

# CONTROLLING RETAILERS

A Study of Cooperation and Control in the Retail Trade  
With Special Reference to the NRA

BY

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*To my parents this house,  
built, like the first,  
with hammer and saw.*

## PREFACE

THIS book traces the reactions of retailers to experiments in the social control of merchandising.

My interest in this subject can be traced to a seminar in which Professor Wesley C. Mitchell developed the thought that basic to any economic theory were explicit or implicit assumptions about human nature. I was anxious to undertake a case study—to view the actual behavior of business men in order to learn what assumptions could properly be made concerning their economic nature and, conversely, to see the full implications of these assumptions when reflected in a pattern of action. An analysis of this kind would necessitate a detailed study of a particular group of men at work in their characteristic milieu.

An opportunity to undertake such a study occurred when, through the courtesy of Grover H. Whalen, I obtained a position on the staff of the Retail Code Authority—City of New York. The winter at the Authority provided understanding, in terms of specific cases, of the problems with which the Retail Code dealt; innumerable interviews, much reading and statistical analysis afforded further insight into the way in which the Code seemed to have operated. The story developed thru these investigations is the subject of this book.

This story falls into five major sections. Part I deals with the history of government control and cooperation among retailers prior to the summer of 1933; it examines the way in which retail cooperation developed, what type of needs it answered, the method by which it grew, and the stage of development which it had reached when the NIRA

became law; in short it pictures the attitudes, customs, and institutions inherited by those retailers who were the actors in the NRA experiment. The next section tells the story of the drafting of the Retail Code; here we are interested in the outlines of the battle of wits waged by proponents of conflicting opinions or opposed interests and the means by which agreement was achieved. Part III presents the problems and processes of Code administration; in this section we aim to discover the way in which the actions of the men administering the law and of the men who were the subjects of regulation conditioned the problem of administration. In Part IV we survey the terrain: what were the changes in the status of the retail employee, the retailer, the previously existing group relations, which occurred during the lifetime of NRA; how did the law in practice relate to the law on paper? In the concluding section we attempt to proceed from the particular to the general: does the story of retailer cooperation and behavior under the Code develop any pattern of a sufficiently generalized nature to possess at least partial applicability to other fields of business enterprise or to other attempts at trade regulation?

A limited number of assumptions are necessary to the analysis. I have assumed that the vague purposes of NRA—the promotion of the public interest, or more specifically, the improvement of the general standard of living and the reduction of insecurity and waste—are good objectives in a capitalist economy. I believe this to be true. But I have gone farther: the analysis in the first four Parts starts with an uncritical acceptance of the methods by means of which the NRA sought to achieve the public interest—minimum wages, shortened hours, the regulation of trade practices and prices; the machinery designed to embody these methods is then examined in order to determine how it operated; criticism in the final section is based on the conclusion that the

methods were bad because the machinery did not, in fact could not, work, the plan was based on inadequate historical insight. The framework on which this book was constructed was dictated by the belief that a plan for society typically calls for a blueprint of the kind of person of which society is to be composed. The failure of planned societies is most likely to result not from deficiency in the theory of the scheme nor even typically because people simply violate the regulations but because the inevitable interstices and leeways which must exist in any plan are utilized by individuals in the direction which they, equipped with an inherited ideology, think profitable.

But the approach which has been followed gives rise to several difficulties. In the first place, since my purpose has been to trace the social implication of individual behavior, the study is of necessity detailed and therefore long; summaries could not be used to abbreviate the discussion but only to clarify it. In the second place, the conclusions are largely negative—the plan was unrealistic, the job was impossible to perform. Negative criticism, since it is notoriously easy to find fault, is always suspect. Yet it seems to me that one can only follow where the evidence leads. If a task is not feasible, if moreover there are actual dangers in undertaking it, then realization of the futility avoids costly error. But analysis provides a basis not only for total acceptance or rejection but also for the selection of the workable from the unworkable in order that the former might conceivably be rearranged in a new pattern. In the third place, the method that has been adopted has made it necessary to tell the story from a point of view sympathetic to NRA. This may give the impression that people who worked in harmony with the National Recovery Administration were "good" and those who opposed it "bad." It

should be noted, however, that such an evaluation ignores the further question of whether the NRA itself was "good" or "bad". Moreover, the judgment refers to actions and not to motives. Altruistic motives might conceivably have been responsible for acts which either furthered or hindered the progress of NRA, as could selfish motives. In this analysis we are interested in the social consequences of individual behavior, we are interested in motives, but we are not concerned with ethical evaluation. We wish simply to discover how people act, not to judge how they ought to act. We are inquiring into the influence of their aggregate behavior on an attempt to regulate economic life.

A book of this kind obviously could not have been written without a great deal of assistance from a great many people. It has benefited, in the first place, from the constant and ingenious aid of my husband, Edward C. Mack; his careful reading of the manuscript at two stages of preparation is responsible for a considerable portion of whatever clarity the book may have. To the many others who through their un-failing helpfulness have made it possible to obtain the information necessary to the study I owe a large debt of gratitude. I name a few to whom I am especially indebted: Dr. Isador Lubin, Commissioner of Labor Statistics, Mr. H. J. Kenner, Director of the New York Better Business Bureau, Mr. Channing E. Sweitzer, Managing Director of the National Retail Dry Goods Association, Mr. Richard M. Neustadt, Managing Director of the National Retail Code Authority and his two assistants, Mr. Hollander and Mr. Raffa, Dr. A. Howard Myers, Executive Secretary of the National Labor Relations Board, Mr. Joel Berrall, staff representative on the Retail Code of the Labor Advisory Board, Professor Kenneth Dameron, who was generous with both information and valuable criticism.

Members of the Faculty of Political Science of Columbia University have helped me with this work through contributions both general and specific. To Professor James W. Angell I am indebted for crucial training; he gave me tools with which to work and the wish to use them. Professors Samuel McCune Lindsay, Paul Nystrom, Leo Wolman, Karl N. Llewellyn and Arthur R. Burns have read the manuscript and offered criticism of essential value. Professor R. S. Alexander read the book in first draft and throughout the work gave me the benefit of his insight into the problems with which I was dealing. To Professor Wesley Clair Mitchell, under whom the dissertation was written, I am indebted for sustaining encouragement and criticism. But in addition, and of precious worth, consultation with him has afforded me the opportunity to gain at first hand an appreciation of standards of scientific work and of the invigorating discipline which those standards impose upon the scientist.



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**PART I**

**PRE-CODE COOPERATION AND CONTROLS**

## CHAPTER I

### INTRODUCTORY

THE National Industrial Recovery Act seemed, in 1933, to be a new departure in American economic life, and assuredly there was in the extensive federal regulation of all types of competitive practices a vast amount of innovation. Yet inspection of the rules devised to regulate industry, and even more, a study of NRA in practice reveals an intricate consanguinity between the new control measures and their relevant past. In part indeed the government actually worked through and expanded forms already in existence. The NIRA explicitly aimed to implement trade ethics, to make of selected and approved aspects of trade lore a Law Merchant. Trade associations were to take active part both in drafting and administering codes. But even where no such identity can be observed, NRA will, in various ways, be seen to reproduce the past. The measures designed to improve conditions of labor had their partial counterparts in state legislation or effective union contracts. The laws endorsed by the government to regulate trade practices, production and prices bore a striking resemblance to control measures voluntarily devised by industry and trade. Finally the actual practice of NRA in contradistinction to its mere abstract formulations, was in many ways a mere replica of previous efforts at control.

That these resemblances should exist was almost inevitable from the nature of the case. As far as the laws themselves were concerned there was, because of the desperate need for precedents, a good deal of borrowing; where this was not the case, a common genesis—the felt need for regu-

lation—produced similarities. With regard to actual practice a further human element enters the picture: the men and women engaged in transacting the nation's business are for the most part the same men and women before and after a statute such as NIRA is entered on the Congressional record; the ideology of these individuals can hardly be abruptly transformed either by the law, or, for long, by the circumstances that were responsible for its enactment; the institutions imbedded in business practice stubbornly resist an attempt to change their character or quality. The gravitational pull exerted by the continuity of individuals, ideology and institutions would all tend to transform the reality of any desk- or conference-made statute into something far closer to the conditions which it sought to correct than was perhaps originally intended.

Accordingly, since past and present are intimately linked, it is necessary, in order to understand the way in which retailers reacted to the new restrictions and sanctions embodied in the 1933 venture in cooperation and control, to understand the content, purposes and methods of voluntary cooperation of the past: What did retailers seek to accomplish through group control devices; how many of the desiderata were at least partially achieved; how and by whom were the gains made? Out of the answers to such questions ought to develop insight into retailer attitudes and conduct under NRA. Moreover, into the otherwise empty code clauses should be poured a rich content.

Cooperation is the answer to a need. As such, it grows out of the nature of that need which in turn is crucially influenced by the nature of the competition arising in a given field of endeavor. Therefore, before discussing the form which cooperation took in the retail trade, the method by which it grew, and the content and purposes which it developed, it will be useful briefly to survey the physiography of its habitat.

## SECTION I: THE RETAIL TRADE

There were about one and a half million establishments engaged in retailing in the United States in 1933. But the word "retailing" does not refer to a single type of business; it refers to a related group of businesses in much the same sense as does the word "manufacturing". Accordingly, the one and a half million retail establishments differed drastically as to the kind of trade which was conducted within their walls. Almost a half of these stores (about 45%) were engaged primarily in providing their customers with food. Another 20% were engaged in selling, supplying, or servicing automobiles. The rest of the stores listed in the census of distribution supplied to the ultimate consumer whatever needs he was willing to spend money to satisfy—pins, furnaces, tropical fish, newspapers, pearl necklaces, second-hand clothes.

The "retail trade" discussed in this book is for the most part only that portion of the total trade subject to the NRA General Retail Code. The larger categories of the group include establishment selling, general merchandise, apparel, furniture, household supplies and hardware.<sup>1</sup> Including the smaller trade categories, they totalled about 370,000 establishments or about one quarter of all retail stores and about 36 per cent of the dollar volume of retail business.

If it were possible to split the six digit number, 370000, into the individual stores which it represents, if it were further possible to mount each separate establishment on a moving conveyor-belt stage, we would view a curious parade of contrasts.<sup>2</sup> About every second store (55% of the total)

<sup>1</sup> See part II, page 163n for detailed list of types of stores.

<sup>2</sup> The figures used in the following discussion have been based on a very approximate classification of the stores which come under the General Retail Code. By subtracting from the data for the Total Retail Trade, information concerning the food, automotive, and restaurant groups, a



would be a tiny shop having an annual business of less than \$10,000 a year or \$192 a week. The storekeeper and his family would often live in the same building in which they worked. About one proprietor in three would be assisted by a full-time person other than a partner. But about once in every 1000 stores there would appear a large and imposing building which housed an annual business of one million dollars or more. These largest stores, 569 in all, would each employ an average of about 900 full-time workers, together they would be found to employ 36% of the employees passing in review. The concentration of employment in the larger stores is further emphasized when we note that 3.7 per cent of the stores, those selling over \$100,000 worth of goods annually, employed 63% of the retail employees roughly classified as coming under the General Retail Code. Conversely, starting with the smallest stores, we find that three quarters of the stores, those having an annual volume of less than \$20,000 employed less than a fifth of the total number of employees. For this group there were about 41% more proprietors than full-time employees. Although we need only to look at the procession of stores in order to observe the difference in size of individual establishments, another type of size differential is less obvious though no less significant. About one out of every ten stores is linked to four or more discreet establishments by membership in the same chain system.<sup>3</sup> Thus, though they may remain

total of 546,465 stores are obtained. The proportions cited in the next three paragraphs have been computed on the basis of this group of stores from data in U. S. Department of Commerce, Bureau of the Census, *Census of American Business, Retail Distribution: 1933, Stores and Sales by Size of Store*.

<sup>3</sup> Department of Commerce, Bureau of the Census, *Census of American Business, Retail Distribution: 1933, Chains and Independents*. Proportions stated in the text are based on data for chains after subtracting information on grocery chains, combination grocery and meat chains, restaurants, motor vehicles and filling station chains.

moderate in size, the advantages of largeness can be obtained in buying and in management skill.

As the last store rolls out of sight we are left puzzled; what could this incongruous group of objects have in common? How can the tiny shop coexist with the huge corporation? Certain characteristics of the business of retailing indicate the direction in which the answer to these questions may be found. It will be useful briefly to outline them since the major characteristics of competition have conditioned the form and problems of cooperation—the question in which we are primarily interested.

Small and large stores alike are confronted with the same problem: how to induce the consumer to enter and buy at a price that will cover costs and if possible yield a profit. But men in paneled executive suites share with the men in unpainted shops not only a central problem but, more specifically, a pool of customer purchasing power. In the most concrete sense, large and small store, clothing, furniture or grocery store compete for the fifteen dollars that Mr. Smith gave to Mrs. Smith late Saturday afternoon. For at any one time the total spending power of consumers is limited and roughly equal to their income (minus saving plus borrowing).<sup>4</sup> Accordingly, the gain of one store must of

<sup>4</sup> The possibility of influencing a customer's decision in regard to borrowing or saving introduces an element of elasticity which contradicts the idea of fixity. But since both borrowing and saving represent at best a small percentage of total income for the majority of individuals in the country, the importance of this element, except in relation to luxury goods, can not be very large. Moreover we are interested not in the total amount of either borrowing or saving but in that portion which has been increased or decreased as the result of pressure exerted by retailers or manufacturers. Although the extent to which it is possible to decoy extra spending must be based largely on a value judgment, there seems to be some evidence which indicates: (1) People "eat up savings" only as the result of extreme need. (2) The urge to put away any additional income for a rainy day is strong. (Cf. U. S. Bureau of Labor Statistics,

necessity be the loss of another. It is not surprising, therefore, to find that competition in the retail field is intense and has in a sense an essentially predatory quality.<sup>5</sup> It is also not surprising to find retailers desperately fearful of new forms of distribution.

The significance of the limited dollar fund of purchasing power is emphasized by the fact that competitive areas are essentially local. Around the home of each potential customer could be drawn a series of concentric circles. Those having a relatively short radius would enclose the locality within which grocery stores, drug stores, novelty shops etc., competed for the daily trade of the householder; a somewhat wider circle would bound the area within which the consumer would make her more important weekly purchases of food, would purchase shoes, minor items of clothing, household utensils and the like. For the more exceptional pur-

Standard of Living Survey in 1918; note rapidity of increase in the proportion of income saved as absolute income increased. See also, *The Behavior of Consumption in Business Depression* by Arthur Tebbutt, Harvard University, Bureau of Business Research Studies, no. 3, August, 1933.)

(3) Typically, people borrow money only as the result of outright need. (4) Installment purchasing may perhaps cause individuals to spend money which they would otherwise save but for the most part, except when the obligations of an installment contract are not met, the effect of the offer of time payment is to lengthen the time period in which income and expenditure must equate. (It is interesting to note that for the individual the result is exactly the opposite, installment payments offer a method of making weekly expenditure equal to weekly income.)

<sup>5</sup> In manufacturing it is possible to introduce new products that either create or tap a new market. It is possible, in other words to attract customers on the positive basis of excellence of quality, price or design of a product. In retailing the range for constructive ingenuity is narrower. A retailer must attract customers away from other retailers by superior merchandising, by superior management which makes possible lower prices and / or more attractive service and surroundings, or by superior ability to create illusion in either of these respects. True, there is a highly creative element in all three of these processes—the difference between retailing and manufacturing is merely one of emphasis.

chases, the circle bounding competition might have today a diameter of several hundred miles, whereas, for exceptional and usual purchases alike, mail order transcends space. The radius within which individuals trade has increased greatly during the last twenty years<sup>6</sup> because of the growth of the mail order business, because of the influence of the automobile and the paved road. Moreover city standards have been brought to the country by the motion picture and high pressure advertising. But essentially the customer of the retail store is tethered to her home, although the rope may stretch with time or the length vary for different kinds of purchases.

The common denominators of an identical market and an essentially similar purpose and problem does not explain how it is possible for the three hundred million dollar company and the three thousand dollar business to coexist in the retail field. In order to understand this fact we need recall that it requires little capital of either money or experience to set up a retail business.

It has been estimated that the average grocery store starts with less than \$2000. When the ability to obtain merchandise on credit is considered, the amount of actual cash required to start a store may be seen to be very small indeed. But the amount of experience of many store owners is also small; a large proportion of them may not have had even a

<sup>6</sup> The movement began around 1911, was marked by 1920, and by 1925 substantial shifts had taken place. In 1928 the trading radius of some large towns of 100,000 population and over was 100 to 150 miles. The stores which were most affected were those carrying shopping goods. (National Bureau of Economic Research, *Recent Economic Tendencies*, McGraw-Hill Book Co., New York, 1929, pp. 331-6. See also Horace Secrist, *The Widening Retail Market and Consumers' Buying Habits*, Northwestern University Business Studies, A. W. Shaw Co., Chicago-New York, 1926.)

clerk's training in the type of store which they plan to open.<sup>7</sup> In many cases a store is used as a method of increasing an income derived in part from other sources which are chronically or temporarily inadequate.

The ease with which an individual can enter the retail business has meant that the number doing so is large. But a high entrance rate implies of necessity a high mortality rate; probably about one third or one fourth of all retailers go out of business each year.<sup>8</sup> Because of the high mortality rate, there has always been a wide fringe of establishments that are on the verge of going out of business, that are, therefore, struggling for existence at any level and in any way which would permit them to continue in business a little longer. The resulting tendency to drag down standards of competition is clear—labor will be paid anything which will buy its services, merchandise will be sold for anything which will be less expensive than holding it, the nature of competitive practice will be determined not by the desire to build a solid reputation, but simply by the desire to keep the doors open until "times get better".<sup>9</sup> Although the standards of

<sup>7</sup> A study of previous occupations of merchants in Oshkosh was made by Dr. Nystrom in 1912. (Dr. Nystrom considers that the findings of the study are typical of many cities and are closely applicable today.) Out of 169 dealers in various lines of trade, 89 or about 52%, had not even had a clerk's training in the type of store which they operated. (Paul H. Nystrom, *Economics of Retailing, Institutions and Trends*, Ronald Press Co., New York, 1930, p. 406.)

<sup>8</sup> In an interesting study, *Retail Trade Mortality in Buffalo, 1918-1928* (Bureau of Business and Social Research, University of Buffalo, 1929), Dr. Edmund S. Garry found that the average mortality rate for all the stores was about 30% between 1918 and 1928. The mortality rate varied for different kinds of stores: grocery stores 35.9, shoe stores 21.8, hardware 16.2, drug stores 12.6.

<sup>9</sup> The "man who enters the retail business is likely to remain in it as long as there is a margin between the purchase price and the sales price of his goods, or until a better alternative employment offers itself for his labor and store space" (McGarry, *op. cit.*, p. 91).

business ethics always tend to be depressed by marginal firms, it is clear that where almost one third of all establishments go out of business in the course of a year, a pressure will be exerted which will have the most far-reaching effects on the quality of competition and consequently on the character of cooperation. Moreover it has meant that the promotion of fair competition has been of particular importance to firms interested in establishing a reputation over a period of years.<sup>10</sup> Such firms have been injured by unscrupulous methods used by competitors, whereas it has not been to their advantage to fight fire with fire. Instead, they have used fire extinguishers: trade association codes of ethics, education in cost accounting, etc.

The urgent need to control competition has been intensified by the fact that the cost of retailing has been increasing during the past half a century. The depression of the 30's accelerated this trend. Dr. Paul Nystrom estimates that operating expenses in department stores were probably about 20% of sales in the 1890's, 25% in 1910 and 30% in 1929, and that similar increases have occurred in other branches of retailing.<sup>11</sup> By 1932 the typical operating expense had increased by another seven or eight points.<sup>12</sup> Thus depart-

<sup>10</sup> The study of Dr. McGarry, quoted above, showed that 13.8 of the grocery stores in the Polk Annual City Directories were listed for over ten years, whereas 28.8 of the drugstores, 29.8 of the hardware and 26.8 of the shoe stores had been listed for ten years or over. Failure in the first year of existence took place in 60.0 of grocery stores, 26.6 of drugstores, 34.5 of hardware stores and 43.8 of shoe stores studied.

<sup>11</sup> Paul H. Nystrom, *Economics of Retailing, Store Operation*, Ronald Press Co., New York, 1930, p. 121.

<sup>12</sup> Typical total operating expenses for 1932 reported to the Controllers Congress of the National Retail Dry Goods Association, varied for Department Stores of different size from 38.00 to 38.9. The data compiled by the Bureau of Business Research of Harvard University showed typical expenses for department stores in various size groups ranging from 35.9 to 40.5.

ment store expenses expressed as a percentage of sales had almost doubled in forty years.

Generally speaking, the increase in expense ratio was accompanied by a decrease in profit ratio.<sup>13</sup> In department stores as well as in other types of retail institutions<sup>14</sup> the increase in expenses made economies of operation essential. Cooperation provided one method of attempting to achieve the necessary economies.

#### SECTION II: AGENCIES OF COOPERATION

Reflecting the underlying structure of the trade, cooperative activity in retailing formed a web of intermeshing and overlapping organization. Because different crafts have peculiar problems, trade associations for furniture, shoe, dry-goods stores, etc., have been formed; because individual stores feel that their survival value can be improved through combination, voluntary chains or buying groups have been set up; because different types of distribution have their characteristic difficulties, associations of chain stores as opposed to independents have been formed; because different localities have common problems, local associations of merchants, retailers, or individual crafts have developed on a

<sup>13</sup> Boris Emmet in *Department Stores, Recent Policies, Costs and Profits*, (pp. 92-3) shows that total expenses have increased between 1922 and 1928 from 27.1 to 29.8 in department stores with sales under one million dollars, from 28.6 to 31.7 in department stores with annual sales of over one million dollars, and from 29.4 to 32.1 in specialty stores. These increases of 2.7, 3.1 and 2.7 in expenses have been accompanied by increases of 1.8, 1.2 and 2.0 in gross margin. Dr. Emmet uses for these comparisons the data collected by the Bureau of Business Research of Harvard University.

<sup>14</sup> The percentage of income to sales in 12 major groups of retail trade was 8.7 in 1919, 3.6 in 1920, 3.5 in 1921, 6.9 in 1922, 6.7 in 1923, 6.2 in 1924, 6.4 in 1925, 5.9 in 1926, 5.7 in 1927 and 5.3 in 1928. (Ralph C. Epstein, *Industrial Profits in the United States*, National Bureau of Economic Research in Cooperation with the Committee on Recent Economic Changes, New York, 1934, p. 315.)

street, city, county, state or national basis; because certain functions are performed more effectively by specialized organizations, credit bureaus, better business bureaus, and the like divide the field on a functional basis. It is possible to obtain only a general idea of the number of organizations of various kinds.

In 1931 there were about 105 national, international, interstate trade associations in the retail field according to data collected by the United States Department of Commerce.<sup>15</sup> Many of the national associations had local chapters.<sup>16</sup> Unaffiliated local associations for stores in the same craft also existed, though their number is unknown. Local groups of this kind were the progenitors of the movement, it was not until the late 90's, and the first few years of the twentieth century that the first national associations were founded. When once established, associations seemed to grow by accretion. A group might have originally been formed to meet a special problem but in order to survive, its direction had to remain highly elastic and able to add new functions just after, or better, just before its membership became aware of the need. In most successful associations, this necessary adaptability and ingenuity was supplied by men whose profession was trade organization. A good trade association director can utilize the enthusiasm and suggestions of member mer-

<sup>15</sup> United States Department of Domestic Commerce, Series No. 5, *The Commercial and Industrial Organization of the United States*, p. 107. A study of Open Price Trade Associations made by the Federal Trade Commission in 1929 lists 61 retail and personal service associations which are classed as interstate. The difference between the two figures is doubtless in important part due to difference in enumeration rather than to growth in the number of associations.

<sup>16</sup> The National Retail Hardware Association, one of the best run organizations in the field, reports a membership of 36 state and sectional organizations. The National Association of Retail Clothiers and Furnishers also has 36 affiliated organizations. (Nystrom, *Economics of Retailing, Institutions and Trends*, p. 383.)



chants, at the same time that he is constructive, has vision, is a good executive, and is able to keep peace between the inevitable factions.<sup>17</sup> The aggregate membership of these various organizations is not known. Several years ago, it was estimated that not over four per cent of the independent retailers belonged to trade associations,<sup>18</sup> chain stores, however, are probably far more highly organized. Moreover, the proportion of stores belonging to associations is much larger in certain trades than in others. Thus over a third of the hardware retailers listed in the 1930 Census of Distribution are included in the membership claimed by the National Retail Hardware Association, probably a far larger proportion of department stores belong to the National Retail Dry Goods Association.

