's draft went much further, banning the transportation in interstate commerce of imported goods manufactured under "unfair" standards as prescribed by the Board.21

By far the most difficult problems uncovered by the hearings were the controversies over geographical differentials and the wage-fixing provisions contained in Section 5 of the measure. A large majority of the witnesses objected to the broad power of the Board to establish fair wages above the basic minimum rates to be set by Congress. Business argued for statutory standards, leaving little or nothing for the Board to decide, while labor, though favoring a work-week between thirty and forty hours, sought to eliminate wage-fixing to safeguard collective bargaining. Even though the objections of industry and labor might

not be powerful enough to defeat the wage-fixing provisions, Congress itself might conclude that too much power had been granted to the executive through the Board. On the other hand, the Administration, feeling that the bill would be killed if Section 5 were eliminated, was prepared to resist any attempt to drop it. 22

The issue was joined early in the hearings when Representative Griswold (D-Ind.), a ranking Committee member, criticized the wage-fixing provisions as "more riotous" than those granted under the NRA. Defending the measure, Senator Black explained that the authors had written in provisions practically identical with those of the New York minimum wage law, pointing out that an inflexible standard would defy the decision of the Court and would be invalidated. 23 Another obstacle to the removal of the flexible standard was the opposition of the South to a rigid formula which would eliminate geographical differentials. The South could be expected to oppose any bill that failed to take into consideration the differences in costs between sections, and for this reason a law providing some degree of flexibility was deemed essential. 24

Aside from this opposition to the powers of the Board, many economists opposed the provisions of Section 5 as uneconomic. The


theory that the unemployment problem could be solved by shortening the work-week was condemned by Harold O. Moulton, president of the Brookings Institution. In a pamphlet circulated by the Institution, Moulton declared that an increase in the production of goods was necessary to restore prosperity and that production would expand with the growth of the population. A scientific study, he said, indicated that a general reduction of the work-week would mean a lower standard of living and that a work-week of forty-three hours was needed. Asserting that eight or nine million workers would be needed to expand productive capacity, he insisted that work requirements would be more than sufficient to absorb all the unemployed. The country, he alleged, had not reached a level of technological development at which high living standards could be maintained while the work-week was shortened.25

As the hearings uncovered numerous areas of disagreement over the measure's provisions, observers became less certain than they previously had been that it would be pushed through rapidly. In spite of the Administration's attempt to distinguish it from the NRA and in spite of its obvious differences, some commentators compared it critically with the Recovery Act, noting that both relied on a shorter work-week to spread work and create employment, both risked raising production and living costs, and both needed a large bureaucracy and a large delegation of authority.26 Other critics, gauging the


temper of Congress, predicted that instead of being "whooned through both Houses," it might be seriously impeded or radically changed by an opposition block which was said to be quietly forming. A new element in the legislative situation was the strained relationship between Roosevelt and Congress. Commentators pointed out that the mystery with which he had surrounded his plans had bewildered his following and that his absolute control of Congress could no longer be assured.27

It was reported that many Congressmen thought the New Deal had gone far enough and that many Democrats, led by Vice President Garner, wanted to bring the Party back to a more moderate course.28 That the President recognized the rebellion was indicated when a week-end party was arranged at Jefferson Island in Chesapeake Bay in an attempt to restore party harmony. It was believed that Roosevelt would make an effort to smooth over differences in personal conferences with groups of Congressmen. But differences over the Court issue, the reorganization bill, wages and hours, labor strife, and government economy appeared too deep to be settled in this manner. Nevertheless, some commentators, noting that big industry had not raised any hard-hitting objections to the bill and that the people wanted some kind of a minimum wage law, believed that the President could push it through, if he put on the pressure.29

28 Business Week, June 19, 1937, 60.
CHAPTER V

SUCCESS IN THE SENATE

During the last week in June and the first in July, while Roosevelt's efforts to reunite his followers occupied the attention of the country, the wage bill was taken under consideration by the Senate Labor Committee. Whatever opportunity had existed for renewed Democratic Party harmony seemed greatly diminished by the uproar that broke out when Senate Leader Robinson introduced a revised version of Roosevelt's Court Plan. Learning that the opponents of the new compromise threatened to filibuster, Robinson announced that he was prepared to hold twenty-four hour sessions and fight it out. As the temperature of many of the Senators rose, the usual Senatorial courtesy was abandoned, and press observers noted an unprecedented bitterness in the debates on the issue. It appeared that the fight on the compromise Court plan might preclude consideration of other important legislation until August.¹

In the meanwhile, the Labor Committee considered a revision of the wage bill along the lines suggested by critics of its wage-fixing provisions. Although no final action was taken during June, the

Committee reported a tentative agreement to strip much of the discriminatory power from the Board and fix definite limits beyond which it could not go in fixing wages and hours. It proposed an amendment to Section 5 eliminating the power of the Board to establish a "fair wage" above the basic standard to be set by Congress. According to Committee members, discussion centered on setting the minimum wage at from $10 to $12 per week and the work-week at between thirty and forty-eight hours. Hence, uniform standards would be fixed for the entire country with limited flexibility to meet special circumstances, a formula that would meet the objections of most industry groups and labor leaders.

Senator Black had received just such a proposal from Arthur Besse, president of the National Association of Wool Manufacturers, who submitted a formula that was acceptable to his industry. He explained that the wool industry, entirely sympathetic to the prohibition of child labor and the establishment of minimum wages, nevertheless objected to the wage-fixing powers of the Board. His plan, therefore, empowered Congress to set minimum standards for all industry and allowed the Board to grant exceptions only to those industries that could prove that they were incapable of meeting them. There would be few industries, he said, that would be able to convince the Board that they had to operate at standards below those set by Congress. Wage standards set industry by industry would be too slow and would cause industries to compete for the lowest rates they could

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got away with. The advantage of his proposal, he maintained, was that it provided better standards without empowering the Board to "chastise" industry. Although his plan was a constructive approach to the wage-fixing problem, any rate based on the standards of the most backward industry would have been largely ineffective and probably would not have won union support. 3

On July 7 the Committee completed its revision of the bill, and Black reported it to the Senate the following day. 4 As the Committee members had indicated, amendments to Section 5 had been accepted which, it was hoped, would end the controversy over the Board's wage-setting powers. The formula had been reversed completely, for instead of setting a forty-cent floor under wages and a forty-hour ceiling over hours, the amendment put a forty-cent ceiling on wages and a forty-hour floor under hours. Hence, the Board could not set wages over forty cents per hour nor hours below forty per week. 5 The reason for the reversal, according to Senator Walsh, who authored the amendments, was that the Committee felt that too drastic a transition from prevailing standards in small industries might upset the economy and increase unemployment. Another reason for the change, he said, was the recognition of labor's argument that the minimum wage

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4 U.S. Congress, Congressional Record, 75th Cong. 1st Sess., 689h.

to be established by Congress under the provisions of the original draft might possibly become the maximum. The Committee had therefore agreed to his amendments to end a dispute as to whether fixed standards for all industry should be inserted in the bill. Since the Justice Department claimed that it was necessary to establish some minimum standard and provide for flexibility to make the act constitutional, the Committee adopted his formula to meet labor's objections and to avoid upsetting business. 6

The Committee's report, which was in the form of an amendment to the original draft, recognized that substandard conditions could not be eliminated overnight and that existing geographical and industrial diversities could not be ignored, thus in effect providing for differentials. It also acknowledged that the bill's proposed standards would yield no more than an annual $800 wage, which was hardly acceptable but was, nevertheless, more than millions were obtaining. Since the same fixed standards could not go into effect in all occupations, the Board was preserved and was directed to establish minimum wages up to the fixed standards, without curtailing employment or dislocating industry. However, the powers of the Board, the report averred, were reduced to a minimum to protect the public from confusion. The Senate draft also provided that all employees were covered except persons in executive, administrative, or professional capacities, as well as local retailing and railroad employees, seamen,
fishermen, and agricultural labor. It also exempted from wage and hour standards learners, apprentices, and the disabled, and provided for overtime compensation.

In spite of the protests of those who feared federal encroachment on state rights, the Committee retained the provisions allowing the Board to eliminate substandard conditions in industries producing goods in intrastate commerce if they competed with "fair goods" brought in from outside. On the other hand, it bowed to the will of the protectionists and incorporated a provision authorizing the Tariff Commission to investigate the effect of the act to determine if an increase in duties would be necessary. The remaining provisions were administrative, covering hearings, investigations, enforcement, appeals, and penalties, and were not controversial.

The Committee reported a simplified, compromise amendment which went far to meet the objections of both management and labor. Although the Board had not been eliminated, its powers had been greatly reduced and its wage-fixing authority could no longer be considered to be a threat to collective bargaining. The draft's provisions for geographical diversities and its implied recognition of differentials could be expected to win enough southern votes to get it through the Senate, even though they would arouse the opposition of labor. Nevertheless, the revised formula, which the Committee hoped would meet the objections of industry, failed to win the support of several

national business organizations. The United States Chamber of Commerce declared that the revised version was as bad as the original bill, in that it encroached on the power of the states, its provisions were obscure, and it provided no definite standards for the Board to follow. Maintaining that it was full of ambiguities and uncertainties and that it was based on artificial definitions without precise meanings, the Chamber warned that it would require a large staff to make and enforce its decisions.\(^8\) The New York Merchant’s Association and the Southern Lumber Industry Committee joined the Chamber in opposing it. Calling the Board a menace, the Association predicted that the enforcement of the bill’s provisions would result in economic chaos. And the Lumber Industry Committee, alleging that the farmers would not be exempted and that increased costs would be passed on to them, urged both farmers and small businessmen to write their Congressmen to vote against it.\(^9\)

On the other hand, Labor’s Non-Partisan League announced that it was beginning an aggressive nationwide campaign to insure passage of the bill during that session and to “liberalize” the wage-setting provisions to attain a sixty-cent maximum and a thirty-five-hour work-week. Failure to pass the measure before Congress adjourned, warned League vice president Z. L. Oliver, would be considered as a

\(^8\) *New York Times*, July 26, 1937.

repudiation of campaign pledges by Democratic Congressmen. In a letter sent to all members of Congress, he urged them to remain in session until the bill was enacted:

Labor not only regards the Black bill as the very least which can be offered in wage and hour legislation, but it feels that any unnecessary delay in enactment of legislation is inexcusable. Talk of adjournment now without action on this bill is little short of treason to the people of America. The issues raised in the last campaign were too fundamental, the economic and political condition of the nation too serious, to permit the pledges then made to be considered empty formal platitudes. The workers voted for wage and hour legislation when in 1936 they last went to the polls. Unless it is given to them now, they will still want it, and will be wondering why they haven't gotten it when they go to the polls in 1938.

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During July there was no opportunity to get the bill to the Senate floor until the Court compromise issue, which continued to tie up all other legislation, was settled. However, the death of Senate Leader Robinson in the middle of the month and the intervention of Vice President Garner resulted in the recommittal of the compromise, bringing to an end a profitless wrangle that had disrupted the Democratic Party and blocked important bills for almost six months. Even though Administration leaders had surrendered on the Court issue, the proponents and opponents of the plan remained suspicious of each other.

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10 Ibid., July 18, 1937.  
11 Ibid., July 28, 1937.  
12 Time Magazine, July 26, August 2, 1937.
other, undermining a surface appearance of harmony and making adjournment difficult.\textsuperscript{13} The President left no doubt that he believed that the legislative record of Congress hardly justified a rush to adjourn. He was reported advising his leaders that they have more to show in the way of legislation deemed essential to the progress of the people before they quit. Because of the desire to get away from Washington after a long exhausting session, Administration leaders announced that they would attempt to bring the wage bill to a vote after but two or three days of debate.\textsuperscript{14}

Action in the Senate opened on July 27 with an exhortation by Senator Black, and although there was very little criticism from the floor that day, Senator McNary (R-Oregon) offered an amendment to exempt from coverage the seasonal canning industry and Senator Johnson (D-Olso.) offered one to strike out the bill’s child labor provisions and substitute the Wheeler-Johnson bill. The following day Senator Vandenberg complicated the wage issue by sharply criticizing the National Labor Relations Act and by offering amendments to it as a rider to the Black bill. But Senator Wagner defended his measure and was able to persuade Vandenberg to drop his rider. Senator Henry C. Lodge, Jr. (R-Mass.) then offered an amendment restricting the import of competitive foreign goods made under standards lower than those proposed in the bill, which was rejected by a 57 to 19 vote. Long


speeches prevented the Senate from reaching a final vote, but
Administration leaders agreed to try for a decision the following
day in the belief that the outcry had spent itself.15

Discussions on the third day opened with an attempt broadening
exempted occupations from Senators Kellogg, Austin (R-Mo.), and Bilbo
(D-Miss.). Mr. Kellogg followed an attack on the measure by the south
block and by Senator Street (D-Idaho), indicating a growing movement
to recommit the proposal. Senator George (D-Ok.), representing
south on conservative opinion, objected to the bill as an invasion
of state's rights, a violation of economic laws, and an unwarranted
expansion of the Secretary of Labor's powers. It was a mild drive, he
said, an inscrutability which should be sent back to Committee.

Criticizing the bill, Senator Street suggested that Congress prescribe
a uniform standard for the entire country, maintaining that the big
business viewpoint would be adopted by the Board, while labor would
be ignored. It was willing, he said, to accept a thirty-cent per hour,
fifty-hour work-week basic standard.16

Yet another attack on the bill came from Senator Kelony (D-Conn.),
who, while introducing an amendment to replace the black bill completely,
placed in the record a letter to William Green from John Pessich,
President of the International Union of Operating Engineers, to
the effect that the measure would do labor little good. Kelony's
proposal would have attempted to alleviate the unemployment problem
by creating a board empowered to take a census of the unemployed and

15 U. S. Congress, Congressional Record, 75th Cong. 1st Sess.,
16 U. S. Congress, Congressional Record, 75th Cong. 1st Sess.,
7778-94.
then set a stipulated work-week according to the number of people out of work. Admitting that he was in accord with the idea of not allowing the federal government to fix higher wages than the minimum, he said that his amendment offered Congress a way to vote for the regulation of working hours without delegating wage-fixing to a federal agency. 17

Maloney's plan for reducing the work-week was not only novel in the use of a board to supervise a census, but it also introduced the principle of a flexible standard set by Congress, which would have solved the constitutional problem inherent in establishing rates. It reduced the function of the controversial Board to simply determining the number of unemployed and then setting the work-week as required by statute. After the rejection of his plan, the Senate again took up the McNary seasonal occupations amendment, which was accepted over Black's objections. There had been a great deal of controversy over the definition of seasonal agricultural industries, and as the debate continued, more activities were added to the list, broadening the definition of agriculture considerably.

Later in the afternoon, Black tried to head off the growing movement to recommit the bill by denying rumors that the AFL was against it. Attempting to assure the Senate of labor's backing, he told the members that he had telegrams from unions all over the country in support of the measure. However, Senator Wheeler announced that he and other Senators had received telephone calls from officers of the

17 Ibid., 1302-06.
Federation asking them to recommit it. Whereupon Black replied that he had called Green to ask if he had told anyone that the bill should be recommitted, and Green said that he had not. This explanation did not satisfy Wheeler, who declared that the statements were made by officers of the AFL and that Green owed it to the Senate to state publicly where the Federation stood. Senator Walsh, however, warned the Senate that if the bill were recommitted, it might come out in a more drastic form because of pressure to incorporate in it the seventy-cent, thirty-five-hour standards that the House Committee was considering. 18

The hostility of the AFL toward the Standards Board was well known, and a number of Senators claimed that they had definite knowledge that the Federation wanted to see the measure recommitted. John P. Frey, head of the Metal Trades Division, was one of those who had gotten in touch with several Senators and asked for a delay in consideration of the legislation. It was reported that Frey based his opposition on a fear that the bill would upset benefits to labor under the Walsh-Healey Act. 19 Considering the southern opposition to the proposal, the situation on July 29 was critical, with the fate of the measure up to Green. If he made public his disapproval of the bill or even if he said nothing, merely allowing his associates to continue their opposition, its passage would have been difficult.

18 Ibid., 7813.

The statement that Black received from him and read into the record the following day, though intended as an endorsement, was a virtual condemnation of the bill:

The wage and hour bill in the form in which it is now before the Senate does not meet the expectations of labor. However, we realize the need for wage and hour legislation. For that reason, rather than recommit the Senate bill for further committee consideration, it would seem advisable to pass the best wage and hours bill possible in the Senate, with the hope that it can be revised and amended in the House in such a way as to make it more nearly satisfactory and acceptable to labor. 20

This endorsement, such as it was, was countered by a letter from J. M. Ornburn, secretary of the Union Label Trades Department, and one from John P. Frey and J. W. Williams, president of the Building Trades Department, denouncing the bill as a danger to the Walsh-Healey Act. Senator Barkley sought to reduce the effect of the Frey-Williams letter by reminding his colleagues that both labor leaders had supported Landon during the 1936 campaign. 21 It appears that although some of the Federation's officers opposed the bill, Green realized that a condemnation of the measure would have killed it for that session, allowing its foes to shift the blame to the AFL. Green was confident that the Federation could secure the adoption by the House Committee of the amendments that he had previously submitted and that the Administration was prepared to support the AFL's program in the House and would resist any amendments unsatisfactory to it. With these

20 U. S. Congress, Congressional Record, 75th Cong. 1st Sess., 7892.

21 Ibid.
assurances from the Administration, Green advised the Senate that the
Federation wanted the bill passed on to the House, where it hoped to
improve the proposal before finally determining whether to accept it
or not.22

In addition to trying to decide where the AFL stood on the
measure, the Senators had to consider the attitude of the CIO and
Labor's Non-Partisan League, which had threatened retribution at
the polls if the proposal were recommitted. While the Senate was
debating the issue, Sidney Hillman, director of the League's campaign
for the legislation, called upon Roosevelt to urge that the bill be
passed during that session. Admitting that it was not all that
the League hoped for, he declared that it met the problem to a certain
degree.23

After the debate on the Federation's position on the measure,
it was subjected to further attacks from the southern bloc and under­
went a series of amendments reducing its coverage. Employees trans­
porting agricultural produce from farm to market and employees of motor
carriers were exempted, but the attempt to exempt employees of
tobacco and cotton warehouses was defeated. To head off what appeared
to be another full day of amending, Senator Barkley, the new Senate
Leader, engineered an agreement for a final vote on the following day,
with the understanding that after 3:00 P.M. any pending amendments

22Report of the Proceedings of the Fifty-Seventh Annual
Convention of the American Federation of Labor, 164.

would be submitted to a vote without debate and that the bill would be brought to a final decision.¹⁴

Before it could be brought to a vote, its proponents fought off a barrage of amendments submitted by members to exempt special industries in their home states. With the help of most of the Republicans, who voted for anything that might weaken the measure, a number of them were adopted. However, an attempt by Senator Copeland (R-N.Y.) to attach an anti-lynching rider to the wage bill failed, as did a move to kill the measure by requiring that Board orders be placed before Congress for sixty days.²⁵

The most important change was made when the Senate accepted the Wheeler-Johnson bill as a substitute for the proposed draft's child labor provisions. This substitute provided 1) that products of child labor would be subject to laws of the state into which they were shipped; 2) that it would be unlawful to ship products of child labor in interstate commerce into any state in violation of any law of such states; 3) that it would be unlawful to ship products of child labor in interstate commerce unless they bore a conspicuous label as being made by children; 4) that it would be unlawful to ship in interstate commerce products of child labor. The substitute defined child labor as the employment of children under 16 years of age or the employment of children under 18 years of age in extra-

¹⁴U. S. Congress, Congressional Record, 75th Cong. 1st Sess., 7863, 7888.

²⁵Ibid., 7921.
hazardous work. Violators were subject to a fine of a thousand dollars for each offence, and the Secretary of Labor was charged with the enforcement of the act.26

Under the Wheeler-Johnson substitute, the Board would have no authority whatever over child labor. The main difference between the child labor provisions of the two proposals was the flexibility of the Black-Connery version, under which the Chief of the Children's Bureau might make exceptions in cases where employment did not interfere with the schooling or the health and well-being of the children. Many Senators felt that under the Black-Connery version the Board would be in a position to permit child labor when the intent of Congress was to stop it. As to the three approaches to the problem, Senator Heeler explained that the Interstate Commerce Committee felt that while any one of them would be a deterrent, all three would outlaw child labor altogether and would be a safeguard against court invalidation of any one. Though technically a defeat of the Administration forces, the acceptance of the Wheeler-Johnson substitute answered the misgivings of some Senators over the flexibility of the Black-Connery version and reportedly won many votes for the legislation.27

The first real test of the measure came when Senator Connally offered his motion to recommit it for further study on the ground that it had been hastily drafted. Declaring that there was nothing

26Ibid., 7949.

27New York Times, August 1, 1937.
in the Democratic platform making a pledge on that particular measure, he said that the matter should be put off until the next session of Congress. During his argument against it, he made much of the Frey-Williams letter and Green's weak endorsement and reminded his colleagues that they were all tired and should go home. Both Black and Barkley defended the bill, criticizing those who wanted to adjourn, after which the motion to recommit was rejected by a 48 to 36 vote. Only seven more opposition votes would have sent it back to Committee.

After the defeat of Connally's motion, Vice President Garner called for a vote on the bill as amended by the Labor Committee. Enough Senators switched sides to pass it by a comfortable 56 to 28 margin, with two Republicans, Davis (Pa.), a former Secretary of Labor, and Lodge (Mass.) joining the majority favoring it, while fifteen Democrats voted with thirteen Republicans against it. The southern Democrats in opposition were joined by Bulkley (Ohio), Burke (Neb.), Cooeland (N.Y.), Donahey (Ohio), Gillette (Iowa), and King (Utah).28

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The comfortable majority favoring the legislation was the result, not only of the pressure of Black, Barkley and Roosevelt, but of a number of other factors as well. Many votes were won because the Senate

28 U.S. Congress, Congressional Record, 75th Cong. 1st Sess., 7932, 7954-57.
Committee had reduced the measure's flexible provisions to a minimum and because they were further reduced by the acceptance of the Wheeler-Johnson amendment. Moreover, Green's endorsement, unenthusiastic as it was, nevertheless eliminated the possibility of the Senate rejecting the bill ostensibly because it did not please the Federation. The influence of the CIO and Labor's Non-Partisan League could not be accurately gauged, but the League's warning that labor would take its revenge at the polls was a threat that could not be overlooked. There were indications that the Senate passed it, knowing that labor would make its real fight in the House and that any changes there would bring it into conference, where compromises could be made. There were also rumors in the Senate that it could be passed with the assurance that it would not come before the House during that session.

Perhaps a more basic reason for its success was the fact that many Senators who had actively opposed Roosevelt's Court plan were not anxious to emphasize their hostility to the Administration by voting against the wage proposal. The Court issue was still the cause of much bitterness, which Senate Leader Barkley labored to smooth over. Senator Wheeler, for example, charged that the Labor Department had opposed his child labor bill because of his stand on the Court issue, and Barkley had to assure him that such was not the case. It was even rumored that some opponents of the wage bill were

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trying to keep the Court issue alive long enough to avoid the necessity of going on record against it. 30

The southern Democrats opposed the measure mainly because they feared the intrusion of the Board on the powers of the states and because they were afraid that basic standards would wipe out wage differentials which the South had always enjoyed. Northern opponents, both Democrats and Republicans, could point to business opposition, lack of labor enthusiasm, and if they were from farm states, the opposition of the National Grange. That organization, through Fred Breckman, its legislative representative, had been urging them to send the bill back to Committee because of the powers it conferred on the Board. 31 With only two exceptions, the Republicans lined up against it, while the nine southern Democrats in opposition represented less than a majority of the twenty-four possible southern votes. Hence, for the Republicans, it was a Party issue, but for the Democrats, it seemed more an issue between liberals and conservatives than a sectional contest.

