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LEGAL, ECONOMIC AND POLICY ASPECTS OF WAGE STABILIZATION*

Guy Farmer**

I. THE ECONOMIC AND LEGAL BASIS FOR WAGE STABILIZATION

WAGE stabilization is a touchy subject, particularly with employees and labor unions. It is easy enough to see why this is so. Whenever you tell a working man that the law will not permit him to have a wage or salary increase, which he feels that he both deserves and needs, you can expect to encounter strong opposition and even bitterness. This puts a heavy burden indeed on labor organizations who have been expected not only to go along with but also to participate in the government machinery for enforcing wage ceilings.

I can certainly sympathize with the feeling of the working man on this subject. His adverse reaction to wage control is a factor to be recognized. But, the average working man does not understand, and can hardly be expected to understand, the economics of the situation and the relationship which exists between wages and prices. The fact is—as every student of the most elementary economics knows—prices, in a freely rising economy, will always stay ahead of wages, and the superficial advantages which employees obtain from wage increases during an inflationary period are completely illusionary.

It has been proved by experience during World War II that it is impossible to control prices if wages are uncontrolled. What happens is wage increases bring continually increased pressure to bear on price ceilings until the price ceilings are eventually broken and labor's gains in wages are more than wiped out by a disproportionate rise in the cost of living.

Therefore, as much as it hurts, wage stabilization is inescapable if we are going to stabilize prices at any reasonable level and halt the upward spiral in the cost of living.

Make no mistake about it, inflation is not just a future threat; it is a present calamity. Unless it is halted, we could quickly reach the stage where a working man could carry his wages home in a gunny sack and still not have enough to buy bread for himself and his family.

*Address delivered at the Conference on Labor Relations in a Mobilized Economy, held at West Virginia University on April 13 and 14, 1951.
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WAGE STABILIZATION

Taking the period 1935-1939 as the base, the cost of living for all items combined has risen from 100 to 181.5 as of January 15, 1951. In other words, the cost of living has almost doubled. What is even more alarming, approximately 50 points of this increase have accrued since June 15, 1946 when the index stood at 133.3.

Wages can never hope to keep abreast of such a spectacular rise in the cost of living, particularly if we think in terms of take-home pay, since individual taxes have also increased many-fold since the 1933-1939 period.

In short, labor always loses in the race between wages and prices, and it is labor, including the middle class, salaried worker which stands to profit most from price control coupled with wage stabilization. After all, it is not the dollar amount of earnings but purchasing power in terms of commodities and services which determine the real value of a man's earnings.

Such is the economic reason for wage control. The legal basis appears in the Defense Production Act of 1950. Title IV of this act deals with price and wage stabilization. It specifically ties wages in with prices and makes it mandatory for wages to be stabilized whenever price ceilings are established. This works either in the case where a price ceiling is placed on a particular industry or business or where price ceilings are imposed generally. In other words, the law requires that price and wage control go hand in hand.

The law does not, however, require that wages be completely frozen. It simply requires that they be "stabilized", and this term "stabilize" suggests that Congress intended that, whenever prices are controlled, wages should likewise be controlled at some level bearing a fair and reasonable relationship to prices and to the over-all cost of living. The responsibility for carrying out this critical and difficult task is placed on the President of the United States, but the President is empowered to delegate the job to existing agencies or such new agencies as he may establish. As we shall see, the President has made that delegation.

II. THE ORGANIZATION OF THE WAGE STABILIZATION BOARD

The Wage Stabilization Board was established by Executive Order (No. 10161) on September 12, 1950. The same order provided for the creation of the Office of Price Stabilization. The executive order provided for a single director of price stabilization,
but, on the wage side, it provided for a tripartite board, composed of three public, three industry and three labor members. Both the price director and the wage board are subject to the supervision and direction of the Economic Stabilization Agency, which is now headed by Eric Johnston. The ESA is in turn responsible to the Office of Defense Mobilization which reports to the President.

It was necessary to coordinate through some over-all agency the activities of the price administrator and the wage board, since the Defense Production Act clearly ties wages and prices together and contemplates a coordinated and interrelated program.

III. Scope of Wage Regulations and Penalties

There has been considerable confusion in the public mind as to the nature and scope of the wage regulations. For example, Stan Musial, the slugging outfielder of the St. Louis Cardinals, seems to have been flabbergasted to learn that the regulations apply to him and prevent him from taking advantage of a very substantial raise.