Chambers of Commerce, Merchants' Associations, Trade Boards, Retail Merchants' Bureaus, seem to exist in as many towns as house someone interested in promoting one. Consequently the available field is fairly thoroughly covered.<sup>19</sup>

<sup>17</sup> An interesting characteristic of the trade association executive is the way in which the utilitarian ethics of the business for which he works is taken over by some of the most imaginative and far-sighted executives as a sincere morality which is garnished with all of the accoutrements of highly moral behavior. One is reminded of attitudes such as that of the English colonial official who exhibits a beautiful and intricate ethics in his obligation to defend the natives, which, however inaccurate in a realistic sense, is none the less sincere on the part of the enforcing official.

<sup>18</sup> Paul Nystrom, *op. cit.*, p. 122. Dr. Nystrom says that considerable progress has been made since the estimate was made but the percentage of stores belonging to organizations was still pitifully small. Recently he estimated that certainly less than 20% of all retail stores were members of a trade association.

<sup>19</sup> In the summary of a questionnaire issued by the Commercial Organization Department of the Chamber of Commerce of the United States in January, 1932, 784 Retail Merchants' Bureaus were classified according to their affiliations. Although there may have been duplications where a single bureau was affiliated with several other organizations, it is clear that there were hundreds of Retail Merchants' Bureaus in the country.

Large cities will frequently have a chamber affiliated with the Chamber of Commerce of the United States as well as a local chamber, together with city and district merchants' associations.<sup>20</sup>

Different from the associations of stores in similar trades as well as from the local and national associations of merchants are the Better Business Bureaus dedicated to improving advertising. There are 51 bureaus throughout the country which are also affiliated through a central organization. This movement grew out of a joint endeavor of advertising media and business men to police advertising copy.

If we add to these major forms of cooperation a large and rapidly increasing number of voluntary chains—in 1933 there were about 776 groups having 91,497 members;<sup>21</sup> if we also include trade journals, trade boards, credit bureaus, and, for certain purposes, bureaus of the United States Government, we may augment the roster of forms which retailers may use for the joint solution of their business problems. The entire structure would seem to present a fairly formidable array of implements for disseminating group standards

The majority of the bureaus were affiliated with Chambers of Commerce or Better Business Bureaus. An article in *The New York Times* (June 19, 1932) stated that there were about 2000 organizations in other cities of the country similar to the Merchants' Association of New York.

<sup>20</sup> In New York City, for example, the local chamber is a venerable body entitled The Chamber of Commerce of the State of New York founded in 1768 and granted its original charter by the King, under the name of Chamber of Commerce of New York in America. The chamber has little to do with retailing or retailers. It has been influential in civic affairs and in the development of commercial arbitration. There is also a Chamber of Commerce of the United States, a merchants' association for the city. A large number of local merchants' associations exist in individual streets or sections in addition to four regional chambers of commerce in Manhattan and the Bronx.

<sup>21</sup> R. S. Alexander, "Trends in Wholesaling," *American Journal of Marketing*, January, 1935.

and pooled information throughout the trade. When we take into consideration the radius within which these standards can spread through competitively necessary imitation rather than direct contact, the apparatus seems still more impressive.

But it is important not to over-emphasize the achievements of cooperation in retailing. The range within which joint action is useful has been limited by the nature of the trade as well as by the nature of the traders. The dominant characteristics of retailing outlined above have influenced not only the form but the substance of social control. The large number of units, the intricacy of pattern, the high mortality rate, the nature of the market, have all tended to circumscribe the direction in which trade organization could proceed as well as to make any progress difficult. Moreover, as a group, retailers are individualists, they like to do things in their own way, to make their own decisions, to run their businesses without having anyone "tell" them how to do it.

In the following chapters we shall discuss the content of the movement resulting from retailer cooperation. Prior to the summer of 1933, what sort of things have retailers attempted to do by means of voluntary cooperative action? How nearly have they achieved their objectives? Was the public interest served by their efforts?

The purposes towards which cooperation has been directed may be divided into three major divisions: (1) the prevention of "unfair methods of competition"; (2) the acquiring of strength in some phase of the market contest or in bargaining with some outside group or interest; (3) the control of costs through the economical provision of services and information. Although this is in a sense an arbitrary division, it will serve to illustrate the forces active in generating and directing retailer cooperation.

## CHAPTER II

### UNFAIR METHODS OF COMPETITION

#### SECTION I. THE GROWTH OF THE CONCEPT OF UNFAIRNESS

THE concept of "unfairness" in business method varies for every year, every country, every business and often every individual, and therefore no fixed definition of it can be formulated. But for practical purposes, unfair business conduct refers to an area of economic behavior which for one reason or another is, at the time, considered unethical by the controlling element of the group to which it applies.

#### *Definition by Law*

In part the content given to the word unfair in any one trade group is determined by what is in a sense a common denominator for all trades and industries—the law.

During the early commercial history of England, unfairness in business conduct rested on one of two counts: Misinformation concerning weights and measures, and forestalling, regrating and engrossing merchandise destined for a fair or market. The latter practices were condemned as an abuse of the privilege to hold a fair; guild monopolies were not only countenanced but protected and were regulated largely by guild-made rules. Later the granting of monopolies was taken over as an exclusive prerogative of the Crown and became a source of state revenue. When the power of the Crown to grant such monopolies was challenged in the Case of Monopolies<sup>1</sup> in 1602, and later decisively withdrawn

<sup>1</sup> The basis of the court decision in this case which involved a suit to protect a Crown grant for a monopoly in the making of playing cards, is most interesting. The decision rendered in 1602, is still a classic.

(except in regard to patents) the basis of the law of restraint of trade was finally laid.<sup>2</sup> The right to enter business—the right to compete—grew, towards the close of the eighteenth century, into the obligation to compete, since competition had become the guarantor of good quality and fair price.

But another century served to prove that monopoly could spring not only from Crown grant but also out of the self-generated forces of competition. In many industries, an initial advantage gained in the competitive struggle tended to increase in geometric progression and eventually to deny to competitors a fair chance of success as well as to endanger the public interest. Laissez faire economics apparently required protection against its own logic. Thus to the age-old prohibitions against competitive methods which root in the concept of theft or fraud—the insistence on accurate weights and measures and the prohibitions against “passing off”—was added a third category of forbidden acts, those which resulted in restraint of trade and monopoly.

In America where the right to enter into competition was a right to be cherished, there was a bristling mistrust of

“The court held such a monopoly to act to the prejudice of the public weal,” contrary to the acts of parliament and void under the common law on the grounds (a) that all trades furnishing employment to subjects, thus avoiding idleness, are of value to that commonwealth, and an exclusive grant to exercise a trade is against the *liberty* and *benefit* of the subjects; (b) such monopolies are not only prejudicial to traders excluded but also to the public generally, because their inseparable incidence are (1) the raising of prices; (2) a deterioration in quality; and (3) the impoverishment of the traders excluded. (Jones, “Historical Development of the Law of Business Competition,” *Yale Law Journal*, 1926, vol. 35, pp. 906-920.)

<sup>2</sup> In the reign of Charles I the Long Parliament cancelled in 1640 several monopolies granted by the Crown. In 1689 the right to grant monopolies by patent of the Crown was finally abolished. (Joseph Davies, *Trust Laws and Unfair Competition*, United States Department of Commerce, Bureau of Corporations, Government Printing Office, Washington, 1916, p. 2.)

monopolistic practices which was expressed in popular thought, politics, state constitutional and statute law, and, towards the end of the nineteenth century, in Federal statute.<sup>3</sup> At the same time the concept of fraud and theft expanded in their application to business practice to include not only the traditional torts such as libel, slander, deceit, assault and battery, but also an ever-expanding list of competitive torts having in common the elements of misrepresentation, misappropriation, diversion of trade, interference with trade relations, and attacks upon competitors.<sup>4</sup> Legislation both state and federal also tended to define fair methods of business conduct. Essentially, however, the concepts of unfairness in business method involves departure from a norm; usual and customary behavior could only be established from within a trade or industry. The law could at best make trade-established standards compulsory; but achievement fell far short of this. "The common law", Mr. Handler concludes, "reached only the crudest competitive excesses"; whereas, though generalization concerning legislation is difficult, state and federal law was, in general, lacking in plan, in ingenuity and in clear definition.<sup>5</sup>

In the retail trade, the law played an unusually minor part in the definition of either restraint of trade and monopoly or of other types of unfair methods of competition. Retailing is one of the few fields in which legal prohibition

<sup>3</sup> Mr. Milton Handler in a very able and comprehensive article on unfair competition discusses legislative contributions. To list them—Federal laws include the Sherman Act, the Clayton Act, Federal Trade Commission Act, Packers and Stockyards Act, acts controlling imports, the Food and Drug Acts, and postal laws; state laws include Printers Ink Statutes, warranty proceedings under Uniform Sales Acts, Commercial Bribery Laws, and a large and varied group of state laws relating to trusts, trade marks, labeling, etc. (Milton Handler, "Unfair Competition," *Iowa Law Review*, 1936, vol. 21, pp. 175-262).

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

of monopoly has been relatively unnecessary. Conditions in the trade reproduce the tenets of classical economic theory in a fairly orthodox fashion.<sup>6</sup> Acts which tend to create monopoly are hard to perform. Moreover, were it possible to drive competitors out of business through price cutting or other devices, it would be impossible to reap the benefits of the monopoly position. Since so little capital or plant is required, a new crop of stores would bud the instant that prices were permitted to return to a profit making level. Accordingly, in retailing there has been little definition of fair methods of business conduct through court restriction of acts in restraint of trade.

Nor has federal law been of direct importance in the retail field in defining unfair methods of business practice which were based on common law concepts of fraud and

<sup>6</sup>It is curious to find that by the twentieth century competition in retailing conformed more closely to the assumption of classical economic theory than did conditions in many industries. John Stuart Mill in the *Principles of Political Economy* notes that retail prices are set more by custom than by competition and that, accordingly, gains of retailers are very high. He states therefore, that much theoretical reasoning which assumes known and natural effects of competition would need to be amended if applied to the retail field if indeed it could be applied at all. But Mill also says, "When indeed the market, being that of a great city, holds out a sufficient inducement to large capitalists to engage in retail operations, it is generally found a better speculation to attract a large business by underselling others, than merely to divide the field of employment with them. This influence of competition is making itself felt more and more through the principal branches of retail trade in large towns; and the rapidity and cheapness of transport, by making consumers less dependent on the dealers in their immediate neighborhood, are tending to assimilate more and more the whole country to a large town." (John Stuart Mill, *Principles of Political Economy*, Longmans, Green Co., Ltd., London, 1926, p. 246.) By the twentieth century, the large firm and cheap transportation had converted towns and cities into thoroughly competitive retail markets. At the same time, certain characteristics of retailing (see text) resisted the advent of the over-ripe phase of industrial structure in which competition breeds monopoly which in turn destroys competition.

theft. Criminal and civil action has been useful only in curbing the most elementary forms of malpractice which were flagrant offenses against fundamental concepts of law and order. Most of the trade definition of unfair methods of competition is in the nature of superstructure upon these elementary prohibitions. Even the Federal Trade Commission was of little importance to the fair practice movement in the retail trade. The Commission proceeded on the case basis. In each specific set of circumstances it determined whether the interests of competitors had been adversely affected, through the use of competitive methods of an unfair kind. This meant that in trades in which a large number of cases arose or trade practice submittals<sup>†</sup> were held, legal definition of fair practice proceeded more rapidly than in those in which malpractice in interstate commerce did not frequently occur. Since a relatively small proportion of the work of the Commission concerned retail stores, the influence on the definition of unfair methods of competition in retailing was largely indirect.

#### *Definition by the Trade*

In the retail trade, definition of unfair methods of competition grew primarily out of the attempts of advertising

<sup>†</sup> The trade practice submittal was first used in manufacturing industries in which it was impossible to correct abuses in individual instances because of the prevalence of the practice throughout the industry. The Commission developed a technique whereby the industry conference would bring out a series of particular practices which were deemed unlawful and listed as class I practices which were enforced by the Commission. Voluntary agreements among members of the industry could outlaw wasteful practices which, though not unlawful, were deemed undesirable by the trade. Such agreements were not enforced by the Commission. The Commission could take the position of approving the regulations, refusing to commit itself, or disapproving the voluntary agreements. Rules have been published which were evolved through trade practice conferences in 100 industries. (Federal Trade Commission, *Annual Report*, 1933, p. 115.)



media, merchants, and financial interests, to eliminate the inaccuracy in advertising which was threatening the usefulness of magazine and newspaper lineage. The amount spent for newspaper and magazine advertising had approximately doubled every ten years from 1900 to 1928. By 1929 it had reached the impressive sum of \$1,120,238,000. Since retailers buy a substantial portion of the advertising space sold, the productivity of the advertising dollar was a matter of prime concern to both the retailer who bought publicity and to the advertising medium who tried to sell copy. Inaccurate and exaggerated copy undermined public confidence and reduced the value of advertising space. Accordingly advertising media and business men attempted to create and enforce standards.<sup>8</sup>

In the retail trade the isolated attempts of individual stores to improve their own copy was not taken up by a group chorus until the end of the first decade of this century. By that time the need to restore public confidence in copy had become sufficiently pressing to arouse concerted action on the part of advertising groups. In 1911 the magazine, *Printers Ink*,<sup>9</sup> engaged an attorney to draw up a model statute which could be recommended to state legislatures. This statute declared it a misdemeanor for "any person, firm, corporation or association" to use directly or indirectly as a sales inducement "an advertisement of any sort regarding merchandise, securities, services, or anything so offered to the

<sup>8</sup> The movement started with attempts to curb fraudulent advertising of patent medicines; this and related activity culminated in the Pure Food Laws of 1906. Cf. Frank Presbrey, *The History and Development of Advertising*, Doubleday Doran, Inc., New York, 1929.

<sup>9</sup> *Printers Ink* was a pioneer in the trade journal field. It was founded in 1888 by George R. Rowell, a dealer in printer's ink. It led advertising into a new era. The first editor, a young man named Mr. Benjamin was selected by the founder because he did not know anything about advertising. (Presbrey, *op. cit.*, p. 319.)

public which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive, or misleading, . . ." <sup>10</sup> Ohio was in 1913 the first state to adopt the suggested model statute. By 1928 it had been adopted by 22 states in its original form and by 16 others in a form changed in such a way as to render it ineffective. <sup>11</sup>

But the usefulness of the *Printers Ink* Statute was far greater as a club in the hands of the Better Business Bureaus than as a direct legal instrument. The Better Business Bureau movement was an outgrowth of vigilance committees organized throughout the country at the instigation of advertising executives in 1911. A year later a national committee was organized by the National Association of Advertising Clubs. The program of the National Committee contemplated the formation of local vigilance committees and the promotion of truth in advertising. In 1914 a fairly elaborate code of ethics was adopted by the Retail Advertising Division of the Associated Advertising Club. <sup>12</sup>

In the same year a Vigilance Bureau was established in Minneapolis. Three to four thousand dollars was raised by the merchants and newspapers and a full time manager was hired for the Bureau. During the first few months the work was carried on with the emphasis on "vigilance". This proved an unsatisfactory method. A young newspaper ad-

<sup>10</sup> *Printers Ink* Statute as reprinted in H. H. Shivley, *Nature of Unfair Methods of Competition in the Retail Trade*, Ohio State University Press, Columbus, 1928, p. 9.

<sup>11</sup> For statutes in each state see "Comment," *Yale Law Journal*, 1927, p. 1157.

<sup>12</sup> This code had 24 clauses which defined the use of terms in stating comparative prices and in advertising sales, it had several clauses defining terms used to describe the content or quality of merchandise, it opposed the use of exaggerated claims, predatory methods, and the use of the word "free" when a gift was contingent on a purchase. (Shivley, *op. cit.*, Appendix, p. 106).

vertising salesman, Mr. H. J. Kenner, who felt that it was good business, as well as good ethics, to advertise honestly, was then hired. Gentler techniques of persuasion were combined with occasional prosecutions under the *Printers Ink* Statute. The following year the National Vigilance Committee undertook the organization of local bureaus, 16 of which were started as a result of the first two years of work.<sup>18</sup> In 1917 most of the Bureaus were closed. Their reorganization after the war was accompanied by a movement to divorce them from the Advertising Club for greater efficiency of operation. By 1926 Better Business Bureaus were said to command the support of business to the extent of \$750,000 a year.<sup>16</sup> By 1933, 51 bureaus had been established.

The work progressed on the case method. Alleged instances of unethical practice were investigated, and, as far as possible, corrected through the use of moral suasion. When necessary there were prosecutions of blatant and persistent offenders. A progressive definition of ethical practice resulted. In 1930 and again more elaborately in 1933 the body of standards which had been developed was collected in a book of Accuracy for Advertisers.

Trade Associations also contributed to the clarification of ethical business standards in specific trades and industries. By 1922 four codes of ethics involving retailers had been drawn up and endorsed by national trade groups; in 1922 and 1923 the number tripled. The content of these codes ranged from a vague statement of general business principle to detailed definition of specific terms and practices.<sup>15</sup>

<sup>18</sup> A bureau could be organized for between five and seven thousand dollars which was typically raised by merchants, newspapers and financial interests in the district.

<sup>16</sup> *Printers Ink*, June, 1926.

<sup>15</sup> Edgar L. Heermance in *Codes of Ethics*, Burlington, Vt., 1924 lists over 100 codes that were reported in 1924 by about 700 national and

In 1924 the National Distribution Conference, held under the auspices of the National Chamber of Commerce, adopted a Declaration of Principles of Business Conduct which stated that the "foundation of business is confidence, which springs from integrity, fair dealing, efficient service and mutual benefit" and that unfair competition embraces "all acts characterized by bad faith, deception, fraud or oppression."<sup>16</sup>

SECTION II. THE CONTENT OF THE TERM "UNFAIR"  
IN RETAILING

Mr. Hastings interprets the positive aspect of the fair practice movement in retailing: "Competition has been placed on a basis of (a) selection of merchandise to best fit consumer needs, (b) most economical operation of physical facilities, (c) power to impress consumers with the personality of the store, (d) ability to create buying action through legitimate interpretation of merchandise in relation to consumer desires."<sup>17</sup> Obviously standards of this kind are still to be realized. But the purpose and direction of the movement become clear. It involves an increasing insistence on verity in connection with any statement concerning the quality, price, attributes, and conditions of sale of merchandise.

The actual meaning of these vague statements and the lengths to which trade ethics had evolved in theory if not in practice can best be illustrated by reviewing the provisions of probably the most elaborate outline of fair practice which

international associations who answered his inquiry. In a letter to the author, Mr. Heermance stated that, since the publication of the book, he had collected again as many codes. The largest number of codes in the book were signed in 1923 (about 45) 1922 and 1924 were also years prolific in fair practice standards.

<sup>16</sup> Chamber of Commerce of the United States, *National Distribution Conference*, vol. ii, 1925, pp. 57 and 58.

<sup>17</sup> *Boston Conference on Distribution*, 1933, p. 20, Address by Ernest C. Hastings.

has been developed in the retail field. *A Guide for Retail Store Advertising*, published by the affiliated Better Business Bureaus Incorporated, contains 441 paragraphs which define fair business practice in general terms as well as for specific kinds of articles. These regulations represent the advanced guard of the truth in advertising and fair play movement. They set forth the definitions and standards developed by governmental and private standards bureaus, by the Federal Trade Commission, by the courts, as well as through the fair practice work of trade associations and Better Business Bureaus. They relate to the quality and the price of advertised articles and to the genuineness of the offer of sale.

*Price:* The limited income of most consumers makes claims of a price advantage a potent sales argument. The use of extravagant claims has done much to destroy public confidence and deafen the public ear. It is therefore most important to advertising mediums and to retailers that such claims, when made, should be believed by the purchasing public. To that end, legitimate claims regarding value are defined and clarified:

1. An advertisement should indicate clearly the articles included in a stated price. If a radio is pictured for \$9.95 the tubes should either be included in that price or a statement to the contrary should be made *prominently*. If a suite of furniture is illustrated for \$149.00, the price should include all the articles pictured.

2. When claims concerning special savings are made they should be unambiguous. On specific articles a claim of saving typically involves a comparative price. Terms such as "value", "worth", "made to sell for" etc., have been so generally abused that their elimination is recommended. Phrases such as "formerly up to", "wholesale prices", "below cost", "list price", "two for one sales" etc., are defined.

When a variety of articles is offered at special bargains as in the case of closing-out sales, clearance sales, bankrupt sales etc., the terms should be used as defined by the Bureaus, and should apply to all of the merchandise offered unless the contrary is clearly stated and marked on the goods.

4. Claims concerning savings throughout the store should only be made if they are provable, in which case economies of volume should be considered, as well as conditions which tend to cancel savings, such as when an expensive delivery system partly cancels the economies of cash sales. Claims of wholesale prices, "factory to you" etc., should be avoided unless they represent actual prices at which retailers typically buy.

5. General underselling claims are considered inaccurate since it is impossible to know all prices in all stores at a given time. They are also considered predatory and contrary to the principles of fair play which have been expressed by the Better Business Bureau movement.<sup>18</sup>

<sup>18</sup> The opinion of the Better Business Bureaus is not a unanimous expression of retail opinion. Many, notably those making such claims, state that they are passing on to customers a legitimate saving due to economy of operation. New York City has for years been a storm center of this discussion because of the highly competitive market, the price policy of R. H. Macy, and the underselling claims of the past five years. But the problem is, by no means limited to New York. *The Bulletin of the National Retail Dry Goods Association* (Sept., 1933, p. 12) stated in the Sept., 1933 issue that general underselling claims had been reported during the preceding week in 120 cities of the country. The problem may be illustrated by the Macy-Gimble battle. R. H. Macy had always featured price advantage and cash sales. Gimbels also featured price and special promotions. In 1930 the emphasis on price caused by the depression caused Macy to foot-note their ads with the statement "Macy's policy is to undersell, by at least six percent, the marked prices of those competitors who do not sell exclusively for cash. We are not infallible. Others may on occasions, sell merchandise at prices lower than we do. But only until we find it out." (*The New York Times*, Sept. 7, 1930.) Two years later, during which time the New York Better Business Bureau fought to have the claims withdrawn,

6. When price inducements are offered through attractive conditions of sale, they should be accurate and explicit,—money back guarantees should be defined and given a time limit, free services as well as delivery charges should be stated; “no charge for credit” means that articles are sold at the same price for credit or for cash; the statement that no down payment is required must be literal. Similarly a free trial must be substantiated by return, not exchange, privileges. The offer of a “free” article which can only be obtained in conjunction with a purchase is deemed a misuse of the word “free”. Offers of free goods and premiums of various kinds have assumed added importance in connection with the attempt to control a demoralized price structure, although the use of the word “free” has been disapproved of ever since the formulation of the Fair Practice Code of the Advertising Club in 1914.<sup>19</sup>

the Macy statement had been transformed into “We endeavor (though we are not infallible) to sell our merchandise for at least six percent less than we could if we did not sell exclusively for cash. This is the keystone of the Macy price policy.” Thus the comparison was changed to Macy selling for cash *vs.* Macy with charge sales, rather than Macy selling for cash *vs.* other stores with charge sales. At the same time Gimbels’ ads carried the slogan “shop at Gimbels and see for yourself—that Gimbels’ policy is to sell its merchandise as low as if it sold exclusively for cash.” (*The New York Times*, Sept. 11, 1932.) The underselling claim when combined with loss leaders and price meeting forces competitors to spend money on substantiating the claim “We won’t be undersold”, at the same time that they benefit relatively slightly from such expeditures.

<sup>19</sup> The practice of giving deals originated in the attempt on the part of manufacturers in certain fields to sell direct to the consuming public, and to use premiums and prizes of various kinds to advertise their product. This use of deals was common around 1905 and was frequently accompanied by various kinds of misrepresentation. The second development of deals took the form of trading stamps which were given by retailers to their customers. Department stores sold 80% of the trading stamps used. According to information collected by the Business Bourse of New York, 10,000 customers collected trading stamps and the value

*Quality.* But the consumer is not only interested in getting an article cheaply, he is interested in getting what he wants or thinks he wants. Therefore statements concerning the content and quality of a purchase, or statements which directly or indirectly condition what a customer thinks concerning quality or content may develop into powerful sales arguments. Consequently it is important to preserve public confidence in claims of this kind. In accordance with this thought, and with the general ethical concepts involved, fair practice has been defined. In general, claims concerning the quality of advertised goods must be accurate and specific:

1. The attributes of merchandise when mentioned should be specific, and based on provable average performance. Thus, terms such as moth-proof, washability, fast color, moisture proof, economical operation of mechanical appliances, etc., should not be made unless their verity has been tested.