In addition to the revision of the Board's powers and the acceptance of the Wheeler-Johnson substitute, the Senate greatly expanded the list of exemptions, attempted to safeguard collective bargaining, and provided for a tariff study. The list of exempted

30Ibid.
occupations was broadened to include professional employees and almost all occupations relating to agriculture and food processing. Seasonal activities were also exempted from the hour provisions, leaving them, however, subject to the wage provisions. They included a long list of occupations mainly centering in agriculture and the food processing industries. The Senate attempted to meet labor's demands by providing for the protection of collective bargaining agreements and for the classification of employees and localities within an occupation. Even though differentials were not specifically granted, the power to classify meant that the Board would be able to recognize regional differentials. One further important change was the inclusion of a provision for a study of production costs at home and abroad to determine if tariff changes should be made to equalize costs.32

Senator McCarran had also attempted to secure the adoption of an amendment barring imports produced under labor standards lower than those of domestic industry. Senator Vandenberg, referring to the section giving the Tariff Commission the power to investigate the adverse effects of foreign competition, declared that it failed to meet the menace. Senator Steiver (R-Oregon), however, suggested that McCarran's amendment would not be effective because it conflicted with the reciprocal trade treaties, after which it was voted down by a 27 to 53 margin. The Senate's version, therefore, was sent to

32 Ibid.
the House with a simple provision for a study of the effects of foreign competition on American production. ³³

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Although some critics felt that the legislation was still a dangerous attempt to tamper with the economy, most seemed to believe that the amendments incorporated in the Senate draft had greatly improved it. One of the main criticisms of the measure was that no one knew exactly what its effects on the economy would be or even how many workers would be affected by its wage and hour standards. ³⁴

The "rudimentary standards" which the Administration sought to improve had not been defined, either by the President or by Congress. It was estimated that there were three million workers making less than forty-cents per hour and six million working more than forty hours per week. To increase wages and reduce hours for so large a group, perhaps twenty per cent of the working force, might well pass beyond the rudimentary "floor" and "ceiling" and cause considerable economic and industrial dislocations. As it appeared impossible even to guess at the consequences of the Senate draft's standards or the effectiveness of its proposed administrative mechanism, it was suggested that more information and a thorough study was needed. ³⁵

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³³ New York Times, August 1, 1937.
Another disturbing factor was that the legislation had been based on constitutional principles which directly challenged the Supreme Court. Although the Court had indicated a change in attitude towards regulation of industry in a number of its decisions based on the interstate commerce clause, it had not specifically overruled its child labor decision of 1918 prohibiting the government from regulating manufactured goods in interstate commerce. The regulation of standards and child labor depended, therefore, upon a reversal by the Court of its earlier decision, a contingency by no means certain.36

But by far the most unsettling aspect about the legislative situation in August was the steady deterioration of the relations between the President and Congress and between his Democratic supporters and opponents. Roosevelt had suffered a tremendous defeat on the Court issue and it was believed that he had lost popular support as well.37 Although the importance and extent of this defeat were debated at the time, it was widely observed that Democrats were in a state of complete disharmony.38

Because of southern opposition to the bill, based on a fear that it would penalize the South and check its industrial growth, the


measure's approval had been accomplished with much more difficulty than had been anticipated. When the President refused to consent to a renewal of crop loans, it seemed clear that he was retaliating against southern conservatives who had been opposing his program. Appearing not to care when Congress adjourned, he took the position that the embarrassment caused by prolonging the session and holding up the program would damage Congress and not him. It was reported that he was not concerned about threats to his program and that he believed that the country was with him. Although he had prophesied the defeat of Democrats opposing him, it seemed certain that he would strengthen the resistance to his leadership among a powerful group of Democrats, if he went to the country. In view of the conservative desertion, it appeared that the President would seek support from progressives, both inside and outside the Democratic Party.39

The debate and the opposition in the Senate seemed to indicate that the country wanted time to consolidate four years of New Deal legislation. And it also revealed that neither organized labor or liberal groups showed much enthusiasm for the measure. Yet, so many had been calling for wage and hour regulation for so long that one critic found it surprising that so few were satisfied.40 Though


40 R. Moley, "Reform Grows Cautious," Newsweek, August 7, 1937.
greatly reduced in scope, it would still eliminate the grossest violations of ordinary decency. Whereas the original version relied heavily on the theory of spreading work to end unemployment, the amended draft was directed more towards outlawing degrading conditions in industry. Its sponsors, prompted by the charge that it would increase costs and burden the consumer, had turned to the humanitarian argument for support. One critic, noting that the President had always emphasized the benefits of wages and hours in terms of individual betterment and had avoided the basic economic argument, pointed out that his supporters had adopted the same tactic. Hence, the legislation's proponents were open to the charge that they were avoiding the fundamental economic issues. The debate in the Senate, far from settling the issues, revealed that both the sectional and economic controversies were to be passed on to the House where the real battle was to be fought.

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CHAPTER VI

THE HOUSE RULES COMMITTEE PREVENTS A VOTE

The fate of the wage measure in the House was affected by three major factors over which Administration leaders could exercise little or no control. First, the untimely death of Labor Committee chairman Joseph Connery during the hearings deprived the Administration of the services of its able and popular House leader at a very critical time. Secondly, the wage proposal was not taken up by the reorganized Labor Committee until July and was not reported until August, by which time the movement for adjournment had gained considerable support. By far the most important development, however, was the alliance of the southern Democrats and the Republicans on the powerful Rules Committee, which controlled the progress of all legislation through the House. It was a combination of these factors that frustrated the President's attempt to win the approval in an overwhelmingly Democratic House of an Administration measure that was widely accepted as an enlightened, humanitarian reform.

Connery's death was considered a severe, though not fatal, blow to the legislation. The Administration had originally planned to have his Committee take the lead, but after his death it changed its strategy and switched the lead to the Senate Committee. Ordinarily, the ranking member of the House Labor Committee would have succeeded
to his post without question. A complication arose, however, as the next ranking member was Mary Norton (D-N.J.), who was then serving as the chairman of the District of Columbia Committee. Because of the lead she had taken in Washington affairs, it was considered possible that she might elect to remain at her post instead of taking the Labor Committee chairmanship. In that event, Robert Ramspeck (D-Omis.), who had attended the hearings and was familiar with the legislation, would be in line. At the time of Connery's death, she told newsmen that she was too shocked by his passing to decide whether to accept his former post.¹

Three days later, however, after a conference with Speaker Bankhead, she announced that she would accept the chairmanship, declaring that she represented a labor district and that an opportunity to serve laboring people had to come first. Thereupon, she was duly nominated by the Ways and Means Committee and elected by the House without opposition. There were indications, nevertheless, that she had other motives for accepting the position. Having little knowledge of the field and liking her job on the District Committee, it was reported that she wanted to pass the job to Representative Ramspeck. However, it appears that Frank Hague, Democratic boss of Jersey City, saw a chance to win back labor support that he had lost opposing an anti-injunction law and wired her to take the post.² Having accepted the


position, she became subject to abuse from critics friendly to labor, who called her the tool of her anti-labor boss.

The disorganization of the Labor Committee postponed consideration of the legislation until the middle of July, during which time the President learned from his congressional leaders that there was a growing movement, amounting to a formidable drive to adjourn. They told him that there was a possibility that his four-point legislative program might cause endless controversy and might require a special session of Congress in October. Nevertheless, they agreed to try to rush through his legislation, including the wage bill. Although the adjournment date depended on the speed with which the House acted on the proposal, it was tentatively set for August 14th. Anxious to get home, many congressmen declared that they saw no pressing demand for reform legislation, while others said that they would be reluctant to embark on further experimental lawmaking because of the improvement in business conditions. However, members of the liberal group in the House, led by Representatives Voorhis (D-Cal.) and Maverick (D-Texas), were known to be forming a block to prevent adjournment until action on the wage measure was taken.

The greatest threat to the legislation, nevertheless, was the southern bloc on the Rules Committee, which would provide the special procedure for bringing it to the floor. Five southern Democrats and

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one southern Republican in alliance with any two of the three other
Republicans could create a majority of its fourteen members and
hold up the bill by refusing to grant a rule. In addition to J.
Will Taylor (R-Tenn.), the Republicans included Joseph W. Martin
(Mass.), who was believed to be in favor of the bill, and Charles E.
Mapes (Mich.) and Donald H. McLean (N.J.). With five northern
Democrats balanced against five southern Democrats, it was generally
conceded that these Republicans would determine the future of the
legislation by their vote.5

Speaker Bankhead and Majority Leader Rayburn had intended
bringing the measure to the floor during the first week in August, but
Representative O'Connor (D-N.Y.), chairman of the Rules Committee,
said that he would be unable to consider any application for a
special rule, ostensibly because a number of his Committee members
were absent from Washington. The House leaders therefore planned to
get a rule to bring the bill to the floor the following week.6

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In the meanwhile, the reorganized Labor Committee took up
consideration of the proposal on July 12, with many observers agreeing
that it would have to act quickly if there was to be any action on

5U. S. Congress, Congressional Directory, 75th Cong. 1st Sess.,

the bill that session. After a week of work on it, Representative Ramspeck revealed that the Committee had made a number of minor changes but had not settled the wage standards formula. When Mrs. Norton was asked whether it would pass before adjournment, she replied that it would depend on the date set for the end of the session and declared that her Committee would meet every day until it reported the measure. She also said that the President had not asked her specifically to speed action.

An even division of the Committee over the standards formula was revealed when it adopted by an 8 to 7 vote a proposal of Representative Wood (D-Mo.), president of the Missouri Federation of Labor. The Wood amendment, which made the House draft much more drastic than the Senate's version, empowered the Board to vary the hourly minimum from forty to seventy cents and the work-week from thirty-five to forty hours. Mrs. Norton broke a 7 to 7 tie to secure the amendment, but it was considered quite possible that there would be a reconsideration of the vote at the demand of the six members of the Committee who had not attended the meeting. It appeared that with a full attendance, the Senate provision would be substituted, with Ramspeck leading the fight in its favor.7

However, the next meeting of the Committee, with 19 of its 21 members present, adjourned without taking action, due to a misunderstanding caused by William Green. On the assurance of Mrs. Norton

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7 Ibid., July 24, 28, 29, 1937.
that the President wanted consideration postponed for a day so that the Administration could suggest amendments to the bill, the meeting broke up without acting on the standards, and some members left with the impression that Roosevelt had suggested postponement of consideration until the next session of Congress. It was later learned that he had not asked for a delay at all. The idea came about when Green called Mrs. Norton to request a delay of action for a day so that he could show the AFL's amendments to the President before he offered them to the Committee. He admitted that he was to blame for the misunderstanding and declared that the President had agreed with his amendments in principle. Green said that he would support the bill if they were accepted and that he would not make any threats against it if they failed to be adopted. Roosevelt indicated that he had discussed the measure in general with Green but had not been shown any of the actual amendments. He said, however, that he favored safeguards for bargaining agreements and for the Walsh-Healey Act.

At the same time, Mrs. Norton revealed that there was considerable sentiment in her Committee that action should be deferred until the next session to permit an enquiry into the number of workers and industries that would be affected by the proposed legislation. She also said that her group might report a modified version of the Senate draft rather than the proposal upon which it had been working. This was confirmed on August 11, when the Committee, by a 17 to 2 vote, approved

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8Ibid., August 4, 1937.
an amended version of the Senate draft. The size of the favorable vote indicated that most of the individual member's objections to the provisions of the measure had been overcome. To accomplish this, the Committee dropped Wood's seventy-cent per hour, thirty-five hour work-week proposal and adopted the Senate's standards. It was revealed that Mrs. Norton had been advised by some members that the bill would not pass with the Wood rates. The Committee also approved Green's amendments and won his support. In another major change, the Wheeler-Johnson amendment was dropped and the original child labor provisions of the Administration draft were restored.

In addition to these changes, there were a number of minor modifications. The term "employee" was amended to exempt those in a local retailing capacity as "outside salesmen." Presumably, under this definition, most employees of local retail establishments other than "outside salesmen" would come under the scope of the measure, whereas they were exempted in the Senate version. Agriculture was defined to include practices "ordinarily performed" by farmers on a farm, and an amendment made it clear that the employees of independent contractors engaged in transporting farm products from farm to market were not employed in agriculture. The Committee also declared that substandard labor conditions existed where women and minors were employed on the midnight shift, a provision that was not in the Senate draft. And the elimination of the words "in any state" from the

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section defining production made the standards apply to goods produced anywhere in the world, thus threatening to exclude all imports produced under "substandard" conditions.

Representative Ramsey also secured an amendment directing the Board, in determining a minimum wage, to take into consideration the differences in the cost of manufacturing occasioned by varying local resources, operating conditions, or other factors entering into the cost of production. His object was to protect southern differentials, and his amendment was certain to arouse strong opposition from labor and the Labor Department. Moreover, the Committee provided for a Board of members from five geographical sections of the country, one representing employers and another employees. 10

The acceptance of the Senate wage and hour standards and the rejection of the Wood formula seemed to indicate that the measure was to be directed more toward the elimination of sweatshops than toward a solution of the unemployment problem. At the beginning of the Administration drive, the argument had been both economic and humanitarian, but the constant warnings that the bill would raise costs and burden consumers prompted proponents of the measure to emphasize its humanitarian aspects. It appeared that businessmen who would support its humanitarian objectives would, on the other hand, fight it as a recovery measure. The inclusion of provisions for

geographical qualifications for Board membership, for differentials, and for tariff protection, further indicated that the southerners and the protectionists were gaining the upper hand in the Committee.

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The bill's opponents did not wait for it to come out of Committee before opening their attack. Claiming that it would never pass, Representative Rankin (D-Miss.) appealed to all shades of opposition by warning that it would harass business, strengthen monopoly, close small industries, concentrate industry in the East, destroy collective bargaining, raise the tariff, check progress in the South, and paralyze industry in the North and West. Another of his colleagues from the South, Representative Cox (D-Ga.), a member of the Rules Committee, circulated copies of an analysis of the measure by Doctor Charles F. Roos, a former statistical economist for the NRA. His analysis declared that the proposal would decrease production and the average standard of living, curtail employment by one-half million within the first year of operation, lower consumption of raw materials, raise production costs for farmers, and hold down wage scales. 11

In addition to this general criticism from the two southerners, the southern farm bloc attempted to make consideration of the labor measure contingent on the granting of crop loans. Threats were made

by southern Democrats, apparently led by Rules Committeeman Martin Dies (D-Texas), to hold up action on the wage proposal until assurance was given that loans would be made to cotton farmers to protect them against price declines. It seemed that three or four southern members of the Rules Committee were determined to block a rule for the bill unless Roosevelt granted the loans, and the President was equally determined not to authorize the loans unless Congress passed crop-control legislation. Hence, the wage measure was directly involved in the conflict over crop loans and the crop-control bill.

The controversy over differentials also added to the confusion on the measure. Although it failed to provide specifically for them, it granted the Board the power to take local factors into consideration in fixing wages, which amounted to setting differentials in all but name. Nevertheless, this equivocal provision satisfied neither the South, which demanded specific differentials, or the North, which wanted nothing in the bill even resembling them. Representative Griswold (D-Ind.), a member of the Labor Committee, condemned the House version because he believed it permitted differentials favorable to the South. He urged the House to write into the bill its own standards rather than allow the Board to fix wages.

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12Ibid., August 11, 12, 1937.

13Ibid., August 11, 1937.
During the second week in August, the Rules Committee remained deadlocked on the question of bringing the bill to the floor, which induced House leaders to call off a meeting of the Committee to consider a rule, in anticipation of an unfavorable vote. They were forced, therefore, to consider some other way to bring the measure out. It would have been possible to call it out by suspending the rules, but this would have required a two-thirds vote, which they were unlikely to get. By another plan, Mrs. Norton would present an application for a rule, which, if not granted in seven days, would permit a discharge petition to be circulated. If it were signed by 218 members, the House could then discharge the Rules Committee from further consideration of the bill. Rounding up 218 signatures, however, might have taken weeks, and Congress was setting ready to adjourn.

When the Rules Committee finally met on August 13th, it considered, not a rule for the labor bill but a recess resolution, which was a routine formality normally adopted a few days before final adjournment. Setting the date would kill the petition method, for in such a procedure the rules provided that intervals of seven to thirty legislative days must elapse before the bill could be taken up. By curtailing the supply of legislative days, the Rules Committee could make consideration of the bill impossible.

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It was a certain sign that adjournment was in sight when the Committee reported a resolution permitting the temporary suspension of rules from time to time to rush through important bills, the passage of which would require the two-thirds majority. In order to get this rule, Rayburn had to assure the Committee that he did not intend to call up the wage measure. House leaders, though reluctant to admit that the proposal was lost, believed that it was too important to be brought up under a suspension of the rules, which would have permitted only forty minutes of debate and would have denied amendments. They may have been influenced by rumors to the effect that the President was not anxious that it pass because of some of the amendments inserted by the Senate and the House Committee. 16

Fading hopes for the measure were revived momentarily when it appeared that the adjournment drive might possibly be checked by a bloc desiring to force action during that session. A group of twenty-eight Democrats signed a petition demanding a party caucus to consider the legislation, which was accented by Representative Doughton (N.C.), who scheduled the meeting for the evening of August 19. This attempt to rescue the bill was led by Healey (Mass.), Maverick (Texas), and Citron (Conn.), who hoped to demonstrate that there was a large majority in its favor, even if they could not force it out. This meeting, attended by only 157 members, eight short of a majority, failed to rescue the bill but did extract a promise from House leaders

to put it on the preferred list at the next session. A large majority seemed to be in favor of the measure, and Bankhead, Rayburn, and O'Connor said they were for it. Actually, there was a majority in attendance, but members of the Rules Committee, not wishing to be bound by any decisions made, refused to answer their names when the roll was called. Some fifty Democrats also loitered in the corridors, exhibiting an independence that was considered a repudiation of John L. Lewis, who had strolled through the lobby the previous day urging members to take action on the bill. The violent and widespread industrial strife caused by the CIO's organizing campaign had made the labor leader highly unpopular with many conservative Congressmen.

Some of the bill's proponents also sought to induce House leaders to take up the measure under a suspension of the rules, and O'Connor was hard-pressed to defend his Committee for its failure to call it out. He patiently explained to Representative Boileau (Wis.) that he simply could not borrow the votes from within the Committee, even though a majority of the House seemed to favor the legislation. Representative Martin (D-Colo.), attempting to put the pressure on the Rules Committee, accused it of smothering the bill and pointed out that the Republicans would be absolved from any blame. O'Connor replied, somewhat cryptically:

It is a simple mathematical problem. If you could make \( \frac{1}{2} \) equal 8 without multiplying by 2, there would be no difficulty . . . We would have the rule out, and we

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could take it up tomorrow, but I do not propose to join my Democratic colleague from Colorado . . . and lambast my own party and put the responsibility on them . . . It does not solely lie there . . . If the Republicans will join the five of us we will bring that rule out. In fact all they have to do is give us 3 votes and the bill will be right out here on this floor.

When Boileau suggested packing the Committee, O'Connor objected to such a procedure and stated emphatically: "... I did everything possible to attempt to get that bill out . . . and I think I can say that our Speaker and majority leader have likewise done everything to get the bill out." Getting right down to the crux of the problem, Representative Lewis (Md.) wanted to know the names of those voting against the bill. O'Connor was able to dodge this question by explaining that no votes had been taken, so that he was unable to answer and would not do so if he could.19

The testimony of the harassed chairman revealed that the five southern Democrats, in alliance with at least three of the four Republicans, had indeed tied up the legislation in the face of considerable sentiment for it. Although no vote had been taken, Representative Martin (R-Mass.) had indicated that he favored the measure. There was nothing, apparently, that the House Leaders could do about the situation.

As it became clear that there might not be any action, labor put more pressure on the Administration and Congress but was unable

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18U. S. Congress, Congressional Record, 75th Cong. 1st Sess., 9110-12.

19Ibid.
to accomplish anything. Sidney Hillman saw the President on August 17, telling him that labor and even many employers were disappointed at the outcome. He said that labor in the South needed the bill more than labor in the North and that the responsibility for its failure rested on the Democrats who defied the Party. Several days later, Roosevelt also saw William Green, who condemned the Rules Committee and urged that Congress be kept in session until the bill was passed. John L. Lewis, accusing the Democratic leadership of being unable to carry out the Party's pledges, hinted that he might form a new party. He was supported by the New York Executive Committee of the Socialist Party, which denounced the Democrats for failing to pass the bill and urged Lewis and Labor's Non-Partisan League to work for the creation of a national Farmer-Labor Party. And E. L. Oliver wrote all Democrats on behalf of the League, urging them to break the blockade against the measure. He later condemned Speaker Bankhead for his failure to force out the bill, promising that the League would oppose his reelection on the basis of his hostility towards the bill, unless he used every means at his disposal to bring it out. 20

Representative Cox defended the Rules Committee, claiming that its most important function was to prevent precipitate action on measures like the wage proposal. He said that he considered the Oliver letter the work of Sidney Hillman, who was assuming to speak for the

Democratic Party and was attempting to exercise leadership on the bill. Striking back at labor, he warned that Communists were invading both parties through CIO leadership. The measure's opponents on the Rules Committee were supported by the Chamber of Commerce, which recommended the pending version of the bill be junked, and by Columbia University president Nicholas Murray Butler, who termed the bill nation-wide regimentation. 21

Since prospects for the success of the legislation in the House seemed dim, the Senate passed a separate bill to ban child labor similar to the Wheeler-Johnson amendment in the Senate draft, in the hope that the House would at least agree to this measure even if it did not act on the wage bill. Unfortunately for its proponents, the Senate action, a few days before adjournment, came too late to save child labor regulation. It seemed doubtful, in any event, that the House would have accepted the new proposal, since the Labor Committee had thrown out the Wheeler-Johnson amendment before reporting the wage bill. 22

The failure of the liberal bloc's wage measure caucus removed the only possible check to the adjournment drive, and Congress finally adjourned on August 21, with the Democratic Party in a state of complete dis-harmony. The already disgruntled members were further aggravated by a radio address by Senator Guffey (D-Pa.), an Administration backer, in which he castigated the Democratic opponents of the Court


plan as "ingrates" and predicted political doom for three of them, Senators Wheeler (D-Mont.), O'Mahoney (D-Wy.), and Burke (D-Neb.). These three struck back at Senator Guffey on the floor of the Senate, accusing him of "fascism" and challenging him to come into their states to defeat them. They called upon their colleagues to remove him from his post as chairman of the Democratic Senatorial Campaign Committee, thereby putting an end to all possibility of Democratic harmony.  

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Senator Guffey's address led observers to believe that he had been designated by the President to open a battle for a more liberal Democratic Party, purged of those who opposed the President's policies during the first session of the Seventy-fifth Congress. That Roosevelt seemed determined to carry on his fight against the conservatives became clear when in a Virginia address he denounced his opponents as men who were afraid of democracy. This was the first of a series of addresses designed as an appeal to the people to support his program and, quite probably, to prepare the ground for the calling of a special session to enact reform legislation. Although he spent a three week

vacation at Hyde Park, he scheduled a trip to the West to secure first-hand information on the accomplishments of his Administration and, incidentally, to stimulate state leaders to put pressure on the Democratic opposition. 24

It was immediately apparent that the fight for wage regulation would continue when Administration advisers revealed that they had already started drafting new legislation, somewhat revamped to provide for fair trade practices. In the face of a continued struggle on the issue, the Southern Industrial Council appealed to the South to unite on some alternative to the bill before southern industry was, as it said, "doomed." Just what kind of alternative the Council expected was not clear, and it might have taken note of an American Institute Public Opinion poll, which revealed that 58 per cent of the southern people favored regulation of hours and 61 per cent approved of minimum wage regulation. The poll showed that the same percentages held true for the rest of the country as well. 25 It appeared that the people of the South were just as anxious to have sweatshop labor conditions eliminated by the national government as those of other sections.

Although it had been anticipated that the President would carry his fight to the people, his speeches during his western trip were moderate. Apparently, he received information that the country was

behind him and that the legislation defeated at the last session should be passed, for he hinted that a special session might be called for November to deal with crop control and the wage bill. He was quoted as saying that the average man did not care too much how results were obtained, so long as they were obtained. 26

On the evening of October 12, Roosevelt told the nation that he had issued a call for a special session on the 15th of November to consider important legislation before the regular session in January and to enable Congress to avoid a lengthy session extending through the coming summer. Explaining that the country needed a sound and permanent prosperity which should not be obtained at the expense of any group, he maintained that a few more dollars a week and a better distribution of jobs would make millions of the lowest-paid workers buyers of industrial and farm products worth billions of dollars. The increased volume of sales, he said, should lessen the cost of production so that even a considerable increase in labor costs could be absorbed without imposing higher prices on the consumer. In addition, he warned his audience that no one section of the country could permanently benefit itself or the rest of the country by maintaining standards of wages far inferior to those of other sections. And he attempted to reassure businessmen, telling them that the government was not trying to prevent them from earning a

26 Rosenman, op. cit., VI, 403, 414-16; Washington Post, October 5, 7, 1937.
decent profit and that there was more danger to their prosperity from a wage policy that discouraged consumption.  