The fact is that the coverage of the regulations is extremely broad. The original freeze regulation, issued on January 26, applies to every person in every business or activity in the entire country who works for an hourly wage, on a piece rate, or on a salary or commission. It applies to bank presidents, janitors, grocery clerks, salesmen, laundry truck drivers, and every one else. Doctors and lawyers and teachers are covered if they work for a salary. However, fees charged for professional services are exempted by a specific provision of the Defense Production Act. A few others have since been exempted by regulation. These exemptions are strictly limited, affecting only employees of state and local governments and employees of charitable, religious and educational institutions. However, even as to these exemptions, the regulations state that, although exempt, these institutions are expected to conform to the wage stabilization policies announced by the board, and the board has reserved the right to review any wage or salary adjustments made to these groups and revoke the exemption at any time without prior notice.

It may be interesting to glance briefly at the penalties which may be incurred for violation of the regulations.

In the first place, it should be kept in mind that a person who receives a wage or salary increase in contravention of the
regulations is as guilty as the person who pays it. In the event of violations, the violator becomes subject to a criminal penalty, involving a fine of $10,000 or imprisonment for not more than one year, or both. Also, the President can by regulation provide various other penalties, such as taking away the privilege of deducting illegal wage payments for tax purposes. In World War II this was done, and the regulation went so far as to provide that the entire amount of the wages paid, not just the illegal excess, should be disregarded as a business expense for tax purposes. No similar regulation has yet been issued under the present statute.

In addition to these penalties, the board has the power by delegation from the President, to go into court and enjoin violations of the regulations.

Insofar as I know, there have as yet been no convictions and no injunctions issued against violators of the wage regulations, although there is no doubt that many violations, some innocent and some intentional, have occurred. This is because the board is not now functioning as I will later point out, and also because the organization is new and has not yet been staffed sufficiently to pursue any kind of a vigorous enforcement policy. But, no doubt it will come, and we may expect more and more vigorous enforcement as time goes on.

IV. The History of the Wage Stabilization Board

The Wage Stabilization Board has had an interesting and stormy history. It was provided for by Executive Order on September 12, 1950, but the members of the board were not actually appointed until October 10. Its labor members resigned in a body on February 15, 1951, and it has not since been reconstituted. Therefore, it was in operation as a board for less than four months, and, in actual fact, it has never truly functioned. Whatever wage stabilization has been achieved has been accomplished around and in spite of the board, rather than through its operation.

At this very moment, frenzied efforts are being made to reconstitute the board, and the behind-the-scenes maneuvering, so typical of the Washington scene, is at its height. This is indeed a critical moment, and decisions are being reached which will be far-reaching in their consequences. It is, therefore, an appropriate time to examine the history of the board, evaluate its prior
activities and attempt to forecast something of its future and the future of wage stabilization.

As has been seen, the decision to establish a single administrator for price control and a tripartite board for wage control was made by the President and not by Congress.

This decision was, in my opinion, responsible in large part for the failure of the board. The theory that problems involving labor should be handled by a board composed of equal numbers of labor, management and public members has taken firm root in the thinking of our government, and where labor disputes are involved, it certainly has merit. Such was the composition of the War Labor Board in World War II. However, where the need is for the establishment and enforcement of an effective program of wage control, such a setup was doomed to failure from the outset. Asking labor and management to administer wage controls is very much like expecting effective price control from a board whose majority membership is composed of wholesaler and retailers.

It is only necessary to take a look at the record of the Wage Stabilization Board to discover how pitifully ineffective it has been. The board did not start to function until January 1951. When the general price freeze was issued on January 26, the Defense Production Act made it mandatory for the wage board to stabilize wages. This was the first test for the tripartite board, and the board flunked it completely. The board could not agree on a wage freeze, and, therefore, the first freeze order of January 26 was issued, not by the board, but by Johnston, the economic stabilizer.

The first wage order of any significance issued by the board was General Wage Regulation 2, issued on January 30, 1951. This was not a wage freeze or a tightening of the freeze. Rather, it was a liberalization of the freeze to validate increases agreed to but not put into effect prior to January 25. This regulation was issued by the public and labor members, with the industry members filing a strong dissent.