2. When terms referring to the content of fabrics are used without qualification they refer to 100% content; thus "all wool" means precisely what it says. Part wool must be qualified by the percentage of wool within three per cent of the actual amount.<sup>20</sup>

of premiums given away in 1913 was \$100,000. (National Retail Dry Goods Association, *Industrial Outlook*, Nov., 1914.)

At the present time deals take a wide variety of forms ranging from combination sales or one cent sales, to offers of "free" goods of all kinds. Deal merchandise can vary from merchandise of little intrinsic value which is clearly marked as advertising—blotters, pencils, etc., to articles of very considerable value. In the latter case a system of circumventing the anti-lottery laws may be devised. If the price of the premium is included in the price of the article which must be purchased to receive it, as in the case of some combination sales which are so advertised, the elimination of the word "free" does not obviate the unethical element. E.g., a store advertises that for the purchase of every dress for \$28.00 an extra dress may be purchased for \$1.00 when the two dresses would ordinarily each sell for about \$14.00.

<sup>20</sup> Ruling of the Federal Trade Commission.



3. The use of certain trade names is essentially misleading as in the case of "Hudson Seal", "American Ivory" etc.; the gradual elimination of such names is advised.

4. Misleading suggestions as to the style of articles should be avoided. Last year's styles or discontinued models should be so marked and not advertised as current models. Illustrations should not improve upon reality through inaccuracy or enlargement. Descriptions having a style connotation such as "hand made", "bench made", "custom made" etc., should be limited to a literal meaning.

5. Similarly descriptions of the source of products should be literally true especially when such descriptions have a pleasing connotation, e. g., articles advertised as imported, or Philippine goods; merchandise should not be advertised as "according to government specifications" or Army goods. Similarly, derogatory attributes should be specified—prison made articles should be plainly marked, goods should not be sold as new when they are second hand or rebuilt; "seconds" are different from "run of the mill" and "mill end" goods; articles of this kind should not be sold as first class merchandise.

*Purchaseability:* Obviously, when an article is advertised in order to attract customers to the store, it must not be merely bait but must be purchaseable, cheerfully shown, and promptly delivered. Moreover, it should be available in sufficient quantities to satisfy the demands which may reasonably be expected to result from the advertisement, as well as be in stock in the usual selection of colors and types unless contrary statements are made. There may be no unwarranted sales pressure applied to "switch" the purchase to an article bearing a more profitable mark-on.<sup>21</sup>

<sup>21</sup> "Bait" advertising is a most usual method of unfair practice which is employed by retail stores. It ranges through various degrees of malfeasance. In some cases the advertised articles are not carried at all. This is more frequently done in window signs than advertisements;

Acts of a clearly predatory nature have been considered unfair methods of competition in retailing as in other businesses. "The weight of authority in these cases is to the effect that intentional injury to another's trade or business, even though by means not in themselves unlawful, gives rise to right of action unless the injury is justified by legitimate self-interest. Even this self-interest does not justify interference with contracts."<sup>22</sup> But in order for injury to be intentional, predation must be a primary motive rather than a secondary result of the pursuit of legitimate self-interest. Blatant malpractice of this kind is not very common in the retail field.<sup>23</sup> Though for the most part not actionable at law, common practices having a predatory flavor and considered contrary to trade ethics include the following: the hiring of employees away from competitors has been the subject of occasional local agreements;<sup>24</sup> underselling claims, always considered deceptive, are branded as predatory when effective and fraudulent when not, drastic price cutting has presumably a clearly predatory character when large department stores or chain systems use their volume to support price cutting in certain departments (or in the case of chains, in certain localities). Such a policy is injurious to smaller stores specializing in the type of merchandise sold at cut prices by the larger companies.

articles are frequently advertised which are almost immediately "out of stock"; or various degrees of sales pressure may be exerted to "switch" a sale to another article. The investigation of "bait" advertising necessitates trial shopping to determine whether the article has been in fact "cheerfully shown, sold, and promptly delivered".

<sup>22</sup> H. H. Shively, *The Nature of Unfair Methods of Competition in the Retail Field*, The Ohio State University Press, 1928, p. 91.

<sup>23</sup> Cf. list of practices, *ibid.*, pp. 91-96.

<sup>24</sup> Such agreements are often thought to work a hardship on the employee. Turnover of retail executive personnel is normally very high and is probably more to the interest of the employees than the employer—the latter needs to engage in no very nefarious scheming to hire a buyer away from the store next door.

## SECTION III. SANCTIONS

The sanctions used to enforce or attempt to enforce these standards have been court action and various kinds of persuasion and pressure.

There have been isolated cases in which a customer or a competitor has brought civil or criminal action for damages. But the number of such cases involving retail firms is small.<sup>25</sup>

<sup>25</sup> Mr. Milton Handler in an article in the *Yale Law Journal*, 1929, vol. 39, p. 22 *et seq.*, outlines the legal sanctions which may be employed for the suppression of false advertising. Briefly they are:

1. Civil actions available to the purchaser.

A. Action for deceit in which the "purchaser must prove that the advertisement contained misrepresentation of fact as contrasted with a mere statement of opinion, a glowing exaggeration or puff which was false to the advertiser's knowledge, and that in reliance upon and induced by the advertisement the purchase was made, to the resulting harm of the plaintiff." Thus there must be proof of: misstatement of fact, reliance upon the statement by the purchaser, direct relation between misstatement and purchase, damage to the customer.

B. Action for breach of warranty under Section 12 of the Uniform Sales Act. Under this act, in order for a false statement of fact to be actionable the seller must make such statement directly to the purchaser.

C. Action for rescission.

2. Criminal actions.

A. Action under the law which makes it criminal to obtain money under false pretences, concerning which Mr. Handler says "Only the most flagrant cases of fraud can be reached in such prosecutions."

B. Section 215 of the Federal Criminal Code forbidding the use of the mails in the furtherance of schemes and artifices to defraud. Mr. Handler states that this clause is equally useless since the schemes which have been punished under it have smacked of the confidence game and outright frauds or "fakes". During a four-year period, out of 74 cases prosecuted only two were concerned with the misrepresentation of articles offered for sale.

3. The administrative control of the mails by the Postoffice Department may close the mails to a dishonest advertiser through the issuance of a fraud order.

4. Civil action by a competitor. Conflicting court opinion leaves no clear indication of what type of action is warrantable. Trade mark

In this category would come cases of "unfair competition" in the original sense of "passing off" and trademark infringement.

The Federal Trade Commission has in several instances issued cease and desist orders involving retail stores.<sup>36</sup> Although it has not been possible to look through all of the Commission's cases to discover which refer to retail stores, a cursory examination reveals that orders have been issued relating to unfair methods of competition such as false advertising of sales, prohibitions against predatory price cutting, untrue statements regarding quality and price, etc. In several important cases where rulings have been appealed, the courts have not upheld the Commission's position.<sup>37</sup>

The *Printers Ink* Model Statute has also provided the basis of court action. But legal prosecution even under this statute can at best be employed only in the more obviously fraudulent type of case. Convictions have been obtained in cases of misrepresentation as to quality or content of merch-

infringement and passing-off is clearly actionable. There seems further to be some basis in court decisions, where diversion of customers is subject to proof (and this only seems to be the case where monopoly or collusion exists), for belief that an action at law or a suit in equity can be maintained.

<sup>36</sup> There seems to have been a somewhat more liberal definition of interstate commerce by the Federal Trade Commission than by the courts. Offices of the Commission have acted in cases which involved interstate commerce only in so far as articles purchased in one state were delivered in another.

<sup>37</sup> E. g. the order which prohibited Sears Roebuck from selling sugar below cost was not upheld in the Circuit Court of Appeals except in respect to the prohibition against misrepresentation in respect to such sale. (*Sears, Roebuck and Co. v. Federal Trade Commission*, 258 Fed. 307, C. C. A. 7th, 1919.) A modified order restraining the Ward Baking Co. from giving away bread was overruled by the Circuit Court of Appeals in 1920, on the basis that no interstate commerce was involved. (*Ward Baking Co. v. Federal Trade Commission*, 264 Fed. 330.)

andise.<sup>28</sup> Similarly cases involving "bait"<sup>29</sup> advertising, general underselling claims<sup>30</sup> and a wide variety of other kinds of unfair practice have been deemed in violation of the advertising laws in various states. It has not been possible to judge the importance of the ground covered by court action since there is no compilation of relevant court decisions

<sup>28</sup> E. g. in 1926 in New York State a conviction was obtained by the New York Better Business Bureau against a firm that sold second-hand autos, incorrectly marked as to the year of the car. In 1925, in New York, a case was decided against a furniture house that sold furniture which was not as advertised. In 1928 the Court of Special Sessions declared that a substance could not be advertised as "shellac" that contained anything except the natural product to which the name referred.

<sup>29</sup> The case involved the advertisement of piano company, of articles which were not actually for sale; it was, therefore, the most aggravated type of "bait" advertising. The court held that "if said advertisements were placed in the papers simply to advertise the name of the defendant company and to get people to come to the store, it could only be at the expense of innumerable persons who could be led to the defendant's place of business under the deception that they could purchase its merchandise as advertised. If this be the purpose of the advertisement, it would be a gross deception and a trespass on the convenience of the public, which the state would be amply justified in prohibiting in the proper use of its police power, and would constitute a plain violation of the act in question."

<sup>30</sup> The Minor Drug Company had a slogan "Minor's Are Never Undersold". Investigation showed that the same merchandise could be found elsewhere at lower prices. The plaintiff urged that this was no mere puffing or dealer's talk, since it was not "the vain boasting of a merchant to his customer concerning his wares, in language that makes proof impossible"; that under the *Printers Ink* Statute "any statement published in an advertisement is *prima facie* a statement of fact, and its proof, or disproof, is dependent upon the evidence adduced at the trial"; and that, "the advertised statement which is the basis of the case is susceptible of disproof". (Brief for Plaintiff. State of Ohio, On Defendants' Demurrer in the Municipal Court of Toledo, Lucas County, Ohio, Police Court Division, Brief prepared by H. E. Frye, who was at the time the Manager of The Toledo Better Business Bureau, to whom I am indebted for the courtesy of viewing the Brief cited above.)

and judgments. On the whole, there seem to have been surprisingly few cases actually brought to trial.<sup>81</sup>

We may conclude that the opinion of informed individuals as well as the paucity of cases in state and federal courts indicates that the courts have not been the primary agency in the enforcement of fair business practice in retailing, any more than they have been responsible for the formulation of those standards.<sup>82</sup> The most significant function of the courts seems to have been indirect rather than direct. They have been the cat-o'-nine-tails for the Better Business Bureaus, as useful hanging on the wall as in action.<sup>83</sup>

Better Business Bureau Managers have threatened; they have tried to convince the offender that it is to his benefit to reform; they have used commercial or social pressure; they have used a combination of all three of these techniques.<sup>84</sup>

<sup>81</sup> In 1923, Mr. Kenneth Barnard, Director of the National Vigilance Committee, reported that although there were no records covering all of the convictions under the Model Statute in all of the states, he had a record of 110 court cases in states having either a Model Statute or laws based on it. (*Printers Ink*, May 17, 1923, p. 20.)

<sup>82</sup> Cf. Cole, "Review of the Ten Year Fight Against Fraudulent Advertising," *Printers Ink*, March 3, 1921, p. 22.

<sup>83</sup> Many Better Business Bureaus sent in comments to *Printers Ink* at the latter's request concerning the usefulness of the *Printers Ink* Statute. The comment of the Cincinnati Bureau was particularly interesting. It seems to present a picture characteristic of many Bureaus. The Manager states that the Model Statute has been of great value. "This is said in spite of the fact that we did not have a great many prosecutions under the Statute in this city in recent years. We use the law many times although not in court cases. We frequently call it to the attention of advertisers who seem to be violating it and in cooperation with our police prosecutor we have at various times called recalcitrant advertisers to the prosecutor's office to warn that unless changes are made prosecutions will result." (*Printers Ink*, June 8, 1933, p. 33.)

<sup>84</sup> The Bureaus now typically request that "corrections" be published in the same paper in which the inaccuracy appeared. This was probably invented as a method of stopping the very cooperative manager of a large store from saying, each time that an inaccuracy was called to his attention by the Better Business Bureau, that "he had not seen the ad, and that he was frightfully sorry, but it would never occur again."

Generally speaking, it would seem that Bureaus having a capable manager obtain fairly satisfactory results. Outside of the chronic "chisellers", the "gyp" houses, the few large "bad actors", the complicated combination of persuasion and intelligently applied pressure has proved reasonably effective.

Trade associations and merchants associations have also assisted in enforcing standards as well as in establishing them. The group spirit in gatherings of business men may well be used to reenforce ethics. Then too, conformance can be urged through the advantages of association membership which is contingent on the observance of the specified standards. This method, it would seem, has been a minor element in the enforcement of fair practice, since it is doubtful whether such a stand has actually been taken, and if it has, whether the advantages of membership in an association in the retail field, has provided an incentive sufficiently powerful to reform a confirmed sinner.

Probably the most useful tool in the correction of misleading advertising is the advertising media themselves. The Advertising Clubs and Better Business Bureaus have organized opinion in some cities to the point where ads which are not satisfactory to the Better Business Bureaus are not accepted in the newspapers. But even where no formal relationship exists, newspapers are generally inclined to favor ethical rather than untrue and exaggerated advertising, since a reputation for verity tends to increase the drawing power of their space and consequently the price at which it can be sold.<sup>85</sup>

Pressure to establish and enforce standards has also come from the consumers themselves and from the government

<sup>85</sup> Cf. Milton Handler, "False and Misleading Advertising," *Yale Law Journal*, vol. 39, p. 47, note 71, for "Index Expurgatorius" of *New York Times* and policy of *Good Housekeeping*.

acting on behalf of the people. The pure food law regulating milk, drugs and vegetables or the government inspection and stamping of meat presumably offer protection to the public both as to purity and quality of food.<sup>86</sup> The American Standards Association which was formerly the American Engineering Standard Committee has attempted to introduce standards in sheetings, blankets and silks.<sup>87</sup> By 1931 the Bureau of Standards of the Department of Commerce Division of Simplified Practice succeeded in reducing the number of varieties of 33 different articles by between 24 and 95 per cent.<sup>88</sup> Information concerning the content of merchandise is available for the public at government departments such as the Bureau of Standards, the Bureau of Mines, the Bureau of Home Economics, the Bureau of Public Health and several bureaus of the Department of Agriculture. Analysis of content, quality and value of merchandise has also been undertaken by Consumers' Research. This organization is a "membership corporation to provide unbiased information and counsel on goods bought by the ultimate consumer."<sup>89</sup> It aimed "to provide a clearing house where

<sup>86</sup> Mr. Kallet in the May, 1934 issue of the *Annals of the American Academy of Political and Social Science* points out that the investigation of the National Civil Service Reform League in 1925 indicated that the government inspections were induced to pass diseased meat because of the terrific commercial loss that would have resulted from honest inspection (p. 27).

<sup>87</sup> *The Bulletin of the National Retail Dry Goods Association* (henceforth cited as *NRDGA Bulletin*), February, 1931, article by H. P. Dalzell, Division of Simplified Practice, Bureau of Standards, U. S. Department of Commerce.

<sup>88</sup> *Annals of the American Academy*, May, 1934, p. 36, article by Dr. Gertrude Mack.

<sup>89</sup> Consumers' Research developed out of the comment caused by *Your Money's Worth* published by Stuart Chase and F. J. Schlink in 1927. The information published in this book caused a large number of questions to be addressed to the author. A Local Consumers Club which was in existence at the time was expanded to fill the needs of the 565 new



information of importance to consumers may be assembled, edited, and promulgated; and to develop as rapidly and as thoroughly as income permits, an art and a science of consumption by use of which ultimate consumers may defend themselves against the invasions and aggressions of advertising and salesmanship." <sup>40</sup> The descriptions of the relative merits of various products which appear in the serial publications of the company carry de-bunking past the shelves of the retailer into the work-room or factory. It is interesting to note that the agitation over *Your Money's Worth*, the book which gave birth to Consumers' Research, was considered to have precipitated the establishment of the Better Fabrics Testing Bureau by the NRDGA.

In general, it would seem that the real basis for what success has accrued to the fair practice movement in retailing is the obvious fact that a retailer lives on public opinion. Customers have become sceptical of certain kinds of statements; they seek dealers whom they can trust. This has meant that for retailers as a whole the preservation of public confidence in advertising is essential. At the same time, when dealing with those who seek business at the expense of the group, the courts can be used as a club with which to urge conformity; if a court case is lost by a retailer, the penalty imposed by the law is augmented by the cost of the unpleasant notoriety; moreover the publicity accompanying a

members that enrolled in the course of the first year. In December, 1929, Consumers' Research was formally organized. By May, 1932 it had 36,800 subscribers (subscriptions cost \$2.00 a year) with new subscriptions coming in at the rate of 100 a day. By 1935 it had a membership of about 50,000. (*Introduction to Consumers' Research*, Bulletin 206, May, 1932, p. 2.)

<sup>40</sup> *Introduction to Consumers' Research and General Bulletin*, Consumers Research Inc., New York City, vol. i, no. 2, p. 1.

suit might be almost as harmful whether the case is won or lost. Obviously, this aspect of control, as well as the more direct censorship, depends on the cooperation of the papers. More specifically, therefore, the fact that the largest advertisers are typically interested in improving<sup>41</sup> the value of copy is probably the key to whatever success has met the movement to improve retail advertising standards. That large stores should be interested in this problem regardless of any idealism is to be expected in the light of a three to four per cent ratio of advertising expenses to sales;<sup>42</sup> that advertising media should display a cooperative spirit is to be expected in the light of the amount of advertising which is done by large retail companies.

#### SECTION IV. EVALUATION

##### *The Accomplishments of the Fair Practice Movement*

When A. T. Stewart opened his store on lower Broadway in 1823, "Inferior goods at high prices was almost a certainty . . . as it still was in the average store a half a century later—unless the customer knew more than the merchant about values. This vice of the retail trade rendered shopping a tedious process of beating down prices, the seller asking habitually more than was expected of a bargaining customer and deeming it a shopkeeper's triumph to work off inferior or out of date goods".<sup>43</sup> This picture conforms

<sup>41</sup> The opportunity for cooperative activity for retailers in the field of advertising was indicated by Mr. O'Connell, when he said "it is probably a fair statement that not more than 50% of all retail advertising today is profitably productive." What is needed to reduce the cost of advertising is therefore not reduction in rates but improvement in results; "Consumer confidence is the goal." (*NRDGA Bulletin*, Jan., 1933.)

<sup>42</sup> See Harvard University, Graduate School of Business Administration, Bureau of Business Research, Bulletin No. 96: *Operating Results of Department and Specialty Stores in 1934* (p. 10 to 13).

<sup>43</sup> Frank Presbrey, *op. cit.*, p. 325.

closely to that of shops in parts of Europe or Asia today where American customers trained in the one price system inflate a shopkeeper's purse at the same time that they deflate his ego with their deplorable lack of appreciation of the art of bargaining.

Driven by business incentives, retailing ethics improved through the introduction and spread of the one price shop. Starting with the elimination of baby soothing syrups containing opium, and progressing through the meticulous definition of exact wool content of a garment, fraudulent advertising was gradually reduced. Newspaper advertisements in 1913 had, conservatively speaking, a flamboyant tone: "Prices No Other House Will Equal"—"An Especially Special Saturday in this Famous Home of Consistent Values",<sup>44</sup> "The most exquisite, the most artistic, the most refined, the in-every-way most extraordinary pianos ever sold . . .",<sup>45</sup> "The Biggest Clothing Sale Ever Held in New York City",<sup>46</sup> "This is the only store where you can get *Low Price and Liberal Credit*, prices that by actual comparison are lower than any other furniture or department store".<sup>47</sup> Underselling claims were the rule rather than the exception in stores featuring a popular price appeal. Exaggerated comparative prices were expected.<sup>48</sup>

<sup>44</sup> Hearn's copy in *The New York Evening Journal*, September 11 and 19, 1913.

<sup>45</sup> Gimbels' copy in *The New York Herald*, September 7, 1913.

<sup>46</sup> O'Neill-Adams Co.'s copy in *The New York Evening Journal*, September 11, 1913.

<sup>47</sup> Ludwig Bauman & Co.'s copy in *The New York Herald*, September, 1913.

<sup>48</sup> In the Gimbels' advertisement quoted above, the statement is made for purposes of contrast, "The usual piano sale offers pianos of little-known names, the assumed value of which are bolstered up by fictitious figures of alleged former selling prices in the Rocky Mountains or far Siam." (*The New York Herald*, September 7, 1913.)

Towards the end of the 1920's, the underselling claims had largely disappeared from New York papers and copy seemed far less exaggerated and consequently more believable.

The depression brought, in the wake of declining purchasing power, a renaissance of price competition and attempts to attract trade on the basis of claims of exaggerated economies. But the relapse still left advertising standards improved relative to the pre-war situation.

#### *The Public Interest in Fair Competition*

The real interests of retailers and consumers in this movement warrant a moment's analysis.

Since the definition of fair practice was, for the most part, supported by business men, it seems reasonable to suppose that important elements in the retail trade benefited thereby. Obviously, it is to the advantage of a retail store executive not to have competitors do what he does not wish to do himself. Enforced advertising standards mean, for firms that would in any event choose to compete on the basis of quality and value, and service, the freedom to proceed with their elected method of building a reputation without having public confidence in their advertising shaken and the public suggestibility blunted by the constant sensational appeals of other stores.<sup>68</sup> Thus, the business man, having decided that it is to his advantage to fight with sabers, prefers to insist that his competitors do not use machine guns.<sup>69</sup> The execu-

<sup>68</sup> Curiously enough, a store which makes a particular feature of honesty and reliability may well lose by having its competitors do likewise. The "Gimbel's tells the Truth" slogan is good partly because the situation which it describes is to some degree exceptional. The ideal competitor should, in other words, be sufficiently honest not to destroy public confidence in advertising copy, but not so honest that it is impossible to be more so.

<sup>69</sup> The small store is probably in a position to make better use of advertising that is misleading than is the larger store, since the element

tive's interest in a highly exact and honest statement may be due to a superior conception of honesty and fair dealing, or it may be based on thinking in terms of a longer unit of time, in which a good reputation is more lucrative than forced sales.<sup>51</sup>

In addition to the abstract value of relatively honest behavior over relatively dishonest behavior,<sup>52</sup> the consumer gains also in a concrete sense through the truth in advertising movement. The extent of that gain depends in each specific instance upon the nature of the deception corrected and the cost of that deception to the purchaser.

In many cases it would seem that a customer is not actually misled by a false statement since she is able, upon viewing the advertised object, to determine the truth of the statement made. In that case the retailer, in so far as he thinks through the implications of his conduct is counting on his ability, or that of his salesmen, to sell the customer another

of salesmanship is probably more important. Thus the smaller shop can attempt to get a customer into the store by means fair or foul and hope to sell him when once he enters. This is perhaps less true of the larger store.

<sup>51</sup> It is important to remember in this connection that a good reputation is built on something the public believes, not necessarily on truth.