In addition to treating the wages and hours issue, the President also discussed other domestic legislation, the foreign situation, and the growing recession. The latter subject had a vital bearing on the wage measure, as many Congressmen were receptive to the argument that the nation needed a respite from New Deal legislation, in that it was causing business uncertainty. This argument was utilized by the NAM, which claimed that wage regulation would be a burden to industry and would destroy both employers and jobs. In an address before the annual convention of the American Meat Packers, the Brookings Institution's Harold G. Moulton took the opportunity to place the blame for the recession on the aggressive labor movement, which brought shorter hours and higher pay than was warranted, so he said, by any increase in efficiency. Although Doctor Moulton's explanation may have been, in part, correct, the recession seemed to have been caused by a number of factors, including credit restrictions, reduced federal expenditures, and declining farm prices.

Another serious threat to the legislation's prospects during the special session came from organized labor itself. Although O'Connor expressed confidence that the Rules Committee would reverse itself and release the wage measure, he declared that both the AFL

27Rosenman, op. cit., VI, 429-36.
28New York Times, October 14, 17, 22, 26, 1937.
and CIO were hurting its chances by publicly criticizing it. O'Connor appeared to be referring to damaging action taken by both unions at their national conventions, which were held in October. Having given grudging support to the wage measure in June, John L. Lewis, in his convention address, reversed himself, calling it the poor, halting wage and hour bill. The AFL convention approved a report criticizing the measure on the ground that it was an intrusion on collective bargaining rights and adopted a resolution recommending that the Executive Council be required to call into consultation the officers of the Building, Metal, and Label Trades and the Railway Employee Department before taking any further action on the bill. The Federation also stated that its experience under the National Labor Relations Board would justify a searching exam of legislation empowering another board to determine wages and hours and that, in the future, it would be reluctant to approve the creation of additional boards. Hence, the Federation's ephemeral enthusiasm, which was never very great, gave way to open hostility to the draft that was awaiting House consideration.

A further complication arose when members of the Labor Committee indicated that they wanted the bill substantially revised before allowing it to reach the floor. It was Mrs. Norton's view that many members appeared to favor a plan to put the Labor Department in control of wages and hours because of the controversy over the Board. Secretary

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Perkins' opposition to differentials was well known, however, and since a number of Congressmen had been highly critical of her, it was questionable whether a move to broaden her powers would have received congressional approval. Moreover, it was known that she considered the Board essential for flexibility of administration and that she was critical of the Senate version as being too inflexible.\textsuperscript{30}

As the date for Congress to reconvene approached, the situation on the bill became even more confusing. With sharp differences among House members again threatening to jeopardize it, with some Labor Committee members in favor of withdrawing it for further consideration, and with Secretary Perkins hinting at changes and suggesting that hearings be reopened, Representative O'Connor warned that if it went back to Committee it would have no chance at all. Pointing out that a new bill would have to go back to the Senate, he said that the proper thing to do would be to amend the pending draft on the floor. Other Congressmen believed that the measure's chances were doubtful because of the AFL's hostility towards it. William Green conferred with Roosevelt to explain the Federation's opposition to the Board and to suggest that the Administration support Senator Berry's bill, which would set up a country-wide minimum.\textsuperscript{31}

The Senator's proposal provided for a forty-hour work-week, a

\textsuperscript{30}\textit{New York Times}, November 7, 11, 12, 1937.

\textsuperscript{31}\textit{Ibid.}, November 12, 13, 1937.
thirty-cent minimum wage, and enforcement by the Justice Department. Recognizing that the minimum was low, Senator Berry alleged that the South could not stand the forty-cent rate and that the thirty-cent figure would eliminate the demand for differentials.  

In addition to the Berry measure, the Administration also received one from the International Ladies Garment Worker's Union, which suggested a work-week of between thirty and forty hours and a sixty-cent minimum wage, with provisions for differentials. In view of the opposition to the forty-cent rate, the Garment Worker's proposal did not seem to have much of a chance.

There was considerable doubt as to whether Congress would give priority to the wage measure as the country became more alarmed over the recession. Although the special session had been called to deal with legislation that had previously failed to pass, it was also evident that there would be a demand for Congress to consider measures to relieve the recession and restore business confidence. As Congressmen began arriving in Washington demanding that the Administration do something about the recession, it seemed certain that the issues of curtailing expenses, balancing the budget, and tax relief would cut across the pending legislation that had been held over.

In spite of this confusion, Mrs. Norton remained optimistic, blaming "chislers" for a lot of "propaganda" against the legislation,

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32 Letter, Berry to Roosevelt, October 26, 1937, Roosevelt Papers, F. D. Roosevelt Library, File 2730.

while she made ready a petition to force the bill out of the Rules Committee. Representative O'Connor, however, was not quite as hopeful: "The present situation on the wages and hours bill is so messed up and muddled that it is hard to say what will come of it."  

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The failure of the bill in the House in August had been a great disappointment to the Administration, but hardly came as a surprise to those observers who had closely followed the course of political developments. For one thing, the Administration, which had overwhelming support earlier in the year, alienated even its liberal backers in its attempt to push through the President's Court Reorganization bill. Administration leaders were therefore at a disadvantage in having to introduce reform legislation in the face of open disharmony and hostility, which even its most astute leaders had difficulty assuaging. Not only this, but the bill's proponents found themselves pushing a controversial and complicated measure through a weary Congress, which was anxious to adjourn and get away from steamy Washington. Admittedly, legislation of such vital and far-reaching consequences deserved both a thorough study and more than a month of congressional consideration. Its opponents were quick to point out that no one, not even the sponsors of the proposal, had an opportunity to study its possible effects.

It was unfortunate that the bill had to be piloted through the House by an inexperienced though conscientious chairman, who had not attended the hearings and was not, therefore, familiar with its provisions when she took over the Labor Committee. Under Mrs. Norton, the Committee made little progress until the Senate acted, and then it quickly dropped its own version to report out an amended Senate draft, which, in view of the time remaining before adjournment, probably seemed the best method of expediting the legislation. The Committee could not have given it adequate consideration, however, for shortly after the bill had been reported Committee members were considering further amendments, and later a number of them favored recalling it for reconsideration.

Although it was well known that southerners considered the measure a threat to their economy, the bill's opponents on the Rules Committee justified their refusal to release it on the grounds that the House had insufficient time to study it. There was nothing that Administration leaders or organized labor could do to force it out, as was clearly demonstrated when a special Democratic caucus on it failed, for its southern opponents were immune to threats from either House leaders or labor.

The legislative impasse brought about by the split in the Democratic Party raised the question as to whether the President or Congress represented the feeling of the country on Administration policies. Although this question could not be settled until the 1938 elections, Roosevelt's western swing convinced him that the
public was behind him and that a special session might yet save his program. His trip was generally conciliatory in its effect, but by the time Congress reconvened, the wage measure was again caught up in cross-currents of confusion over legislative procedure, party disaffection, labor criticism, and the recession.

The recession emphasized those previously unanswered questions concerning the bill's effect on the solvency of marginal business, the cost of living, employment, and foreign trade, questions that could not be answered in a few weeks. Hence, the demand of its opponents for more information was strengthened, but it does not appear that the Administration made any attempt during the recess to make any study of those questions.

It remained to be seen whether, in view of the confusion attending the opening of the special session, the Rules Committee would release the bill, and if not, what the Democratic leadership would do about it.
CHAPTER VII

DEFEAT IN THE HOUSE

When the President announced his decision to call a special session for mid-November to deal with his five-point legislative program, the country had not yet recognized the severity of the recession. In the five-week interval between his call and the reconvening of Congress, however, the nation experienced its most severe and serious economic decline since 1933. Although business had overextended itself, it appeared that the principal cause of the decline were capital's pessimism about the future and the government's curtailment of spending. To halt this decline and to restore confidence, the President held a series of conferences with government officials and businessmen and promised that he would do all he could to persuade private capital to take up the slack caused by the curtailment of government spending.

Although the severity of the recession added another measure of uncertainty to the special session, two things appeared certain. One was that as a result of the recession, Congress was likely to show an independence unprecedented since 1933; the other was that Administration leaders would have their hands full making it do anything before it adjourned. This new independence stemmed in part from a new attitude towards reform legislation, for after three months at home, members
felt that they knew better than the President what the country wanted.\footnote{1}

In what was considered by the press to be his most conciliatory message in five years, Roosevelt recognized the seriousness of the recession and attempted to restore the country's confidence by promising that the government would encourage business through tax relief and aid for small enterprises. Although he emphasized his concern over the business decline, his message also dealt specifically with the four major issues of his legislative program, agriculture, executive reorganization, regional planning, and wage regulation.

Referring to the wage problem, he repeated his view that the country needed immediate congressional action to maintain wages and purchasing power and that child labor, wage-cutting, and the long work-week were seriously curtailing buying power. Recognizing, however, that a uniform minimum wage could not be an immediate goal, he advocated a flexible plan to enable industry to adapt itself to necessary changes. And it was high time, he said, that the country had legislation that would banish child labor and protect labor from low standards.\footnote{2}

His message received a polite but unenthusiastic reception from Congress. The slump, rather than the President's legislative program, held the interest of lawmakers who had no more of a definite program for immediate procedure in November than they had in August.

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\footnote{2}{Rosenman, \textit{op. cit.}, VI, 490-97.}
The House, having made an agreement with the Senate to start immediate consideration of the Byrnes Executive Reorganization bill, waited for the Senate to act, only to find that body locked in a filibuster over an anti-lynching bill. The result of the impasse in the Senate was considerable disorder in the House, indicating that Administration leaders were having difficulty keeping their forces under control.  

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Action on the wage bill got under way when Representative O'Connor reported that the attitude of the Rules Committee had not changed, in spite of his previous assurances that it would release the measure. Mrs. Norton then introduced her petition to discharge the Committee from further consideration of the proposal, and Rayburn promised that he would sign it and would encourage others to do the same. With no other apparent way to get the bill out, the House faced the prospect of having to wait until December 13th to consider it, providing that 218 signatures could be obtained. Among some House leaders there was a feeling that Mrs. Norton would never get the necessary signatures, since many members, recognizing labor's critical attitude towards the proposal, felt that they could act independently towards it. And yet, it was generally conceded that if it could be brought to a vote it would

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pass by a comfortable majority, mainly because members would not wish to seek reelection in 1938 after having opposed a measure to outlaw sweatshops. 4

Opposition to the bill broke out again soon after the President's message had been read. Representative Lamneck (D-Ohio), claiming that the country was weary of government regulation, advised his colleagues that he intended to introduce a simplified measure which would place all authority in the Federal Trade Commission. In addition, Representative Lawrence J. Connery (D-Mass.), filling his late brother's seat, announced that he also would introduce a substitute, which would establish a forty-hour week and a forty-cent minimum wage. He said that his brother would never have tolerated the pending bill in its revised form. 5

The question as to whether the bill should be reconsidered by the Labor Committee was settled, at least temporarily, when that body voted 19 to 2 against taking it up again. Mrs. Norton declared that her Committee had received no suggestions for revision from Secretary Perkins despite previous announcements that changes would be requested by the Labor Department. Although Representative Wood (D-Mo.), who was considered the AFL's voice on the Committee, had voted against recommittal and although there had been no official notice that the

4Ibid., November 17, 1937.
Federation had changed its position in favor of the measure, eighty or ninety members refused to sign the petition without some further clarification of the Federation's attitude. Mrs. Norton therefore arranged to consult with both William Green and John L. Lewis, and the fate of the bill was once again in the hands of the two labor leaders. With only 135 signatures at the end of the first week, she would have to have a clear-cut endorsement from both of them to secure the necessary additional names.6

Following the directions issued to him by the Federation convention, Green announced that he would have to confer with his Executive Council before he could comment on the AFL's attitude towards the proposal. However, Lewis, in a letter to Mrs. Norton, wrote that although the measure was unsatisfactory in many particulars, it should, nevertheless, be passed. After Green had conferred with his officers over the week-end, he sent a letter to Mrs. Norton denouncing the measure and demanding that it be returned to the Labor Committee for reconsideration. Recalling that the AFL had previously found the measure reasonably acceptable and fairly satisfactory, he advised her that its former position had to be qualified by two new factors not then existent: 1) its recent experience with the NLRB and 2) the adverse changes in the economic and industrial life of the nation. Green declared that the AFL therefore opposed the creation

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of a wage-fixing administerator and demanded, in addition, a shorter work-week.\(^7\)

While Congress awaited the decision of Green's Executive Council, criticism from the opposition and the introduction of new proposals reduced the speed with which signatures were gathered for the petition. Denouncing the bill, Representative Taber (R-N.Y.) predicted that it would hurt small business, destroy unions, lead to federally fixed wages, and finally result in a totalitarian state. Defending the action of the Rules Committee in refusing to release the measure, Representative Dies (D-Texas) questioned whether a majority really favored the proposal. He revealed to his colleagues that members from every section had said to him that they might be compelled to vote for the bill, but nevertheless, they did not want the Committee to bring it out. He was cheered when he told the House that it had a remedy in the petition and that the proponents could easily bring the bill out if they had the majority they claimed.\(^8\)

Mrs. Norton's task was further complicated by the introduction of two bills providing the standards that organized labor was seeking. On the 18th of November, Representative Connery introduced his uniform standards measure, which eliminated both differentials and the Standards Board and thereby met the Federation's demands. The AFL,

\(^7\)U. S. Congress, Congressional Record, 75th Cong. 2nd Sess., Appendix, 175; New York Times, November 23, 24, 1937.

however, was supporting the proposal of Senator Berry, which sought to establish a thirty-cent wage, a forty-hour-week, and Justice Department enforcement. It was reported that Berry’s views had obtained wide acceptance among Federation legislative agents in Washington.9

The Administration’s bill was further endangered by the activity of a militant liberal group, which threatened to block all legislation until an agreement was reached to consider the wage measure at some definite time. Its leaders planned to exert all efforts to get 216 signatures, induce Republicans to join in a move to tie up crop control legislation, and clip the power of the Rules Committee so that it could no longer prevent bills from coming to the floor by failing to report a rule.10 This threat to the South, which was burdened with a large crop and needed control legislation, not only angered the southerners but entangled the wage bill with the pending farm measure.

Green’s letter denouncing the bill was widely regarded as a death-blow to the petition, and when it appeared that some of those who had signed the petition were considering withdrawing their names, fifty-four of the measure’s backers decided to canvass signatures for it. In addition, the bill’s unofficial steering

10 Ibid., November 19, 1937.
committee sought pledges from members representing urban and industrial sections that they would oppose any farm legislation unless the wage measure was first brought before the House.

When the bill's proponents appealed to Representative O'Connor, he assured that he had done all he could and reminded them that the Labor Committee could bring it out by putting it on the Wednesday Calendar, the way legislation was usually brought before the House. If its backers used this alternative method, he said, the majority need not wait but could have the measure any Wednesday. The Labor Committee knew, however, that any attempt to bring the bill out on the Wednesday Calendar would be frustrated by opponents who would load the Calendar with other measures.\(^\text{11}\)

With no prospect for a change in attitude by the Rules Committee and with the campaign for signatures lagging, Mrs. Norton made an attempt to satisfy the critics of the Standards Board by announcing that her Committee had voted to substitute a single administrator for the Board if the measure were allowed to come to the floor. The Committee, she said, had done its best to incorporate the suggestions previously made by the AFL in its amendment and had not had any notice of the change in attitude of the Federation until Congress reconvened.\(^\text{12}\) Her statement was generally regarded as an attempt to add signatures to the 130 she had already gathered.


\(^{12}\) U. S. Congress, Congressional Record, 75th Cong. 2nd Sess., 324, 357, 362.
By the end of the month, fifteen days after the session began, the petition still lacked twenty-five signatures, and backers of the bill intensified their efforts to secure the necessary names. House rules required that the signatures had to be obtained seven legislative days before the bill could be brought to the floor. If they were secured, the question to take up the bill became the order of business only on the second or fourth Monday of the month. Hence, in order for the bill to come up the second Monday, December 11, names would have to be secured seven legislative days before that date, that is, before midnight on December 2. The fourth Monday fell on the 27th, by which time Congress would have adjourned.

As the deadline drew near, Representative Boland (D-Pa.), Democratic whip, who had been polling state delegations on the probability of getting enough signatures, assured Mrs. Morton that they would be obtained. Representative Cox, however, alleged that he could get ten members to withdraw their names if the total reached 210. Nevertheless, the signing of the petition by Marvin Jones (D-Texas), sponsor of the farm bill, indicated that the steering committee's threats to block farm aid were cracking southern opposition to the wage bill. Open threats were made against farm legislation by backers of the wage proposal, including a statement by Mrs. Norton that it would be in trouble if there were not enough names on the petition. Representative Gavagan (D-N.Y.) also was quoted as agreeing that "the boys" from the cotton states were going to get it if the petition failed, while Representative Healey said quite
frankly that if something were done for the farmers, something should also be done for the workers.¹³

Threats to block the farm bill, pressure from the Administration, and the efforts of Labor's Non-Partisan League finally and dramatically secured the required 218 signatures. Down to the clerk's desk in his wheelchair rolled Representative Mansfield (D-Texas), who inscribed the 218th name, bringing forth applause and cheering from Administration backers. Amidst cries of "deals" and "fraud" and under pressure so great as to exasperate the opposition, Mrs. Norton and the bill's proponents had indeed won the first round of the struggle.

Representative Dies denounced House leaders for promising anything to get signatures for the petition. Representatives Green (D-Fla.) and Hendricks (D-Fla.), who were accused of signing the petition in return for support for the Florida ship canal, promptly denied that they had engaged in any trading with backers of the wage bill. Nevertheless, Dies' accusations led Representative Fish (R-N.Y.) to introduce a resolution for an investigation of lobbying in connection with the petition, which was, however, easily defeated.¹⁴


The success of the petition enabled the House to take up the measure on the 13th of December, but its passage was by no means assured. It was understood that the Labor Committee was considering sixty amendments, many of which might alienate some of the bill's proponents. Though the House rules limited debate on each separate amendment, the opposition could create what amounted to a filibuster by stringing out a series of amendments and thus string another the measure.

It did not appear, however, that the opposition would have to resort to such tactics, for less than a week before the bill was taken up, the advocates of wage legislation were themselves at odds as to what they wanted. Labor Department officials pressed for amendments that would put administration in their hands, and it was also known that Secretary Perkins favored an administrator. On the other hand, John L. Lewis and Sidney Hillman still favored the idea of wage-fixing by special boards, while sources close to Roosevelt reported that he still favored a board. It was believed that AFL leaders were in no hurry to get a bill through the special session unless they could get it in the form they desired, and their lack of interest accounted for the somewhat indifferent attitude of the Federation's lobbyists towards obtaining signatures for the petition. 15

As it became certain that the Administration's proposal would be considered by the House, however, William Green summoned Federation officials to Washington for a meeting to formulate a measure of its

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The officers of the AFL recommended that Congress pass a bill:
1) fixing a flat forty-cent per hour, forty-hour work-week; 2) providing for enforcement by the Attorney General; 3) protecting workers whose standards were fixed by collective bargaining; 4) and eliminating differentials. Acting on instructions from the Executive Council, Green said that the Federation would oppose legislation providing for a board, or with a single administrator empowered to create special wage boards. The great advantage of the AFL's proposal, he declared, was its clear-cut simplicity.16

Its greatest disadvantage, on the other hand, was the fact that Administration leaders, the Labor Department, and the CIO believed that it was impracticable. Not only did it rule out differentials, but critics declared that the Justice Department, having had no experience in labor regulation, was not the proper enforcement agency and that workers would prefer to go to the Labor Department for protection. CIO officials flatly stated that they would fight the AFL proposal and would recommend enactment of the pending measure. House Leader Rayburn said that rigid standards would never be accepted by either the House or the Senate.17

Completely disregarding the recommendations of the Federation's Executive Council, the Administration went ahead with its own bill,

apparently convinced that it would have enough votes to put the measure through unchanged. The Labor Committee had previously accepted the Green amendments to protect collective bargaining and agreed to eliminate the Board and substitute an administrator, but it declined to accept the Federation's recommendations for nationwide standards and Justice Department enforcement. Many House members, recalling the measure's near defeat in the Senate, pointed out that opposition from the AFL would greatly weaken its chances.

Mrs. Norton attempted to head off potential disaster by advising the Federation that the substitution of its measure would result in great confusion. She said that it would be impossible for her Committee to substitute the AFL's measure for the amended Senate draft, because opponents of wage regulation would object on the ground that its measure was not germane to the legislation under consideration. Nevertheless, the AFL refused to give up its own measure and made plans to have it introduced by Representative Dockweiler (D-Cal.).

In spite of the opposition of the AFL, the Labor Committee decided to adopt the provision for a Labor Department administrator, thus carrying out Mrs. Norton's promise to eliminate the Board. And at the same time, the steering committee met secretly to plan its strategy and work for harmony between northern and southern Democrats.

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This harmony movement was offset, however, by a serious attack on the bill by the AFL. Claiming that the proposed administrator would become a labor czar, Green sent a letter and an analysis of the proposed legislation to every Congressman, condemning the measure for putting the power formerly granted to five men in a single administrator. The Federation, in its elaborate comparison of the powers of the Board with those of the administrator, pointed out that the substitution of an administrator with advisory boards constituted a very slight difference from the five-man Board and was, therefore, completely unsatisfactory. With the Federation lobbying strongly against the measure, it seemed quite possible that some combination of southerners in cooperation with those sympathetic to the AFL might be able to defeat it.

Though Democratic Whip Boland said that he had the votes to pass it, Representative Dies declared that he had enough backing to recommit it, alleging that he could count on the South, the Middle West's rural areas, and two-thirds of the Republicans. One handicap, which proponents of the legislation could not overcome, was the complicated nature of the bill itself. The administration draft was so confusing that government printers, using four kinds of type to distinguish the various changes made in it since it had been introduced, inadvertently omitted three sections. This error was

discovered just before it was taken up and required a last minute correction. With Representatives Dies and Cox predicting that the bill would raise living costs, lower wares, and throw a million employees out of work, and with William Green and J. P. Frey of the AFL condemning it as completely unsatisfactory, the nation was treated to the spectacle of the Federation joining southern Democrats, Republicans, and the National Association of Manufacturers in opposition to a labor bill designed to eliminate sweatshop working conditions.

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On December 13 Mrs. Norton offered her motion to discharge the Rules Committee from further consideration of the bill. Opposing her motion, Representative Dies reminded his colleagues that they would be considering a measure that labor did not want and that violated the Democratic platform. Nevertheless, the House voted it out by a 285 to 123 margin.