After this liberalization, nothing of significance was done by the board, while it argued and fought over a wage formula to be substituted for the freeze order of January 26. On February 12, Regulation 5 was issued, permitting merit and length of service increases to be made, and, although this was again a liberalization, the labor members dissented because they believed the board
WAGE STABILIZATION

should order employers to open up their payroll records to labor unions.

Meanwhile, the internal fight over the wage formula, which eventually was embodied in Regulation 6, continued to rage, and rumors were rife in Washington that the dispute centered on escalator clauses and on the percentage of increase allowable—whether six per cent, eight per cent, ten per cent, or twelve per cent.

However, the board was never able to agree on a formula. On February 15, Regulation 6, providing for a ten per cent increase over January 1950 wage and salary levels, was issued by the board, not as an order but simply as a recommendation to Johnston, and, thereafter, on February 15, the labor members resigned from the board and labor staged its dramatic walkout from the entire mobilization program.

Since then wage stabilization has been in the lap of Johnston who has handled it for all the world like the hot potato it assuredly has proven itself to be. The only other thing of any significance which Johnston has done since the demise of the board was to issue Regulation 8, on March 8, validating escalator or cost-of-living clauses incorporated in contracts which were in effect prior to January 25, 1951.

V. PROPOSALS FOR RECONSTITUTING BOARD

It would be foolhardy to attempt to evaluate all of the factors which motivated the walkout of labor. Obviously, their discontent was not with wage stabilization alone but with price control and the entire mobilization program. The walkout was a power play to dramatize their dissatisfaction and to put pressure on the administration to give them a full partnership in the government. In part, also, it was a personal slap at Wilson, whom they dislike and perhaps would like to force out of his top mobilization job.

The walkout of labor gave the administration an opportunity to start afresh, and abolish the tripartite setup, which had failed so dismally, and appoint a wage administrator. But this was not done, and apparently will not be done. Instead, Johnston's office has attempted and is still attempting to bring labor back in the fold and reestablish a three-headed board. From all reports, it appears that he is willing to go a long way to satisfy the labor group. The chief bone of contention seems to revolve around the question of whether or not the board will be given power to
adjudicate disputes—including both wage disputes and non-
monetary issues, such as union security, check off, arbitration,
jurisdictional disputes, management functions, operating pro-
cedures, seniority and other matters.

Labor is holding out for vastly enlarging the powers of the board and reports are that Johnston has given in in large part to their demands, and is now seeking industry approval. So far, this has not been forthcoming. My own view is that, granting the board the authority to settle wage disputes and labor disputes generally would be a serious, almost a tragic, error. It would be just as unfortunate—perhaps more so—for labor as for anyone else.

Before explaining the basis for this view, it might be of interest to set forth what is understood to be Johnston’s proposal for reconstituting the wage board:

1. The board would be reconstituted as an eighteen-man tripartite board.

2. The new board would adopt and administer wage stabilization rules and regulations, subject to policy review by Johnston’s office.

3. The new board would be granted the power (not previously within its authority) to hear and adjudicate labor disputes where the parties agree to submit the dispute and be bound by the decision.

4. The new board would be granted power to hear and adjudicate any dispute certified by the President as affecting the national defense program.

VI. DISCUSSION OF PROPOSAL

Item 1. The Eighteen-Man Board. There appears to be no objection to doubling the size of the board, which would not alter its tripartite character, although this is the first time on record when anyone has suggested that the way to solve a problem is to multiply it by two. It is unfortunate that the tripartite arrangement has not been abandoned since it has already proved unworkable as an instrument for wage control. In opposing a tripartite board, I wish to make it clear that my purpose is not to freeze out labor from the defense program. I believe that labor’s cooperation is essential and that labor should be given a real voice in defense mobilization. For example, I would approve an advisory committee on wage stabilization composed of labor and industry representatives, and I would urge the Admin
istration to consult it frequently and place careful heed to its views. But, where the actual making and enforcement of policy is concerned, I firmly believe this should be done by persons representing the public, who are not subject to pressures and influence from any special group. I would exclude industry as well as labor from the policy-making authority.

Item 2. The Administration of Wage and Salary Controls. This was, of course, the sole reason for the establishment of a wage board, and there can be no objection to this proposal. It is only to be hoped that the board will concentrate on the objective and devise and enforce a workable wage policy.