<sup>52</sup> Honesty, being a desirable moral standard has a certain absolute value in terms of a decent society. It is therefore socially "better" to have survival value based on honesty than on dishonesty. This situation is not altered by the conscious or unconscious use of the truth in advertising movement as a cloak for the pursuit of self-interest. Similarly, a moral benefit accrues to the consumer when he is not told lies for the purpose of attracting his trade. It is interesting to note, however, that a difference in degree rather than in kind is involved in distinguishing between a direct misstatement of fact, misleading implication, and the manipulation of the psychology of the genus homo in creating a false impression. The point at which these various degrees of dishonesty become a "lie", recognized and resented by the public, depends upon conditions which change with time.

article when once she appears in the store. At most the customer's time is at stake.<sup>68</sup>

But if a customer is unable to detect the inaccuracy of a claim, she may lose more than time. Concerning misstatements as to the quality and the material content of an article, a customer is injured in so far as the misrepresentation involves a quality in which she is concerned. The consumer purchases utilities; she purchases value-in-use for herself and for her family. She is primarily interested, therefore, in what happens after she leaves the store with the goods. The merchant, on the other hand, is interested in her coming to the store and making a purchase. In the future relation of the customer to the new purchase he is interested only to the extent that it should be sufficiently satisfactory for the customer to come back to the store: she must not feel that she has been treated badly and could do better somewhere else. In other words, he is interested in giving the customer what she *expects* rather than necessarily what she *wants*. But he is also interested in his competitor. He does not want him to pass off on the customer a cheaper article as identical with the more expensive one that he himself is trying to sell, any more than he is willing to have his competitor sell an article for the same price which has cost less, this in addition to the more general concern in preserving faith in advertising copy. It would seem then that the customer's interest in verity does not conflict with that of the retailer. It goes further and its incidence is somewhat different. The consumer interest is on the side of the truthful retailer who is living up to her expectations and insisting that

<sup>68</sup> This principle underlies bait advertising as well as any kind of false or exaggerated statement concerning merchandise the falsity of which the customer is able to detect. Organizations such as Consumers' Research operate to increase customer equipment with which to combat inaccurate advertising.

his competitor do likewise, although the extent to which she is interested depends on the extent to which a deception involves a quality in which she is primarily concerned.<sup>54</sup>

But there is also a wide field in which a customer has not as yet been trained to expect a guarantee of fulfilled wants. The customer can only take what she is given, although, of course, she can trade where she is given what she wants. For long she submitted to the doctrine of let the buyer beware. A fair practice movement has successively condemned fraudulent, misleading, inaccurate, and finally, incomplete statements concerning technical attributes of merchandise. But there is still much that a customer would like to know concerning merchandise that most retailers are not interested in telling her.<sup>55</sup> She wants to know how an article will wear, how it will clean, how, in other words, it will serve her.<sup>56</sup>

<sup>54</sup> Thus the retailer may be equally interested that the wool content of a garment, which is part cotton, and the silk content of a garment which is part rayon, be accurately stated; they both affect the cost to him and to his competitor. The customer, on the other hand, if she purchases the woolen garment for warmth, and the silk garment for style, might be far more affected by the former than by the latter misrepresentation. In fact, if she has a limited amount of money to spend, she may actually obtain more satisfaction out of the dress which is part rayon, which she can buy at her price.

<sup>55</sup> In part this is due to the fact that retailers do not know and it is expensive to find out. Also, the emphasis on price has made it difficult to sell a grade of merchandise concerning which any sort of guarantee could be given.

<sup>56</sup> The standards concerning sun-fast, washable, etc., approach the type of thing here discussed. The American Home Economics Association attempted in 1919 to secure the cooperation of associations of manufacturers and retailers to determine the minimum standards of wear for certain fabrics. At the instigation of the same body 10 years later the American Engineering Standards Committee attempted to have the manufacturer group accept the standards for the quality of sheeting which they deemed desirable; three definitely described weight classes, stating per cent of material other than cotton, the thread count in both directions

Specification relating to performance is still relatively rare even in the Better Business Bureau *Guide for Retail Store Advertising*.

Exaggerated claims or implications concerning the value as opposed to the quality of an article are more or less injurious to the customer depending upon the difference between the amount of money which she paid for the article and that which she would have been willing to pay for it had there been no deception involved.<sup>67</sup> The affect of the injury differs in individual instances depending on the importance of this sum to the individual customer.<sup>68</sup> In some cases, it is doubtless the retailer rather than the customer who is deceived.<sup>69</sup>

and whether the fabric was a second or first. (*Annals of the American Academy*, May, 1934, article by Dr. Gertrude Mack.)

<sup>67</sup> It would seem that in certain kinds of articles at any rate the margin within which the customer is not able to judge the actual value which he is receiving is very large, even if there is none of the excitement of sale or bargain psychology involved. The Better Business Bureau of New York City made a test consisting in assembling 90 suits and overcoats at a hotel, removing all marks of identification, and inviting retail buyers, manufacturers and textile men to appraise them. It was found that the appraisals ranged from 30 to 40% above and below the actual average retail price of the garments; in only three cases was the average valuation and the retail price the same. (H. H. Shively, *op. cit.*, p. 29.)

<sup>68</sup> It may well be that in terms of pragmatic utility the customer gains from being fooled in that the pleasure she experiences from the thought that she had purchased a bargain is greater than the financial loss which she suffers.

<sup>69</sup> A study made by the Boston Better Business Bureau, under the direction of Kenneth B. Blackman in 1928, seemed to indicate that there was considerable caution and skepticism exercised in belief of comparative prices. The individuals interrogated were requested to select a word which most nearly expressed their opinion of comparative prices. Out of the 459 answers, 29 said "truthful", 207 said "exaggerated", 172 said "misleading", and 51 said "false". (Domestic Distribution Department, Chamber of Commerce of the United States, *Small Store Adver-*



*tising A handbook for the retail merchant*, Washington, November, 1931.)

The Bureau of Business Research of Ohio State University undertook an analysis of reactions of Columbus women to special sales in 1931. 1823 questionnaires were made out; 81% of the women indicated that they were interested in special sales, but only 36% believed that special sale advertising was dependable; 64% believed it partially or not at all dependable. The objections to special sales that were raised by the women included the statement that they could not distinguish between regular and special merchandise, that the goods so offered was not reliable, and that frequently (an objection raised in 22% of the cases) a lower grade merchandise was offered in such cases. (NRDGA *Bulletin*, November, 1931, p. 676.)

## CHAPTER III

### RETAILER AND CONSUMER

COMPETITION typically refers to the contest for the same market between individuals in the same or alternative lines of business. But obviously there are many other types of business relationships which have a highly belligerent form in so far as one man's gain is another man's loss: other things being equal, the more the retailer receives for a product, the higher his profit and the less value per dollar the customer obtains; the cheaper the retailer buys, the higher his profit and the less profit the manufacturer can make; the lower the salaries paid by the retailer, the greater his profit and the poorer the employee's living. This struggle between retailer and his customer, his sources of supply, his factors of production will all be termed phases of the "market contests".<sup>1</sup> Related cooperative activity will form the subject of the next three chapters. In part, cooperation of this kind was the direct result of trying to govern a situation which by its very nature could only be controlled through joint action of competitors, in part it was an attempt to present a more convincing front against opponents in the market contest. When opponents were organized, retailer cooperation was often the result of an essentially defensive move.<sup>2</sup>

<sup>1</sup> Professor John Maurice Clark kindly suggested this term.

<sup>2</sup> In announcing the plan of reorganization for the National Retail Dry Goods Association after the war, Dr. S. M. Rastall said that one of the three basic reasons for the new organization was that "any section which remains unorganized is sure to stay in the background without its interests being given the proper amount of general attention," "because the war has shown as never before the tremendous value of organization,

Joint action of retailers directed toward obtaining control over some aspect of their relation with consumers arises, not from the need of combating organization with organization, but simply because the type of practice which is the object of regulation can only be controlled through the agreement of competitors.

In a sense this discussion merely continues that of the previous chapter. Unfair methods of competition can be thought of as a continuous sequence ranging from the sort of practice which is grossly immoral to the kind to which only the slightest trace of unethical quality could be imputed. Most of these practices are attempts to attract customers; they have in common the fact that they are uneconomical in that competitors are under some degree of compulsion to imitate a practice that they would not otherwise consider good policy. The competitive methods that are banned by the trade differ as to the type of sales inducement and the extent of moral opprobrium and business cost which they involve.

The division between this chapter and the previous one is based on subject matter. We have concluded the discussion of predation and unfair advertising in which false, misleading, misrepresentative or inaccurate statements were made about merchandise: we are about to discuss more substantial types of sales inducements such as low price, easy terms of payment and attractive service features. Some of these practices may involve a considerable amount of misrepresentation, e. g., the loss leader which is really a practice mid-way between the two groups. Some, on the other hand, involve practically no misrepresentation—excessive returns could be cited as an example situated at

the various business groups are organizing and arming themselves for the future as never before." (NRDGA *Special Convention Bulletin*, March 8, 1919.)

the lower end of the range. It is most interesting to note that, particularly in the face of an active movement to abolish some of these uneconomic practices, competitors who practice them are considered more or less unethical. The flavor of moral opprobrium may be a rationalization of economic motive but it is none the less real. But even more important to observe at this point is that unfair sales inducements unlike unfair advertising rely for their appeal on the fact that customers want them. Attempts to abolish them may therefore be directly opposed to the interest of the consumer, the customer of the retailer. This opposition of interest between vendor and purchaser became all too clear to retailers through their experience with manufacturers' codes under NRA when they, as customers, suffered from analogous restrictions imposed by the sources of supply from whom they purchased.

#### SECTION I. UNECONOMIC PRACTICES

Some of the earliest examples of cooperative activity aimed to limit uneconomic practices. The limitation of discounts to dressmakers was an important element in the work of merchants' associations and retail dry goods associations in the first decade of the 20th century. There were many attempts about the same time to limit advertising to certain selected media in order to prevent the drain on the retail purse necessitated by contributions, in the form of advertising, to all of the charity and church affairs of the community at pain of congregational disapproval. These modest beginnings were enlarged in the course of the development of merchant and trade associations to include many other types of cooperative agreements.

There have been many attempts to limit the amount of returned goods, which increased steadily from 1900 to 1914, and again after 1920.<sup>8</sup> By 1932 the cost of returns in de-

<sup>8</sup> The ratio of annual returns to sales was about twice as great from 1926 to 1929 as it was in 1919 and 1920. (Paul H. Nystrom, *Economics of Retailing, Store Operation*, pp. 570-571.)

partment stores was calculated to represent one or two per cent of sales.<sup>4</sup> It has been estimated that one half of the returns of merchandise could be eliminated without affecting the proper use of the privilege.<sup>5</sup> Local associations attempted to enact and enforce agreements against selling on approval before 1900; the cause was taken up by newspapers and by retail trade associations around 1910 in campaigns to educate the consumer and obtain the concerted action of retailers. From 1911 to 1914 returns was one of the principal subjects discussed by retail trade associations.<sup>6</sup> From 1914 to 1920 the proportion of returned goods declined, but it seems probable that this was due as much to the patriotic fervor of war times with the resultant acceleration of cooperative activities as to the work of retail associations in the preceding decade. Isolated campaigns have achieved fair success in lessening the returned goods evil. Notable among these are campaigns carried on in Boston through the Retail Trade Board; in Chicago, where returns in piece goods departments were reported cut by about one half;<sup>7</sup> in Dallas,

<sup>4</sup> The NRDGA Controllers Congress reports that the ratio of returns to sales in the two smallest size groups was 6.8 and 8.8, in the two largest size groups it was 10.4 and 11.7, in specialty stores it was 14.6% of goods purchased in 1930. The cost per transaction for returns of different kinds varied from 31.8 cents for a cash take sale to 55.9 cents for a charge send sale. (Study made by Ohio State University reported in the *NRDGA Bulletin*, October, 1932.) On the basis of these figures and the Harvard department store expense reports, it was calculated that returns cost one and one half percent of sales in the stores with between one and two million dollar annual sale volume and 2.23% in stores of over ten million dollars sales per year. (*NRDGA Bulletin*, October, 1932, p. 747.)

<sup>5</sup> *NRDGA Bulletin*, December, 1931, p. 727, article by P. A. O'Connell, "Value of the Credit Bureau in the Community."

<sup>6</sup> Nystrom, *op. cit.*, vol. ii, pp. 570-571. The stores which suffered most from the returns evil were the large down town stores—the type of store most active in the Trade Association movement.

<sup>7</sup> *NRDGA Bulletin*, May, 1931, p. 306, article by Harry W. Scharter, "Profitable Store Management in 1931."

through the Returned Goods Division of the Dallas Retail Merchants' Association in cooperation with the Merchants Retail Credit Association;<sup>8</sup> in San Francisco by the Dry Goods Association,<sup>9</sup> where a continuous campaign is carried on. Although 60% of the Merchants' Associations interrogated in a recent study conducted by the National Association of Retail Secretaries claimed that they had conducted returned goods campaigns at some time, in only ten cities had such a campaign been carried on within the last two years.<sup>10</sup>

It seems probable that the salutary results of these campaigns are not permanent because the customers grow careless when they are no longer being "educated", and because the stores, fearful lest a competitor lure trade away through offering easy returns privileges, tend to relax requirements when customers become irritated. Likewise, sales people who are paid on a commission basis are unlikely to refuse a possible commission if it seems probable that a customer

<sup>8</sup> The Dallas plan was a rather painstaking attempt to eliminate "chronic returners"—defined as individuals returning over 20% in value and units during the first year of the project and 15% after the second year. Letters were written explaining the plan, accounts were watched, and follow-up letters sent to a list of patrons who continued with high return ratios. After the third or fourth batch of letters had been mailed the names of the chronic offenders were sent to individual stores for whatever action was thought appropriate. In addition to customer education, newspaper publicity was given to the problem and sales people were trained in the six cooperating stores. All of these stores showed a marked reduction in the percentage of goods returned in 1932 as compared with 1931; the average rate of return being 11.3 for the five stores for which figures were given in 1931 and 8.8 after the plan had been in effect for one year. (*Retailing, Executive Edition*, October 2, 1933, p. 2.)

<sup>9</sup> It was estimated that returns were reduced seventeen per cent by this campaign in which certain types of articles were not accepted for return for sanitary reasons and articles not returned within four days were classed as "irregular" and made difficult to credit.

<sup>10</sup> *Retailing, Executive Edition* (henceforth cited *Retailing*), February 11, 1935, p. 14.

will keep goods sent on approval. Thus, although aggressive cooperative campaigns have been helpful in lessening the extent of returns, there seems to be a strong retrogressive tendency which sets to work when the cooperative fervor of a world war or constant group education are lacking and individual store insistence on group standards lags.

Another store problem which retailers have attempted to solve by cooperation is the cost of alteration. Since the total cost of alteration was not typically collected by stores from their customers,<sup>11</sup> an agreement as to adequate alteration charges was thought to be advantageous. In some cases associations have merely furnished to certain of their members information concerning rates in other member store.<sup>12</sup> In some cases attempts have been made to agree on a standard alteration rate. One of the outstanding examples of successful agreement on alteration charges occurred in St. Louis where for the past 10 years the downtown stores are reported to have adhered to an alteration schedule which is posted in the fitting rooms.<sup>13</sup>

<sup>11</sup> The NRDGA undertook a study of the cost of alterations. A survey of 12 stores revealed that in 1929 the average cost of alteration of women's garments was four per cent and the average amount collected from the customer 3.1 per cent. In men's clothes the average cost of alterations was 4.5 per cent of sales whereas there was typically no charge for the work. (NRDGA *Bulletin*, January, 1931, pp. 29 and 30.) A study of 48 stores reported in the July, 1930 issue of the *Bulletin* indicated that 60% of the stores collected over 75% of the total charge for alterations including overhead. (NRDGA *Bulletin*, July, 1930, p. 389.)

<sup>12</sup> The NRDGA, in response to a special request from a member of the Association, compiled a list of alteration charges in several stores, a copy of which may be obtained by any member of the Association. (NRDGA *Bulletin*, March, 1930, p. 176.)

<sup>13</sup> *Retailing*, September 24, 1934. The charges vary according to the price of the dress,—for a dress costing \$20 or less the charge is \$3.50; for one between \$50 and \$75, the alteration charge is \$6.50. It is reported that there is little customer complaint.

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A recent survey conducted by the National Association of Retail Secretaries concerning trade agreements in effect in Retail Merchants' Associations in different parts of the country brought out the following information:<sup>14</sup>

<i>Subject of the Agreement</i>	<i>Percent of Cities having such Agreements</i>
Advertising and donations .....	About 100%
Giving away of merchandise .....	86%
Loaning of merchandise .....	74%
Restricting placing cards in display windows (requests typically referred to the association office) .....	54%
Discounts to employees only .....	80%
Charge for alteration of women's garments ..	84%
Charge for parcel post .....	50%
Charge for express .....	40%
Charge for special deliveries .....	33%
Charge for C. O. D. ....	27%
Carrying charge for delinquent accounts .....	51%

Marked progress has been made through retail cooperation in the elimination of trading stamps which were used extensively before the war.<sup>15</sup> The elimination of this type of redeemable coupon did not seem to cause the customer uprising that was feared, at the same time that it saved stores many thousands of dollars.<sup>16</sup>

Agreements concerning closing hours, although thought desirable by many merchants, seem difficult to enforce. Typically they require cooperation on the basis of fairly small districts under the leadership of local merchants' associations. Stores have frequently agreed upon dates at which mark-down and season-end sales would begin. The January white sale and August fur sale are now in the class of expected natural phenomena.

<sup>14</sup> *Retailing*, February 11, 1935, p. 14.

<sup>15</sup> Thirty states were reported in 1914 to have some sort of restriction on the use of stamps, one of the most practical type of restriction was merchant cooperation. (*NRDGA Industrial Outlook*, November, 1914.)

<sup>16</sup> In Louisville the elimination of trading stamps was reported to have saved the stores \$100,000 a year. (*NRDGA Bulletin*, June, 1931, p. 306.)



## SECTION II. SUPPORT FOR PRICES

Attempts by retailers to delimit the use of a price inducement as a method of attracting trade may be grouped in two classes: the attempt to insure adequate gross margin by a proper relation between mark-up and expense, and the attempt to restrict competitive price cutting on leader items.

*Adequate Mark-Up*

Attempts to insure adequate mark-up have for the most part taken the form of cost education, price lining, agreement on prices or price policy, and the promotion of larger unit sales.

Cost education is an effective method of insuring adequate mark-up because "it has been found that very few retailers actually cut their prices below costs when they definitely know what those costs are."<sup>27</sup> One of the major aspects of trade association work has been the teaching of cost accounting by means of prepared bulletins and articles, field agents, and series of classes for retailers. Education may assist in getting the small store to uphold the price structure. But for the most part it would seem that the larger stores are the leaders in price setting in any given district. The smaller stores meet the competition of large buying power as best they can. And among large stores there is frequently a certain uniformity of price which seems to suggest that, if there was no agreement, then at least there was intimate knowledge of the price structure of competitors. The comparative shopping departments would insure the thoroughness of such knowledge.

Moreover in certain markets there seems to be considerable discussion of price lines which is the foundation of

<sup>27</sup> Nystrom, *Economics of Retailing, Store Operation*, p. 471.

the price system in many departments.<sup>18</sup> Thus five leading department and specialty stores are reported as agreeing to abolish \$5, \$10 and \$15 dress lines and substitute \$5.95, \$10.95, and \$16.75 price lines.<sup>19</sup> In another case one hears that buyers in all departments of retail stores in a local organization met and agreed on specific changes in price lines in order to meet the costs of a sales tax. General price policy is frequently discussed in retail associations. Buyers, manuals and other forms of education concerning typical department costs and mark-on has a stabilizing influence on the price at which goods are offered for sale in different kinds of stores.

Low margin selling has always existed in certain types of retail establishments and typically it has been resented by many competitors. With the growth of chain and mail order companies featuring the economies of mass buying and low cost retailing, the problem grew ominous.<sup>20</sup> But obviously the raised hands of small retailers even though joined together in local retail merchants associations, trade associations, and the like could not stop the growth of mass distribution fortified by mass purchasing and skillful manage-

<sup>18</sup> Price lines were first used in women's apparel and subsequently spread to many other departments. This device could operate to prevent price competition on each line at the same time that the customer is afforded opportunity to select an article to suit her pocketbook.

<sup>19</sup> NRDGA *Bulletin*, June, 1933, p. 37.

<sup>20</sup> The 1930 version of the price cutting menace is the super market—a large cash and carry store situated typically where rents are low, having a minimum of equipment and featuring large turnover at low prices. The *Big Bear Market* which did about a ten million dollar business in 1934 can presumably make a satisfactory profit on a mark-up of slightly over nine percent on cost. (*Retailing*, February 16, 1935.)

ment.<sup>21</sup> Accordingly the cooperative movement has made little headway in this direction. There have, however, been attempts to improve the grade of merchandise carried by stores in order to increase their average sales check.

Since operating costs relate more closely to the size of the sales check than to dollar volume, an increase in the average transaction ought to augment profits. In the fall of 1931 the NRDGA launched the Quality drive—an elaborate campaign of education which aimed to induce stores to carry and customers to purchase a better grade of merchandise.<sup>22</sup> Progress in this direction, however, seemed to be balked by the inadequate purchasing power of consumers.

<sup>21</sup> The resentment against the "Trust" and the "Wall Street" store was probably only in part a resentment against the low mark-up of the cash and carry chain. The chain, it was claimed, drew money out of the community. Local retailers also fought these stores because, as has been explained above, the business which they gained the local retailer lost. Exceptions exist when as claimed by certain chain store officials the opening of a chain store helps the local merchant since shoppers who would have gone to neighboring towns remain at home to make their purchases.

<sup>22</sup> The campaign was launched by the NRDGA on September 29, 1932 at a gathering attended by leading manufacturers, retailers, newspaper publishers and representatives of the consumer. "Quality", as one of its sponsors explained, "does not necessarily mean higher priced merchandise. It means merchandise of good material content, of good workmanship and construction, intended to give satisfaction, wear, and use to the consumer who is willing to pay a fair price for it." The purpose of the campaign, it was explained, was to improve merchandise which was bought by the people of the country, to encourage buying, to help restore confidence in our industries, to bring order out of chaos. "*Perhaps of secondary importance, it should increase the amount of the average sale in retail stores—an achievement, which indeed, would aid in the solution of some of our operating and expense problems.*" (NRDGA Bulletin, Oct., 1932, p. 732. Italics mine.) Community campaigns for consumer education, suggested store displays, and all of the other tools of high pressure salesmanship in the 1930's were used to publicise the campaign.

*Profitless Selling*

Attempts to control retail price structure have taken the form of preventing price cutting in leader merchandise.<sup>23</sup> This movement was gathering strength just prior to the enactment of NRA. It will be recalled that leaders had been condemned when used as bait and not freely offered for sale. The fair practice movement had also condemned the general underselling claim. Local merchants, moreover, had strenuously objected to the leader policy of chain stores.<sup>24</sup> But it was not until chains started to compete with other chains in the use of leaders and the depression reduced sales and narrowed margins that the agitation against the use of leaders grew intense and general.

The recent increase in the use of loss leaders was disclosed in the Federal Trade Commission investigation of chain stores. Of the 777 chains, averaging about twenty-four stores a-piece, that reported information in 1922, 8.9 per cent of the chains operating 14.8 per cent of the stores sold deep cut leaders—leaders below the net purchase cost; in 1928, 1458 chains averaging about thirty-three stores per chain reported the 11.9 per cent of the chains and 16.8 per

<sup>23</sup> The curbing of price cutting was an important function of the early trade associations, particularly those which were influenced by manufacturers. The first period in association history was characterized by offensive rather than defensive action. "They seem to have been formed for the purpose of enabling their members more effectively to take advantage of favorable business conditions", through the fixing of prices, limitation of production and division of territory. (National Industrial Conference Board, *Trade Associations*, p. 10.)

<sup>24</sup> Although small local merchants often used leaders, chain stores or department stores had a particular advantage in price wars in so far as it was possible to support losses in one department or city by profits in the rest of the store or in other cities.

cent of the stores sold leaders of the deep cut variety.<sup>25</sup> The increased use of leaders in the grocery and meat, drug and women's shoe chains, seemed marked. The figures would also appear to indicate that the practice had spread to the smaller chains. In 1928 almost half of the chains that reported the use of leaders consisted of between two and five stores. By 1929 it was estimated that between three and five billion dollars of retail business was being transacted without profit as loss leaders or to attract trade.<sup>26</sup> By 1931 the figure of business done without profit was raised to twenty billion,<sup>27</sup> though it seems doubtful whether most of this was intentional profitless selling.