In her plea for the bill, Mrs. Norton alleged that it did not strike at the South, at collective bargaining, or at employers. She

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22 U. S. Congress, Congressional Record, 75th Cong. 2nd Sess., 1385-93.
defended her Committee's proposed amendment, explaining that many proponents had wanted administration in the Labor Department, while others had objected to placing power in the hands of the Secretary of Labor. To meet that objection, her Committee had decided to provide for an independent administrator, within but not subject to the Labor Department, to be named by the President and confirmed by the Senate. She told her colleagues that there was nothing radical in the procedure of administration, in that it was modeled on some of the laws followed by twenty-two states with minimum wage legislation. There was a great deal of propaganda against the bill, she said, but it amounted to nothing more than the false claims and statements of paid lobbyists. 23

In the course of the day's debate, Mrs. Norton received strong support from members of her Committee and also from Representative Maverick (D-Texas). The Texan, condemning the Federation bill for being unenforceable, attacked the AFL for attempting to dictate to House members. It was, he said, attempting to tell Congress to enact the Federation measure or not pass any legislation at all. He declared that he did not care what William Green, John L. Lewis, or the NAM wanted; he was going to vote for the bill. On the other hand, the measure was denounced by Republicans and southern Democrats, with Representative Bruton condemning the Auto Worker's Union's president Homer Martin for threatening political retaliation if the

23Ibid.
bill were not passed. In addition, the AFL-Dockweiler bill received some support, while Representative Griswold favored his own version, and Representative Martin (Colo.), announced that he intended to reinsert the Wheeler-Johnson amendment in the pending measure.²⁴

Consideration of the legislation the following day revealed a division among proponents of wage regulation over the Committee's and the AFL's bills. Opponents threw their strength to various groups among the measure's advocates in such a manner as to produce a large group of dissidents, who would finally combine with them. Dies said that he had enough votes - at least 135 Democrats and 69 Republicans - to send it back to Committee.²⁵ Republicans and southern Democrats condemned the measure, basing their arguments on labor's opposition, the business recession, government bureaucracy, regimentation, and sectional interest. Representative McReynolds (Tenn.) attacked the measure, pleading with Congress not to sacrifice labor and industry, and he was called a hopeless reactionary by Representative Oeller (N.Y.), who warned that the unemployment problem would not remedy itself.²⁶

The wildest charges were made by Representative Hobbs (Ala.), who predicted that the measure would enslave labor, increase unemployment, reduce wages, and kill labor unions and collective bargaining.

²⁴Ibid., 1393-1415.
²⁶U. S. Congress, Congressional Record, 75th Cong. 2nd Sess., 1463-1511.
On the other hand, Representative Healey (Mass.), submitting charts and statistics to sustain his argument that areas maintaining sub-standard labor conditions were lowering standards in other sections of the country, declared that the bill was being jeopardized by irresponsible criticism. And Representative Dorsey (Pa.) defended the legislation from criticism that it was experimental by reminding his colleagues that similar laws were in effect in many other countries.27

Representative Ramspeck (Ga.) was not satisfied with either of the bills, objecting to the administrator in the House version and to the rigid standards in the AFL's proposal. Believing that both bills were unconstitutional, he declared that the House should restore the five-man Labor Standards Board. Representatives Lanneck, Connery, and Johnson (Miss.), also dissatisfied with both of the measures, announced that they would introduce bills of their own. Hence, as the House completed its general debate and made ready to consider amendments, the division among the measures' advocates was very much in the open.28

Technically, the House was considering an amended draft of the Senate version, but the Labor Committee, having considered more than sixty amendments, to the proposal, decided to incorporate those that it approved in a new draft, which it intended to offer as a

27 Ibid., 1472, 1478, 1485, 1494.
substitute. After the clerk read through the first section of the amended Senate draft, Mrs. Norton offered the Committee's amendment to strike out everything after the enacting clause and substitute the Committee's version. Opponents of the legislation interrupted the reading of the substitute several times to raise points of order concerning the appropriateness of her amendment to the Senate draft.29

Representative Snell (N.Y.) alleged that the Committee's substitute was not germane, in that it provided for an administrator, while the Senate draft proposed a Board. Representative Martin (Colo.) pointed out that jurisdiction over child labor was vested in the Secretary of Labor in the Senate draft and in the Chief of the Children's Bureau in the substitute and that if one provision was germane, the other was not. And Representative Cooper (Tenn.) asserted that the substitute was not germane in that it violated the jurisdiction of the Ways and Means Committee by imposing an embargo, which amounted to writing a new tariff.30

The House was thrown into confusion when the presiding officer, McCormack (Mass.), upheld Cooper's point of order on a technicality and ruled the substitute invalid. After this pronouncement, Rayburn ripped off the ruled-out page and rushed the substitute to the clerk's desk. Mrs. Norton, coached by O'Connor, announced that she was submitting a new substitute, a copy of the Committee amendment with


30Ibid.
the offending sections deleted. Thereupon, the Chair overruled the objections made by Snell and Martin, making Mrs. Norton's substitute germane, and ordered the clerk to read it. At this point, Representative Griswold offered the Dockweiler-AFL proposal as an amendment, but the order of procedure had become so confusing that a discussion arose as to just what the House was supposed to be considering. The Chair thereupon ruled that it was technically considering an amendment to a substitute for a bill but that perfecting amendments might be made to either the substitute or the amendment.31

After the order of procedure had been clarified, Ramspeck declared that the Griswold-Dockweiler amendment was not germane in that it had a different purpose, procedure, and agency than the Senate draft. When the Chair ruled it germane, Ramspeck announced that he opposed both the substitute and the amendment, basing his argument against the Griswold-Dockweiler proposal on the ground that its forty-cent, forty-hour standards would upset industry all over the country.

Since Administration leaders were determined to keep the House in session until the Griswold amendment was disposed of, Rayburn succeeded in getting the members to limit amendments to the Griswold-Dockweiler amendment in order to facilitate consideration of the legislation. In this way a decision was reached on a number of perfecting amendments

and the Griswold-Dockweiler version proceeded to a vote. Late in the evening, proponents of the substitute and the Senate draft combined to defeat it by a vote of 162 to 131. Hence, after over seven hours of debate, the AFL's proposals had been junked. The legislation had been considered amidst terrific confusion - at one time there were nineteen members on their feet shouting and arguing - and the disorganization was so hilarious that one guffawing reporter nearly fell out of the press gallery. It was serious work, however, for the backers and opponents of the bill, who were on notice that House leaders were determined to complete the bill by Saturday night, even if it meant sitting late every night to do so.

With the AFL proposal out of the way, the House resumed consideration of the substitute. The Federation, however, sent telegrams to all members urging them to recommit the pending legislation, thus furnishing the opposition with one of its most potent arguments against the bill. William Green told the Congressmen:

Because the pending wage and hour bill is highly objectionable to membership of the American Federation of Labor, I respectfully request you vote to recommit to the appropriate committee for revision, study, and necessary changes, in order to make it a practical and constructive measure.

In addition to rejecting the AFL's bill, the House also disposed of two other proposals before taking up perfecting amendments.

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33 U.S. Congress, Congressional Record, 75th Cong. 2nd Sess., 1664-69.
Representative Lamneck's plan, which empowered the Federal Trade Commission to establish standards, was attacked by Griswold and Celler, who pointed out that the Commission was already overburdened. Lamneck's proposal was finally put to the test and rejected by a 141 to 95 margin. Representative Bacon then submitted his plan for a Federal Commission of Inquiry to investigate the possible effects of wage regulation on industry, labor, and agriculture. As soon as his measure was introduced, however, Rayburn raised a point of order, whereupon the Chair denied that the proposal was germane, thus disposing of another threat to the substitute. Indeed, as the House began considering perfecting amendments to the substitute, it was subjected to another extreme southern outburst from Representative Rankin, who warned that the measure endangered the Bill of Rights and the Fifth Amendment and predicted that it would lead to communism and fascism. Nevertheless, the backers of the bill exhibited their strength by voting down a number of unwelcome amendments. The House accepted twenty-three amendments, generally favoring the mining and agricultural industries of the Middle and Far West, while southern attempts to exempt the seasonal food processing, cotton ginning, fishing, and tobacco warehousing industries were defeated.

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34 U. S. Congress, Congressional Record, 75th Cong. 2nd Sess., 1664-99.
Administration forces also defeated attempts to substitute the Wheeler-Johnson proposal, the Labor Standards Board, and the Federation's bill. Mrs. Norton defended the child labor provisions in the Committee substitute on the ground that they followed laws already existing in forty-three states. Ramspeck's attempt to substitute the Labor Standards Board for the proposed administrator was defeated after Mrs. Norton defended her amendment on the ground that it was based on the generally accepted minimum wage legislation of twenty-three states. Another attempt to substitute the AFL measure was also rejected, after which the Administration's two best sneakers, Rayburn and O'Connor, pleaded for the bill, admitting its defects but reminding Democrats of their party pledges.36

The amending process having been completed, Mrs. Norton's thoroughly amended substitute to the bill was finally accepted and the bill itself was brought to a final vote. Representative Hartley (R-N.J.) then introduced the motion to recommit the amended bill for further study. The roll call on his motion was taken in breathless silence, with even the packed galleries preserving strict order, so great was their interest. As the "ayes" and "noes" alternated with monotonous regularity, it was impossible to tell which way the vote was going. Finally Bankhead announced the result, 216 for recommittal, 198 against, amidst a burst of handclapping and cheering that continued for several minutes. Mrs. Norton, who had spent

36Ibid., 1780, 1787, 1832.
practically every minute of the week's debate at the Committee table, slumped in her seat as if she could not believe the Speaker's announcement, but soon members gathered to congratulate her on the manner in which she had handled the bill. Hence, after a month of work to get the measure before the House and after five days of intense controversy, it was returned to the Labor Committee for reconsideration. Analyzing the vote, O'Connor calculated that of the 218 who had signed the petition, 10 voted against discharging the Rules Committee and 29 voted to recommit, while of the 285 voting to discharge the Rules Committee, 85 voted to recommit. His figures seemed to indicate that many members signed the petition and voted to discharge the Rules Committee in order to give the bill its chance or in the hope of amending it to make it acceptable.

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The main causes of the Administration's defeat on the wage bill were the recession, the split in the Democratic Party, and opposition from the AFL. In addition, the antagonism of national trade associations and farm organizations also played a part in its failure. And the fact that the bill had been reduced in scope by members interested in exempting industries in their own constituencies induced a number

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of its former proponents to join the movement to send it back to Committee. While it was true that the split in organized labor helped to divide the ranks of the overwhelming majority of Democrats, even more important was the apprehension aroused by the proposal in the South, which emphasized the wide differences within the Democratic Party on economic questions.

Democratic party disharmony was revealed by an analysis of the vote, showing that Democratic machines in two large cities had played an important part in the bill's defeat. Administration leaders were reported as being completely surprised by the sudden switch of seven Louisiana votes against the measure, which occurred because of machine rivalry. It seems that governor Richard V. Leche, who favored the bill, had not consulted his political rival, Robert S. Maestri, mayor of New Orleans, who was responsible for the switch of the Louisiana delegation. The Administration was also disappointed when Mayor Hague, boss of New Jersey's Hudson County machine, ordered its representatives to vote against the bill because of his dispute with the CIO. Apparently, Hague thought he was striking a blow at John L. Lewis, but the CIO chief, although he had endorsed the measure, had not cared enough about it to send his lobbyists into the Capitol.39

While Lewis was unenthusiastic about the measure, William Green,

spurred by anti-New Deal backers on his executive council, urged state federations to pass unfriendly resolutions and telegraph their Congressmen to oppose it. Green's lobbyists gave Democrats and Republicans from industrial districts courage to vote against it, thereby reducing Administration forces to the point where the Louisiana switch resulted in its defeat. 40

The wage bill had become another issue of contention between the two national unions, both of which claimed to be representing the best interests of labor in advocating or opposing the measure. Berating Green and his organization for their part in killing the bill, the CIO chief ridiculed the Federation president for following the dictates of the conservatives on his council: "Green . . . jumped to the orders of a little clique of half a dozen officials who dominate the federation's executive council." 41

On the other hand, the Federation, fighting the unfavorable criticism that it received for its part in the defeat of the legislation, presented itself as the defender of the rights of the working man. Hailing the measure's defeat as a great victory for labor, Green accused the CIO and Labor's Non-Partisan League of outright treachery to the working man, asserting that the "ill-considered" and "highly objectional" measure would have victimized the worker by recognizing

40 Ibid.

41 Washington Post, December 21, 1937.
differentials fixed by a dictatorial administrator. Presenting the recommittal of the bill as a constructive achievement, Green told his followers that the CIO, thwarted in its purpose, had deliberately misrepresented and vilified the AFL. Moreover, he claimed that the defeat of a practical wage measure was directly attributable to the treacherous conduct of the CIO, which had opposed the Federation measure and had defeated it with the help of waverersing members of Congress. The CIO, he said thought more about its prestige and influence than of the condition of the workers, while the AFL had attempted to win a uniform standard and wipe out differentials and sweatshops. In view of the hostility of the South and the Administration to rigid standards, Green's condemnation of the CIO for the defeat of the AFL's proposal seems somewhat disingenuous.

The principles for which the Federation stood were set forth by Matthew Woll, AFL vice president, who assailed the whole concept of federal control of labor relations. He stated that:

... the government has ventured too far into the extension of its functions into the whole area of our industrial life. It has certainly gone a great way in its attempt to control and direct the activities and functions of trade unions.

Setting forth the principles for which he and the Federation stood, Woll declared that management and labor had the right to try and work out a basis for carrying on production without government interference.

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Although some of the bill's backers placed the blame for its defeat on the labor split, Representative Martin (Colo.) pointed out that the basic cause may have been much deeper. The split, he said, simply furnished an alibi to Congressmen who were not in favor of such legislation but who would not otherwise have dared to vote against it. These members, he told the House, could now go back to their districts with Green's letters and say that they had been for labor but not for the House bill. Reminding them that the issue was not dead but was on the calendar to stay, he placed the blame where he felt it belonged. The main trouble, he said, was that Congress lacked a social conscience and failed to understand the economic forces that were changing the country. Hence, he placed the blame for the bill's failure on those who paid lip service to the cause of raising labor standards while actually indifferent or hostile to it.

The important question, however, was not so much the responsibility for the Administration's defeat but rather how to rescue a bill that seemed irrevocably lost. Speaker Bankhead declined to predict its future, and even Ellenbogen, a champion of regulation, believed that it was lost, unless there was a national campaign for it. Nevertheless, in spite of the shelving of the

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44 U. S. Congress, Congressional Record, 75th Cong. 2nd Sess., 1829-30.

measure, the President insisted that the fight for wage regulation go on. Calling his congressional leaders to the White House, he chided them for their failure to enact the bill and proposed the introduction of the measure again early in the next session.16

Although the Democratic campaign platform had not specified the manner in which wage regulation was to be accomplished, there was no doubt that the defeat of the Black-Connery bill was a severe setback for the Administration and, in addition, appeared to many as a repudiation of the party's campaign pledges.17 Nevertheless, while there were many Congressmen who would remain unalterably opposed to wage-fixing in any form, there was also a large group of Democrats and Republicans not opposed in principle to regulation. With the support of this group and with Roosevelt's determination to press for what he considered an essential part of his New Deal program, there seemed to be a good possibility that a simplified wage and hour bill might yet succeed.18

CHAPTER VIII

THE HOUSE LABOR COMMITTEE FINDS A COMPROMISE

Any doubts as to what the Administration would do about its wage and hour legislation were settled by the President when Congress reconvened early in January. In his address on the State of the Union, he once again called for action on the program that he had submitted to the special session. Restating a principle that had become a familiar part of his philosophy, he reminded Congress that it was absolutely essential that the purchasing power of the industrial workers be raised. Though he emphasized the human suffering that inadequate wages brought about, he also pointed out that millions were unable to purchase manufactured goods that they produced, thereby restricting the market for them.

In addition to his plea for these underpaid workers, he defended the concept of government regulation of wages and hours. Countering the argument that regulation was experimental, he declared that wage and hour standards had proved their worth economically and socially from 1933 to 1935 under government auspices, and he once again reminded Congress that the people had voted overwhelmingly in favor of putting a floor under wages and a ceiling over hours. Criticizing those in Congress who opposed regulation on the ground
that cheap labor would help their locality acquire or retain industries, he declared that they did their constituents a disservice by blocking efforts to raise their incomes and standard of living.¹

After this criticism of unenlightened industrial practices, he attempted to reassure both Congress and organized labor that they had nothing to fear from federal regulation:

No reasonable person seeks a complete uniformity in wages in every part of the United States; nor does any reasonable person seek an immediate and drastic change from the lowest pay to the highest pay. We are seeking ... to end starvation wages and intolerable hours; more desirable wages are and should continue to be the product of collective bargaining.²

Before turning to other matters, he pointed out that Congressmen from urban areas had recognized the necessity of helping the farmer, and he urged that those who represented rural constituencies recognize the importance of aiding the workers.

The President’s appeal for wage regulation, paralleling his message opening the special session, was considered conciliatory and reasonable. He made no attempt to condemn the opponents of the bill and avoided placing the blame for its defeat on any group. Indeed, the press noted a change from his former aggressive technique and characterized his speech as the most moderate since he had taken office.³

In addition to his plea for action on the bill, he moved to eliminate the greatest single obstacle to its passage. Shortly after

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the session opened, he called a White House Conference of the governors of the southeastern states. The governors of North and South Carolina, Tennessee, Georgia, Alabama, Florida, and Louisiana met with him and went on record as endorsing the principle of establishing wage and hour regulation, expressing confidence that the Administration would work out satisfactory legislation. Although there was no hint of a quid pro quo, it was rumored that Roosevelt had given his support to the southern demand for an end to freight rate discrimination. Though Lawrence W. Robert, executive director of the Southeastern Governors' Conference, and governor Leche of Louisiana denied that there had been any trade, observers could not believe that the governors' resolution was a simple manifestation of political sentiment.

Roosevelt's conciliatory efforts appeared to have been effective, for reports that the bill might be called back came from many members. Even one of its most severe critics, Martin Dies, declared that it could be revived quickly if a "proper compromise" could be reached. He said that a small group of proponents had started drafting a compromise after a conference with leaders of the opposition, and he promised that the Democrats would do their best to carry out the platform pledges made during the election.4

Mrs. Norton reported that even though many members favored

the wage provisions of the measure that had passed the Senate, the Labor Committee was nevertheless considering a new bill based on a forty-hour work-week and a forty-cent minimum, with some compromise on flexibility which would meet with the approval of the House. She declared that she did not intend to hold new hearings and that her group planned to retain the Senate title and substitute a new bill. This procedure, she said, would make unnecessary the adoption of the House bill by the Senate and would facilitate matters by throwing the question into conference as soon as the House voted.

Somewhat optimistically, Mrs. Norton took the view that the House was in better accord on the legislation as a result of the election in Alabama of Representative Lister Hill to Hugo Black's old Senate seat. The election, she said, had convinced a number of members that they were wrong in opposing the bill. Representative Starnes, however, took exception to her point of view that it had changed any southern member's attitude towards the measure:

Seven members of the Alabama House delegation, including myself, all supported Hill. Newspapers opposed to wage legislation supported him. The only thing that the election meant was the defeat of Tom Heflin. It won't change any votes on the bill.

His analysis of the election results confirmed a study of the political situation in Alabama made before the election by a political

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6 Washington Post, January 12, 1938.
commentator in a Washington paper. The study pointed out that many Alabamans would not vote for Hill because of his support of the wage bill, but on the other hand, many would refuse to support his opponent Heflin because of his record as a buffoon and a Klansman. The commentator declared:

If Lister Hill is victorious it will be despite wages and hours and because he has the support of the New Deal organization and the backing of Alabama New Deal Governor Bibb Graves, and because of the unpopular record of Tom Heflin.

The critic declared that the South was afraid of the wage bill and was pleased that it had been sidetracked for the time being, that the legislation had been solidly opposed by the southern press, and that it was unpopular with the mass of voters, who were, nevertheless, for any man who evidenced a sense of responsibility for the distressed. The correspondent concluded, therefore, that the election would be a great deal more than a simple mandate on the bill as Mrs. Norton had implied.

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When Congress reconvened, the status of the legislation was most uncertain. The major discussion in both Labor Committees was the possibility of drafting a straight forty or forty-four hour

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standard, with no mention of wages, and enforcement in the Department of Justice. It seemed certain at that time that no stronger plan could pass the House, and as a result, several Congressmen sought consideration of their own measures. Senator O'Mahoney once again proposed his plan for the regulation of industry through the licensing of corporations by the government. In addition to O'Mahoney's measure, Representative Edward Eicher (D-Iowa) announced that he planned to combine revised versions of the farm and wage bills in a single omnibus measure, while Martin Dies declared that he would also introduce a "40-40" bill, with a provision allowing state agencies to prescribe differentials within certain limits. And Representative Starnes introduced a straight hours proposal, which avoided any reference to wages, provided for a forty-four hour week, and abolished the so-called "graveyard shift."

There was not, however, any prospect for immediate action on these proposals or the Administration measure, as the Labor Committee was quite unable to act. Although it had decided by a 14 to 2 vote to report out a bill, it was unable to agree on any draft, and Mrs. Norton revealed that her colleagues had requested an opinion from the

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Attorney General on the AFL's "40-40" proposal, which many members considered unconstitutional.\textsuperscript{11}

Any hope that the Committee would be able to expedite a compromise measure was dashed when its leaders announced that they had informally decided on a thirty-day "cooling period," during which there would be no attempt to agree on a bill. They indicated that the Administration was not rushing for action and that the "cooling period" would have a settling effect on many of the issues in question. In the meantime, Frank Beck proposed calling in those who had opposed the bill to find out what they did not like about it. In many cases, he declared, a minor adjustment would overcome many objections. Connery suggested writing specific wage differentials into the measure rather than providing for sectional differentials. It was reported that Mrs. Norton had requested the AFL, the CIO, and the President to advise the Committee as to just what they wanted. Hence, the Committee revealed itself hopelessly split and seemed undecided as to what course to follow. In spite of these developments, Labor's Non-Partisan League predicted that Congress would pass the bill and urged its supporters to write to the Committee and demand quick action.\textsuperscript{12}

Nevertheless, the month of January passed without any progress whatsoever, and apparently, without any direction by the Committee's


leader or its chairman. A number of suggestions were made, however, none of which solved the problem of finding a satisfactory wage and hour standard.

The International Ladies' Garment Worker's Union introduced a humorous note, adopting a resolution proposing a twenty per cent salary cut for southern Congressmen on the basis of their argument - used to justify differentials - that living costs were substantially lower in the South. John P. Frey wrote his AFL unions, praising England's trade board system of wage administration and suggested that the government study the British experience. The Brookings Institution's Harold G. Moulton continued to blame "aggressive labor unions" for the recession and warned the nation against reducing hours and increasing pay. The CIO and AFL attacked each other viciously in the press, and all efforts to unify organized labor collapsed in a deluge of invective and accusation. In the Senate the filibuster over the anti-lynching bill had the Administration completely tied up, while the House debated the housing bill. As an issue, the wage measure seemed to have dropped out of sight.  

Nevertheless, during the "cooling period" conferences were held, although no decisions were made on the bill's provisions. According to its opponents, the line-up in the Rules Committee remained the same, and O'Connor declared that he could not predict what action

his colleagues would take. Mrs. Norton indicated that her Committee would work with the Rules Committee and that she opposed plans to force action on the proposal by petition. If the Rules Committee refused to let the bill out, she said, it would take the responsibility for killing it.

There was some criticism of Mrs. Norton when she declared that she would seek further clarification of the Administration's views on the legislation. Her procrastination brought forth a protest from Labor's Non-Partisan League, which alleged that Mayor Hague had a hand in delaying the bill. New Jersey labor leaders took the position that Mrs. Norton's reported illness, which kept her away from Washington, was no reason for delaying the legislation, and they urged House leaders to authorize someone to act for her in her absence.  

During this period of inactivity on the measure, there were conflicting reports as to where small businessmen stood. An American Institute of Public Opinion poll showed that they were fairly evenly divided, with fifty-four per cent in favor of regulation. On the other hand, an Administration-sponsored Washington meeting of small businessmen adopted a resolution rejecting all forms of wage and hour legislation and called upon the government to abandon its attempts to regulate private business and industry.

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Roosevelt replied to the convention's resolution, declaring that the Administration would not give up the fight but would be willing to compromise on differentials. The President, it was reported, was willing to accept a minimum of $13 per week for the North and $11 per week in the South. It was believed that Roosevelt was willing to compromise on differentials in order to discourage the movement for rigid rates, a standard that he considered to be unconstitutional.

Another public opinion poll, however, indicated that the American people favored greater differentials than those suggested by the President. Not only did 67 per cent of the voters favor some form of wage regulation, but the national average that they suggested was forty cents per hour for a forty-four hour week, or about $18 per week; in the South sentiment favored twenty-five cents per hour, or about $12 per week.\(^\text{15}\) The poll showed that the voters were willing to accept the differentials that organized labor staunchly opposed.