Items 3 and 4. The Settlement of Wage and Other Labor Disputes. This is the real joker in the Johnston proposal. If this proposal is adopted, and it now appears that it will be, we may as well abandon what little hope we have of getting effective wage control. And, not only that, it will forecast the end of genuine collective bargaining and the voluntary settlement of labor disputes. It will usher in through the back door a system of compulsory arbitration which may well prove a permanent part of our national life. Unions, no less than employers, should abhor such a development.

I hope that you will not shrug off my alarm at these developments as mere rash predictions. There are many eminent experts in this field who entertain the same fears. It is perfectly obvious what will happen to wage control if the wage board is given the power to settle wage disputes. By this, of course, I do not mean disputes as to the application and interpretation of wage regulations and policies. This board already has and should continue to have power to dispose of this kind of dispute. I am referring now to disputes between an employer and a union as to whether or not the employer should grant an increase which would be in excess of what the regulations permit. The War Labor Board handled such disputes during World War II, and the result was continuous pressure applied in thousands of individual cases to exceed the wage ceilings. Under such pressure, our experience has proved beyond doubt that wage ceilings or formulae finally bend and then break. It is impossible to hold any kind of firm wage line if recognition is given to the right to constantly hammer on a case-to-case basis at the wage ceilings.

The fact is that, if we seriously intend to hold a line on wages, we must first decide upon a fair and reasonable formula,
whether ten per cent or fifteen per cent, and then we must have the guts to say "no" to any efforts to break the dike, however determined and widespread they may become. If it is known that the government means business about holding the line on wages, unions and employees will learn to accept the situation, and it will be possible through collective bargaining to reach settlement within the ceilings. But, if there is provided a forum for seeking approval of increases in excess of ceilings, the unions and employers will either (1) make settlements for more than the ceilings provide, and petition for board approval, or (2) if the employer will not agree, the union will take the case to the board as a dispute. In either event, wage control will eventually become a nullity.

In short, therefore, I believe that the granting to the board of the power to decide wage disputes, involving the question of how much of an increase the employer should grant, will divert the board from its function as a stabilizer of wages and pervert it into an instrument for pushing wage ceilings higher and higher by compulsory means. If this is done, price ceilings will also be broken, and runaway inflation will be the result.

This is not all. Under the Johnston proposal, as I am given to understand, the new wage board would also be given the power to decide non-monetary disputes such as union security, management prerogatives, seniority, disciplinary rules, vacation, and the like.

At the outset, speaking as a lawyer, I seriously question whether the President has the authority to give any such power to the wage board. Title V of the Defense Production Act states that the national policy shall be "to place primary reliance upon the parties to any labor dispute to make every effort through negotiation and collective bargaining and the full use of mediation and conciliation facilities to effect a settlement in the national interest." It might be possible to meet this requirement by providing that no dispute should be submitted to the board until all voluntary means of settlement have been exhausted. However, this same title of the act further states that, before procedures for settling labor disputes are established by the President, he shall call a conference of management, labor and the public and that he shall take such action as agreed upon by such conference. This seems to contemplate that the holding of such a conference is a condition precedent to the establishment of disputes settlement
machinery, and, moreover, that there must be agreement on the
course to be followed. No such conference has yet been called.

Legal objections aside, however, my fundamental quarrel
with the proposal is that our experience in World War II demon-
strated conclusively, in my opinion, that, where government pro-
vides a board to settle disputes, the result is compulsory arbitration,
and collective bargaining goes out the window. And, if we
voluntarily discard the democratic process of free collective bar-
gaining between management and labor for a system of govern-
ment arbitration, we will be giving up a fundamental freedom
which may not be restored during our lifetime. This emergency,
according to many responsible officials, may last for many, many
years, and all our citizens who believe in democracy should hesitate
to subscribe to a course which would turn over to the government
the settlement of disputes which are now being worked out at the
plant level by the give and take of collective bargaining between
the employer and the union representing his employees.

It will do no good to provide that a dispute cannot go to the
board until collective bargaining has been exhausted. Again,
experience has shown that, if there exists a governmental forum
for airing disputes, there is always the possibility that employees
can obtain from the government board more than they can secure
by negotiation. On the opposite end of the stick, employers will
hold back something in order to improve their position before the
board. That being true, collective bargaining is exhausted quickly
without really being given a chance to succeed, and the board is
deluged with literally thousands of disputes. Collective bargaining
then becomes a sham as our World War II experience under the
War Labor Board so clearly shows.