Clear it was that, whether intentional or unintentional, the retail trade was beginning to feel that something ought to be done about the menace of profitless selling. In the words of Gordon C. Corbaly, President of the American Institute

<sup>25</sup> LOSS LEADERS BELOW NET PURCHASE COST BY TYPES  
OF CHAINS \*

*Percent using loss leaders*

Type of Chain	1922		1928	
	Chains	Chains	Stores	Sales of Stores
Grocery .....	10.3	19.7	15.0	16.3
Grocery and meat .....	8.2	13.4	11.8	12.7
Meat .....	13.8	6.7	10.2	11.8
Drug .....	8.6	16.5	18.5	21.7
Variety \$1 limit .....	51.5	39.7	83.8	85.4
Variety \$5 limit .....		20.8	6.9	5.7
Variety unlimited .....	25.0	33.3	45.0	48.8
Dry Goods and Apparel	20.0	20.2	9.8	6.6
Department Store .....	30.0	30.0	6.8	56.5

Source: Federal Trade Commission; *Chain Stores: Scope of the Chain Store Inquiry, 1932*, U. S. Government Printing Office, Washington, D. C., pp. 21, 22, 24.

\* Types of chains not included reported less than ten percent of chains or stores using leaders.

<sup>26</sup> Daniel Bloomfield, *Selected articles on Trends in Retail Distribution*, p. 329, H. Wilson Company, New York, 1930.

<sup>27</sup> *Boston Conference on Retail Distribution, 1931*. Address by W. T. Grant.

of Food Distribution, " Each chain knows that its quotations will be approximately met by all of the other chains and voluntary chains. This state of affairs naturally has turned men's minds towards using other methods to compete for the continuing favor of the housewife. . . ." <sup>28</sup>

A code of ethics was submitted to the Board of Directors of the National Chain Store Association in 1929. One of the clauses of this code read, " We believe it to be unintelligent and unfair practice to deliberately initiate the selling of any goods without profit, in order to attract business or undersell competition, knowing that every penny that is lost on one item must be made up on another, if the business is to continue." <sup>29</sup> At the 1931 Boston Conference of Retail Distribution, a resolution was introduced by Mr. Grant: " Resolved that it be the sense of this meeting that it is an unfair practice to deliberately initiate selling of merchandise without profit in order to undersell competition." <sup>30</sup> The resolution was passed unanimously by the meeting.

By March of 1933, *Chain Store Age* can report that " The leading factors in the drug and toilet goods trade have decided to get together, as far as the law allows, to protect retail profits. They are tired of the destructive competition of the pine board stores, department stores and other price wreckers. They are going to see what can be done by legitimate cooperation to secure a more attractive margin on nationally advertised products. ' Profit bearing not uniform prices must be the objective.' " <sup>31</sup>

<sup>28</sup> *Ibid.*, 1930, p. 97. Address by Mr. Corbaly.

<sup>29</sup> *National Chain Store Association Addresses*, 1929. Address by W. T. Grant.

<sup>30</sup> *Boston Conference on Retail Distribution*, 1931, p. 29.

<sup>31</sup> *Chain Store Age*, *General Merchandise Edition* (henceforth cited *Chain Store Age*), March, 1933, p. 68.

Manufacturers had supported the attempt of retailers to maintain profitable prices in that they had for years been attempting to put through legislation such as the Kelly price maintenance bill which would permit the maker of a product to state the price at which it could be resold. The vital interest of certain specialty stores such as hardware, grocery, and drugs, in stopping price cutting is evidenced by their support of the price maintenance bills which would give to the *manufacturer* power to control resale price. Retailers in the general merchandise group were definitely opposed to manufacturer control of prices. The NRDGA vigorously fought the Kelly and similar bills.

By the time that the Roosevelt Administration assumed office, the Retail Trade was, as a whole, interested in trying to protect profits or diminish losses through concerted action. But, although many of the specialty stores were ready for price fixing even at the cost of manufacturer control, most of the larger stores were unwilling to give up their strategic position in the economic process although they, like the specialty shop, were, by 1932, interested in joint attempts to control the use of loss leaders. The prolonged adolescence of retailing had finally come to an end: the trade had reached the adulthood of interest in price stabilization perhaps thirty years later than normal.

### SECTION III. EVALUATION

We find on the whole, that retailer cooperation has not been a very effective method of delimiting the type of inducement which might be offered to the consumer. This is not surprising when we consider that even highly organized manufacturing industries have had considerable difficulty in regulating prices and services. In the retail trade, it would seem that the failure of the desultory attempts at control in this field was in the public interest.

*The Public Interest*

Typically it is not to the interest of the consumer to have retailers limit through cooperation the services and terms of sale which a retail store is supposed to afford a customer. One of the major reasons for retailer objection to practices of this kind probably lies in the fact that it is not always possible to pass on the costs of these services to the consumer. There is therefore no guarantee that were it possible, for example, to abolish the return privilege, that the customer would get the benefit of two per cent lower prices. In any case, the customer who takes advantage of the exaggerated services benefits at the expense of the customer who does not. Likewise, the consumer interest is opposed to retailers' attempts to maintain prices at a profitable level, just as it is to the maintenance of excessive profits in any consumer goods industry. Losses for retailers mean bargains for consumers. Theoretically the consumer interest is best served by permitting just enough firms to remain in business so that consumer needs may be supplied at maximum efficiency and minimum cost. The interest of labor, however, would be on the side of the retailer in the event that wages improved with profits.

*Organisation of Consumer Interest*

The opposition of the consumer to high prices may be organized or merely an aggregate of individual reactions. It may be organized in a number of different ways.

The cooperative store is one instrument with which the consumer can, through organization, fight high prices or any other objectionable aspect of retail stores. In the United States, about one-tenth of one per cent of the retail business was done through such outlets. This is a negligible amount when compared with some European countries such as England where about twenty per cent of the business is on a



cooperative basis, Sweden and Denmark where about thirty per cent, or Finland where about forty per cent of the total retail business is conducted by consumer cooperatives. Dr. Nystrom feels that perhaps the most important reason for the backwardness of the American cooperative movement is the keenness of competition in the retail trade and the fact that "Despite all of the drawbacks and defects of the present retail system of distribution, the ultimate consumer probably receives more for his money at the present time than ever before."<sup>32</sup>

Consumer interest in low prices has on occasions been sponsored by the Government. Under the wartime Food Control Act, the President declared that he intended to interest himself in reducing the cost of living through the Department of Justice.<sup>33</sup> The NRDGA immediately notified the appropriate authority that the Association was anxious to supply information and help in whatever way was desired, "... by following an absolutely straight forward policy of complete cooperation with the Government, the activities of the Attorney General were kept in sound and reasonable paths". This continued for about a year, then the attitude of the Attorney General changed. The NRDGA then retained Charles Evans Hughes and challenged the constitutionality of the Lever Law.<sup>34</sup> It was declared unconstitutional.

Consumer opposition to rising prices can take a most effective form through the spontaneous reaction of individuals. The power may lie not in organization but in aggregate

<sup>32</sup> Nystrom, *Economics of Retailing, Institutions and Trends*, p. 288.

<sup>33</sup> The Food Control and the District of Columbia Rents Act was approved August 10, 1917. It authorized the President to make necessary regulation to prevent restrictions in the sale and movement of necessities. (40 Statutes at Large, p. 276, Amended 41 Statutes at Large, p. 279.)

<sup>34</sup> NRDGA *Bulletin*, April, 1933, p. 92, article by Lew Hahn.

action which, because of a similar stimulus similarly applied, results in homogeneous group reaction. Retail prices can be generally increased only at the expense of the number of purchases made, since total dollar purchasing power is relatively fixed at a given time. But since the number of purchases bears a general relation to the number of needs which must be filled, there is less elasticity than might be imagined in the number of articles which will be purchased. One article of clothing can not serve the purpose of shoes and overcoat. Therefore an increase in prices, when total consumer income increases less rapidly, is likely to mean a general "trading down" on the part of the consumer who still pays \$3.95 for a pair of shoes but gets a poorer quality for it. But if the consumer believes that the increase in prices is unreasonable, a "Buyers' Strike" may occur. This is a spontaneous decision, on the part of a perceptible number of customers, to refrain from usual spending because prices seem too high. Though customer "education" helps to justify price increases, in regard to articles which are frequently purchased so that price comparisons can readily be made consumers are not easily reconciled to rising prices.

Thus, although retailers have been able to achieve a certain amount of conformity in *price lines*, the customer is the final arbiter of the number and price of the articles purchased out of the aggregate purse, at the same time that the public purse is itself filled by the economic machine. Only at times when the economy is already predisposed toward a rise in prices can there be any effective price raising through similar or joint action of retailers. This does not mean, that, theoretically, retailers would be unable to determine to reduce the amount paid for goods in order to increase profits without changing prices. But the necessarily unorganized nature of a market in which so many units operate and in which competition is so keen, makes attempts of this kind difficult

to enforce the minute business falls off or hesitates in its advance.

The pros and cons of the loss leader do not really involve the question of price fixing except as a by-product. Those who believe that the leader is an unfair method of competition claim that it is supposed to give the impression that other articles in the store are as cheap as the leader. This, it is said, can not be true: in reality, what the customer saves on leaders he loses on other articles in the store. Thus the objection to the leader is placed on the same basis as the objection to the general underselling claim with which it is typically either explicitly or implicitly linked.<sup>85</sup> On the other hand those who believe in the use of the loss leader admit that the cost of leaders is added to the mark-up on other merchandise but state that this is also true of the cost of publicity. The leader is claimed to be merely a new form of advertising.

Although the dialectics of this argument are intriguing it would seem that the real objection to the use of the loss leader derives from the fact that individual retailers can not make their own decisions with respect to its use but must in part imitate their competitors; moreover the imitation tends to grow progressive. The consequences of these facts are particularly objectionable under two conditions: (1) When the use of leaders has genuine advertising value for one store and not for another. In this case the store which uses the leader to advantage, and this typically happens in

<sup>85</sup> Conversely the underselling claim when backed by price-meeting, results in a specialized kind of loss leader, the sale of which may be confined to a particular customer who has found the same article priced more cheaply somewhere else. The customer has, through this price-meeting or beating, presumably obtained the impression that all prices in the store are equally low. But this is precisely the theory of the fixed price loss leader except when it is used simply as a bait. Thus most loss leaders carry an implied general underselling claim.

connection with a convincing underselling claim, benefits at the expense of his competitor. (2) When economic conditions make it impossible for retailers as a whole to add the cost of leaders to the mark-up on other merchandise. In this case retailers as a whole suffer though the consumer benefits. When neither of these conditions prevail but, in spite of differential advantage to individual stores, the cost of leaders can on the whole be passed on to the consumer, then consumers who purchase the leader goods benefit at the expense of those who do not.

## CHAPTER IV

### RETAILER AND RESOURCES

RESOURCES, as the sources of supply are termed in the Trade, wage a continuous battle with their customers, the retailers. As an undercurrent to this aspect of the market contest lies a struggle which is symbolized by the discussion of whether the retailer is to be "the distributing agent for the manufacturer" or "the purchasing agent for the consumer". Advantage in this controversy shifts with long term movements accompanying a maturing economy, with the cyclic or random fluctuations in business activity and with the skill of the contestants.

An "economy of plenty" seems in general terms to give the buyer an advantage over the seller. But in this country any advantage over a protracted period of time which might accrue to the retailer through the slow maturing of the economy has been aided through what was in a sense one aspect of the maturity—the growth of large distributing units. The big firm has been able to utilize to the full the strategic position of the buyer in an economy of plenty.<sup>1</sup>

<sup>1</sup> A manufacturer explains to an agent of the Federal Trade Commission his reasons for selling goods below cost to a chain store. He says that the chain's offer to purchase goods was not subject to negotiation,—it was "take it or leave it". He took it, because: (1) He wanted to use the materials which he had on hand which might deteriorate in value; (2) He wanted to keep his organization together in a dull month because he thought that he might be busier in the following months; (3) He was the main source of supply of the chain and he was afraid to let them make other connections. (Federal Trade Commission, *Chain Store Price Policies*, 1934, p. 18.) The strength of the position of a large buyer has caused many manufacturers to be less anxious to sell to the large

The increase in direct purchasing from manufacturers,<sup>2</sup> in "hand to mouth buying",<sup>3</sup> and in the extensive use of quantity discounts seem to be related to long run changes. In the ability of the large firm to force concessions from its resources lies an essential conflict of interest between the large and small store. We will find that the small store frequently finds it better to side with manufacturers in attempting to reduce the differential advantage of large purchasing power.

Changes in the retailer resource relation are caused not only by long term movements but also by the cyclic or random acceleration or retardation of business activity. Business depression assists retailers to improve their bargaining position relative to their resources, just as unusual prosperity may mitigate in favor of the sources of supply. Thus during the war the rapidly rising prices frequently caused difficulty in enforcing the delivery of orders placed at a lower price.

stores than might be supposed. The reason seems to be that the trade of certain large stores is often unreliable, and consequently the plant capacity required to handle it is likely to be thrown out of use if the demands of the purchaser are not met. Since these demands are frequently fairly stringent, a manufacturer has better control of his business if he relies for the main part of his trade on a large number of less erratic and less demanding customers.

<sup>2</sup> In New England direct selling by the manufacturer to small stores occurs; (1) in the Southern district where population is dense; (2) and for the rest, largely where buyers are (a) chains, (b) cooperative buying groups, (c) large department stores. (Domestic Commerce Series 59, 1927.) Dr. R. S. Alexander has computed on the basis of census data that the amount of goods sold by retailers which was purchased from wholesalers decreased between 1929 and 1933 from between 58.9 and 54.7 to between 49.6 and 46.6.

<sup>3</sup> In the dry goods field the increase in small order buying is illustrated by the figures of one firm that in 1920 had 250 orders averaging about \$400.00 each, and in 1927 almost 800 orders averaging \$250.00 each. This was considered a fairly typical situation. (Domestic Commerce Series 59.) See also *Recent Economic Changes*, McGraw Hill Book Co., Inc., New York, vol. i, pp. 344 and 353-55.

Conversely, when the market broke and prices fell, there was a tendency for retailers to cancel orders placed at a higher price level, and for the retailer to be in a position to insist on better terms and prices.<sup>4</sup> Similarly the 1930 depression caused a continuous increase in advantageous terms demanded by retailers of their resources.

But whatever advantage the retailer might gain in his personal dealings with resources, it was in part outweighed by the fact that manufacturers were better organized. Trade Associations in this field were both more numerous and more powerful than among retailers. Particularly did the latter lack any strong central organizations such as the National Association of Manufacturers.

The constant pressure of individuals attempting to strike a good bargain aided or hindered by underlying long term and cyclic or random economic conditions and backed by organized groups resulted in certain practices some of which were deemed unfair and others of which were thought wasteful. These practices form the subject matter for a discussion of trade relations.<sup>5</sup>

#### SECTION I. COOPERATION IN TRADE RELATIONS

The Committee on Trade Relations of the National Distribution Conference lists types of unfair practices: Cancellations and returns<sup>6</sup> resulting from overbuying in a rising market, passing on customer returns, change of style,

<sup>4</sup> Cf. Chamber of Commerce of the United States, *National Distribution Conference*, vol. ii, pp. 12 and 13.

<sup>5</sup> Mr. Filene says that the waste due to unfair trade practices between distributors and producers "at the very lowest figure and conservatively estimated amounts to \$250,000,000 a year." (Lincoln Filene, *Unfair Trade Practices*, Harper and Brothers, New York, 1934, p. 1.)

<sup>6</sup> The returns evil in the apparel trade between 1924-1927 reached a point where between five and fifteen percent of gross sales were returned. (Nystrom, *Economics of Fashion*, Ronald Press Co., New York, 1928, p. 431.)

etc., overselling through consignment sales, sending goods which had not been ordered, abnormal extension of credit etc.; overselling because of the manufacture of too many new models, requirements concerning complete line purchasing, etc.; delays in delivery; substitution; unethical relations between buyers and salesmen, such as commercial bribery, promises of large purchases in order to obtain price concessions which are not fulfilled; unethical credit abuses; attempts to evade contractual obligations, excessive demands for service such as abnormal discounts and credit or price concessions; over-generous allowances on returned goods, etc.; discrimination.

Instances of wasteful as opposed to unfair practices which were enumerated by the National Conference on Distribution picture the field for the useful operation of vertical integration between production and consumption. The retailer is thought to have useful functions as an informer on public needs in relation to the types of goods needed and the prices at which they would be accepted. Waste was said to occur through lack of standardization of sizes, quality, workmanship, varieties of specific articles and their containers. Unwise contracts result from the failure to make definite and specific, the unsound extension of credit, contractual terms relating to consignment selling and the right to copy merchandise, achieved because of bargaining power rather than the abstract justice involved.<sup>7</sup>

A variety of methods of attempting to control the undesirable elements in trade relations have been employed by industry. In part there is simply a tug of war between conflicting interests. At times there are attempts to negotiate adjustments. Both war and negotiations have been conducted through: consultation between buyer and seller; informal activity of trade associations, merchants' associa-

<sup>7</sup> National Conference on Distribution, *op. cit.*, pp. 90, 91.



tions and chambers of commerce; more formal conferences held under the auspices of special committees, chambers of commerce or trade associations to evolve rules of fair practice; and enactment of legislation.

*Consultation between buyer and seller*

Individual buyers can unite for strength in the market contest. Group buying can take the form of resident buying offices, of permanent group buying arrangements ranging from small associations with limited functions to groups combining huge buying power, or of a full-fledged voluntary chain having a wide variety of buying and service functions.<sup>8</sup> Such functions may include cooperative advertising, display and store arrangements, private brands, interchange of statistics, advice and information on merchandising, store operation, etc. Either large or small stores can benefit through group buying. Voluntary chains are particularly useful as a method of improving the small retailer's ability to compete with chains, whether cooperation has been negotiated by retailers themselves or by wholesalers wishing to assure themselves of a more certain market. The growth of the voluntary chain of both the wholesaler and retailer type has been more extensive in the parts of the country and the types of distribution in which chain-store competition is more intense.<sup>9</sup> The savings involved in various kinds of

<sup>8</sup> There are over 400 resident buying offices in New York City, including privately owned and cooperative groups. The NRDGA *Buyers' Manual* states that the majority of stores regardless of size are connected with some resident buying office in New York.

<sup>9</sup> Voluntary chains have developed most extensively in the grocery line. Recently the growth has been phenomenal, the number of chains having almost doubled from 1929 to 1933. In 1929 there were 375 groups having 54,797 members, in 1933 there were 776 groups having 91,497 members, about half of which were the wholesaler sponsored variety. (R. S. Alexander, "Trends in Wholesaling," *American Journal of Marketing*, January, 1935.) In the drug field, a smaller though significant develop-

voluntary chains seem to differ widely. It seems clear, however, that considering the centrifugal elements present, voluntary chains must pay in order to exist.<sup>10</sup> This is particularly true since there is typically expense involved in joining them.<sup>11</sup> Some of the savings which resulted from group buying may well have caused more harm than good. Apparently many peaceful buyer-seller contacts were broken by the downward pressure on prices exerted by these organizations.<sup>12</sup> This pressure gave rise not only to irritation and severed relationships, but frequently to chicanery and dishonesty of a most ingenious nature.<sup>13</sup> The constructive

ment has taken place. (The Food Institute, *The Voluntary Chains*, 1929.) Several successful hardware groups are in operation. Voluntary chains also appear in the dry-goods field; the Ben Franklin League, having over 2000 members and sponsored by Butler Brothers is outstanding in this field. In the men's clothing field Dr. Dameron believes that from 8000 to 10,000 stores probably belong to some form of group buying organization. (Kenneth Dameron, *Men's Wear Merchandising*, The Ronald Press Co., New York, 1930, p. 211.)

<sup>10</sup> In their survey of retail management practices the U. S. Department of Commerce found that, out of the samples studied, savings on cooperatively purchased merchandise ranged from one to ten percent in the drug field and from five to twenty percent in the six other fields in which cooperatives were studied.

<sup>11</sup> Typical membership charges seems to range between \$50 and \$100 per year. Cf. Federal Trade Commission, *Chain Store Survey Cooperative Grocery Chains*, 1932, p. 41 and *Drug and Hardware Chains*, p. 41.

<sup>12</sup> Mr. Klein, speaking at the Boston Conference of Distribution, said in 1931, "I venture to say that during the past two years, more long established contacts between producers and distributors of women's apparel have been severed than in any period of like length in the history of ready-to-wear industry." (*Boston Conference on Retail Distribution*, 1931, p. 55.)

<sup>13</sup> At the Boston Conference, Maxwell Copelof explained some of the abuses of group buying in the garment field: a group-buyer, determined to purchase coats to sell at \$45, looks at a manufacturer's line made to sell at \$59.50. Dangling the plum of purchases by the group at profitable prices, the buyer succeeds in getting the necessary price reduction. Tricks on the part of the manufacturer may counteract the retailer devices. E. g., an order of 100 coats was to be delivered, after inspection, as

aspect of the movement has been hindered by the difficulty in educating membership to the point at which adequate central control is authorized.

#### *Association Activity*

Trade Associations have attempted to improve retailer-resource relationships through education and conferences. Particularly has education of this kind been undertaken by the associations of smaller retailers whose interests, as has been suggested, are frequently on the side of the wholesaler or manufacturer in his battles with large firms. Such associations are frequently partly supported by manufacturer patronage.<sup>14</sup> Mutual understanding of retailer and resource may be furthered by an interchange of knowledge concerning merchandise, business problems and trade news that occurs through trade journals, information services, and the informal contacts of the clubrooms of chambers of commerce, rotary clubs, etc.

Trade associations have also provided their members with group backing in exerting pressure on other groups or organizations. Before the beginning of the century, the Retail Dry Goods Association of New York attempted to reduce

quickly as they were manufactured. Twenty-five coats were made according to specifications and inspected by the retail buyer, twenty-five different and cheaper coats were then delivered. This process was repeated until the last of the order had presumably been completed. (*Boston Conference on Retail Distribution*, 1930, address by Maxwell Copelof.)

<sup>14</sup> The type of trade associations having relatively small dues and financed largely through the sale of a trade paper is, typically interested in improving the relationship between manufacturers, and wholesalers and retailers, e. g., The U. S. Department of Commerce, *Trade Association Activities* (1927) lists as one of the major activities of the National Retail Hardware Association the simplification and standardization of trade relations with wholesalers and manufacturers. The National Retail Hardware Association is one of the largest and best run trade associations of this type.

the bribery of buyers by resources.<sup>15</sup> Cancellations reported by members were investigated by the NRDGA during the post-war epidemic of disavowing contracts. Arbitration service has been provided in trade associations and chambers of commerce,<sup>16</sup> as well as by the Arbitration Association. Arbitration clauses have been included in contracts by "a growing number of important department stores and retail establishments".<sup>17</sup>

#### *Inter-group Conference*

Various attempts at joint agreements between representative associations of retailers and resources have also occurred. Before 1925<sup>18</sup> a joint committee on trade relations had been formed or was in the process of formation in the hardware industry, men's clothing and women's garment industry.<sup>19</sup>

<sup>15</sup> *Retailing*, December 7, 1929.

<sup>16</sup> The Chamber of Commerce of New York State has done important work in this field.

<sup>17</sup> *Bulletin of the American Arbitration Association*, September, 1931, p. 543.

<sup>18</sup> Lincoln Filene, *op. cit.*, p. 68.

<sup>19</sup> A most interesting example of cooperation in trade relations occurred in the women's apparel industry. In 1917 the announced intention of manufacturers to sell goods on a two/ten basis (two percent cash discount if paid within ten days) occasioned the publication of an open letter signed by many well known merchants. A series of conferences followed in which an alternative schedule was agreed on in 1917. "The discount agreement has not been nullified or modified. The organization of manufacturers and retailers are imposing substantial fines on members who fail to abide by the Trade Regulations in question. The books of firms are periodically inspected by accountants who, henceforth, will be under the direct supervision of the Chairman of the Commission of the Coat and Suit Industry. The Commission is composed of representatives of the employers' associations, the union and the public, the three spokesmen for the last named being direct appointees of the Governor of the State". (*Boston Conference on Retail Distribution*, 1931, p. 56.) Mr. Klein says that to be effective, trade associations must have the power to coerce members into compliance with agreements. This agreement is a most interesting precedent to the problems between retailer and resources which arose under the NRA code.