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So little progress had been made on the bill that in February the Administration announced that efforts to enact it would be put off until the end of the session. Wage and hour strategists said

that they would try to get a modified measure to the floor after action on the appropriation bills, perhaps sometime in April. After a conference with Roosevelt, Ransneck, and Assistant Secretary of Labor McLaughlin, Mrs. Norton announced that her Committee would report a bill late in March and that there were no plans for seeking action before that time. She said that a new abbreviated bill would have fewer exceptions and would provide for an administrator. In addition, Ransneck indicated that he was preparing another moderate measure which proposed to use the power of the Federal Trade Commission to prevent wage cutting and hour increases. He said that it was time to compromise, since there was no hope for the measure of the last session. In face of Rules Committee opposition and Mrs. Norton's abandonment of the petition, Ransneck maintained that some entirely different approach to wage regulation was necessary. 16

The announcement that the new bill might include an administrator induced William Green to issue a warning against either such a provision or one creating a new board. In addition, the labor leader declared that his organization had submitted a new draft of its previous measure. The new AFL version, with its rigid "40-40" standard, was known to be completely unacceptable to southerners and the Rules Committee. Nevertheless, copies of the Federation measure were sent to all members of the Labor Committee, with an analysis of the proposal, and letters were also sent to all members

16Washington Post, February 10, 11, 17, 18, 1938.
of the House requesting support. The AFL received the backing of Hamilton Fish (R-N.Y.), who favored its new version because of his opposition to wage boards and, as he described it, regulation by edict.17

In addition to the proposals already under consideration, the Labor Department was weighing the merits of two bills and the Committee studied another compromise plan based on the NRA code standards of 1934. The President rejected the Dies proposal for administration of a national law by state agencies as unsound and unlikely to benefit sections needing it the most.18 The Labor Department considered one plan setting rigid standards and another establishing differentials: plan "A" proposed a "40-40" standard, with industry boards and administration within the Labor Department; plan "B" fixed wages at $1 in the South and $1.3 in the North, with a forty-hour work-week.19 The NRA-compromise adopted the code scales and provided that they could be altered by ten per cent in either direction. The plan placed jurisdiction in the Labor Department, where a wage division would be created under an administrator who could appoint wage boards for each industry.20


18Memo, Roosevelt to H. H. McIntyre, January 13, 1938, Roosevelt Papers, F. D. Roosevelt Library, File 2730.

19Letter, Perkins to Roosevelt, February 9, 1938, Roosevelt Papers, F. D. Roosevelt Library, File 2730.

After several days of fruitless controversy over these conflicting versions, the Committee once again postponed further consideration of the legislation. Irreconcilable differences over the proposals induced Mrs. Norton to appoint a subcommittee, chairmanship by Ramsbeck, to draft a compromise. Apparently, the Committee could not decide whether to accept flexible rates, or set rigid standards and take a chance on getting the bill to the floor. The impasse at this point was marked by a refusal of the Committee to negotiate with the Rules Committee on a compromise. Though the Labor Committee had indicated its willingness to confer with all members who objected to the bill, Ramsbeck withdrew a motion to consult with the Rules Committee on the ground that his Committee should not give the public the impression that it was abdicating its authority.

The Committee's failure to work out a compromise seemed to further diminish the legislation's prospects. Some observers noted that interest in it was cooling and that there was a growing sentiment for submitting the question to a joint committee for further study. Representative McReynolds, leading opponent of the defeated bill, declared that it was dead and that only a joint resolution setting up a House-Senate committee to study the problem for a year could pass. The study proposal was urged on Roosevelt by Bankhead and Rayburn, but their explanations as to the lack of enthusiasm did not move him, and he refused to abandon the measure. By insisting

on a start, he kept his promise to the nation and his record clear. It was reported that he was doing his part, quietly advocating the legislation in his personal conferences with Congressmen.\(^{22}\)

Though Mrs. Norton remained confident, other leaders professed to see little chance for the proposal, and many seemed not to want any attempt to pass it at all. With the entire membership facing election, the consensus was that they should not risk the possible unpopularity that a vote on the measure might engender. The President had put Congress in a difficult position by stating his objectives and leaving it to Congress to carry them out. Faced with the responsibility for whatever consequences might develop, Congress would have preferred to have waited until after the election.\(^{23}\) Nevertheless, Mrs. Norton, promising that she would carry on the fight, declared that the principle of wage regulation would be established sooner or later; if not that session, the next time. O'Connor, disagreeing with the House leaders' suggestion that the bill go over to the following year, was even more optimistic than Mrs. Norton. The legislation could pass, he said, if one of the many drafts before the Committee could be revised to meet the demands of the opposition. Labor’s Non-Partisan League also viewed the situation optimistically, hailing the appointment of the subcommittee as an encouraging

\(^{22}\)Washington Post, March 2, 1938.

development and pledging the cooperation of the League in the support of the new measure.24

While the House leaders were debating the feasibility of continuing the struggle, the subcommittee undertook its task of finding an acceptable compromise. It was soon evident that the AFL's bill would be abandoned because of its rigid standards, as it was known that the Rules Committee would not permit a vote on an inflexible measure. Consideration of the bill would, therefore, be a waste of time. Mrs. Norton revealed that the latest proposal provided for a graduated approach, setting a thirty-cent minimum which would rise to forty cents in three years, and a forty-four hour work-week which would decline during the same period. Confirming this, Ramsneck declared that his subcommittee would be able to report a revised bill in a very short time.

In order to resolve the differences between the subcommittee and the Federation, Ramsneck met with the officers of the AFL and secured a pledge from Green to cooperate in efforts to pass the compromise. Green said that the Federation felt that a ceiling for hours should definitely be fixed but that it was not rigidly committed to a forty-cent minimum if some change were necessary to get the measure through Congress. He added that he did not think

that there was a great deal of difference over how the law was to be administered.25

In spite of these pledges of cooperation, the AFL continued to sponsor its "40-40" bill, which had already been introduced in the House by Representative Michael Stack (Pa.) at the request of Green. It stipulated that its wage provisions would not affect the higher rates negotiated by unions and placed enforcement in the federal courts and the Justice Department.26

About a week after his conference with AFL officials, Ramspeck revealed that his subcommittee had agreed on a minimum of twenty or twenty-five cents but was deadlocked on whether to make annual increases mandatory. An alternate proposal would allow an administrative agency to vary the increases in relation to the cost of living and other factors. Having finally arrived at a wage-rate compromise, the subcommittee sought some expression from the AFL on the proposed graduated rates. Green told them that he thought that the Federation would support the thirty-cent minimum if it were coupled with a mandatory annual increase until forty cents were reached. Although the Federation chief had gone on record as approving a graduated rate, some observers alleged that his stand for a thirty-cent minimum had wrecked Ramspeck's twenty-cent


compromise. In addition, it was known that the labor leader was already committed to a thirty-hour week and was opposed to a forty-four hour provision. Hence, the subcommittee, after six weeks of work, seemed no closer to a compromise solution than when the bill had been defeated. Disagreement with the AFL on the rates continued to prevent any apparent progress. The CIO, on the other hand, continued to support the Committee, urging its members to demand quick action on a new bill. 27

Ramspeck resolved the deadlock early in April, however, by reporting another compromise measure to the Labor Committee. Feeling that there already had been too much delay and having failed to make any progress with the three subcommittee Republicans, the Democratic members submitted their draft without taking a vote on it. This compromise, a modified form of the bill reported in August, provided for a "weighted average" wage floor and a forty-eight-hour ceiling. It proposed a five-man standards board, geographically selected, empowered to fix a "weighted average" wage based on the number of workers in each wage group. The board was authorized to raise hourly rates not more than five cents annually but could not exceed a forty-cent ceiling. The gradual changes would eventually reach the "40-40" standard, giving industry time to adjust.

Under this plan, the board, in setting rates for any industry, would have to take into consideration the wages being paid, the

number of employees involved, wages paid by employers maintaining standards voluntarily, the cost of living, local economic conditions, and differences in manufacturing costs occasioned by varying local natural resources. In addition to this, the bill exempted seasonal industries from its hours provisions, provided that the board might classify employees within occupations according to localities, and denied the board power to issue orders to concerns engaged in intrastate commerce. 28

Although Ramspeck alleged that the possibilities for differentials were greatly diminished because the floor would be the average pay in any industry, the bill appeared headed for certain opposition from the AFL, which would object to its flexible standards, and from the Rules Committee, which wanted no legislation of any kind. Green immediately wrote Mr. Norton to oppose the subcommittee draft, calling it "baffling and confusing" and more objectionable than the previously defeated proposals. It would, he said, stifle the economy and impose a dictatorial control over employer-employee relations. He criticised the complicated method of fixing wages, alleging that the power of the board to choose samples of wages and hours would subject industry to government decrees. Emphasising the advantages of the AFL bill, he reiterated his willingness to accept a thirty-cent floor. 29


While the AFL was busy lobbying for its own measure and raising objections to the Committee's compromise, the CIO and Labor's Non-Partisan League were organizing a campaign to force Congress to act on the measure. At a CIO conference in April, John L. Lewis condemned Congress for failing to take any action and Sidney Hillman warned that unless a bill was passed there would be further wage reductions. One way to kill wage regulation, said Hillman, was to endorse a bill that could not pass. The Federation's proposal, he declared, did not have a chance. The CIO, he concluded, must not rely only on union organization but must make its power felt in the political field. The conference thereupon demanded immediate enactment of a measure, advised all its members to write their Congressmen to support it, and warned that opposition would be considered an unfriendly act by the workers.

Labor's Non-Partisan League also put new vigor into its campaign. E. L. Oliver wrote to Mrs. Norton urging that Committee members subordinate minor objections and attempts at perfection, which were desirable but could only delay the legislation. Nothing, he said, could justify further delay. Thereafter, the League increased the pressure on Congressmen by bringing delegations of labor leaders to Washington to tell them what was happening at home as a result of Congress' failure to act. The League and the CIO were optimistic, therefore, as to the outcome of the struggle, and when Roosevelt again recommended wage legislation in his Gainesville,
Georgia speech, they declared that prospects for favorable action were bright.  

On April 14, the subcommittee placed Ramspeck's "weighted average" proposal before the Labor Committee, which still remained badly split on the wage issue. In addition to Ramspeck's compromise, Mrs. Norton submitted a new draft that provided for a graduated scale, increasing from twenty-five cents to forty cents in three years and decreasing from forty-four hours to forty hours in two years. Her measure was to be administered by the Secretary of Labor, with enforcement in the Justice Department. Both drafts accepted the principle of a basic minimum wage, but Mrs. Norton's came closest to satisfying the demands of the AFL for rigid standards, while Ramspeck's more closely resembled the previously rejected House version.

The Committee, therefore, had a choice between Ramspeck's version, which came closest to satisfying the South, or Norton's draft, which was closer to the AFL's demands. Ramspeck's compromise was rejected by a close vote - 10 to 8 - with Norton not voting. The Committee then accepted her bill by a vote of 14 to 4 and agreed - 12 to 6 - to eliminate differentials. This action made the proposal unacceptable to Ramspeck, who declared that he would oppose it on the ground that it was unconstitutional. Nevertheless, the

30 CIO News, April 2, 9, 16, 1938.

Committee majority finally accepted a compromise draft providing for a graduated basic floor for wages and ceiling for hours, without differentials based on geographical areas. These were the basic principles that Green and the AFL had insisted upon from the beginning.

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The success of the measure would depend on the ability of its proponents to organize a drive for its passage before Congress adjourned. On April 11, they received another assist from the President, who once again expressed his hope that wage legislation would be passed during that session. Speaking in terms of a better distribution of prosperity, available work, and buying power, he based his argument on morality, declaring that it was only just that the benefits of prosperity coming from the use of the people's money should be redistributed among all the people.32

In spite of Roosevelt's plea and the Committee's compromise, House leaders remained pessimistic, as Congress seemed united on only one thing - an early adjournment. Moreover, the failure of the Administration's Executive Department reorganization bill led many to declare that the prospects for the wage measure were hopeless.

32Rosenman, op. cit., VII, 245.
McReynolds predicted that the bill would never reach the floor and that if it did there would be "a great disturbance." And although O'Connor appealed to each of his Committee members to release the measure, Cox said that they had not changed their position and that there would be no bill that year. In addition, the NAM recommended that the wage proposal be abandoned in order to speed recovery and reemployment.

On the other hand, it was reported that many Republicans from industrial areas would support the bill, and Mrs. Norton announced that Martin and the other Republicans on the Rules Committee were for it. There were also indications that some Republican leaders were quietly organizing support for the measure as a result of the sectional conflict, which continued to weaken party lines. Representative Smith (R-Me.) was quoted as saying that Mrs. Norton's draft was what he and Welch (R-Cal.) had been fighting for from the beginning. Smith was said to favor it because it lacked differentials and would therefore stop the migration of New England industries into the South. In addition to these favorable statements, proponents pointed out that Lambertson (R-Kan.) was the only Republican Labor Committeeman who voted against the Norton draft.33

Equally important to the success of the measure was the constant pressure from the CIO and Labor's Non-Partisan League, and

the relatively enthusiastic endorsement of the draft by the AFL. The League continued to urge its members to help force the bill out of the Rules Committee by writing to their Congressmen. And although Green was not satisfied with the rates, he said that the measure embodied the fundamental requirements sought for by the Federation - a specific floor for wages and ceiling for hours and enforcement by the Department of Justice. Declaring that the measure could be improved by raising its low standards and referring to the fact that the rates would rise to a "40-40" standard over a three year period, he said:

The country needs them now. At this very moment, when the country is suffering from curtailed purchasing power and widespread unemployment, a really effective wage and hour bill should prove most beneficial. We believe that it would be sound common sense to adopt a bill providing a minimum wage of not less than 30¢ an hour to begin with and a maximum workweek of forty hours.

Declaring that sweatshop labor had been outlawed by public opinion, Green asserted that no employer or member of Congress could claim that a wage of $11 or $12 a week would be an imposition on American industry. And pointing out that the bill was simple and easily understandable compared with the previous "hodge-podge," he called upon every member of Congress to vote for the new measure.

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34 CIO News, April 23, 1938.
On April 21, Mrs. Norton submitted the Committee's report and Ramspeck's minority statement on the compromise to the House. Her report pointed to the need for quick action, emphasized the sharp decline in business activity, and warned that spiraling deflation threatened the foundations of government. Maintaining that the payment of substandard wages was detrimental to commerce and to the health and well-being of employees, it declared that the bill would go far to remedy the situation. It also asserted that the measure created no new administrative body and did not provide for differentials.

Ramspeck objected to the bill on the ground that it was discriminatory and indefinite in that it failed to provide for a fact-finding procedure. He alleged that its escalator clause violated the due process section of the Constitution and would, therefore, be held invalid by the courts. Furthermore, he declared that the delegation of power to the Secretary of Labor to determine what industries should be included under the law was arbitrary and illegal and that the standards upon which the Secretary was to make decisions were not sufficiently definite. And finally, he maintained that the standards and the unequal freight rates in the South would discriminate against southern employers. 37

This dissenting statement was considered a setback, in that it strengthened the position of the measure's opponents on the Rules

Committee. Though there were rumors that the Republicans were considering letting the bill out to split the Democrats, reports also indicated that only Martin - from a strong labor district in Massachusetts - favored it, that Mares (R-Mich.) and McLean (R-N.J.) were undecided, and that Taylor (R-Tenn.) opposed it. On the other hand, it was considered possible that the Rules Committee might kill it by postponing a decision from day to day until adjournment rather than by voting against it.\textsuperscript{38}

While the Rules Committee was considering the legislation, the Administration and organized labor intensified their campaign in its behalf. Roosevelt once again called O'Connor to the White House and urged that the Committee act. At the same time, a delegation of New York labor leaders, composed of representatives of the garment unions and the American Labor Party, appeared in Washington to urge their Congressmen to support the bill. This action, planned by Labor's Non-Partisan League, followed other meetings previously arranged for delegations of unionists from Ohio, Pennsylvania, Massachusetts, and New Jersey. In addition to this pressure from the League, John L. Lewis telegraphed all Congressmen, condemning the Rules Committee. Its failure to let the House take up the measure, he warned, would be regarded by labor as an outrageous gagging of the people's representatives.\textsuperscript{39} William Green also

\textsuperscript{38} New York Times, April 21, 23, 25, 26, 1938.

\textsuperscript{39} CIO News, April 30, 1938; New York Times, April 29, 30, 1938.
declared that any attempt to keep the bill in Committee was indefensible and would be considered an unfriendly act by the AFL. He wrote to his state federations and affiliated unions urging them to send telegrams and letters to Congress demanding action.\(^40\)

In the meanwhile, the Rules Committee formally considered the measure, hearing testimony from both Mrs. Norton and Ramspeck. Defending it from Ramspeck's attacks, she asserted that it was constitutional and that it had the President's backing. She also defended the twenty-five-cent rate from charges that it would destroy some industries, pointing out that the most a worker could make would be an annual income of \(\$540\), which was much below the \(\$810\) that was considered to be the lowest annual subsistence income.\(^41\)

Administration pressure, labor's endorsement of the measure, and Mrs. Norton's testimony did not, however, change the position of the Committee. Although Representative Cox had predicted that there would not be a vote, on April 29 it was pigeon-holed by an 8 to 6 decision, with Republicans Taylor, Mades, and McLean joining the five southern Democrats in opposition. Notwithstanding the promise to avoid the use of another petition, the announcement of the Committee's decision induced Mrs. Norton to initiate a petition at once. Opponents admitted that many members, anxious to make amend


\(^{41}\)U. S. Congress, Congressional Record, 75th Cong. 3rd Sess., 5919-21.
for opposing the Executive Department reorganization bill, would support it, and southerners apparently thought that both the petition and the bill would be successful, for there were rumors of a proposed filibuster in the Senate.42

Organized labor rushed to the support of the measure, protesting the action of the Committee. Labor's Non-Partisan League, describing the decision as one that threatened the foundations of democracy, condemned the eight opponents for denying what it called the "mandate of the people." E. L. Oliver, speaking for the League, termed the majority a "reactionary cabal." He promised that southern members who opposed it would be approached by delegates of the American Federation of Hosiery Workers, who would appeal for the bill.43

Both John L. Lewis and William Green threw their weight behind the measure, the former calling the Committee's action a travesty on the principles of our form of government." William Green sent the following telegram to each member of the House:

... I urge each member of Congress to sign this petition at the first opportunity accorded on the first day the petition is presented for signature. Such action would have a profound effect throughout the entire country.44

The urgent note in Green's telegram emphasized the fact that there was little time left in the session. With House leaders

43Ibid., April 30, 1938.
setting the date for adjournment on June 1, the last day the bill
could be brought up would be on May 23, and the petition could
not be filed for signatures until May 5. Nevertheless, having
received the promises of the chiefs of some of the state delegations
that they would deliver the entire membership in support of the
petition, Mrs. Norton was confident that the names would be obtained.
In addition to these assurances, the Pennsylvania delegation
promised that it would fight the adjournment movement to get the
bill out, and Mrs. Norton also received the packing of a twenty-
nine man steering committee that pledged to fight adjournment
until the House passed the measure. Representative Healey (D-Mass),
the leader of this group, made plans for a mass meeting to whip
up enthusiasm for the petition, which would have to have the
necessary signatures by May 11. 45

The President also did what he could to aid the petition. In
response to a letter from Mrs. Norton, he sent her a telegram
acknowledging that he had no right to criticize the House rules
while claiming the right to express his own views. 46 He was
devoted, he said, to democratic processes and therefore hoped that
the whole House would be allowed to discuss the measure, in the
belief that a large majority wanted the bill and that the House should

45 Washington Post, April 30, May 2, 1938.
46 Letter, Norton to Roosevelt, April 29, 1938, Roosevelt
Paper, F. D. Roosevelt Library, File 2730.
be allowed to vote on it. Although southerners were angered by
the President's insistence on the measure, Mrs. Norton declared that
his telegram would and rumors that he was not putting on pressure
for the bill. In addition to this backing from northern Democrats
and many Republicans, from organized labor, and from the President,
it was widely reported that the bill's chances were enhanced by
Senator Claude Pepper's victory in the Florida primary election.
With wages and hours a direct issue, Pepper, who supported the bill,
soundly defeated his opponent, who condemned it. As a result, the
stand of the southerners on the issue supposedly was weakened.

The day before the petition was submitted it was evident that
the proponents would have more than enough signers. The steering
committee declared that it would have 198 signatures as soon as it
was placed on the clerk's desk, and both Healey and Bankhead were
certain that it would succeed. When Representative Daly (Pa.)
claimed that thirty-five Republicans would sign, Ramspeck replied that
these gains would be offset by the loss of fifteen southerners who
had signed the first petition. Hamilton Fish warned his colleagues
that if a majority of Republicans voted against it, there would not
be any Republican Party after the next election, and Representative

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47 Telegram, Roosevelt to Norton, April 30, 1938, Roosevelt Papers, F. D. Roosevelt Library, File 2730.


Sadowski, chairman of the Michigan delegation, announced that his group had voted to oppose adjournment until the bill were passed, even if Congress had to stay in session all summer.50

The result of this campaign was a veritable stampede to sign the petition after it had been placed on the clerk's desk. In contrast to the drawn-out canvass for signatures of the previous December, 218 names were obtained in a little over two hours. Mrs. Norton started the rush, during which members crowded around the desk to add their names, forcing Speaker Bankhead to call a sergeant-at-arms to form a line. When 218 had signed, there was a burst of cheering, after which Mrs. Norton announced that her Committee had decided not to accept amendment to the bill. This move was made to hamper advocates of differentials, who had asserted that they would amend the wage provisions when the measure got to the floor. Of those signing the petition, 183 were Democrats, 22 Republicans, 8 Progressives, and 5 Farmer-Laborites, with only 18 signatures from southern Democrats.51

Backers of the bill attributed its success to many causes, but steady labor pressure and a desire to give it its chance so Congress could adjourn were seen as the controlling factors. Organized labor was jubilant. E. L. Oliver declared that it had been a great victory


for the people and that the House had served notice that there was
no place in America for sweatshops. John L. Lewis wired Congress
that enactment was imperative, warning that if the bill failed to
pass, chiseling employers would cast restraint to the winds. And
William Green commended Congress, calling for the measure's passage
and claiming that it had the overwhelming support of the people.52

In the interval between the signing of the petition and May
23, when the measure was taken up, southern Congressmen sought
to force the House to accept differentials by threatening a filibuster,
while its proponents worked to ensure its passage without crippling
amendments. Although opposition from southern representatives
seemed futile in face of the success of the petition, McReynolds
nevertheless announced that he would offer amendments to eliminate
wage regulation and confine the proposal to the limitation of hours.
It was southern opposition in the Senate, however, that threatened
to keep Congress in session all summer unless differentials were
included. Senator Harrison led this drive, and Senator Thomas,
chairman of the Labor Committee, declared that there would be
difficulty harmonizing the two versions if the House passed its

draft without differentials. If they were included, no fight was expected in the Senate, and the measure could go directly to the White House.53

As the day for House consideration approached, the campaign for and against the measure reached a new high. Senator Thomas aided the opposition, condemning the bill and alleging that it was unconstitutional and dictatorial. Its basic principles were also attacked by Columbia University economics professor Leo Wolman, who maintained that wage regulation would neither stimulate the economy nor reduce unemployment. In addition to these attacks, the National Grange threatened to throw the farm bloc into opposition unless the House accepted a long list of exemptions.54

On the other hand, the President, Administration leaders, and organized labor worked to keep the bill's supporters in line. Representative Healey declared that the steering committee had not lost strength and would block any motion for adjournment until a vote was taken. The Amalgamated Clothing Workers announced that any bill was better than no legislation at all, and Labor's Non-Partisan League promised retribution to those who failed to support the proposal. Secretary Perkins pleaded for the measure, emphasizing its effects on purchasing power and the recovery program. And the President, for

the sixth time asked Congress to take action. 55

Moreover, there was no doubt as to popular support for the measure. A public opinion survey asking: "Should Congress pass a bill regulating wages and hours before ending this session?" revealed a 59 per cent majority favoring such action. In New England, an overwhelming 76 per cent responded affirmatively, and even the South approved by a 56 per cent margin. 56

With popular backing assured, with labor united in support, and with Republicans ready to abandon their partisan stand, passage of the House bill was assured, without, it seemed, serious alternation or amendment. The impasse which had held up the legislation almost a year had been overcome by compromise on part of the bill's proponents and organized labor.