We should not overlook the fact that we are by no means
helpless now to handle labor disputes and even strikes that might
threaten our defense program. The National Labor Relations
Board has long had procedures for settling disputes relating to
representation rights and unfair labor practice, and it now has
the authority to enjoin certain illegal boycotts and strikes. We
have the process of collective bargaining which has been highly
successful, for we must remember that it is only in the rare case
that collective bargaining fails. We have voluntary arbitration
under many union contracts, and we have a Federal Mediation and
Conciliation Service if an impasse in bargaining is reached. And,
if all these fail as they sometimes do, we have the emergency pro-
visions of the Labor-Management Relations Act, which have been invoked in strikes of great national importance. Most of our serious strikes have affected an industry or at least a substantial part of an industry, and it is this type of strike that we have most to fear. If such strikes occur, the emergency provisions of the Labor-Management Relations Act are available and should be invoked rather than by-passed by the establishment of a national arbitration board. If the emergency provisions of the Labor-Management Relations Act are not adequate or if they are unfair, they should be changed, but we should not trade them for compulsory arbitration by government decree.

All of these procedures exist alongside of, and are compatible with, the continued functioning of collective bargaining and the other voluntary means of settling disputes. Government arbitration is not. They are also compatible with a large degree of industrial freedom for employers and unions alike, and arbitration by a government board is not. If we value this freedom, as I know we all do, we should not relinquish it so lightly for the superficial advantages of a governmental agency for settling disputes.

VII. An Alternative Proposal

Since I have been rather critical of apparent administration proposals for reconstituting the Wage Stabilization Board, I should perhaps state briefly my own affirmative views. In this, I do not wish to appear presumptuous, but merely to set forth an alternative proposal for purposes of comparison. In my opinion, the first and primary job of the Wage Stabilization Board should be to hold the line on wages. I recognize, of course, that there is a direct relationship between wages and prices, and also that we cannot expect labor to go along with rigid wage control while we are following a liberal policy on prices. However, I am certain that we cannot enforce any kind of wage control, if we start out with an administrative setup and with policies which, by their very nature, make effective control difficult to the point of being well-nigh impossible.

I believe as a citizen that inflation is our greatest threat—apart from Communism itself—and that we must all—including industry and labor—be willing to tighten our belts and make real sacrifices. This means that we must be prepared to accept price and wage controls even where it hurts—not just for everybody else—but for ourselves as well. Therefore, I favor a stern price
and wage policy, and I believe that this is also the view of the great majority of the American people. If such is to be the policy, it will pinch many employers and many more wage earners. The pressure to relax the controls will come from many sources, and it will be continuous and strong. Consequently, if price and wage controls are to work, they must also be administered with a hard heart and a strong hand. I do not believe that a tripartite board is the proper instrument for either forging or enforcing wage policy any more than it would be appropriate for administering price control.

I would like to suggest the following approach:

1. A strong policy toward price control, including holding the present line and even rolling back some commodity prices.

2. Abolition of the tripartite wage board, and appointment of a single administrator over wages.

3. Establishment of a clear cut wage policy, and strict adherence to that policy. The administrator would have no authority over disputes, either wage disputes or otherwise. The administrator would, of course, have the power to revise the wage regulations, or interpret the regulations, but he would not entertain any petitions to lift the ceilings in particular cases, except where the case fell within certain recognized exceptions, such as individual hardship cases. Any change in policy should be general in application and not confined to particular parties or cases.

4. The wage regulations should be simple and understandable, and parties should be prohibited from making any agreement for an increase in excess of the regulation. By the same token, it should be made unlawful to strike for increases beyond what is permitted by the regulations. This would, in effect, be a strike against the government.

5. Employers should support the wage policy by refusing to agree to excessive wage increases for the purpose of submitting them to the board for approval. This is unfair to the wage administrator and makes effective wage control extremely difficult.

6. Labor disputes should continue to be handled by collective bargaining, conciliation and voluntary arbitration, with recourse to the emergency provisions of the existing law only in event of strikes endangering the national health, welfare or safety.