More recently Trade Associations, in cooperation with Better Business Bureaus, have approved standard definitions in the fur trade, infants' wear and rug and carpet industries.<sup>20</sup>

In 1927 the NRDGA appointed a committee that made surveys of the furniture, silk and millinery field which resulted in a joint agreement between manufacturers and retailers in the industries concerning specific aspects of trade relations. Trade practice agreements grew out of these studies, the Standards of Business Practices for the furniture trade were intended "to define the proper relationships which should exist between buyers and sellers in the purchase of furniture and allied products"<sup>21</sup> and was subscribed to by the National Associations of Furniture Manufacturers, the Southern Furniture Manufacturers' Association, the National Retail Dry Goods Association, and the National Retail Furniture Association. A trade relations committee was appointed to act as clearing house for complaints and the establishment of effective means of bringing about their enforcement. Three types of practices were specified—the first group involved for the most part breach of contract of one kind or another. The second group of practices were those deemed unfair although they were not illegal; a third group were composed of practices which were discouraged since "While not strictly unfair or unethical in character, these practices were condemned, by both manufacturer and retailer, as wasteful in character and contrary to the best interests of the industry and the public".<sup>22</sup> The last mentioned group included such practices as excessive demands for service, the holding of too frequent markets, the failure to select sales outlets "with respect to financial capacity, credit rating, efficiency in management, and moral and ethical

<sup>20</sup> NRDGA *Bulletin*, April, 1931, pp. 243-44.

<sup>21</sup> NRDGA *Bulletin*, August, 1930, p. 435.

<sup>22</sup> NRDGA *Bulletin*, August, 1930, p. 457.

standing within the community . . .", over-emphasis, on the part of all parties concerned, on price terms and discounts without regard for quality and style; frequent changes in designs, the piracy of designs, consignment selling, dealer solicitation of donations, etc. A fair practice code for the millinery industry which was also prepared under the auspices of the trade relations committee set up by the NRDGA was endorsed by 196 stores of the NRDGA, and most of the membership of the four cooperating millinery associations.<sup>23</sup>

The demoralization of the market after the post-war recession caused sporadic discussion of the problem of trade relations which finally blossomed into more ambitious attempts to civilize buyer-seller relations. A separate department in the Chamber of Commerce of the United States was formed.<sup>24</sup> This activity culminated in the National Dis-

<sup>23</sup> A clearing house for complaints was established for the millinery trade with the interesting provision that until several complaints had been received against a given firm, no action would be taken. This, it was thought, would prevent personal grudges from causing inconvenience to the cooperating firms. The code was framed to correct abuses which were known to exist. Some of these abuses were clearly emphasized in the preliminary survey in which 61% of the retailers complained about having received unordered merchandise; 75% of resources complained that the retailers took cash discounts after the period for such discounts had elapsed, etc. (NRDGA *Bulletin*, March, 1930, p. 139.)

<sup>24</sup> The Chambers of Commerce in small towns have a large retail membership which has not been permitted to gain control of the national councils. In a monograph on *Retail Bureaus and Committees* prepared by the Commercial Organization Department of the Chamber of Commerce of the United States (pp. 1-2), it is said "Experience indicates that it is not advisable in small communities to set up a regular organization for the retail merchants within the chamber. If this is done the retail merchant's bureau is liable to overshadow the chamber on account of the large number of retail merchant members, and thus is created a serious organization problem." A retail merchant's committee should be appointed by the president with the approval of the board of directors with defined duties which include suggesting retail activities and assisting the secretary in executing them. But the "whole machinery for promoting the retail activities of the chamber is directly under the governance

tribution Conference in 1925.<sup>25</sup> The conference adopted the report of the Committee on Trade Relations which recommended that a Joint Trade Relations Committee be established to act as a clearing house for complaints, to conduct research into existing trade abuses and codes of ethics, to coordinate production and consumption through providing a clearing house of useful information, and to encourage the formation of codes of ethics.<sup>26</sup> But subsequent attempts to set up boards of review—the National Trade Relations Council in 1931<sup>27</sup> and the National Council on Trade Relations in 1933<sup>28</sup> seem to have been doomed to failure.

#### SECTION II. LEGISLATION

At times Federal legislation has been the field on which the battle between retailer and his resources took place. The struggle over design piracy culminated in an attempt to enact prohibitory legislation. The NRDGA opposed the Vestal Bill which aimed to facilitate and enforce design copyright largely on the basis that it was thought that the retailer ought not be held responsible for the sale of pirated designs or required to suffer loss through the attempts to determine responsibility in cases of alleged piracy. The fight over

of the chamber board of directors." Material collected for a special committee of the chamber based on answers to questionnaires indicates that in 1931 Retail Merchants' Bureaus had the following relation to the chambers:

- Financed and controlled by the chamber—335.
- Part of the chamber, but formally independent—46.
- Completely independent of the chamber—136.
- Independent of the chamber but partly financed by the chamber—24.
- Independent, but formerly part of the chamber—16.
- Independent, but a merger contemplated—8.

<sup>25</sup> *Filem, op. cit.*, p. xi.

<sup>26</sup> *National Conference on Distribution*, p. 87.

<sup>27</sup> *NRDGA Bulletin*, July, 1931, p. 407, Editorial.

<sup>28</sup> *Ibid.*, May, 1933, p. 13.

piracy grazed rather than opposed retailer interests.<sup>29</sup> Opposition to it was, therefore, always subject to negotiation, and, although the bill never passed, it was jointly discussed by retailers and manufacturers.<sup>30</sup> The bill prohibiting commercial bribery was, on the other hand, approved and sponsored by the NRDGA as well as by the Retailers' National Council.<sup>31</sup>

Retail attitudes towards diminishing below cost selling have been discussed in connection with the relation of retailer and consumer. We noted that by 1932 opinion was fairly solidly in favor of prohibiting price cutting through joint action. But only certain groups of specialty stores were willing to pay the price of manufacturer resale price dictation in order to achieve price stability. Control of prices in part determined whether the retailer was the "selling agent for the manufacturer" or "the purchasing agent for the consumer". To the large firm the question of balance of power was a matter of crucial importance. Many small retailers on the other hand, particularly in the drug field, preferred manufacturer control to the cut-throat practices which had developed in the trade. Similarly many small retailers in other fields preferred control by manufacturers to the pur-

<sup>29</sup> An editorial in the *NRDGA Bulletin* (February, 1932, p. 66) explains the retailer position: "We have been compelled to oppose (design piracy) legislative measures in the past . . . because they imposed very definite far-reaching restrictions, and expenses and unreasonable burdens on retail distributors and consumers—the innocent victims of the effects of such measures," p. 66.

<sup>30</sup> The silk and velvet manufacturers were important sponsors of the bill. At the Boston Conference on Retail Distribution in 1930, Mr. Bonner reports, "Since our last meeting the Silk Association has been able, in conjunction with the American Union of Decorative Artists and Craftsmen, to draft what is today known as the Vestal Bill, and after many deliberations with the NRDGA, I believe that all our points of difference have been ironed out." (*Boston Conference on Retail Distribution*, p. 76.)

<sup>31</sup> *NRDGA Bulletin*, April, 1930, p. 197.



chasing advantage obtained by large buyers. Conversely some manufacturers did not favor price maintenance.<sup>32</sup> Chief among the supporters of price maintenance were manufacturers wishing to protect a continuing interest in a product on which a large sum had been spent for national advertising.<sup>33</sup>

The pros and cons of the permissibility of manufacturer control over resale prices had been fought out in the courts over a period of many years. "Starting thirty years ago

<sup>32</sup> Organizations of independent drug stores, grocery stores and hardware stores are in favor of retail price maintenance. Manufacturers in the grocery field are less sure of the benefit to be derived from such legislation. Manufacturers in the cigarette field are said to benefit from price cutting of retailers. The furniture trade is reported to be not much interested in the question (Seligman and Love, *Price Cutting and Price Maintenance*, Appendix II by Reavis Cox). Thus it may be seen that the issue is far from a clear-cut one and the proponents not clearly divisible into manufacturers *vs.* retailers or any other simple classification. A referendum conducted by the Retail Trade Board of Boston on the Kelley Price Fix Bill found retailers three to one against it. (*NRDGA Bulletin*, February, 1931, p. 66.) The Federal Trade Commission report on Resale Price Legislation had canvassed the opinion of 691 manufacturers, 61 percent of whom claimed that they had no preference in the matter, 10 percent said that they were opposed to legalized price fixing and 29 percent admitted to be in favor of it. (*NRDGA Bulletin*, 1931, July, p. 403.)

<sup>33</sup> The opposition of some large manufacturers to leaders may be based on the following sequence of events: A manufacturer builds, through expensive advertising campaigns, a national market and consumer demand for his product; the price of the product is known; consumers are willing to buy it at that price. A retailer, wishing to impress customers with the lowness of prices in his store, cuts the price on the branded article; consumers, recognizing the saving, flock to buy it. The competitors of this store, not wishing to give the impression that their merchandise is more expensive than their competitors, also cut prices. Because of the interlocking local areas of retail competition, price cutting on the branded article spreads widely. The manufacturer now finds that retailers do not want his product because they cannot sell it at its regular price, because it has no advertising value at the cut price, and because there is no profit in it at the cut price.

with a practice which in all of its manifestations was regarded as legal, the courts have during the last two decades, step by step declared illegal one after another, almost all the methods incident to the practices. As a result the manufacturer who wishes to maintain prices today, finds only one "method: namely that of sales through his own agencies, of unquestioned legal standing."<sup>84</sup> True this still permits the manufacturer to avoid retailer price cutting by direct selling or selling thru agencies, devices available for the most part to the large manufacturer only; it also allows selling on consignment in the event that the disadvantages of this method should not outweigh the advantages; moreover, when the manufacturer sells direct to the retailer rather than thru a wholesaler, he may always refuse to sell to a customer who cuts prices providing that he can find out about the price cutting without employing illegal means.<sup>85</sup>

Since legal enforcement or even highly effective extra legal enforcement of resale price maintenance was impossible, the groups favoring price fixing attempted to have it legalized through legislation. In 1914 the Stevens bill<sup>86</sup> and later the Kelly<sup>87</sup> and still later the Kapper-Kelly<sup>88</sup> bills would

<sup>84</sup> Edwin R. A. Seligman and Robert A. Love, *Price Cutting and Price Maintenance*, Harper Bros., 1932, pp. 87-88. The history of the changes was divided into four periods by the authors: (1) Before 1908, though price maintenance was not universally used, it was unquestionably legal; (2) 1908-1914, the discussion of trust acts led to uncertainty concerning price maintenance with confused court decisions; (3) 1914-1921, a period of comparative quiet; (4) 1921 on, period of "increased interest and decreased rights" (p. 21 *et seq.*).

<sup>85</sup> Cf. Beech Nut Packing case and subsequent legal decisions such as: Federal Trade Commission vs. Beech-Nut Packing Co. (Jan., 1922), U. S. 441.459; Hill Bros. vs. Federal Trade Commission (Jan., 1926, 9th C. C. A.) 9 Fed. (2nd), 481.; Cream of Wheat Co. vs. Federal Trade Commission (July, 1926, 8th C. C. A.) 14 Fed. (2nd) 40.

<sup>86</sup> H. R. 13305 introduced by R. B. Stevens of New Hampshire.

<sup>87</sup> A bill was introduced by M. C. Kelly of Pennsylvania in 1917.

have legalized price maintenance. The Kapper-Kelly bill, in the final form in which in 1931 it was passed by the House and shelved by the Senate would have permitted price maintenance by contract.

The NRDGA has borne the burden of the fight against these measures. From 1914, when the Association first took up the cudgels in connection with the Stevens Bill, to the present time, it has attempted to thwart the repeated attempts to enact price-maintenance legislation. To date no federal statute has been enacted, although two state statutes had been passed prior to the summer of 1933.<sup>38</sup> The NRDGA argument against price maintenance is summarized in an editorial in the *Bulletin*:

1. It would abolish free and open competition among retailers.
2. It would place efficient organizations on the same basis as the inefficient.
3. It would destroy initiative in American business.
4. It would create unwarranted government control of business.
5. It would make the retailer a selling agent for the manufacturer rather than the purchasing agent for the consumer.
6. It would be against public welfare because it would raise prices.
7. It would not prevent so-called "predatory" price-cutting, because it would apply only to those goods purchased under agreement and not to those secured through other channels.<sup>40</sup>

Revived in 1923 and elaborate hearings were held in 1926 (69th Congress, 1st Session, H. R. 11.)

<sup>38</sup> Introduced in 1927 (70th Congress, 1st Session, H. R. 11 and Senate 1418) and again in 1929 and 1931.

<sup>39</sup> By the spring of 1933 New Jersey and California had state statutes permitting price maintenance on certain kinds of products. See Seligman and Love, *op. cit.*, pp. 460-70, Appendix III.

<sup>40</sup> NRDGA *Bulletin*, April, 1933, p. 9 *et seq.*

## SECTION III. EVALUATION

In general, it would seem that the attempts on the part of retailers and resources jointly to control the problem of trade relations had not been eminently successful. True, a certain amount of mutual understanding may have been achieved through the medium of trade journals and informal conferences, codes of ethics and the like; but conference could not meet the problems which originally gave rise to the difficulties. Although it is doubtless true that the problem of making a profit is a joint one between buyer and seller,<sup>41</sup> clear opposition of interest is perhaps even more noticeable, particularly if one views matters astigmatically. Even when initial agreement on standards occurred, it was seldom possible to enforce these standards.<sup>42</sup> The forces of competition work too actively in respect to the type of practice involved. The retailer-resource relation is highly personal. When a resource grants a concession to one firm, this fact can, if discovered by another retailer, be used as a talking point with which to gain similar concessions. If unable to do so, he will trade where such concessions can be obtained.<sup>43</sup>

As a fighting instrument, particularly for defense, the retail trade association seems to have been able to assist its

<sup>41</sup> NRDGA *Bulletin*, August, 1931, p. 459.

<sup>42</sup> The reasons for this are explained by Lincoln Filene. Mr. Filene, staunch worker for trade regulation, explains that one of the reasons for the difficulty in enforcing trade agreements was the unwillingness of the interested parties to make complaints. Although he felt that the conference and agreement method provided the most workable approach, he concluded that it was fairly hopeless for individual business or groups of businesses to attempt fundamental reforms because an attack on all fronts was necessary. (Filene and Love, *op. cit.*, pp. 60, 78, 79.)

<sup>43</sup> The backing of the trade association would appear to be of least use to the type of firm of both buyer and seller which most needs protection. The managers of small establishments have little time to enter into long discussions and little influence by means of which to abbreviate them.

membership to take advantage of the underlying economic situation which governs the retailer-resource relation. Particularly has this been true with respect to the fight over national legislation. Although it is not possible to say how crucial was the part played by the NRDGA in fighting national resale price-maintenance legislation, two facts are clear: the matter was seriously considered in Congress; the legislation did not pass.

The public interest in civilizing trade relations is probably less crucial than some of the enthusiastic supporters of the movement might hope. Even if it were true that the waste involved in abusive practices was large, there is no way of knowing that, were they abolished, the consumer would be given the benefit of the saving.<sup>44</sup> Unless trade regulation could enter the more constructive phases envisioned also by planned economy, it would seem that the fundamental interests involved in the discussion would be those of retailer, manufacturer and wholesaler rather than that of the consumer.

The public interest in the resale price maintenance struggle is almost impossible to allocate. Opinions would differ as to whether the consumer ought to side with the proponents or opponents of price fixing. If, as seems to be the case at the moment, the weight of informed opinion favors the encouragement of all types of price flexibility, then the recently publicised position of the large retailer as champion of the consumer would, in relation to the price-fixing controversy, have considerable basis in fact.

<sup>44</sup> Although it may be true that the \$125,000,000 which unfair trade practices may cost annually is "ultimately and inevitably included in the price paid by the customer" (Filene, *op. cit.*, p. 99) it seems questionable whether the elimination of undesirable practices would mean a corresponding saving to the consumer. It seems reasonable to suppose that some of the agitation over wasteful trade relations is predicated on the desire to improve profits.

## CHAPTER V

### RETAILER AND GOVERNMENT

THE organized activity of retailers for the purpose of dealing with the problems of government have involved all kinds of legislative and civic work. But the bulk of retailer interest in legislation has been concerned with protecting the vested interests of the craft, fighting specific tax measures, and combating extravagance in government.

#### SECTION I. THE WORK

The protection of legitimate retailers from itinerate merchants, sales from residences, house to house selling, etc., is the subject of much local civic activity of retailers.<sup>1</sup> Local groups also may be concerned with traffic problems, parking spaces, relief of unemployed and the like.

State laws penalizing chain stores have been advocated by independent retailers. The National Chain Store Association was organized in 1918 primarily to combat such legislation.<sup>2</sup> This type of law was sponsored largely by retailers who "appealed to friendly legislators to take up their cause against the chains", "The obvious defense against such at-

<sup>1</sup> Local ordinances, as reported by merchant associations canvassed in a survey by The National Association of Retail Secretaries, dealt with the regulation of house to house selling in thirty-three percent of the cities studied, with hotel selling in twenty-five percent, with transient merchants in sixty-six percent, and selling from residences in twenty-five percent of the cities covered by the study. The figures were accompanied by the statement that judging from the remarks made "we assume that in many cases the ordinances are not very effective." (*Retailing*, February 11, 1935, p. 14.)

<sup>2</sup> *Chain Store Age*, October, 1933, p. 78.

tacks was to expose their sponsorship. . . ."<sup>3</sup> But a more serious phase of the problem developed later when governments, in need of funds, started to initiate tax measures against chains. *Chain Store Age* reports in the fall of 1933 that in the past four years fifteen states put through chain store tax measures.<sup>4</sup> The National Chain Store Association fought vigorously against this wave of legislation. It attempted to enlist the small as well as the large chain. The country was divided into eight zones with a chairman for each district,<sup>5</sup> for the purpose of fighting the sixteen bills which had been reported in sixteen states when the year 1933 was not yet two weeks old.<sup>6</sup>

The NRDGA originally contemplated energetic work in the field of tax legislation.<sup>7</sup> At the annual convention in February, 1912, it was said that a national association would be useful in tariff control since retailers represented the interests of "people at large, — in other words, the consumer", and that the association representatives "would be treated with more respect and would have greater influence than would the statements of any other business organization".<sup>8</sup> At the first business meeting, tariff questions were given a prominent place in the proposed and accepted Association activities.<sup>9</sup> It is interesting to see that the now familiar

<sup>3</sup> *Chain Store Age*, October, 1933, p. 78.

<sup>4</sup> *Ibid.*, p. 88.

<sup>5</sup> *Ibid.*, February, 1933, Editorial, p. 71.

<sup>6</sup> *Ibid.*, Feb., 1933, Editorial, p. 70.

<sup>7</sup> Members would be supplied information on the basis of which they could communicate with their senators, etc. NRDGA *Report of First Annual Convention, 1912*, "Program for Association Activities, 1912-13."

<sup>8</sup> NRDGA, Annual Convention Dinner, February, 1912, address by Mr. Charles A. Stix, p. 38.

<sup>9</sup> "The Association shall through its secretary and Executive Committee follow closely proposed changes in Tariff schedules. It shall, where these changes are inimical to the dry-goods interest, appear before

espousal of the consumer interest by organized groups of retailers seems to have started at least as far back as 1912, in connection with tariff problems, retailers favored low tariffs.

In December, 1918, members were urged to oppose luxury taxes. A month later the recently appointed Executive Secretary, Lew Hahn, stated in an editorial in the *Bulletin* that tax matters would, in the future, constitute an important phase of the Association's work. In September, 1920, the NRDGA sent an invitation to four retail associations to join in a plan for the formation of a National Federation of Retail Associations. Three years later, in 1923, the Retailers' National Council was formed.<sup>10</sup> In December of 1923 the Council adopted a resolution urging reduction of taxes and economy in government. In 1930 a special bureau was established under the direction of George Sheridan for the express purpose of stemming the tide of local and state sales taxes.<sup>11</sup> This bureau was abandoned in the fall of 1933.<sup>12</sup>

the Tariff Commission and state its side of the question, in order that it may assist in guiding the final recommendations of that body." (NRDGA, First Annual Convention Business Meeting, 1912. "Proposed Program for the Association's Activities, 1912-13." Accepted, February 13, 1912.)

<sup>10</sup> The member associations were: The National Retail Hardware Association, National Association of Retail Druggists, National Association of Retail Clothiers and Furnishers, National Association of Retail Grocers, American National Retail Jewelers Association, National Shoe Retailers Association, National Federation of Implement Dealers, National Garment Retailers Association, and the National Retail Dry Goods Association. The Council was believed to represent about 174,000 stores doing an annual business of about nine billion dollars and employing about 1,500,000 people.

<sup>11</sup> NRDGA *Bulletin*, October, 1930, p. 537. In 1933 in commenting on the Economy Act, the editor of the *Bulletin* said that economy had been urged in 1930 and 1931, and in every issue of 1932 through March, 1933. "We never let up in our pronouncement that there could be no sound economic stability until government costs were brought in line with present day conditions." (NRDGA *Bulletin*, April, 1933, p. 9.)

<sup>12</sup> *Retailing*, January 2, 1935.



Since one of the strongest arguments in favor of sales taxes was the relatively large revenue which they yielded, the fight against them was bound to take the form of a fight against the need for large revenue—in other words, against extravagance. Obviously retailers were not alone in this fight. Local chambers of commerce to the number of several hundred are reported as “waging a sharp tax battle along a wide front, working with city and county authorities to bring local government costs down and bringing their influence to bear upon expenditures and taxes in state and national fields.”<sup>13</sup>

In the study of trade association activity prepared by the Chamber of Commerce of the United States, fifty-nine retail associations were canvassed, eighty per cent of which reported that they were engaged in “legislative” activity,<sup>14</sup> and thirty-two per cent that taxation was listed among their activities. At the present time nearly every national trade association is said to have a Washington representative.

#### SECTION II. EVALUATION

We have seen that some of the legislative activity was a method whereby one type of distribution attempted to combat another type. In this respect legislation represented a device not unlike the pressure exerted on resources by independents or chains urging them to refuse to sell to voluntary chains or to consumer cooperative stores. On the other hand, the more recent legislation which affected retailers disadvantageously was essentially a method of obtaining government revenue.

<sup>13</sup> *Functions and Field Work of Chambers of Commerce*. Committee Report Chamber of Commerce of the United States, Washington, D. C., March, 1934, p. 17.

<sup>14</sup> It is interesting to note that a considerably higher percentage of retail and service trade associations reported this type of activity. For the 500 trade associations studied in all lines, fifty-eight percent reported legislative work.

It is interesting to note that retailer opposition to tax measures and other legislation, tended to develop intercraft, state and national organizations. When no such organization was available, the NRDGA assumed the burden of the fight.

Up to 1933 sales taxes existed in only five states of the Union. Speaking of the work of the Tax Information Committee of the NRDGA, Mr. Sweitzer, the Managing Director, could say in August of 1931, "Now that the legislative sessions of 1930-31 are practically at a close, it is a source of satisfaction to be able to say that *not a single general sales tax bill has been enacted in any single state of the Union during the recent session*".<sup>18</sup> But the forces favoring sales taxes were too strong to stem. By June, 1933 such taxes had been enacted in 10 states; later the number was further increased.

The importance of sales taxes to the retailer derives from the fact that the consumer buys out of a limited income fund. In part, therefore, a sales tax means a reduction in sales of an amount roughly equivalent to the tax. To this loss must be added the cost of collection. Moreover a local tax may mean a reduction in sales of more than the amount collected, since it may tend to drive trade out of the district having the tax. This means that a state tax is worse than a federal tax, and a city tax worse than a state tax.

From the point of view of the consumer the sales tax seems to be predicated on principles contrary to the theory of taxing those most able to pay. At best the *amount* of the tax, not the *rate* of the tax, increases in proportion to income. But actually the increase in the amount of the tax is less than proportionate to the increase in income, since a larger proportion of the higher incomes are spent on non-taxable goods

<sup>18</sup> NRDGA *Bulletin*, August, 1931, p. 458. Editorial by Chauncy C. Switzer.

and services. This is true even when food is not taxed.<sup>16</sup> The chief advantage of the sales tax is probably that it is a relatively effective way to collect revenue.<sup>17</sup> It has the further advantage of not having a too powerful set of interests opposed to it. The large retailers may be opposed to sales taxes, but if additional income is required, the alternatives are also none too savory; business interests might be less opposed to a national sales tax than to a high personal or corporation income or profit tax. The consumer interest is not as yet sufficiently organized to be an important political force in the sales tax issue.

<sup>16</sup> In a study prepared by the Business Week and quoted by Mabel L. Walker in *Where the Sales Tax Falls*, a two percent sales tax will take \$5.48 per \$1000 from a thousand dollar income, and \$0.16 per \$1000 from a \$1,000,000 income. These figures are worked out on the basis of estimates of typical expenditure distribution for taxable and non-taxable goods and services at different income levels.