55 U. S. Congress, Congressional Record, 75th Cong. 3rd Sess., Appendix, 3215; New York Times, May 9, 11, 12, 18, 20, 1938.

CHAPTER IX
THE SENATE AND THE HOUSE AGREE

On May 23 Mrs. Norton once again introduced a motion to discharge the bill from the Rules Committee, but under circumstances very much more favorable for the legislation than those of the previous December. With the overwhelming majority of members in favor of the proposal, there was little that its House opponents could do except attempt to amend it. In her review of the course of the bill since its introduction, Mrs. Norton maintained that the new draft was entirely different in form, method, administration, and philosophy from the original version. And she also explained that she had broken her word on the petition because she had concluded that she could not justify denying workers a chance for better working conditions.1

Opposing her discharge motion, Representative Dye warned the House once again that the measure placed unprecedented power in a federal bureau and was, therefore, unconstitutional. Its rates, he said, were inflexible, and he pointed out that the Supreme Court had never directly recognized the right of Congress to enact

1U.S. Congress, Congressional Record, 75th Cong., 3rd Sess., 7274.
wage and hour legislation. He assured the members that he was not seeking differentials but sought only to make the proposal more flexible and would, accordingly, introduce amendments to accomplish this.

After Representative O'Connor reminded the House that Congress had to make at least a start on wage regulation, the vote on the discharge motion was taken, and the bill was brought to the floor by a 322 to 73 vote. An analysis revealed that 219 Democrats, 52 Republicans, 7 Progressives, and 4 Farmer-Laborites had supported the motion, while only 53 Democrats and 20 Republicans opposed it. With the bill released, the House agreed to a rule that allowed five hours of debate that day and provided that the measure be read for amendment the following day.

Emphasizing the improvements that had been made in the bill, Mrs. Norton opened the debate, declaring that differentials had been eliminated, that most of the exemptions had been dropped, and that rigid standards had been adopted so that employers would know exactly where they stood. She also said that the power of the Secretary of Labor to determine whether industry was engaged in interstate commerce was less than that delegated to the old five-man Board. And in addition, she pleaded with her colleagues not to emasculate the bill by adding exempting amendments.

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3U. S. Congress, Congressional Record, 75th Cong. 3rd Sess., 7279.
The legislation was supported by Democrats from the North and by many Republicans from industrial areas and was denounced by southern Democrats and mid-western Republicans. Representative Welch (Cal.) said that the bill's child labor provisions were the best possible and that it was the most humane measure ever considered by Congress. Representative Gifford (Mass.) declared that it would be a great aid to the textile section and Keller (Ill.) alleged that wage and hour provisions of the NRA codes had saved the country, while Allen (Pa.) said that northern as well as southern states needed the bill and that any industry that could not pay $11 per week had no right to exist.4

Reminding his colleagues that the measure was supported by the AFL, Representative Maverick (Texas) declared that it was not a conspiracy of the CIO, John L. Lewis, or Moscow, as some critics had implied. The South, he said, having benefited from the hundreds of millions of dollars that the New Deal had spent there, should observe the same laws as the rest of the nation. Representative Healey (Mass.) maintained that Congress could set wage standards and should not delegate that power to an administrative board, while Fitzgerald (Conn.) reminded members that wages as low as $2 and $3 per week were being paid in every section of the country, and Wood (Mo.) pointed out that when southern textile employees' wages were raised to $11

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4Ibid., 7282-91.
per week during the days of the NAA, not a mill closed.5

The opposition based its argument mainly on the ground that the proposed standards would have an adverse effect on the southern economy and business recovery. Representative McReynolds (Tenn.), declaring that the time would come when only big industry could afford to pay fixed standards, said that the southern worker would lose if his goods could not compete. He alleged that it was necessary to amend the proposal in the interests of workers everywhere. Representative Lambertson (Kansas), calling the measure a second NRA, asserted that it was a marriage of the Administration and the CIO. Lewis and Labor's Non-Partisan League, he said, led the procession and William Green had to fall into line. And Representative Hanes (Mich.), citing an article on lay-offs brought about by the District of Columbia minimum wage law, maintained that the legislation would make industrial strife worse, that it would augment unemployment, and that some unions in the AFL were against it. Restore prosperity, he said, and let the unions take care of wages and hours.6

Representative Ramspeck, maintaining that he was not in favor of differentials on a geographical basis, advocated his own draft and claimed that it was more in line with the President's recommendations than the House bill. Condemning inflexible rates, he cited the testimony of Assistant Attorney General Jackson, Labor Department Solicitor Gerard Reilly, and legislative draftsman Benjamin Cohen,

5Ibid., 7291-7316. 6Ibid., 7286-93.
all of whom doubted whether Congress had the power to establish a single wage and hour standard for the country. This allegation was denied by Mrs. Norton, however, who introduced statements from Jackson and Cohen to the effect that nothing in their previous testimony was to be taken to indicate that fixed rates would necessarily be unconstitutional.7

Ramspeck's proposal was the first of fifty amendments considered the following day, most of which were rejected under the direction of the steering committee, which had counseled its adherents not to vote for any of them. The Georgian made a plea for his bill, explaining that it was similar to the one passed by the Senate, except for its "weighted average" wage standards. After a short debate, it was rejected by a comfortable margin, 139-70.8

Representative Taylor (Colo.) also introduced a measure, substantially the AFL bill of December with a twenty-five-cent floor, which was rejected. The House in addition turned down the Wheeler-Johnson amendment, a Connery proposal to substitute the "40-40" standard, and the "Grange Amendment" to exempt seasonal dairying and agricultural workers from overtime. Moreover, it rejected an attempt to eliminate the section giving the Secretary of Labor authority to decide what industries would come under interstate

7Ibid., 7299.
commerce, a Dies amendment to allow state labor commissioners to alter
wage and hour standards, a plan to bring all federal employees within
the bill's coverage; a fifty-three-cent, thirty-hour work-week
 provision, and an amendment exempting firms experimenting with
annual wage plans.9

On the other hand, the House accepted Mr. Norton's amendment
to exempt food processing occupations, the so-called "Shirley
Temple" amendment exempting child actors, and another exempting
county newspapers with a circulation of less than three thousand.10
On the whole, the measure's backers were able to prevent opponents
from loading it down with unwelcome amendments.

Although criticized from both sides as filled with ambiguities
and uncertainties, the bill was finally passed by an overwhelming
vote, 314 to 97, after Lambertson's motion to recommit had failed.
A breakdown of the vote revealed that 256 Democrats, 46 Republicans,
7 Progressives, and 4 Farmer-Laborites favored it, while 56 Democrats
and 14 Republicans were opposed. In their moment of victory,
proponents were wary of commenting on their success, preferring
not to aggravate the southerners. And the press also noted that
House leaders Bankhead, Rayburn, and O'Connor were notably absent
from the House well throughout the day, conduct that was in sharp

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9U. S. Congress, Congressional Record, 75th Cong. 3rd Sess.,
7389-7433.

10Ibid., 7401, 7419, 7443-45.
contrast to their efforts in December when they strove in vain to get the bill through.11

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The adoption of the amended draft sent the measure back to the Senate where a southern filibuster was threatened over the House's rigid standards. The parliamentary rules provided that its rejection by the Senate would send it to a Joint House-Senate conference committee for modification. But if the Senate amended it in any particular, unanimous consent by the House would be required to send it to conference. Failing unanimous consent, the measure would again be sent to the Rules Committee, and another petition would be required for another vote on the bill in the House.12

To avoid having the bill recommitted to the Labor Committee in the Senate, Senate Leader Barkley attempted to reach an agreement by which a conference committee would be able to substitute elastic standards and geographical differentials. He therefore agreed with southern members that they would receive "proper" representation on the committee if they would let the bill go to conference without resorting to a filibuster. His task was made somewhat


easier because of Congress' desire for speedy adjournment, because it was known that the President supported differentials, and because the wage bill's advocates in the House, having chastised their southern colleagues for recommitting the proposal in December, agreed that some compromise was in order.13

Hence, a last minute bargain with the southern Democrats averted a fight to send the bill back to committee and arrested the threatened filibuster. Barkley worked out the details with the southern leaders, Senators Harrison, Burns, and Byrd, and agreed to add two southern spokesmen, Pepper and Ellender, to the conference group. In addition to Pepper and Ellender, the Senate group included Labor Committee chairman Thomas, who favored flexible standards; Walsh, who was willing to accept modifications; Murray, following the Administration's wishes; Borah, supporting statutory standards; and La Follette, who favored the Senate version. Of the seven House conferees, Ramspock was the only southern member advocating differentials. This agreement appeared to be satisfactory to both sides, and Barkley was able to announce that the bill would be reported out in a week, while Harrison declared that the agreement was the best that the South could do and asserted that opponents would have another opportunity to defeat the bill when it returned to the floor.14 As a result of this understanding with the southerners,

13Ibid., May 26, 1938.
consideration of the measure was a mere formality. Senator Thomas asked for unanimous consent to disagree with the House amendment, and after Schwellenbach assured the Senate that the conferees would work within the bounds of the Senate and House drafts of the bill, the measure went to conference by unanimous consent.\textsuperscript{15}

In the meanwhile, Speaker Bankhead was forced to delay the appointment of the House conferees because of the illness of Mrs. Norton, and during this interval it was reported that government officials were considering some revision of the bill's administrative provisions. There was a growing concern over the costs of administration, and lawyers warned that an army of agents would be needed to enforce its provisions. While the Senate version simply prohibited the shipment in interstate commerce of goods produced under substandard labor conditions, the House bill made it a criminal offense to employ workers under substandard labor conditions and provided for fines and imprisonment for violations.\textsuperscript{16} It appeared, therefore, that the conference would be required to consider the problem of enforcement in connection with any wage formula that it accepted.

Before the conference took up the legislation, two developments enhanced the probability that its members would accept differentials. First, Senator Thomas called the House bill unconstitutional and

\textsuperscript{15}U. S. Congress, \textit{Congressional Record}, 75th Cong. 3rd Sess., 7560.

pleaded for the Senate version. He defended the right of Congress to delegate wage-fixing powers to an administrative board and warned that the board must have latitude to prevent the dislocation of industry and further unemployment. In addition to his plea, it was revealed that differentials did indeed have the backing of the general public, as a poll showed that all sections of the country favored them by a margin of 62 to 38 per cent. 17

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On June 4 the House group won an important concession when the conferees reached their first agreement by approving the House bill's basic wage minimum of twenty-five cents an hour, with the proviso that no agency later approved could lower it. Having agreed on a wage floor, they continued to seek a compromise which would preserve some rigidity and yet allow for differentials. Although there was no immediate agreement on flexible standards or a board, it was reported that they favored a board.

A number of different approaches to the problem of flexibility were attempted. Representative Hartley suggested a twenty-five-cent, forty-four hour standard to operate for two years pending a wage and hour report by a special commission. Ramteck was the only one to support this plan, however, and it was rejected. Senator Walsh

submitted a "five year plan" for a twenty-five cent minimum, with advances of three cents per year until forty cents was reached, but this proposal was unacceptable to the majority of the Senators because it lacked discretionary power. Senator Ellender indicated that the South might be willing to give up differentials if a provision to reduce railroad freight rates were incorporated in the bill, but Damoneck pointed out that such a provision would not be germane. He suggested, however, that freight rates might be included among those factors to be taken into consideration in setting wage standards.¹⁸

While the Walsh proposal was being debated, William Green issued a statement urging the adoption of the House measure. The AFL, he said, insisted on three requirements: a wage floor, a ceiling for hours, and a plan that would be simple to administer. If the Senate version were adopted, he warned, the Federation would call on its friends in Congress to defeat the conference report.¹⁹ In addition to this warning, the legislation was jeopardized by the threat of a southern "filibuster" to be led by Senators Harrison, Pepper, and Ellender. The southerners were balking at the demand of the House group for a "40-40" standard within a few years.

Senator Thomas therefore suggested a "seven year plan," which proposed a twenty-five-cent floor, with a two and one-half-cent


increase per year until the floor became thirty cents. Thereafter boards for each industry would determine the increase, but after seven years the mandatory rate of forty cents would be reached and then all boards and administrative authority would be abolished. The southerners were willing to go along with the thirty-cent minimum but insisted that the boards be allowed to fix rates without a mandatory time limit for reaching the forty-cent minimum. They wanted the field between thirty and forty cents open to the operation of geographical differentials. Although Thomas said that his plan, a composite of all those offered, would receive enough support to be adopted after some modification, Ellender declared that if it failed to include differentials, southerners would oppose it.

With the collapse of the conference a definite possibility, Ellender and Pepper drafted a modification of the Thomas proposal, in which the provision for a forty-cent minimum wage after seven years was eliminated. Though the Senate conferees voted 4 to 3 to accept it, Borah assailed it as an endorsement of a thirty-cent standard and said he would not sign a draft that did not include a definite date on which forty cents became the minimum. La Follette and Walsh also announced that they would not sign such a compromise. Acceptance appeared probable, however, after a canvass of the House group found general sentiment in its favor. It was reported that Mrs. Norton was ready to compromise because the Senate had made

concessions considered vital by the House group. It was also believed that another totally unrelated event, the defeat of the administration candidate in the Iowa primary, played a part in the willingness of the Administration to compromise. On the other hand, William Green personally exhorted Thomas to retain a time limit for the forty-cent minimum wage.21

Since Senate conferees had voted 4 to 3 and House members 5 to 2 in favor of accepting the modification, southern senators were amazed when the conference committee made an abrupt about-face. The committee adopted a provision setting a basic floor at twenty-five cents, which was to increase to thirty cents the second year and reach the forty-cent level within seven years. It was revealed that Senator Thomas had reopened the question, proposing ten years as the time limit. Ramspeck quickly proposed that the limit be set at seven years, and his suggestion was accepted by a vote of 12 to 2. It was suggested, however, that Ramspeck's strategy was to make the proposal repugnant enough to the Senate to encourage a filibuster.

Immediately thereafter, Ellender called the southern Senators into caucus to determine whether they would back a filibuster on the time limit provision, and they voted to assist him unless a satisfactory compromise was reached. They directed their wrath at Senator Thomas for reopening the question after it had apparently been

settled and expressed resentment over the part that organized labor was playing in insisting on a time limit. 22

In order to avoid the filibuster threat, further discussions continued which finally led to a compromise on the time limit problem. Agreement was reached on a proposal that retained the twenty-five-cent-floor the first year, set a thirty-cent-floor the second year, and authorized industrial wage boards to determine minimum wages up to forty cents per hour in those industries that could afford rates above the twenty-five-cent minimum during the seven-year period. The boards would become operative at once, and it would therefore be possible for the forty-cent rate to be set the first year. In accepting applications for higher minimums, the boards would have to consider such factors as prevailing wages and hours, unemployment, and the cost of living.

The agreement provided that hours were to be set at forty-four the first year, forty-two the second, and reduced to forty thereafter, but a shorter work-week was possible the first year by an order from the boards. Exemptions were to be granted to industries paying an annual wage, providing they guaranteed 2000 hours of employment. In addition, the committee struck out the section empowering the Secretary of Labor to determine what industries were engaged in interstate commerce, but it agreed to place administration of the act in the Labor Department. The agreement made no provision for geographical

differentials as such. Hence, the North won rigidity the first two years and a compulsory forty-cent minimum after seven years, while the South won flexibility after two years and exemption after seven years if a forty-cent rate resulted in unemployment.23

With the wage standards issue settled, both sides were optimistic about the outcome of the conference. Although Senator Thomas and Mrs. Norton pledged the committee to secrecy on the compromise in fear that "pressure groups" might unset the new understanding, talk of a filibuster diminished and southerners declared that they did not care about the forty-cent provision since the boards were empowered to make exceptions. Senator Ellender said that compromise did not incorporate everything the South wanted but that it was fairly good, while Pepper maintained that it was a good bill and that the southerners had won most of their points. And Mrs. Norton declared that it contained every principle incorporated in the House version and that her group was well satisfied.

Although Senators Borah and Walsh and Representatives Hartley and Welch voted against the wage standards, they were adopted by a 12 to 4 vote, after which the committee voted unanimously to report a wage and hour bill. The report was signed and filed in both Houses on June 12, thereby ending the last serious threat to the measure.24


The settlement of the wage-fixing provisions removed the last obstacle, and early passage of the legislation was assured. Submitting the conference report, Senator Thomas declared that the agreement was more satisfactory than either the House or Senate bills and that it had not been reached by "logrolling" or bartering.

The committee, he said, had recognized the hazard of setting a high wage floor without giving industry time to adjust. It had, on the other hand, guarded against inertia by providing that all industries covered by the act be brought to a forty-cent rate unless that rate would curtail employment. Furthermore, although it had agreed to allow classification for the establishment of the highest minimum wage in each job class within an industry, it prohibited classification on the basis of age or sex, or on a regional basis. The measure had been drawn, he said, so that even if the rigid rates were adjudged invalid, the provisions for setting minimum rates industry by industry would still remain operative. 25

No minimum rate, he pointed out, could be established unless it had been worked out by an industry committee and no rate could go into effect unless it were found to be within the law by an independent officer exercising independent judgment after a hearing.

25 U.S. Congress, Congressional Record, 75th Cong. 3rd Sess., 9158, 9164.
These administrative safeguards were modeled on the New York minimum wage act, whose provisions had been praised by Chief Justice Hughes in the Tipaldo case. Concluding his brief for the proposal, the Senator declared that Congress was not delegating its authority to an independent agency and that the measure was, therefore, constitutional.26

After Thomas' statement, Senator Bailey took the floor to contest the constitutionality of the legislation. Basing his argument on the commerce clause of the Constitution, he said that it gave no power to Congress to regulate industry or agriculture, and he told his colleagues that he did not see how the fact that men worked different hours for different wages could be considered an obstacle to commerce. The legislation was, consequently, manifestly unconstitutional in his opinion.

Senators Borah and Minton accepted Bailey's challenge, basing their defense of the legislation on the welfare and commerce clauses of the Constitution. Borah declared that Congress had the power to control wages in the interest of the health and well-being of workers actually engaged in interstate commerce, and when Bailey contended that manufacturing and farming were not commerce, Minton pointed out that the Court had sustained the National Labor Relations Act on the ground that industrial strife would become an obstacle to commerce. He maintained that the question of wages and hours led to

26Ibid., 9164-66.
industrial strife and that Congress could, therefore, deal with wage
standards. 27

During this debate, there were cries of "vote," indicating
that the argument was purely academic and that the Senators were
anxious to approve legislation that had already been agreed upon. The
conference report was, consequently, accepted by a voice vote, with
a few scattered "noes." 28

Over on the other side of the Capitol, there was also some
ineffective opposition during an hour's debate on the compromise.
When Mrs. Norton called up the report, Representative Taber raised
several points of order on the ground that the committee had gone
beyond its scope, but he was quickly overruled by the Chair. Mrs.
Norton then explained the measure to the House, declaring that its
administrative procedure was similar to the system that had been
successful in England since 1909. She pointed out that the bill was
not sectional, nor did it allow differentials, and that its child
labor provisions were virtually the same as those in the House's
original bill. 29

Representatives Hartley and Lamberton criticized the measure
on the grounds that it was bureaucratic and that it would harass
industry. Hartley, who had signed the conference report, reversed
himself and declared that the legislation would prolong what he

27 Ibid., 9166-78. 28 Ibid., 9178.
29 Ibid., 9244, 9255-57.
called the "New Deal depression." Representatives Kollor and Fish, however, commended it as preserving the best features of the NRA, and even McReynolds, formerly the leader of the opposition, said that he would vote for it. Representative Stealey told his colleagues that it represented half a century of struggle for principles which had been recognized by Massachusetts over forty years before, and Ramspeck declared that it was a victory for labor and not for either the North or South. With such an unprecedented degree of unanimity on both sides of the House, the bill was easily passed by a 290 to 89 majority, thus concluding an eighteen month struggle in its behalf. On Saturday evening, June 25, the President signed it without comment or fanfare.

* * *

Although the legislation was not everything that organized labor desired, labor leaders expressed their general satisfaction with it. Calling it a sincere effort to raise the standards of the underpaid, Sidney Hillman said that labor welcomed the bill. William Green declared that although it was far from perfect, it met the fundamental requirements of the AFL and gave effect to the principle of assisting the unorganized workers. However, he termed its method of administration "cumbersome" and "undesirable" and its provisions

30 Ibid., 9257-65.
permitting wage differentials through classifications within industries as "dangerous." At the same time, he said that the Federation would not condemn it because of its faults. Nevertheless, it was reported that the Building Trades were still against the measure, as craftsmen saw no benefits to them in the act, and there was speculation as to whether Green would move for the amendment of act during the next session. Criticism of the legislation also came from the National Child Labor Committee, whose general secretary, Courtenay Dinwiddie, declared that though the bill's child labor provisions were a most important advance, they were limited to interstate commerce and would affect only a small number of employed children.32

Press comment on the legislation was far from enthusiastic, either in the North or the South. Southern editors recognized that the condition of southern workers was inferior to that of labor in other sections of the country but wondered if the measure would benefit the South. The Birmingham Star (D) hoped that the South had not fooled itself into believing that it had won differentials when in fact it had not. The Dallas News (D) found no compromise in the measure for the South and predicted that it would hammer young industry, reduce jobs, and increase relief costs. However, the Chattanooga Times (D) thought it possible that higher pay standards

might be achieved without dislocating the economy of any industry or section. And the Richmond Times-Dispatch (D), recognizing that the southern worker lived on less because he made less, thought the act's provisions were fair.33

The northern press was, if anything, less enthusiastic about the measure than that of the South. The best that the New York Sun (I) could say of it was that it was "a dash of this and that," that it had some flexibility, and that it had not set up another agency. The Detroit Free Press (I) thought the measure hopelessly vicious and a political approach to an economic problem, which should not have been enacted in any form. The Boston Herald (R) found in it many obvious defects but acknowledged that it was received thankfully throughout the Northeast. Calling the act a mixture of good and bad, the St. Paul Pioneer Press (I) declared that Congress had wisely abandoned the attempt to set rigid standards. The Kansas City Star (I) agreed that the measure was a patchwork not serving depressed industries or the workers. Western papers echoed these sentiments. The Santa Fe New Mexican (R) saw more bureaucracy in the legislation, while the Portland Oregonian (I) found it a victory for the South, and the Los Angeles Times (R) declared it a mass of exemptions which would do more harm than good.34

34 Ibid.
This press criticism was confirmed by reports from various sections of the country, indicating that the measure, being a compromise, was far from satisfactory to anyone. The South seemed to feel that the differentials issue had been postponed rather than settled. Those in the South who wanted differentials wiped out were not pleased with the low twenty-five and thirty-cent minimum rates, while others who wanted differentials preserved were not convinced that the act's provisions guaranteed them or that the South would be influential enough with the administrator to make its weight felt. In New England some critics accepted the measure with misgivings or as a victory for the South, but many welcomed it as the best compromise possible. The West Coast was reported to be disappointed at the exemption of the food processing industry, as the high-paid West Coast industries received stiff competition from the East and South. And the results of the legislation were feared in the Midwest, where it was believed that the act would increase business uncertainty and lead to the ultimate socialization of all enterprise.35

In part, dissatisfaction was also caused by the uncertainty of the scope of the measure. Although it was impossible to determine exactly the number of workers that would benefit from the wage and hour provisions of the act, labor experts estimated that there would be an immediate gain in wages for only 200,000. It appeared

that the law would mainly affect some garment and textile industries and the fertilizer and sawmill industries in the South, while its effect in non-manufacturing industries was not known at all. Experts believed that the recession and its attendant drop in working hours and pay scales would greatly ease the initial effect of the law on the economy.36

By no means, therefore, would the law bring about an increase in the purchasing power of a large majority of the country's low paid workers, at least not within the first two years of its operation. The $11 weekly wage, an annual $550 income established by the twenty-five-cent minimum, failed to come close to meeting the $1200 estimated cost of living for a family of four.37 Hence, the measure's standards were a disappointment to those who expected that the law would bring about an improved standard of living for a large number of workers.