<sup>17</sup> The American Legislators Association compares the monthly yield of the sales tax to the monthly yield of total taxes and finds that the ratio in the eight states studied ranged from forty-eight percent in California to eleven percent in New York and averaged about twenty-five percent.

## CHAPTER VI

### RETAILERS VS. FACTORS OF PRODUCTION

RETAILERS have utilized group action to assist in negotiations with carriers, with landlords, and with public utility companies. In fact, it is doubtful whether any of the goods or sundries purchased by retailers have not at some time been a subject for joint action or scrutiny. Little, however, could be gained by a detailed description of the cooperative attempts in these fields. Accordingly we will briefly review the extent to which the relation between retailer and advertising media have been a subject for cooperation, and then proceed to a more detailed discussion of the role of group action and social control in the employer-employee relation. This subject is important not only in itself but as background for the National Industrial Recovery Act.

#### SECTION I. ADVERTISING

The control of advertising expenses is important to the large retailer since it represents two or three per cent of his total sales dollar. For the advertising medium, particularly for the daily newspaper, a significant part of total income is derived from retail advertisements. In chapter one we discussed one method whereby the cooperative activity of retailers, backed in many respects by advertising media, attacked the problem of the productivity of advertising. Through the fair practice movement, they attempted to decrease the cost of advertising by increasing its usefulness. But retailers also used more direct methods to attack the same problem.

Local retail associations have been useful in reinforcing the bargaining position of advertisers who objected to having rates increased or wished to have them decreased. In part this took the form of direct negotiation over lineage rates. In part it developed into a fight against padded and unproductive circulation. Since an increase in circulation raises lineage rates it is important to the advertiser that the added readers be prospective customers. Accordingly retailers have objected to "distribution and circulation far outside of the actual market area in which the merchants can go for worthwhile business"; "the expansion of the circulation by contests of various kinds," "the payment of bonuses to men and boys on street corners for 'pushing' or 'holding out' the paper." Undesirable also, are certain practices in connection with the publication of the papers such as the publication of morning papers early in the evening and evening papers early in the forenoon, the continued use of "'Extras' which represent only a flash sale," but nevertheless raise the circulation figures. Another undesirable practice is the insistence on the part of a newspaper that advertisements be repeated in morning and evening papers; in 1930 this occurred in 114 cities.<sup>1</sup>

If direct pressure does not suffice, Shopping News sheets may be used as a club with which to urge fair dealing. These sheets, in which advertising space is allocated to participating merchants, are distributed throughout a locality. In part the growth of "shoppers" is a depression phenomenon, at any rate the number in existence at any one time has never been very large.<sup>2</sup> Their importance, however, as a method

<sup>1</sup> *Boston Conference on Retail Distribution, 1931, p. 13.* Address by Mr. D. F. Kelly, President of the Fair, Chicago.

<sup>2</sup> The American Newspaper Publishing Company reports the organization of forty-six "shoppers" between 1921 and 1930, whereas 131 were organized from 1930 to 1933, seventy-two of which were started between January, 1933 and September, 1933. It is also interesting to note that

of keeping newspapers from objectionable practices is probably in no sense measured by the number in existence, but rather by the number that could be in existence if conditions warranted.

Whether or not group pressure was partly responsible for bringing it about, certified circulation data has been made available to advertisers. Moreover, "it is now recognized that the purchaser of advertising space from a newspaper has the right to demand competent information as to the buying habits and purchasing ability of the paper's market."<sup>3</sup> Market analyses have been undertaken through the offices of individual papers<sup>4</sup> as well as by university bureaus, government departments, associations and private agencies.<sup>5</sup> The needs of the market can be developed as well as analyzed through machinery such as the Herald-Tribune Institute with its 190,000 inquiries on fashion, beauty, and home furnishings; the Science Institute of *The New York Evening*

out of the 187 "shoppers" organized in the last twelve years, 121 have been discontinued. (*Retailing*, February 26, 1934, p. 14.)

<sup>3</sup> *Boston Conference on Retail Distribution*, 1930, p. 33, address by John Mench. The acceptance of this principle has meant that "a New York Times representative carries a sales manual which breaks . . . circulation down by counties throughout the United States, by towns, by purchasing power districts in New York City, by income grouping of Times readers, in fact by every conceivable method a sales executive could ask." (*Boston Conference on Retail Distribution*, 1931, p. 71. Address by Louis Wiley, business manager of *The New York Times*.)

<sup>4</sup> E. g., the Buffalo *Courier Express* was reported as having expended about \$55,000 from 1928 to 1933 in market analysis. It was said that the recent preoccupation with reducing costs made the location of customers important. The study of buying power indicated, reasonably enough, that purchases followed income not population. Over 300 executives had come to the *Courier's* office to inspect this data. (*NRDGA Bulletin*, May, 1933, p. 45. "A Buying Power Study of a Community," by R. C. Harris.)

<sup>5</sup> E. g., R. L. Polk & Co. has undertaken an extensive study of consumer expenditure throughout the country; this service is sold to interested parties.

*Journal* is, among other things, an interesting adventure in market development; statistics collected on lineage figures, etc., are useful to merchants as also are the weather bureau reports and technical aid on advertising.<sup>6</sup>

In summary, it is evident that a newspaper obtains income in a competitive market by pleasing its advertisers, therefore, granting a conflict of interest on the subject of the price of lineage, the interests of newspapers is intimately bound up with that of retailers. This fact has meant that retailers have obtained backing in their honest advertising movement as well as information and services of various kinds. Were the influence of advertisers on a newspaper confined to the pages devoted to advertising, the public could only benefit through the relationship.

#### SECTION II. EMPLOYER-EMPLOYEE RELATIONS

Payrolls constitute about one half of the expenses of a retail store. Twelve per cent of the gainfully occupied population are in trade.<sup>7</sup> Accordingly the price paid for labor in retail stores and conversely the wages received by the workers is a matter of considerable importance to both retailers and American labor. Salesgirls in retail stores, over a considerable period of years, received approximately the same weekly wage as domestic servants with one important difference: the wage of domestic servants includes food and board whereas the wage of retail employees does not.<sup>8</sup> Thus it may be seen that retail employees have in general belonged to the unskilled, low income group of workers in the United States.

<sup>6</sup> NRDGA *Bulletin*, April, 1933, p. 71. "Eight ways in which Newspapers are helping to stimulate Buying" by Arthur O. Price.

<sup>7</sup> 1930 Census data. Figures include wholesale and retail trade.

<sup>8</sup> Nystrom, *Economics of Retailing, Store Operation*, p. 276.

*The Employers' Side: Wages as a Business Cost*

The organization of retailers for the purpose of dealing with employer-employee relations has been stimulated by impending legislation and labor unrest. Before the war, the wave of minimum wage laws which were being contemplated contemporaneously with the founding of the NRDGA in 1912 and which were made laws, in eleven states in 1912 and 1913, was bound to bring the subject of wages to the collective attention of retailers. Early in 1913 agitation concerning the labor situation in department stores was under way. "It is only a question of time, unless there is improvement, before there will be an anti-department store movement in this country against low wages and bad conditions in general."<sup>9</sup> "This should be anticipated by an effort on the part of retail dry-goods men voluntarily to improve the conditions of their employees to the utmost." The publication of the *Welfare Work Bulletin* by the Association is in itself interesting.

In July, 1913, in an article in the *NRDGA Bulletin*, entitled, "What is the Cause of the Brewing Unrest in Department Stores?", Elizabeth Gannon states the opinion of the Labor Campaign Investigation Committee when she claims that the growing spirit of feminism and class consciousness is responsible for the fact that, for the first time, strikes are being taken up by department store workers. "Wise employers already endeavor to anticipate the reasonable demands of labor, and meet them before the loss of strikes is incurred. The method of tomorrow which is getting well under way today, is the producing of higher value, greater skill, and a reason for interest on the part of the worker."<sup>10</sup> Increased productivity would, it was hoped, make it possible

<sup>9</sup> *Welfare Work Bulletin* of NRDGA, February 1, 1913, article by Gertrude Beeks.

<sup>10</sup> *NRDGA Bulletin*, July, 1913.



to raise wages.<sup>11</sup> Training was necessary to increase productivity.

The facilities for training department store sales people, such as those which had existed in Boston since 1906,<sup>12</sup> and in the continuation schools of Wisconsin, Los Angeles, etc., were expanded through the work of the Department Store Education Association, which was started in 1914, and the Department Store Educational Council, which cooperated with the City Board of Education. In 1915 Mrs. Prince, who had been largely responsible for the pioneer work in Boston, was appointed Educational Director of the NRDGA. The movement to rationalize retail store operation and to develop salesmanship into a skilled occupation spread into universities and public school systems of the country. Government aid was facilitated through the National Vocational Education Act and the Civilian Vocational Rehabilitation Act which, in 1917, empowered a Federal Board for Vocational Education to promote vocational education in the fields of agriculture, trade and industry. Vocational training was encouraged and partially supported in cooperation with state schools and with national associations which were in a posi-

<sup>11</sup> The movement started in 1905 when the Women's Educational and Industrial Union of Boston undertook an investigation of training needed by girls who wished to become salespeople. The following year Mr. Filene offered part time employment to students; other stores followed. (Nystrom, *Economics of Retailing, Store Operation*, p. 380.)

<sup>12</sup> Miss Beeks, in the article quoted above, says that the average wage of department store sales people was \$8.84 in New York City. In an article reprinted from *Harper's Weekly*, Inez Milholland says that the average wage of department store girls in New York was \$7 a week (since the first estimate is for sales people only, the two figures do not seem to disagree very radically), and that some girls get \$4 or \$5 at the same time that every employee is required to do more or less overtime with "ridiculously insufficient" compensation. Miss Milholland states that they are planning to unionize New York City—where conditions are worse than anywhere else. (NRDGA *Industrial Outlook*, June, 1914.)

tion to offer courses for their membership, and for employees of member stores.<sup>13</sup>

Retailer cooperative activity dealing more directly with the subject of wage rates seems to have stopped short of formal agreement between members of trade associations. But obviously there were many ways of knowing the "market rate" for different types of work in a given location at a given time. Store intelligence services, employment offices run by Retail Associations,<sup>14</sup> and informal discussion of store owners, were bound to have a stabilizing effect on wages. Particularly was this true in an industry in which little or no employee organization existed and in which workers were unskilled.<sup>15</sup> Moreover, information concerning typical departmental selling percentages and labor costs gave store owners a basis for determining what wage rates ought to be. Monographs studying special problems such as "The Part Time Worker",<sup>16</sup> explained the economies and possibilities

<sup>13</sup> United States Department of Commerce, Domestic Commerce Series No. 20, *Trade Association Activities, 1927*, p. 275.

<sup>14</sup> The NRDGA opened a National Employment Department in September, 1914.

<sup>15</sup> During the war, the market was, apparently largely governed by the wage that workers were willing to accept rather than what employers were willing to pay. Presumably this situation has not been repeated since.

<sup>16</sup> The monograph entitled *The Part Time Employee* was published by the Personal group of the NRDGA in 1932. A questionnaire on the use of part time employees was sent to 223 stores and answered by 105. The survey disclosed such facts as the following:

1. Part time workers are used more by the larger stores than the smaller ones.

Stores doing under 2 million have from 2 to 15 percent of force on part time. Stores doing 2 to 10 million have from 4 to 20 percent of force on part time. Stores doing over 10 million have from 6 to 25 percent of force on part time.

2. Hourly wages for part time workers range from 25 cents to 40 cents and average about 33½ cents an hour.

3. The hours for which part time workers are used are reported.

4. Suggestions for further training and the extension of the use of the part time worker are made.

of various kinds of solutions of personnel problems. In general it may be said that the retailer was in a position to know how the salaries which he paid compared with salaries typically paid by other stores.

In the April, 1933, issue of the *NRDGA Bulletin*, Mr. Plant reports that the meetings of the Local Store Managers' Groups and affiliated chapters of the Store Managers Group of the NRDGA, were proving helpful. "These meetings have served to focus attention upon the importance of more uniform wage rates and job classifications, for both selling and for non-selling activities." He reports that the need had been felt for "definite classification of each job within the store and of determining what the proper fulfillment of these jobs is worth in terms of maximum, minimum, and median rates". He adds somewhat ambiguously that "no standard wage scales are being proposed, but the mere classification of individual jobs and the exchange of experience and information among store managers within a community, has served to place each individual operating function on the basis of its own merits as far as wages are concerned".<sup>17</sup>

The company union was used but little in retail stores. It is therefore of no great importance to determine whether those unions which existed were sincere attempts to offer autonomy to a group of workers who were not organized, or an attempt to avoid a less docile type of organization. Perhaps the outstanding example of the company union or employee association in the retail trade is the Filene experiment.<sup>18</sup> The Association's activity covered a wide range of subjects of a legislative, judicial and social nature. It was supported by the company although Mr. Filene had encour-

<sup>17</sup> *NRDGA Bulletin*, April, 1933, p. 65.

<sup>18</sup> Other well known company unions were established in Meekins, Packert and Wheat of Springfield, Mass. The Wiebolt Stores, etc.

aged self-support at several times, starting in 1908.<sup>19</sup> Though the question of wage level seems never to have been raised, it would seem that the association provided a salutary example of a self-respecting and effective employer-employee relationship in a retail store.

*The Employee's Side—Wages as Income*

The most usual technique for employees to use in order collectively to better their situation is unionization. But in the retail trade, the union movement has never achieved a truly influential position. Therefore, employer organization has not been matched by employee organization.

The early employee associations were called "Early Closing Societies" because their activity was directed primarily against the length of the work day which was, even down to the 1880's, from fourteen to sixteen hours every day.<sup>20</sup> With the beginning of the 90's the several local unions which had for a time been associated with the Knights of Labor withdrew and associated themselves with the A. F. of L.

In 1897 the union membership of retail clerks was reported to be 2,700. Within the next seven years, as the result of a "mushroom growth",<sup>21</sup> it grew to a reported membership of 50,000 in 1903, which was maintained until 1908. A sharp drop in the following year reduced the membership to 15,000 in 1910, which constituted 1.2 per cent

<sup>19</sup> Cf. Mary La Dame, *The Filene Store, A Study of Employees' Relation to Management in a Retail Store*, Russell Sage Foundation, 1930.

<sup>20</sup> Nystrom, *Economics of Retailing, Store Operation*, p. 281.

<sup>21</sup> In the August, 1905, issues of the *Retail Clerks International Advocate*, the secretary reports: "two years ago we met in convention, having achieved the greatest growth of any period in our history. The business activity immediately preceding the Zanesville Convention swelled our ranks. Our membership was the result of a sudden increase, a mushroom growth. Such sudden development is rarely permanent and the gain thus achieved gave us for the time, the prestige of large numbers without materially strengthening us. . . ."

of clerks and salespeople in stores engaged in the retail trade. It was not until 1920 that a slight increase in union membership was reported which raised the unionized clerks to 20,800 and the proportion of clerks and salespeople that were unionized to 1.3 per cent. By 1923 the membership had dropped again to 10,300.<sup>22</sup> At the 18th annual convention in 1924, the president spoke of the loss of membership in the preceding few years because "salespeople in different communities have thought they have no further need of organization, believing they had obtained the best to be had". Although the voting strength of the union was kept at 100—equivalent to 10,000 members—from 1924 to 1931, the actual membership doubtless fell. In 1933 the voting strength represented 5,000 members.<sup>23</sup> The activity of retail unions had been greatest in grocery, shoe, furniture and drug stores,<sup>24</sup> a fact which reflects the higher percentage unionization of male than female employees.<sup>25</sup>

#### *Minimum Wage Legislation*

Social control can take the form not of cooperation of interested parties but of government control. Legislation stipulating minimum wages and maximum hours of work provided a possible method of improving the status of employees of retail stores. Since a minimum wage is most useful where a majority of the workers receive a relatively

<sup>22</sup> Leo Wolman, *Growth of American Trade Unions, 1880 to 1923*, National Bureau of Economic Research, New York, 1924, pp. 115, 144, 160. The figures expressed in percentages are the ratio of the unionized retail clerks to the salespeople and clerks in stores. The latter figure is for wholesale and retail stores.

<sup>23</sup> A. F. of L. *Encyclopedia*, 1919, p. 478; A. F. of L. *Proceedings*, 1934, p. 11.

<sup>24</sup> Nystrom, *Economics of Retailing, Store Operation*, p. 281.

<sup>25</sup> In 1920 the percentage of unionization of sales people and clerks was 1.7 for males and 0.5 percent for females. (Wolman, *op. cit.*, p. 144.)

low wage, the retail employee ought to have been a good candidate for assistance by this means.

In the drive for statutory regulation, the workers' interest was espoused by the National Consumers' League.<sup>26</sup> A minimum wage bill was drafted in 1910 by the League and passed by Massachusetts in 1912. In 1913 eight states passed minimum wage laws. By 1923 sixteen states had legislation of this type. The provisions of the laws, as well as the efficiency with which they were enforced, varied greatly. The wages for adult experienced workers ranged from \$17.50 a week minimum in North Dakota to \$8.50 in Kansas and Massachusetts.<sup>27</sup>

Although there had been constant court tests and discussion covering the constitutionality of these laws, the matter was not finally determined until 1923 when the Supreme Court sustained, by a five to four decision, the opinion of the Court of Appeals in the District of Columbia which had held the law unconstitutional.<sup>28</sup> Thereafter enforcement gradually lapsed, although California and Wisconsin continued to operate their laws.

<sup>26</sup> The National Consumers' League was organized in 1899 under the leadership of Florence Kelley. The work of the League was based on the thought "that the responsibility for some of the worst evils from which workers suffered rested with consumers who sought cheap markets regardless of how cheapness was brought about." The League accordingly undertook to educate the consumer concerning conditions under which goods were produced. Attempts to remedy the sub-standard conditions took the form of white-listing, league labels and legislation. Child labor laws, limitation of the hours of work and minimum wage laws have been the most important elements of their legislative work. (National Consumers' League, 1899-1935, *Thirty-five years of Crusading*.)

<sup>27</sup> U. S. Bureau of Labor Statistics, *Bulletin No. 285*. For a discussion of minimum wage and maximum hour legislation in the United States and in foreign countries see Barbara Nachtrieb Armstrong, *Insuring the Essentials*, The Macmillan Co., New York, 1932.

<sup>28</sup> *Atkins vs. Children's Hospital*, 261 U. S. 525.

The inertia which followed the disappointment over the court decision prevented further legislation until the persistent wage cutting during the depression once more made a spectacular and appealing issue out of minimum wage laws. Through the skillful utilization of popular indignation regarding starvation wages, six new bills were put through in 1933. These bills were based on the Consumers' League measure which attempted to answer the court objection to the early group of minimum wage laws.

The League's bill provides that the Commissioner of Labor may investigate conditions in an industry on his own initiative and must investigate them upon the petition of fifty or more individuals. If he finds that a "substantial number of women or children are receiving oppressive and unreasonable wages",<sup>29</sup> a wage board shall be appointed to determine the minimum "fair wage"<sup>30</sup> rate for women and minors in the industry. This wage board is appointed by the Commissioner and consists of not more than three representatives of employers, employees and the public, the first two groups to be appointed, as far as possible, from a list of nominees.

<sup>29</sup> National Consumers' League, *Standard Minimum Wage Bill for Women and Minors*, Section 2g: "An oppressive and unreasonable wage' shall mean a wage which is both less than the fair and reasonable value of the services rendered and less than sufficient to meet the minimum cost of living necessary for health."

<sup>30</sup> *Ibid.*, Section 2h: "A fair wage' shall mean a wage fairly and reasonably commensurate with the value of the service or class of service rendered. In establishing a minimum fair wage for any service or class of service under this Act the commissioner and the wage board without being bound by any technical rules of evidence or procedure (1) may take into account all relevant circumstances affecting the value of the service or class of service rendered, and (2) may be guided by like considerations as would guide a court in a suit for the reasonable value of services rendered where services are rendered at the request of an employer without contract as to the amount of the wage to be paid, and (3) may consider the wages paid in the state for work of like or comparable character by employers who voluntarily maintain minimum fair wage standards."

A report must be submitted within sixty days. If the report is accepted by the Commissioner the wage rates which may be separately stipulated for different kinds of employment and for apprentices or learners, become declaratory for the industry. After 15-day notice, the Commissioner may publish the name of an employer failing to comply with the established rates, but not until a 9-months period has elapsed can the provisions of the Act be made mandatory. Failure to comply with the wage provisions then punishable by a fine, imprisonment or both. Employees who have been paid less than the stipulated minimums may recover through civil suit back wages plus the costs of suit.

By the summer of 1933 bills had been passed in the states of New York, New Hampshire, Ohio, Illinois, Connecticut New Jersey and Utah which followed the general pattern of the model bill. The industries investigated were limited to the ones in which conditions seemed to be worst,<sup>81</sup> for the most part the laundries, hotels and restaurants.<sup>82</sup>

The difficulty of enforcing a minimum wage law would be great enough in an ideal political climate, and in America no such conditions exist. It has been found that with few exceptions there has been serious difficulty in keeping capable and experienced executives in charge of the administration of the acts. In two states, New Jersey and Connecticut,<sup>83</sup> no appropriations have been made for the administration of the law.

Hourly wage rates can be raised by reducing hours as well as by increasing wages. Statutory limitation of the hours

<sup>81</sup> Dry cleaning has been investigated in Ohio, and the macaroni industry in Illinois.

<sup>82</sup> It has been estimated that approximately eighty percent of the workers in the laundry industry in New York would presumably be affected by the minimum wages set by the commission.

<sup>83</sup> In spite of the absence of special funds, an attempt is being made to administer the act in Connecticut.



of work for women or minors engaged in retail trade exists in all but eight states of the union, but the maximums prescribed are so high as considerably to reduce the value of the legislation in the face of the recent movements towards shortened hours of work. In the retail trade, since hours have always been longer in retailing than in most industries, the regulation is of more than average utility. Although hours legislation was enacted in New Jersey as early as 1911, it was not until after the war that the movement became important. By 1924 sixteen states had passed regulatory measures. In 1929, 1930 and 1931, twenty-one states passed new laws and two revised old ones regulating the maximum hours of work.

The extent to which working hours for women or minors were limited may be summarized by the following tables:

NUMBER OF STATES HAVING MAXIMUM HOUR LAWS FOR RETAIL TRADE WITH WORK DAYS OF SPECIFIED LENGTHS \*

<i>Number of States</i>	<i>Maximum Hours Per Day</i>	<i>Maximum Hours Per Week</i>
10	8	48 to 56
2	8½	48 to 56
15	9	48 to 58
11	10	54 to no limit
1	10½	56 and 57

NUMBER OF STATES HAVING MAXIMUM HOUR LAWS FOR RETAIL TRADE WITH WORK WEEKS OF SPECIFIED LENGTHS \*

<i>Hours Per Week</i>	<i>Number of States</i>	<i>Hours Per Week</i>	<i>Number of States</i>
48	10	55	1
50	2	56	3
52	1	57 and 58	2
54	14	60	5
Total 48 to 54	27	over 60	2
		Total over 54	13

Source: Based on U. S. Department of Labor Bulletin of the Woman's Bureau No. 98, *Labor Laws for Women in States and Territories*, United States Government Printing Office, 1932, and *Supplement, Summary of Legislation*, January-June, 1933.

\* Exceptions to the provisions listed above are frequent. Longer days on Saturday in retail trade or exemptions for towns below a specified size are among the common qualifications.

Regulation of hours for males occurs for the most part only for men engaged on public works, in transportation or in dangerous and unhealthful occupations. The hours of work of drug clerks are limited to nine hours a day in California and seventy hours a week in New Jersey.<sup>24</sup>

### *Summary*

The market contest between retailers and labor involves interests which are only in part antagonistic. The individual retailer benefits through having low labor costs. This does not necessarily mean that he pays low wages. For salesmen and executives, particularly, the highest paid worker may provide the cheapest labor. Also, if for one reason or another, (such as sympathetic social feeling, fear of criticism or need for more skilled workers than those used by some other type of store or type of distribution) one retailer pays relatively high wages, it is to his interest to insist that his competitors also pay comparable wages.

The employer interest in minimum wages is illustrated by the events which followed the 1923 decision on the unconstitutionality of minimum wage legislation. California had a relatively high minimum of \$16; moreover, the law was well administered. A case was pending trial, which would have precipitated a decision as to the constitutionality of the law; it was withdrawn by the plaintiff. At the urgent request of manufacturers associations, merchants associations and chambers of commerce throughout the State, the enforcement of the law continued. The few large establishments that were definitely opposed to regulation were wisely let alone by the Commission. In Massachusetts a voluntary minimum wage law was in force for some time.