The measure was therefore accepted with misgivings throughout the country and approved by labor with reluctance. Although Sidney Hillman called it a good measure, John L. Lewis was reported to have lost interest in it completely because of its low rates, while William Green and the Federation were believed to be making plans for its early amendment. One critic took consolation in the fact that, as a compromise, it could not satisfy everyone and might have


been worse. As local differentials were to be fixed by industrial boards, the measure was seen to be open to dangerous possibilities, and many believed that it would be effective or worthless, depending upon the administrator. On the other hand, another commentator was convinced that a law without differentials would have been a discredit to the principle of national wage regulation, in that it would have represented an attempt by the Northeast to strike at southern competition. It was obvious, he said, that the law would not work if it handicapped southern workers and employers and if its burdens were distributed unequally over the country.

The United States Chamber of Commerce also recognized the potential dangers in the legislation, claiming that it would lead to new and more drastic kinds of federal regulation and that it would be impossible to administer effectively.

It appeared, therefore, that the measure would be whatever its administrator made of it. This would depend upon whom the President selected as administrator, whom the administrator chose for his industrial committees, and how effectively he administered the measure. However, in spite of all the criticism of the bill's provisions, there was general agreement that it reconciled sharply opposed points of view, served as a declaration of policy, and was a long-delayed step in the right direction.


CHAPTER X

CONCLUSION

With the signing of the Fair Labor Standards Act, the President brought to a close the long struggle for what some critics defined as the most important piece of New Deal social legislation after the Social Security Act. The success of the Administration's campaign for the measure, believed by many to be the most bitter and protracted fight over any New Deal law, raises a number of controversial and provocative questions.

Probably the most important question to be answered, in evaluating the success of the Administration's drive for wage and hour regulation, is to what degree the act accomplished the original intentions of its backers. It has already been pointed out that at the time the new law was passed its scope was unknown, and it was believed that its full application would remain for determination by the courts.\(^1\) It is realized that many other factors, the most important of which was the outbreak of the European war, make a definitive answer to this most important question all but impossible. It is, however, possible to compare the scope and the coverage of the original bill with the act, and this comparison will be used as a criterion of the Administration's success.

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A just consideration raises the question of Roosevelt's leadership, as well as that of his followers in Congress, and this, in turn, suggests a review of Administration policy. It is significant that the bill was taken up, not only at a time when Democratic leadership in Congress was patently in revolt, but also at a time when labor, which might have been expected to support the bill loyally, was itself involved in a "civil war" with which it seemed to be obsessed. In the course of the measure's progress through Congress, there is no doubt that its success at a number of critical moments depended almost solely upon labor's attitude towards it. The congressional situation was such that labor exercised the decisive influence in its consideration throughout the bill's legislative history.

Certainly one of the most engaging and complicated questions raised by wage and hour legislation was the economic principles upon which the measure was based. Its opponents cited state minimum wage experience and the effects of the NRA codes to convince the public that the anticipated results of national regulation would be detrimental to the economy, while the bill's proponents cited the same experience to prove that regulation would be salutary. The entire question was very much brought home to the public and Congress by the recession in the autumn of 1937, which further intensified the debate over the economic policies of the New Deal. While respected economists validated the arguments of both sides, the recession made Congress very susceptible to the business demand that private enterprise be given a respite from New Deal experimentation. This, however,
did not conflict with the country-wide clamor that the Administration
act to counter the recession by increasing its pump-priming monetary
policies.

The Administration's arguments in regard to the economic theories
underlying the act lead to the final estimation of the act in the
history of the New Deal. The "Second New Deal" has sometimes been
called "revolutionary," and if this is so, it would be presumed
that the national regulation of wage and hour standards was a part
of that "revolutionary" program. A study of the congressional
debates will reveal a thread of criticism to the effect that the
measure was truly revolutionary and that Congress was tempering
with the very foundations of democratic capitalism. These dire warnings
were responsible for making the measure, as finally passed, a great
deal less revolutionary than the original Black-Connery bill,
indicated that Congress was indeed concerned as to the ultimate
effect of wage regulation upon American society.

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As to the scope of the new act, it will be recalled that the
Administration sought to justify the regulation of labor standards by
the national government on three main grounds: 1) the necessity of
protecting workers from the pressures of industrial competition; 2)
the desire to check downward spirals of wage cutting and market
prices; 3) and the belief that increases in wage rates would increase
purchasing power and the demand for goods and services. The original Black-Connery bill had been drafted so as to achieve these ends, but successive alterations changed its wage formula, method of administration, and child labor provisions. As its coverage was reduced, so too was the effectiveness with which it would bring about the ends for which it had been conceived. Originally intended to affect millions of workers, as finally passed, it would admittedly help less than 300,000 of the lowest paid employees in the most backward industries.

Before considering the scope of the legislation, it should be pointed out that ten different bills reached the floor of Congress, each with at least one major change from its predecessors, and most with amendments substituting entirely different provisions. Where the original Black-Connery bill contained five main parts and thirty subsections, the final document was completely different, with nineteen sections in no way comparable to the original.² In the interest of clarity, the ten bills are briefly outlined below:

1) Black-Connery Bill, May, 1937, Labor Standards Board, flexible wage and hour standards;

2) Senate Committee Bill, June, 1937, Labor Standards Board, reduced wage flexibility;


4) First House Bill, August, 1937, Labor Standards Board, reduced wage flexibility, original child labor provisions;

5) Second House Bill, December, 1937, Administrator, wage and hour committees, original child labor provisions;

6) Dockweiler-AFL Bill, December, 1937, rigid standards, Justice Department enforcement;

7) Third House Committee Bill, April, 1938, Secretary of Labor, rigid standards, no differentials;

8) Ramspeck Bill, April, 1938, Labor Standards Board, "weighted average" wage standard;

9) Third House Bill, May, 1938, Secretary of Labor, rigid progressive standards, no differentials;

10) Conference Bill, June, 1938, Administrator, flexible progressive standards.

As one might expect in the struggle over one of the most bitterly fought measures enacted by the Roosevelt Administration, the true issues were frequently obscured by clouds of falsification and propaganda. There were, however, three main points of contention: 1) a single administrator against a board to administer the act; 2) flexible versus rigid standards; 3) and the method to be used to enforce the child labor provisions.

In the ten bills, Congress considered five different methods of administering the measure. The Labor Standard Board provisions of the Black-Connery bill were first altered in the First House bill, where there was an attempt to give equal representation on the Board to geographic areas and to labor and management. Thereafter, opposition to the Board led to the substitution in the Second House bill of an administrator with advisory wage and hour committees, along with
a provision that the administrator could not set rates without a
committee recommendation. The Third House bill, contemplating rigid,
progressive standards, placed administration in the Secretary of
Labor, whose only duty was to determine which industries were in
interstate commerce. The Conference bill, adopting the best workable
compromise, created a Wage and Hour Division in the Labor Department
and provided that wage and hour committees under an administrator might
set standards within limits fixed by Congress.

The most bitter fight, however, developed over the issue of
flexible standards versus rigid rates, with those favoring flexible
standards pointing out that rigid rates would raise due process problems,
while those favoring rigid rates contended that flexible standards
involved an unconstitutional delegation of power. It will be
recalled that the original Black-Connery bill contained a complicated
wage and hour formula centered around such concepts as "oppressive
wage," "oppressive work-week," "substandard wage," and "substandard
work-week." The standards for an "oppressive wage" and "oppressive
work-week" were to be set by Congress, with the provision that they
might be altered by the Board under certain conditions, while the
Board itself was empowered to set a minimum fair wage and maximum
fair work-week. The outstanding feature of this wage and hour formula
was its extreme flexibility.

This formula, however, was changed by the Senate so that there
would be just one set of standards to be fixed by the Board, with
variations drastically reduced so as not to exceed a forty-cent
maximum or a forty-hour work-week minimum. These provisions remained the same in the First House bill, and when the Second House bill shifted authority from the Board to an administrator and wage and hour committees, the committees were bound by the same considerations that had governed the Board. The Third House bill contained a rigid, progressive, scale, eliminating differentials and the necessity for any discretionary agency to alter rates. Provision for flexible standards was incorporated in the Conference bill, which represented a compromise by setting a rigid, progressive, formula within which flexibility was allowed.

The act's wage and hour formula, therefore, was much less flexible than that of the original draft. Where the Black-Connery bill had originally contemplated a forty-cent floor, with variations up to eighty cents per hour, the act provided for a twenty-five-cent floor the first year, a thirty-cent floor the next six years, and forty cents thereafter. Where the bill had originally proposed a forty-hour ceiling, with the Board empowered to revise it downward, the act established a ceiling of forty-four hours the first year, forty-two the second, and forty thereafter. Not only did the act set much lower standards than the original bill, but it restricted the range in which the administrator might alter them. Although flexibility had been retained as a concession to the South, the standards were much less flexible than the South wanted them and much more so than labor desired. And although the administrator had been granted a measure of discretionary power, being allowed
to approve rates anywhere between twenty-five and forty cents the first year, the overall effect of the act was greatly reduced, considering that it would take seven years to reach standards that the original bill sought to establish immediately.

As to the child labor provisions, the supporters of this prohibition were divided into two groups, one favoring the simple prohibition of the interstate transportation of goods produced by children, while the other favored the Wheeler-Johnson amendment, based upon the prison-made goods theory. "Oppressive child labor" was defined in the original bill as the employment of children under 16 years of age or the employment of children under 18 year of age in any industry defined as hazardous by the Chief of the Children's Bureau. The Senate Labor Committee altered these regulations so as to allow the employment of children below 16 if such work did not interfere with their schooling or endanger their health or well-being. In addition, the Committee exempted from coverage children employed in agriculture and those employed by their parents.

These regulations, however, were changed when the Senate accepted the Wheeler-Johnson amendment, which contained a dual approach to the problem, setting forth an outright ban coupled with a prohibition against the transportation of goods made by children into states with laws prohibiting such goods. Although advocates of the dual approach claimed that it was superior to the simple ban in that at least one approach was likely to survive a court testing, opponents believed that it was wholly inconsistent and confusing. As Secretary Perkins pointed out, the Wheeler-Johnson amendment would require that
employers publicly admit to the employment of children under conditions which under other sections of the amendment would involve criminal offenses. The Secretary objected to the amendment, not only because the principle followed in the prison-made goods act was not applicable to the regulation of child labor, but also because it involved complicated administrative problems and would set up artificial barriers between states which would obstruct commerce.  

With the Administration thus opposed to the amendment, it was struck out of the First House bill, and the original, simple approach was reincorporated. All further efforts to substitute the Wheeler-Johnson provisions were defeated.

The act, therefore, defined "oppressive child labor" as the employment of children under 16 years of age or the employment of children between the ages of 16 and 18 in occupations which the Chief of the Children's Bureau found hazardous. Children 14 or 15 years of age might be employed if the Chief of the Children's Bureau determined that such employment did not interfere with the child's schooling or impair his health or well-being. Children working for parents, those employed in agriculture while not required to attend school, and those employed as actors in motion pictures or in theatrical productions were exempted.


The exclusion of the Wheeler-Johnson amendment and the elimination of the Labor Standards Board, which had been empowered to grant exceptions to the child labor provisions of the Black-Connery bill, made the prohibition in the act much less flexible than those in the earlier bills. Nevertheless, it was not entirely satisfactory to reformers, who pointed out that while it was a step in the right direction, it covered only the small number of working children engaged in producing goods for interstate commerce. It dealt with approximately 30,000 to 50,000 children, who would be withdrawn from industry, out of an estimated 850,000 minors, 15 years of age or under, who were gainfully employed. Hence, it affected less than six per cent of the working children, and virtually exempted agriculture, where some seventy per cent of all child laborers were employed.5

On the other hand, there was a definite advantage gained by the act in placing administration within the Children's Bureau, which had acquired valuable experience in the administration of the child labor law of 1916. The Bureau's staff of experts would be able to draw upon their first-hand knowledge of state practices, as the Bureau had made it a policy to strengthen state services through federal-state cooperation.6 Not only this, but the act

6 Ibid., 393, 399.
would also help advance state age limitations and thus bring many
who formerly went unprotected under a more uniform system.

Although the act's provisions had been altered and its wage
formula changed, it nevertheless utilized the same principles to
justify regulation and government intervention in free enterprise
as the original bill. Like the Black-Connery measure, the act
relied upon a broad utilisation of the powers of Congress over
interstate commerce in order to eliminate conditions that were deemed
detrimental to the health, efficiency, and well-being of the workers.
In language similar to that of the original bill, the act stated
that substandard conditions 1) were spread by interstate commerce
among the states; 2) directly burdened the free flow of goods
in interstate commerce; 3) constituted an unfair method of competition;
4) led to labor disputes obstructing the free flow of goods; 5) and
interfered with the orderly and fair marketing of goods. Both the
bill and the act declared that Congress, having recognized the effect
of such conditions in interstate commerce, should exercise its power
to eliminate them. However, the language of this provision, requiring
that the act be administered so as to avoid curtailing employment
or earning power, is somewhat more restricted in the act than the
original bill, indicating that Congress was concerned with the
effect of the act on the economy. It is indeed an interesting
paradox that this legislation, originally framed so as to increase
wages, purchasing power, and employment, contained a cautionary
clause stating that its provisions should be carried out so as not
to result in unemployment. It appears that the controversy as to whether wage regulation would increase purchasing power and reduce unemployment or whether it would disrupt industry and increase unemployment had been settled in favor of the latter argument.

The elimination of the Standards Board and the substitution of an administrator and wage and hour committees removed much of the discriminatory power originally granted to the Board and followed the tested machinery utilized by state wage legislation. Actually, the substitution of an administrator placed in the hands of one man much of the power that would have been exercised by the five Board members. The administrator was to appoint industry committees for each industry requesting alteration of wage rates. The committees were empowered to investigate conditions, take evidence, and recommend rates which would be put into effect if approved by the administrator. Whereas the Black-Connery bill made industry committees advisory, the act made them mandatory and prohibited the administrator from fixing rates without a committee recommendation.\(^7\)

In addition to appointing these committees, the administrator was authorized to collect data regarding wages and hours, inspect manufacturer's records, investigate working conditions, and utilize state and local agencies to aid him in the administration of the act. Like the bill, the act established a system of court review in the Circuit Courts by which anyone subject to the orders of the administrator could petition for a review of his case.\(^8\) Hence, the

\(^7\)Sections 5, 8.

\(^8\)Sections 9, 10, 11.
enforcement and administrative provisions of the act were, in many respects, similar to those of the original bill.

As far as exemptions from the act are concerned, they furnished Congressmen an opportunity to favor home industries and provided opponents an opportunity to obstruct the bill's passage by loading it down with objectionable exceptions. Generally, they were of three types: exemption from the wage provision, from the hours provision, or exemption from both. The act exempted all those classified as professional or executive employees, seamen, fishermen, self-employed, or those engaged in agricultural employment, and in addition, exempted from either the wage or the hours provision employees engaged in the seasonal or perishable food and canning industries. The main difference among the bills was the way the problem was handled. In the Black-Connery bill there were few specific exemptions, but the Board had broad power to make necessary exemptions. As the bill progressed through Congress, the administrative discretion became more narrow and the exemptions greater in scope. However, with the narrowing of the discretion and the listing of the exemptions, many exceptions that might have been made by the Board under the original bill were not included in the final act.

Apart from the difficulties in administering the complex provisions of the act, Congress placed broad responsibilities of statutory interpretation on the Wage and Hour Division of the Labor Department. Great uncertainty occurred because the fundamental factor in the determination of the coverage of the law was not the
nature of the employer's business but the nature of the job of each
class of employees. Among the factors to be considered were the use
of vague, elastic, and broadly inclusive language establishing
coverage and the delegation to the administrator of the power to
define the meaning of terms establishing exclusions and exemptions.
There was great uncertainty as to the concept of "employees engaged
in commerce" and of "employees engaged in the production of goods
for commerce." It was this latter phrase that seemed to extend
coverage to all employees in a plant engaged in activity "necessary
to the production of goods."\textsuperscript{9} Although the administrator was expected
to interpret these provisions broadly, the final determination remained
in the courts. Nevertheless, it seemed that the legislation was intend­
ed to include all employees whose connection with commerce was
sufficiently direct so that regulation could be validated under the
doctrine that federal jurisdiction extended to all activities
substantially affecting or entering interstate commerce. Although
these considerations created a large degree of uncertainty about the
legislation at the time it was passed, perhaps the chief limitation
of the act was that it had no application to employees in exclusively
intrastate occupations.

Few enactments in New Deal legislative history had such a stormy
career and raised so many fundamental questions within so short a

\textsuperscript{9}Frank E. Cooper, "The Coverage of The Fair Labor Standards Act
And Other Problems in Its Interpretation," Law and Contemporary
period of time. Yet in spite of numerous compromises made to resolve opposing points of view, the provisions finally accepted appeared better than those in the original measure. If greater flexibility and administrative discrimination were eliminated, so too was the possibility of irreparable harm in the absence of an inspired job of administration.

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The scope of the act was reduced, not only by the changes in its wage formula and administrative provisions but also by two important economic factors which were utilized by both the opponents and the advocates of the measure. Although the recession was not considered a serious threat to the legislation until the autumn of 1937, by December of that year it was of such importance that many opponents of wage regulation declared that all further government attempts to regulate business should be abandoned and that the country should be given a "breathing spell" from further New Deal experimentation. Opponents argued that any kind of wage regulation which forced up wages and increased costs would have no other effect than to increase unemployment and reduce purchasing power, thereby prolonging and worsening the depression. However, an increase in purchasing power and a reduction in unemployment, along with the abolition of the sweatshop, were precisely the ends that the legislation sought to accomplish, and the controversy over the
impending effects of wage regulation upon the economy indicated that
the Administration's argument had not been accepted, at least by a
majority of Congressmen. The recession, therefore, emphasized the
dispute over the economic theories upon which the proposal was
based and aided those who sought to defeat the bill or reduce its
effectiveness.

Before the bill had been introduced, it appeared that both
organized labor and businessmen had accepted the concept of govern­
ment regulation of wage standards for the purpose of relieving
unemployment and raising purchasing power. Although it opposed
national regulation, even the NAM seemed to agree with the
legislation's basic principles. The NAM endorsed a general wage
level for similar work and similar conditions in a locality, a
general standard of working hours consistent with the welfare and
health of employees, and the abolition of child labor. These
were the very principles by which the Administration sought to aid
the unemployed and restore purchasing power, and the best New Deal
lawyers wrestled with the problems inherent in writing nationwide
standards that would be applicable to all industry. However,
geographical and industrial differences, as well as differences in
the cost of living in different sections of the country, made the
setting of such standards impossible. Legislation setting standards

10 Report of The Committee on Employment Relations, National
Association of Manufacturers, December, 1936, Roosevelt Papers, F. D.
Roosevelt Library, File 264.
had to take into account that not all industries would be able to make enough money to pay the fixed rates, and no matter how desirable the objectives, economists could not ignore marginal industries and workers.\textsuperscript{11}

Yet, a strong case was made for government wage fixing, as there was ample evidence that competition failed to work perfectly, that a considerable degree of monopoly existed, and that wages were not being fixed by a natural law. All of these conditions justified national wage regulation, for as long as there were many non-competitive factors at work, there was a strong case for government participation in fixing some rates.\textsuperscript{12} There was indisputable evidence as to the need for regulation in certain industries where severe competitive pressure induced employers to drive wage scales down to inadequate levels, and there was no economic reason, as distinguished from a constitutional or political reason, why such regulation should not cover men as well as women and children.

Nevertheless, the opposition utilized a number of powerful arguments in order to weaken the Administration's case for regulation. First it pointed out that the legislation would not affect most of the sweatshop industries because they were local operations. Secondly, it alleged that wage regulation would not be effective unless

\textsuperscript{11}J. A. Loftus, "Wages and Hours," \textit{Commonweal}, July 30, 1937.

accompanied by economic planning in other areas, and that, in any case, fixing wages would be impossible when so many different factors had to be considered. But perhaps the most effective argument was that the "purchasing power" theory of recovery was an economic error and that wage regulation would force prices up faster than incomes with a resultant increase in unemployment. Dividing the volume of work, it was said, would not increase production or raise living standards. Opponents of the measure condemned the "purchasing power" theory, alleging that while wage rates were at a peak, unemployment was still very great. Supporters of the measure were accused of overlooking the fact that setting minimum wages would force a scaling up of all wages and that it would be impossible to reduce hours without a proportional increase in rates. This attack on wage and hour regulation did not go unanswered, however, as proponents were quick to point out that while the number of men at work had decreased over the previous twenty years, output per worker had increased by thirty per cent. It followed that a cost rise would be offset by a gain in productivity and that the establishment of minimum wages would not necessarily be inflationary.


If the scope of the act is taken as a criterion, it appears that the attack on the Administration's theory of unemployment relief through wage regulation was completely successful. Although no systematic attempt was made to enumerate the number of employees covered, since coverage would finally be determined by the courts, it was estimated that the number:

1) covered by the act 11,000,000
2) receiving less than 25¢ per hour 300,000
3) receiving less than 30¢ per hour 550,000
4) receiving less than 40¢ per hour 1,181,000
5) working more than 44 hours 1,381,000
6) working more than 42 hours 1,751,000
7) working more than 40 hours 2,181,000

The disparity between the 1,681,000 that were to benefit from a wage increase or a reduction in hours and the estimated eight million that would have benefited under a forty-cent per hour, thirty to forty-hour work-week formula emphasizes the reduction in the scope of the act. Whatever chance the Administration's "purchasing power" theory had before the autumn of 1937, the recession, labor's concern over bargaining, and southern concern about differentials soon thereafter induced Congress to ignore it and confine the act to the elimination of sweatshop conditions.

This is not to say, however, that the rejection of the "purchasing power" theory eliminated all favorable potentialities from the new law. Perhaps one of the most important implications of the legislation

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was the statutory recognition of the fact that living conditions of those in the lowest income group were not to be determined solely by the market mechanism. It was a complete denial of the thesis that a competitive market without any regulatory intervention would result in the greatest good to the greatest number of people. The act assured many workers a better living than they would otherwise have been able to secure due to their weak position in the labor market. It would have, in addition, a favorable effect on other economic developments. Enterprises where productivity was low would eventually be eliminated, forcing production to shift to more efficient industries, and experience indicated that shorter hours would lead to improvements in the quality and quantity of production.\(^{17}\)

Therefore, notwithstanding the reduction in the scope of the legislation, it appeared that the country would benefit from a redistribution of the national income in favor of the worker. Any development that increased labor's share in the national product would help reduce the instability of the economy from which the country had suffered in the past.

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As to the part played by organized labor, its position on the

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measure was somewhat complicated by the fact that, not only was it divided on the issue of craft versus industrial unionism but both of these divisions were at odds on wage and hour legislation. There is little evidence that the AFL played an important part in the legislative gains of 1935 to 1937, as it continued to believe that any attempt by statute to interfere with a union's right to carry out a contract with employers was an interference with union organisation. Hesitant in giving the policy of wage regulation unqualified support, it approached the issue with caution and reservations. The Federation believed that the first attempt to fix minimum wages by means of a wage board system, made under a New Zealand compulsory arbitration law, was designed to curtail rather than further labor's right to organise and bargain. That compulsory arbitration became an integral part of minimum wage regulation in Australia was considered a valid reason for caution on the part of many labor officials in their approach to a wage law. The AFL, therefore, was unwilling to jeopardise its basic rights to secure minimum wage legislation.18

On the other hand, the CIO, strongest in basic, mass-production industries which were national in scope, believed that its exercise of power could be effectively advanced by cooperation with national rather than state or city governments. The CIO, therefore, tended to believe more in price and production controls set up by the

federal government, while the AFL preferred to rely on friendly local administrations that would advance craft unionism. 19

As late as 1936 there were conflicting opinions within the AFL on the issue of a minimum wage for men as well as women, a fact which helps explain the inconsistent course of Federation action on the wage measure in the following years. There was even some difference on the AFL's Executive Council on the Thirty-Hour bill, which came to light at the AFL convention of 1936. President Hutcherson of the Carpenter's Union expressed opposition to wage fixing by law, declaring that what the state could give, it could take away. Apparently Green did not publicly oppose Hutcherson, but asserted that the Federation's policy was to obtain the Thirty-Hour law. 20

When the wage bill was introduced, both the AFL and CIO supported the basic principles upon which it was based. Yet neither the AFL or CIO gave it an unqualified endorsement. Federation officials, privately clinging to the traditional Comper's doctrine that minimum wages would become the maximum, openly opposed the measure. 21 Perhaps because he knew the attitude of his AFL officers, President Green apparently tried to reduce the scope of the bill and make it appear as

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19 Herbert Harris, Labor's Civil War, Alfred A. Knopf, New York, 1940, 100.


an exception to the general rule against wage fixing. This seems to be born out by the concept that the Federation would accept regulation where there was no collective bargaining. It was this principle that was incorporated in the "Green Amendments," which the Federation submitted during the hearings, but which were not adopted by the Senate. Although the House Labor Committee attempted to meet the Green demands and accept the Federation's recommendations, the opposition of AFL officers Williams, Frey, Hutcheson, and Woll, along with that of the southerners and Republicans, successfully bottled up the legislation.

The Executive Council tried to explain to the Federation convention in the autumn of 1937 why Green had not demanded the recommittal of the bill to the Senate Labor Committee. The convention was told that the adoption of the Green Amendments would have reduced government control over wage regulation to a minimum, but this explanation was not convincing. A resolution introduced by the same group that had opposed the bill reprimanded Green for his support of the measure and required him to consult with the officers of the Building Trade, Metal Trade, Union Label, and Railway Departments before taking any further action on the measure.23

22 Derber, op. cit., 222.
Although Mrs. Norton tried to meet the earlier objections of the AFL, by the time of the special session in December, 1937, its attitude had hardened, and it joined the NAM and conservative southerners in defeating the bill. Trying hard to justify its opposition, Green referred to the recession and the unfairness of the Labor Relations Board, although neither argument seemed relevant to the bill. The Federation's campaign for the Dockweiler-AFL measure was a failure, and it might have known that its proposal was so rigid as to be impractical and completely unsatisfactory to the South.

After helping to kill the bill in 1937, opposition in the Building Trade, Metal Trade, Union Label, and Railway Departments created a deadlock through March when the Administration sought to resolve the problem through the Ramspeck subcommittee proposal. The Administration believed that if these groups could be induced to consider something other than the Federation bill, the deadlock could be broken.  

Although the CIO favored Ramspeck's compromise, the full Committee turned it down because of AFL and NAM opposition. After Mrs. Norton introduced her bill with its rigid escalator rates, the Federation supported it vigorously and warned that it would oppose a compromise report favorable to the Senate version. When the House and Senate

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24Memo, March 10, 1938, Roosevelt Papers, F. D. Roosevelt Library, File 2730.

25Perkins, op. cit., 262.
agreed on the Conference compromise, the Federation accepted it, declaring that while it had undeniable faults, it did meet the fundamental requirements of the AFL.

Thereafter, the AFL claimed credit for the ceiling and the floor written into the act and for the elimination of the Board. Indeed, Green has made the Federation's fight for the statute appear heroic. The AFL, he said, had to counteract the opposition of "reactionary groups" as well as seek modification of undesirable or unreasonable proposals advocated by the authors of the Administration draft. It was the unyielding stand of the AFL, he declared, that was mainly responsible for the successful passage of an acceptable measure. Green alleged that it was this refusal of the AFL to surrender on the basic standards that prevented the bill from foundering in the face of attacks by opponents and defeatist statements by CIO spokesmen, who were willing, he said, to compromise its most essential provisions. 26 Looking at the Federation's stand another way, what he did not say was that the AFL was also responsible for the defeat of the measure twice and for the possibility of there being no wage legislation at all. As it was, the attitude of the AFL delayed the passage of the bill for a year and weakened it materially. In 1937, with united labor support, a forty-cent minimum and a forty-hour work-week might have become law. A twenty-

26Green, op. cit., 142.
five-cent floor and a forty-hour work-week were a large price to pay for a reduction of the legislation's scope.

During the long fight for the bill, there were several occasions when Congressmen were at a loss to know where the AFL stood because of conflicting statements from its spokesmen. While it is somewhat inaccurate to say that AFL leaders did not "give a damn for those at the bottom of the heap," it is perfectly clear that the Federation was hostile to the whole concept of wage regulation from the beginning and later accepted the inevitable with reluctance. It's opposition to wage regulation was old and intrenched, and even the depression did not dislodge it. Opposition and indifference also came about because its officers did not expect minimum rates to do much for skilled trades, while if by chance minimum wages exceeded union rates, they expected that the union movement would be weakened.

The CIO, on the other hand, was more favorable to regulation, but Lewis, also afraid of wage-fixing, was no more enthusiastic than Green. Nevertheless, the CIO was less conditioned by traditional AFL thinking, seeing unions as effective pressure groups and believing in the possibility of building union membership on favorable labor legislation as well as on collective bargaining agreements.

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It was no secret, however, that Lewis lost interest in the measure because of its low minimum standards and thereupon turned the whole matter over to Sidney Hillman. The scales were too low to benefit the miners or the mass-production workers, who were demanding wages around a dollar per hour. But Hillman, agreeing that twenty-five cents was too low, nevertheless argued that it was necessary to make a start and consider improvements later. It is alleged that Lewis, wanting no part of the bill, finally proposed that Hillman take over the campaign as "his baby." 29

While the statement attributed to Lewis that, were it not for Hillman there probably would not have been a wage law, is somewhat extreme, there is no doubt that he was the driving force behind the CIO's campaign. For a year the CIO, through the Washington office of its political affiliate, Labor's Non-Partisan League, organized a tremendous lobbying campaign to ensure the success of the measure. Hillman worked tirelessly for the proposal, convinced by the Textile Worker's drive in the South that it was hopeless to try to organize workers who made six dollars per week in the cotton mills when their employers were stoutly defended by the local authorities. He was convinced that only a political attack on a national scale would correct the situation and lessen the downward drag of the marginal workers on the organized worker. However, important as his role was,

it is difficult to believe, as it has been alleged, that his collapse in November, 1937, brought to a halt the campaign for the bill.\footnote{Ibid., 431-32, 441-42.}

This simple explanation does not take into account the powerful opposition of the AFL and the southern bloc.

It was definitely demonstrated, however, that the nationwide unity of organized labor behind the bill was the driving power that finally brought about its enactment. In the opinion of Representative George O. Sadowski (D-Mich.), chairman of the Michigan delegation, it was the joining of the AFL with the CIO in support of the measure that changed the attitude of Congress. This unity, he said, infused a new aggressiveness among New Deal Congressmen and mobilized powerful forces against reaction.\footnote{U. S. Congress, \emph{Congressional Record}, 75th Cong. 3rd Sess., Appendix, 3215.}

While it is possible to agree that labor was responsible for the campaign that finally forced the measure through, in view of the opposition of the officers of the AFL and the indifference of Lewis, one must also conclude that organized labor was not primarily responsible for the Fair Labor Standards Act. Perhaps more important than any other factor was the great depression and the favorable climate for experimental legislation that it created. In addition, the country was confronted with the problems of industrial unrest and was more aware of the importance of purchasing power.
However, it was the leadership of Roosevelt and Perkins, as well as the President's supporters in Congress that secured the passage of the legislation. The conservative Democrats and organized labor, with the exception of Hillman's branch of the CIO, had to be won over.

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Having determined that the Fair Labor Standards Act was not primarily the creation of organized labor but was instead the work of the President and his supporters, some evaluation of Roosevelt's actions and the Administration campaign for the law is necessary. Such an evaluation must consider Roosevelt's philosophy, the responsibility for the provisions of the act and its drafting, the Administration's strategy in the fight for the bill, and the performance of the President's adherents. It should be realized that the bill was drafted in almost complete secrecy, making it difficult to get at the facts behind the controversy over the legislation.

Secretary Perkins has maintained that the President arrived in Washington in 1933 prepared to devise some method of placing a limitation on hours and a floor under wages to guarantee workers at least a subsistence wage.\(^{32}\) The basis of his political program

\(^{32}\)Perkins, op. cit., 254.
was an economic philosophy, largely derived from Progressivism, which included the concept that society owed a debt to those who suffered from economic misfortunes. He believed that provision should be made for such persons as a duty of society and as a right of the individual, rather than as charity. Roosevelt first implemented these theories when, as governor of New York in 1931, he was instrumental in initiating cooperative action that later led to an interstate pact between five New England states, Pennsylvania, and New York, aimed at securing uniformity of employment standards, particularly with reference to women.

It has already been pointed out that Roosevelt, although favorably inclined towards the Thirty-Hour bill, nevertheless refused to support any hours limitation that did not also make provision for maintaining wage rates. He was, therefore, induced to incorporate a program of wage regulation within the Recovery Act. At this time, Secretary Perkins was considering a plan, similar to the wage bill, that had been submitted by Hillman, but the committee called by Perkins to study it was submerged in planning for the NRA. During the period of doubt over the future of the NRA, Perkins had Charles

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O. Gregory, Labor Department Solicitor, prepare a wage bill, contemplating a procedure under which minimum wage boards appointed by the Secretary of Labor would investigate standards, conduct public hearings, and recommend minimum rates.

During 1936 Perkins held the Gregory bill in abeyance, as Roosevelt delayed action on new wage legislation, mainly because of the adverse decisions of the Supreme Court and because of a growing disposition among conservative elements of the AFL to think that the Walsh-Healey public contracts act and the Wagner labor relations act were enough. Although he delayed action, he did provide for two studies of the industrial problem by establishing the Committee of Industrial Analysis and the Council for Industrial Cooperation.

When Roosevelt finally became convinced that he could not have his way on the Court issue, he decided to go ahead on the wage bill, and according to Secretary Perkins, approved a draft based on the principles of the Gregory plan plus various theories suggested by other advisors, all in a lengthy measure drafted by Benjamin Cohen and Thomas Corcoran. Just what part each of the advisory groups played in the development of the bill is difficult to determine, but it appears that the final draft incorporated suggestions from the Gregory version and that of the Council for Industrial Cooperation.

The final plan of the Council's attorney Siegfried Hartman had been submitted to the President, approved by the Justice Department, and elaborated by Justice Department attorney Walter L. Pope.37 John O. Painy, chairman of the management group of the Council, testifying at the Joint Hearing, contended that the Black-Connery bill was "strikingly similar" to the principles first suggested by the Council and that it incorporated many of the provisions originally submitted in the Council's proposals.38 While the Council's version incorporated the concept of a federal agency empowered to approve agreements made by industry committees to regulate unfair competition, including wage standards, the Black-Connery bill was not at all concerned with fair trade practices, and the Administration never seriously considered incorporating wage legislation and trade practices regulation in the same bill. Yet the two drafts employed the same technique of operation, both relying on industry committees to suggest rates, which would be approved by an administrative agency and would be subject to a review by the courts. On the other hand, the Council's plan was based upon the power of Congress to prohibit unfair practices in interstate commerce, while the Administration's draft was based on the power of Congress to regulate interstate commerce. Hence, the two proposals were basically dissimilar in

37Letter, Hartman to McIntyre, April 22, 1937, Roosevelt Papers, F. D. Roosevelt Library, File 466.

their approach to the problem, in spite of Paine's claims to similarity.

The Gregory plan appears no more similar to the Black-Connery bill than the Hartman draft. Where Gregory proposed wage and hour committees to be appointed by the Secretary of Labor, the bill made industry committees advisory and empowered the Board to set rates, contemplating at the same time a floor for wages and a ceiling for hours. The only thing that the two plans appeared to have in common was the procedure for administration and court review. In spite of the fact that she publicly supported the Black-Connery bill, Secretary Perkins criticized its wage provisions as unsound, declaring that minimum wages should be set by wage and hour committees, industry by industry.

Whatever the origin of these provisions, in April, 1937, before leaving on his fishing trip in the Gulf of Mexico, Roosevelt turned over to Corcoran his notes, a paper on the reasons for combining wages, hours, and child labor in one bill, and two corrected confidential drafts of the legislation for a final drafting by Administration lawyers. While the final bill was the work of the group of lawyers surrounding Corcoran and Cohen, it appears from the Joint Hearing that much of the drafting was done by Justice Department attorney Walter L. Pope. This is born out by the testimony of Assistant Attorney General Jackson, who indicated that, not only was Pope more

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39Memo for the files, April 27, 1937, Roosevelt Papers, F. D. Roosevelt Library, File 466.
familiar with the measure's provisions than he was but also that Pope had done a large part of the study for the legislation. As the record indicates, Jackson frequently relied on Pope to substantiate his remarks: "... perhaps Mr. Pope, who had worked on the actual draft of this bill ... Mr. Pope, who did a large part of the detailed study of this for the Department of Justice ... Just what relationship there may have been between Pope and Hartman can not be determined until Justice Department records are released for study.

It seems clear, however, that the bill was drafted under a new concept of constitutional power, covering not only employees in interstate commerce, but also those who "produced goods for interstate commerce." This approach was thought out by Jackson, Cohen, and Labor Department attorneys Gerard Reilly and Rufus Pool, after consultation with Felix Frankfurter and other lawyers.

Although it was frequently compared with the NRA, the Black-Connery bill was in no way comparable, relying on a new theory of the commerce power of Congress, utilizing federal administration of congressionally set standards rather than voluntary codes, and confining itself to labor standards rather than covering all fair trade practices. The measure, therefore, was more of a delayed attempt by the President to add wage fixing provisions to the Black Thirty-Hour bill than a proposal to revive the NRA.


Without dwelling at length on the Court issue, suffice it to say that as a maneuver to further the New Deal legislative program, the President's plan was a grievous failure. While his proposal might have been justified prior to the liberal shift of the Court, after this occurred, his refusal to compromise aided those who sought to block his program. Roosevelt's insistence on his plan only served to further alienate the conservative elements in Congress and played into the hands of those who thought that the New Deal had gone far enough. The rejection by the Senate Judiciary Committee of his Court bill was of great importance, for in spite of Roosevelt's prestige, he could not win a majority on a Committee that was five-sixths Democratic. The Committee's report was seen as a deliberate attempt to align all conservative elements in the Democratic Party for a political war on the New Deal. 42

In addition to the Court issue, there were numerous groups that were bitter over the executive department reorganization plans, business regulation, relief, and the wage bill. The southerners took advantage of the President's obstinacy, lining up opposition to the Black-Connery bill by trading votes with the bloc fighting the Court measure. 43 Belatedly, Roosevelt attempted to end the


revolt, but his Jefferson Island meeting was only superficially successful. He was unable to convince the Democrats that any "emergency" existed that would justify quick action on his program. The refusal to accept this view accounted for the modified version of the Senate bill and the refusal of the House to take any action on it before Congress adjourned.  

The unexpected opposition on the part of Congress and organized labor induced Secretary Perkins to take special measures on behalf of the bill. Forseeing a difficult problem in getting the legislation through, she placed on her staff a former Interior Department attorney, Rufus Pool, whose job was to know the bill and its daily progress. Pool devoted his energies to determining precisely the objections to the measure and by whom they were held. Secretary Perkins credits him with a great deal of the success in getting the bill through, for by canvassing Congressmen, he ascertained specific objections and knew how large a body was favorable to the various proposals.  

As a result of the adjournment of Congress in August, 1937, without taking action on the measure, House Rules Committee chairman O'Connor, Labor Committee chairman Norton, and the President himself were subjected to criticism from the proponents of the legislation.  


45 Perkins, op. cit., 261.
The Rules Committee was condemned for its refusal to let the bill come to a vote, but it was pointed out that Roosevelt was partly responsible for the Committee’s unprecedented degree of power. It appears that he had deliberately fostered autocracy in the House by condoning the refusal of House leaders to hold caucuses and by consenting to the rule whereby the signatures necessary to bring a bill to the floor were increased to 218. Roosevelt agreed to this in 1933, it was alleged, in order to block the Thirty-Hour bill and paper money bills without appearing to oppose them.\footnote{\textit{"What Happened To the Wage and Hour Bill?"}, The New Republic, September 1, 1937.}

Hence, he was in part responsible for the fact that control of the House rested with the conservative oligarchy.

Representative O’Connor, sensitive to criticism that he had failed to induce his colleagues to release the measure, urged each of them to allow the House to consider the bill on its merits. Going on record in its support, he pointed out that in any event it would be considered and would eventually become law. He said that if the Rules Committee failed to act, 218 members would surely sign a petition, putting the Committee in a bad position. O’Connor reminded them that a vote to release the bill would not commit any Committee member to support it.\footnote{Letter, O’Connor to each member of the Rules Committee, October 13, 1937, Roosevelt Papers, F. D. Roosevelt Library, File 2730.}

In spite of this support, O’Connor later became a victim of...
the President's "purge," being denounced by Roosevelt as one of the most effective obstructionists in the House, who had labored to tear down New Deal strength.\textsuperscript{48} The Rules Committee chairman was both condemned as the "trigger-man" responsible for knifing progressive policies and defended as a champion of wage legislation, whose sole offense was his opposition to the Federal Reorganization bill.\textsuperscript{49}

As to Mrs. Norton, the complaint against her was that she did not know much about labor and its relation to industry and that she lacked parliamentary skill and capacity for debate.\textsuperscript{50}

Having been routed in the first campaign in the struggle, the President decided to make a "barn-storming" trip through the West to bring the issues directly to the people, and during this time he received much advice as to whether or not to call a special session that autumn. He was advised by one Congressman from the South that ninety per cent of the people in his home district were for the President's program and supported a special session. The Congressman pointed out that a special session might be of political value in view of the April primaries, if it gave Congress an opportunity to pass the legislative program then pending.\textsuperscript{51}

Coming to the conclusion that the country was behind him and

\textsuperscript{48}New York Times, August 17, 1938.


\textsuperscript{50}Newsweek, November 29, 1937.

\textsuperscript{51}Letter, Representative W. D. McFarlane (D-Texas), to Roosevelt, September 9, 1937, Roosevelt Papers, F. D. Roosevelt Library, File 419.
that it supported his program, Roosevelt called the special session, only to see the wage bill go down to defeat once again in the face of the combined opposition of Republicans, conservative Democrats, national business organizations, and the AFL. The campaign on the bill was intense, with both sides utilizing every means to win support. Even though Harry Hopkins, WPA administrator, was helpful in lining up the Louisiana delegation, it switched over to the opposition at the last minute because of differences within the state Democratic machine. And the same Hudson County machine that sent Mrs. Norton to the House also joined the opposition and had its representatives help kill the bill. There was also evidence that the Chamber of Commerce and the National Association of Manufacturers had undertaken a nationwide campaign to defeat the bill. A member of the latter group, the Southern Pine Association, set up the Southern-Mid Western Committee, which published articles attacking the legislation in farm journals in an attempt to win over the farm vote.

As a result of this opposition, the President not only suffered his second major defeat of the year but for the first time a New Deal social measure was defeated. An intimate advisor describes Roosevelt as furious over the defeat and only slightly less bitter.

52 Despatch, McIntyre to Hopkins; Despatch, Hopkins to McIntyre, December 2, 1937, Roosevelt Papers, F. D. Roosevelt Library, File 2730.

than he was about the Court setback. While he muttered about the southern betrayal and was bitter in regard to those who had deserted him, he nevertheless resolved that he would see the legislation reintroduced. He was afraid that the country would say that Congress, in rejecting the wage bill, was "flying in the face of modern civilization," especially if the Democratic Party offered no substitute for the proposed legislation. The burden, he believed, was on those who rejected the bill to offer some other plan. He refused, however, to consider other proposals that did not attempt to abolish low-paying, sweatshop standards, even though they attempted to deal with the employment problem.

Evidencing the same tenacity, or stubbornness, that proved so unfortunate in regard to the Court issue, Roosevelt once again made the wage bill a part of his legislative program in January, 1938. While he worked to win the support of the southern governors and while the opposition maintained its attacks on the legislation, the House Labor Committee worked vainly to obtain a compromise that would be acceptable to both the South and organized labor.

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55 Roosevelt to Senator Hattie Caraway, December 20, 1937, Roosevelt Papers, F. D. Roosevelt Library, President\'s Personal File 5456.

56 Letter, Roosevelt to Senator Francis Maloney, January 7, 1938, Roosevelt Papers, F. D. Roosevelt Library, File 264.

It appears that after four months of labor, the Committee was at a standstill. Mrs. Norton reported that she was "sick and tired of meeting and adjourning without doing anything" and that she had told her Committee that the President was going to the country to insist on a wage bill. In this way, she said, she hoped to break the deadlock and get her Committee moving. The issue was resolved on April 14, the same day that Roosevelt made another appeal for the measure, when the Committee rejected Ramspeck's draft, which was designed to please the Rules Committee, and accepted Norton's bill, which supposedly came from the Labor Department.

Although the CIO and Labor's Non-Partisan League had lobbied for Ramspeck's compromise, when a canvass of the House revealed that there were not enough votes to carry it, Mrs. Norton submitted her plan, whereupon the CIO and the League shifted their support to her plan and worked loyally for it. As it appeared that the full Committee did not discuss her draft for more than a half an hour before reporting it out, Ramspeck considered himself betrayed and announced that he would oppose it. Nevertheless, the bill had finally been wrenched from the Labor Committee, and the fight shifted

58 Memo, Norton to Roosevelt, April 13, 1938, Roosevelt Papers, F. D. Roosevelt Library, File 2730.

59 Perkins, op. cit., 262.

to the Rules Committee, which was still unalterably opposed to letting it come to the floor.

It seems that the attitude of Congress towards the legislation was determined as much by the results of the May primaries as by the lobbying of the bill's opponents or advocates. According to E. L. Oliver, who was directing the campaign of Labor's Non-Partisan League, twenty per cent of Congress was pro labor, another twenty per cent opposed, while the remaining sixty per cent had no convictions of any kind, except that they wanted at all costs to be reelected. "Doubtful" Congressmen were only concerned as to how a vote on the legislation would affect their chances of election or defeat in the next campaign. They asked themselves, said Oliver, whether the loss of support from employers would be offset by the labor vote. 61

This observation perhaps explains why the turning point in the campaign came after the Florida and Alabama primaries, when in a changed atmosphere, the bill was taken from the Rules Committee and passed without a serious study. 62 On the other hand, there is some doubt as to the significance of the primaries in the success of the petition that brought the bill to the floor. It does appear that the Administration played up the primaries as proof that Roosevelt was certain to be the issue in a class versus class

61 Josephson, op. cit., ibid.

campaign. The propaganda worked, with the result that most of the Democrats yielded, having in mind Roosevelt's ability to punish independence. Although the prevailing attitude was to string along with the President, it seemed clear that many Congressmen were caught between his popular support and conservative pressure, and would have been glad to have been relieved by a filibuster or by the Rules Committee from voting on the measure.63

Whatever the exact cause of the favorable outcome, Roosevelt made a remarkable comeback after the defeats of the previous sessions. When Congress met in January in an atmosphere of criticism and revolt, all signs pointed to his further eclipse after a major blunder and defeat and a severe depression. But he had rallied his Administration and, with the backing of labor, had finally carried out his campaign promise to secure a federal law abolishing sweatshop standards.

* * *

As the New Deal has sometimes been characterized as "revolutionary," so too was the Fair Labor Standards Act criticised as a revolutionary departure from the hitherto accepted principles of democratic capitalism. This attitude towards the legislation was

taken, not only by conservatives and businessmen but also by a large part of organized labor. Criticism of this kind overlooked the fact that by 1938 all states had child labor laws, forty-three states had hours laws for women, forty-seven had hours laws for men, and twenty-five had minimum wage laws for women and children. The passage of the wage and hour bill did not, therefore, represent a sharp break with laissez faire in this field but was rather a logical step in a movement that had been progressing for many years.

Federal legislation was based on somewhat different principles than those embodied in state laws. The states were mainly attempting to mitigate the evils of the sweatshop, particularly among women and children, whereas the federal law not only attempted to attack the same problem, but in addition, sought to aid the unorganized through legislation based upon a "purchasing power" theory of recovery. While it is not easy to distinguish between motives, nationwide regulation was justified by the desire to protect health, reduce unemployment, increase wages, and eliminate industrial disputes. The opposition to the original Black-Connery bill and the reduction of the scope of the act, however, clearly indicate that the consideration of the health and welfare of the sweated worker was of paramount importance and that the emphasis was not on reemployment. Far from being revolutionary, therefore, the Fair Labor Standards Act was a logical extension of regulation in a field in which the states were powerless to correct conditions detrimental to the welfare of the nation.
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