<sup>24</sup> *State Government*, American Legislators' Association, April, 1933. "They call it a day".

Retail labor benefits from minimum wage laws, if they are capably enforced and if the increase in wages of the less skilled workers is not accompanied by a decrease in employment and in the wages of the more skilled employees. Whether or not this, or some other undesirable result, accompanies minimum wage legislation can not be determined theoretically; economic conditions, enforcement, and many other factors influence the operation of a wage law. Therefore each law is in many respects a special case requiring separate analysis. In part IV of this book we will examine the evidence relating to the operation of the minimum wage regulations of the Retail Code.

The struggle between retailers and their employees on the broader front of all wages, rather than on that of minimum wages alone was, as we have seen, not essentially an organized battle, though in so far as there was organization, employers were probably better coordinated than employees. For the most part, employer organization was used, not for hard and fast agreement as to wage rates, but for the dissemination of knowledge concerning wages and labor costs, and for the provision of training facilities for employees or prospective employees, thereby providing executive timber and improving the productivity of the rank and file worker.

## CHAPTER VII

### SERVICES SUPPLIED THROUGH COOPERATION

RETAILERS have combined for the economical and efficient provision of services, the dissemination of propaganda, and the collection of information. This type of activity is one of the most important of all the objectives of collective action. The success of general association activity is probably, in the last analysis, dependent on the ability to achieve progressive education of its members.

But, in spite of the great importance of this type of work, it will be possible only to outline briefly some of the kinds of activity included, in order to complete the panorama of retail cooperation prior to the summer of 1933. No direct precedent to Code clauses is involved, but a brief survey is necessary in order that we may be in a position to picture the relations of the NRA codes to the total field of cooperative activity.

#### SECTION I. PROPAGANDA

Not unrelated to practices discussed under retailer-consumer relations is a group of activities that have essentially the quality of propaganda.

Retailers have through "consumer education", anticipated more impressive institutions of adult education. They have engaged in a "truth campaign", which was a fairly elaborate effort on the part of the NRDGA to counteract the adverse publicity due to the numerous charges of retail profiteering after the war. The public has been educated to

do Christmas shopping early,<sup>1</sup> to "buy at your neighborhood store", to celebrate Mother's Day and Father's Day,<sup>2</sup> and to "Say It With Flowers." Other kinds of joint promotional campaigns include the community sales days in which a general hurra for Oshkosh is arranged by the local merchants association often in collaboration with a professional promoter.<sup>3</sup>

#### SECTION II. SERVICES SUPPLIED BY VARIOUS GROUPS

A wide field for Trade Association work lies in the education of the merchant rather than the public. Perhaps the best picture of the scope which is afforded the ingenuity of an imaginative Trade Association management can be obtained by running through the activities of this kind undertaken by the NRDGA. Such a review ought also to be useful in illustrating the method whereby a trade association grows.

In the first two years of the Association's existence a department of expert accountancy was organized, information concerning shop-lifters was collected, and the *Industrial Outlook* was published;<sup>4</sup> the purpose of this business review was

<sup>1</sup> The National Consumers' League was interested in this movement as a method of diminishing the severity of the pre-Christmas rush for retail employees.

<sup>2</sup> Apparently Fathers have required fairly intricate promoting. In May, 1933 the NRDGA *Bulletin* reports a plan which is being sponsored by the leading men's wear manufacturers "to sentimentalize this event properly" by special packaging, ensembling, etc., ads were to be run in 1800 newspapers.

<sup>3</sup> The survey of trade agreements in effect in retail merchants associations made by the National Association of Retail Secretaries indicated that city-wide promotional sales were held in 78 percent of the reporting cities between one and six times a year. *Retailing*, Feb. 11, 1935. These were not necessarily of the "Oshkosh Day" variety.

<sup>4</sup> The early issues of this bulletin looked like the rogues' gallery; pictures of shoplifting and sneak thieves decorated the pages which were also well supplied with lists of National Detective agencies, etc. NRDGA *Bulletin*, Oct., 1912 to Jan., 1913.

to present "the trend of public thought and activity in relation to industry". Articles were selected for review from leading magazines and other avenues of the press. In the fall of 1914 a National Employment Department was organized. In January of 1915 operating statistics were compiled from thirty-eight stores in twenty-four states, an early though not the first attempt to collect operating data for retail stores.\* In the same year the personnel department was informally organized through the appointment of Mrs. Prince as Director of Education. In 1917 a merchandise meeting was held during which many of the future activities of the Association were foreshadowed. A standardized cost accounting was started and an advisory credit information made available.

Towards the end of 1918 the Association was reorganized as a last service of the National War Service Committee of Retail Dry Goods and Department Stores. The new program was adopted by the convention in 1919. A Bureau of Research and Information was formed which answered inquiries and sent out a questionnaire on costs of doing business. At that time it was suggested that if the retailers did not keep better accounts the government would do it for them. In 1920 the first meeting of the Controllers Congress was held and a Traffic Group was organized, as well as a department to assist in the organization of local units. In 1921 the Board of Directors authorized the cooperation with the Harvard University Bureau of Business Research in collecting annual operating data; an Advertising Group was founded partly in order to prepare a plan for a "campaign

\* In 1911 the Harvard University Bureau of Research attempted to investigate the expenses of shoe distribution but found that little progress could be made because of the lack of uniformity in accounting methods. The following year a standard system of accountancy for Shoe Retailers was prepared and through a slow process of education was installed in a sufficient number of stores to permit the compilation of data.

which will put the retailer right in the eyes of the public". In 1922 the first National Merchandise Fair took place. 1923 saw the publication of the *Merchant's Manual* which was started three years before and contained much useful information concerning buying, marketing and selling merchandise. The monthly publication of the *Bulletin* provided an important means for the dissemination of pertinent news and information. In the fall of the year a Bureau of Accounting and Control was organized to install standard accounting systems in stores. During the year, the staff was reported to have answered 4450 questions after having made 150 special investigations. In 1924, a graduate of the Prince School gave short courses in training at different member stores. A bi-monthly merchandise service was started. A sales promotion calendar developed ideas for display and set dates upon which sales should take place. This prevented such things as the inconvenience of having August fur sales (which had started as September fur sales) edge back to the previous winter season. The Merchandise Managers Group and the Personnel Group were formally organized to provide information and service and act as a clearing house of ideas. The Store Managers Division published studies on labor turnover, forms which should come to a store manager, etc. The Retail Delivery Association installed a resident manager in the Association office with the hope that economies in delivery would result.

Some of the more outstanding later achievements are of particular interest. In 1927 Research Groups were organized by stores in non-competing areas which exchanged the most confidential information to their mutual advantage.\*

\* The Research Groups were supposed to consist of between five and fifteen stores of about the same size and type in non-competing areas. Meetings were to be held about every three months. Weekly sales were to be reported by phone and monthly reports by departments were to be

A confidential reorganization service was supplied for adjusting differences between partners which threatened to disrupt a firm and to analyze and recommend changes in store management. A Testing Laboratory was organized in 1928.<sup>7</sup> This service was in part the outgrowth of the agitation caused by the Chase and Schlink book *Your Money's Worth*, published the previous year, which brought home to retailers that if a store was expected to stand behind its goods it was best to know what was in them.

It is not necessary to continue to enumerate the various ways in which the NRDGA has continued to provide services and information for its members. The picture is clear—an ingenious and progressive management grasping or foreseeing opportunities for group work, thus providing the mechanics for satisfying a need the moment it arose.

The particular work performed by various kinds of groups depends, of course, upon the interests of the members. Local groups, national trade associations of various types of stores, trade journals, chambers of commerce, government agencies etc., may have in many respects overlapping functions, but for the most part they are particularly well suited to perform special kinds of services. The work undertaken by the NRDGA would hardly be duplicated by an association having a large membership of small stores. The work of such an organization might focus on merchant education in accounting, personnel work, merchandising information, trade news supplied typically through a trade journal, display suggestions, ideas concerning the remodelling of store fronts and interior arrangements, and the collection of operating data

made on sales, stocks, markups, markdowns, advertising and selling salaries, etc. Several such groups are operating today. (NRDGA Bulletin, March, 1927, article by John B. Guernsey.)

<sup>7</sup>The Better Fabrics Testing Bureaus made analyses and tests of all kinds for a charge of about \$5.00 or more on the basis of the labor involved.



in order that stores can measure their own performance against the experience of others.

Local rather than National groups have achieved notable savings through purchase and standardization of supplies,<sup>8</sup> and through group purchase of advertising space. Cooperatively operated delivery, or consolidated railroad shipments have also proved economical. Many of the kinds of services which are practical on a national scale have also been undertaken by local trade or merchant's associations.

Trade Journals have done notable work in supplying information and services to retailers. In many cases the paper is the heart of the Trade Association. In other cases the journal is independently financed and covers a somewhat different field. The color chart and promotional calendar of the *Dry Goods Economist* are trade classics. Similarly *Women's Wear* supplies valuable fashion information as well as trade news. *Retailing*, another Fairchild publication, in addition to carrying news of general interest to the retail executive, computes indexes of retail prices. The work of *Printers Ink* has already been discussed.

Valuable information was supplied to store owners from a wide variety of other sources such as central offices of voluntary chains, The National Retail Credit Association, and its local branches,<sup>9</sup> or institutions such as the Boston Retail

<sup>8</sup> The standardization of supplies is considered to be one of the most conspicuous services achieved by the Retail Dry Goods Association of New York City. It is estimated that \$15,000 was saved member stores in 1916, and that by 1933 the annual saving had risen to \$88,973. (*Retailing*, Dec. 7, 1929.) The cooperative buying of supplies had a venerable origin in the cooperative buying of hay and feed; in 1933 thirty-one commodities were jointly purchased. (NRDGA's *Secretary's Report for 1933*.)

<sup>9</sup> The National Retail Credit Association was an outgrowth of the panic of 1893. The National Association of Retail Credit Men was organized in 1912 and aimed to establish a local association in every city having ten merchants willing to affiliate. (U. S. Department of Com-

Trade Board, which, though a local organization, has organized the annual forums—the Boston Conference on Retail Distribution.<sup>10</sup> The Chamber of Commerce of the United States has a Domestic Distribution Department which “is prepared to make suggestions and help merchants with their problems whatever they may be.”<sup>11</sup> The National Distribu-

tion, *Trade Association Activity*, 1927.) In 1933 there were about 1,300 local agencies, about eighty-seven percent of which were owned by merchant associations or Chambers of Commerce and other non-profit enterprises; the remainder were privately owned and operated for profit. (NRDGA *Bulletin*, August, 1933, p. 13.) These local organizations were united in a corporation fifty-one percent of the stock of which was held by the National Retail Credit Association. This made it possible to supply national credit service and local service from several bureaus on one billing. (NRDGA *Bulletin*, September, 1932, p. 675.) The credit service is extensively used by retail stores; about eighty-five percent of the department stores and women or children's specialty stores studied by the department of Commerce in 1927 reported using this credit information. (United States Department of Commerce, Domestic Commerce Series, No. 33, 1930.)

<sup>10</sup> Although the Boston Retail Trade Board is a local organization it has, like the NRDGA, conducted work of a national scope and trade-wide interest. The Merchants Institute of Boston was the first plan of its kind in the country. It conducts a series of evening courses on the more important phases of retail operation. Out of this Institute grew the idea of a “Williamstown for Retail Problems”. This national forum for the discussion of the problems of the trade, first met in 1929 and was sponsored by the Retail Trade Board of the Chamber of Commerce with the cooperation of the Harvard Graduate School of Business Administration, The Boston University College of Business Administration, the Massachusetts Institute of Technology, the seven largest National Retail Trade Associations, seven important State Associations and the Chamber of Commerce of eleven of the leading New England cities. The conference provided an opportunity for the meeting of minds of different branches of retail trade and all other parties interested in the solution of retailers' problems.

<sup>11</sup> The printed pamphlets which it has issued are: *Planning Your Business Ahead, The Relation Between Stores and Local Chambers of Commerce, Retailers Expenses, Small Store Advertising, Special Sales Events and Store Opening and Closing Hours*. (Commercial Organization Department, Chamber of Commerce of the United States, Jan., 1932, *Retail Bureaus and Committees*.)

tion Conference in 1925 was held under the auspices of the Chamber.

Another organization supplying extensive services to retailers is the United States Government. The Division of Domestic Commerce in the Department of Commerce was formed in 1923. In the words of Secretary Hoover "The chief purpose of this organization will be to investigate the possibilities of eliminating waste in merchandising and distributing commodities within the United States".<sup>12</sup> The Division has published, in the Domestic Commerce Series up to July 1934, about 120 titles, most of which have touched on problems directly or indirectly related to the retail trade. The work of the Domestic Commerce Division is conducted in the Washington office of the Bureau of Foreign and Domestic Commerce, in the thirty-four branch offices of the department, and in the forty-seven district offices which, though they are located in and supported by Chambers of Commerce or other local commercial bodies, are supplied with most of the Department's information.<sup>13</sup>

<sup>12</sup> NRDGA *Annual Report for 1923*, Letter to Mr. Hahn from Secretary of Commerce, Herbert Hoover, asking for the release of Mr. Paull from the Association's staff to take over the charge of the newly formed department.

<sup>13</sup> The services supplied on domestic marketing problems are dispensed through three divisions: The Merchandising Research Division which conducts cost studies in distribution, credit research work, and special studies; The Domestic Regional Division which makes regional commercial surveys in the United States; The Marketing Service Division composed of a business research section which answers special inquiries and provides a clearing house for trade information; The Marketing Publication Section, the small business unit which adopts the solution of marketing problems to the needs of the small store; the Trade Association Section which devotes special attention to the trade problems of trade association executives, "supplementing (without duplication) the work of existing official and private agencies." (Pierce, *Government Aid to Proficient Marketing*, 1931.)

SECTION III. THE PUBLIC INTEREST

The attempts to achieve a partial rationalization of retailing by means of cooperative activity has beneficial elements for all of the major interests involved.

Obviously, certain retailers benefit more than others. It may well be that retailer education tends to level the difference between the exceptional and the average store. The leading minds of the trade share their thoughts on management merchandising and the like with the less inventive and less capable. Differentials in success may well be lessened, although doubtless the real secret of the recipe is left out, in fact can probably be neither described nor transmitted. But certainly the number of establishments which are benefited far exceed the number that suffer by improving the quality of the competition which they must meet.

The employee may not be substantially affected except in so far as his wages improve in accordance with increased productivity. If he is made to work more intently or if employment is decreased, the advantages of the additional earning power accruing to some workers may well be overbalanced by the reduced earnings of others as well as by objectionable conditions of work.

The consumer benefits by shopping in stores neatly kept and adequately stocked, at the same time that the persistent attempts to educate her are probably only successful where they are enjoyed.

## CHAPTER VIII

### SUMMARY

HAVING wound through the maze of cooperative activity in the retail trade we emerge with the impression that in reality little of importance was accomplished. On the whole, this impression appears to be well grounded when the retail field is compared with some of the extractive or manufacturing industries. Retailers, we have observed, are individualists, the trade has a highly complex structure, a small unit size, a high mortality rate, a geographically limited market. The resultant character and key of competition have limited the range and achievements of voluntary cooperative activity prior to the NRA. But, although the limitations of the movement are on the whole more impressive than its achievements, something had certainly been accomplished by the web of Trade Associations, Merchants Associations, Better Business Bureaus, and the like by the Spring of 1933.

Clearly the primary purpose of cooperation was to assist in achieving the object of business enterprises—profit.<sup>1</sup> Other things being equal, profit increases as the amount paid for goods and supplies decreases, as operation becomes increasingly economical, and as selling price grows higher. Accordingly the attack proceeded on three fronts: buying, management and prices. Cooperation could provide a useful

<sup>1</sup> The firm that was unwilling to subscribe to the prescribed business ethics was not supposed to be assisted. As a matter of fact, many of the "chiselers" were probably helped more than the "good" firms, since they were benefited without being restricted.

technique for achieving this tri-part purpose by controlling the kind of circumstance which, because of the nature of competition, could only be controlled by the joint action of competitors; it could organize retailers to act as a unit in opposing groups having interests antipathetical to their own; by the economical provision of services and the collection of trade information, retail organization could aid in educating store keepers.

Combination for the purpose of dealing with sources of supply was directed towards more advantageous purchasing. As the spring of 1933 approached, retailers were besting their opponents in this fight through the achievement of advantageous terms and the defeat of price maintenance bills. Little had been done by way of a constructive integration of buying and selling with the exception of the rather limited work of certain groups of stores.

Cooperation directed towards the economical purchase of factors of production had, in the advertising field, attacked on two fronts: to a very minor degree, retailers had used group organization directly in bargaining with advertising mediums; far more important, they had attempted to increase the value of lineage by making it more honest. In spite of the backsliding in the fair practice movement incidental to the depression, it would seem that the credibility of copy had been increased. But retailers had been unable to prevent the extravagant use of advertising lineage which forced competitors to follow suit and kept advertising costs high for all. Similarly retailer joint action in dealing with labor problems had at best occasionally stabilized wage rates, improved the calibre of work or increased the productivity of labor through education and management studies; but it had been unable to reduce the proportion of the sales dollar spent on labor. The cost of supplies had been reduced by joint purchase through trade associations and the cost of trans-

portation had been reduced by group shipping or delivery arrangements. In general, it may be said that joint retailer action directed towards reducing the cost of factors of production was, with certain exceptions, essentially an attempt to increase productivity. Group pressure was not typically used to decrease price; newspapers were too strong to make such action fruitful and employees too unorganized to make it necessary.

The provision of services and information through association work progressed in most fields of store management. Doubtless the outstanding accomplishment of cooperation lies in the education of retailers.

In regard to the definition and enforcement of fair methods of competition, retailer cooperation had been mildly successful when efforts were confined to dishonest or oppressive advertising. But when the prohibitions reached into the field of regulating consumer-retailer relations to the extent of banning sales inducement that were wasteful and uneconomic, control proved largely ineffective. Substantially unchecked was the offer of price concession in the form of uneconomic services, or non-fraudulent premiums or free goods offers; the loss leader had not been curbed. Competition on a price basis was rampant and essentially undiminished by retailer cooperation.

But in spite of its obvious limitations, there seems to be a persistent virility in retailer group action. Cooperation forced its way over the structure of the trade like a creeper. If on the left there was no support on which to fasten, groping tentacles would discover a friendly twig on the right. Adjustability and liveness was probably the result of the fact that the fuel for the movement was the energy of individuals forced to compete for a constituency. Successful trade association managers have been obliged to keep their organizations young. One of the tests of capable leadership was

the ability constantly to find new fields for useful work. Since retailers are busy men their attention must be earned and then presently earned again.

Such government control as existed prior to the summer of 1933 seems to have been essentially a technique employed by certain groups of retailers or other business interests to enforce standards on the rest of the trade. We have noted that there was little conflict between the objectives of the fair practice movement which developed from within the trade and government regulation achieved thru legal restrictions; law did not go as far as the trade-devised regulation but it went in the same direction. In regard to control of the conditions of labor, we found that the minimum wage and maximum hour legislation, though typically not initiated by retailer action, was frequently not opposed by the more stable elements of the trade.

The National Industrial Recovery Act created a new direction for cooperative activity and government regulation. But even more important, it created a new method of formulating and enforcing trade standards. It turned a collection of group standards, in which only a portion of the trade had been interested, into a formal trade law,—not unlike the one time Law Merchant. These new regulations would be in a sense imposed from above rather than slowly evolved from within the trade group. This meant that although the codes must bear an intimate relation to control measures of the past as well as to established practice, it would be possible to take five or six steps ahead in a code where only one would have been possible under voluntary machinery.

In following the process of code drafting in the next part of this book we shall accordingly be interested in the selection from the complicated precedent of the restrictions to be incorporated in the Retail Code. But of perhaps more interest will be the clauses embodying the newer aspects of NRA



trade regulation: restrictions affecting prices and labor, clauses stipulating price, maximum hours and minimum wages are, in the first place, intimately bound with interests other than those of retailers. In the second place, since similar restrictions had seldom been enforced prior to 1933, retailer reactions would be largely unpredictable. Nevertheless, the nature of their reactions would plot the government's problem, first, in obtaining a satisfactory code and, second, in enforcing that code.

In the following section we will trace the story of code drafting. In part III we will analyze the process and problems of code administration. In Part IV we will, in a sense revert to the story here suspended in the early summer of 1933—the story of cooperation and social control in the retail trade. We will hunt the footprints of NRA first in the areas vitally affecting interests other than retailers—wages, hours of work, prices. Then we will reexamine the fair practice movement and the various organized relationships between retailers and their opponents in the market contest to see what if any changes seem to have occurred between the summer of 1933 and the spring of 1935.

**PART II**  
**THE GENESIS OF THE CODE**

## CHAPTER I

### THE NATIONAL INDUSTRIAL RECOVERY ACT

At this point in the stream of events which spun the story of retail collective activity, the river flows through a lake. The history of retailer cooperation is merged with that of group relations in all industry by the National Industrial Recovery Act. We will pause for a moment to study the genesis of this act before resuming the story of the retailer by inquiring into the gestation and birth of the Code of Fair Competition for the Retail Trade.

Two full years of depression had swept the Democratic Party into national office. The country was in the process of a physical and psychic deflation. The red hue of balance sheets is easy to recall, as is the downward plunge of indices of production and payrolls. The psychic deflation is more difficult to recreate in memory than the deflation of monetary and physical values; yet a recollection of its quality is necessary background to an understanding of the NIRA.

By the spring of 1933, the popular mood was unsure to the point of panic. Solid things seemed to have lost their weight and dissolved into a time-sequence; there was no knowing whether they would be there tomorrow. Individuals were losing their poise, their necessary feeling of adequacy; as a group, they were losing confidence in their collective power. When Roosevelt took the oath of office on March 4, 1933, he slaked a popular thirst. He focussed and fed the need for faith that grew out of the enveloping un-  
sureness of the time. He was bewilderingly confident in the adequacy of man. He was a tonic to national morale.

The first days of the new administration were dramatic. Staccato commands from the White House were bringing order out of chaos. There must be an end of submission, there must be action, action and faith. "We do not distrust the future of essential democracy. The people of the United States have not failed. In their need they have registered a mandate that they want direct, vigorous action" . . .<sup>1</sup> "I assume unhesitatingly the leadership of this great army of our people, dedicated to a disciplined attack upon our common problem,"<sup>2</sup> to the "larger purposes, to the pursuit of social values, to the forgotten man." "The relation between government and business will necessarily be in process of redefinition during the coming years." "Our new national administration . . . is going to bring about governmental action to mesh more with the rights and essential needs of the individual man and woman." "*These are not merely hopes. They are the battle orders imposed upon myself and my party.*"<sup>3</sup>

There could not be the slightest doubt that there would be rules of the game laid down in Washington. The only question was what the rules would be.

#### SECTION I. DRAFTING THE NIRA

Obviously, in a democratic government, lobby-infested and shackled with vested interests, pressure groups would have much to say concerning legislation which affected them. The organized groups most vitally interested in the NIRA were industry and labor.

Both organized labor and business were wary of letting the camel's head into the tent. Neither was anxious for gov-

<sup>1</sup> Franklin D. Roosevelt, *Looking Forward*, John Day Co., New York, 1933, p. 269.

<sup>2</sup> *Ibid.*, p. 267.

<sup>3</sup> *Ibid.*, p. 246. Italics mine.

ernment regulation, although the thought was certainly far from new. Comprehensive industrial planning had been seriously considered since the Economic Council Hearings in the fall of 1931 and had reached the preliminary stages of legislative drafting prior to the spring of 1933.<sup>4</sup> Moreover, even the Chamber of Commerce was not opposed to industry-controlled regulation.<sup>5</sup> But the issue was precipitated by the relatively clear road in both Houses that greeted the Black-Connelly 30-hour bill. Clearly, regulation of some kind was inevitable. Accordingly the obvious job for the guardians of business interests to perform was to get into the control bill the measures and principles which they advocated and to keep out of the bill clauses adverse to business interests.<sup>6</sup>

\* At the hearing before the Ways and Means Committee of the House of Representatives, May 18-20, 1933, Mr. Richberg, in speaking of his role in the writing of the NRA says: "Before the final draft of this measure there has been prepared a very large number of measures under the auspices of many groups, including a measure approved by the U. S. Chamber of Commerce and measures brought in by the various trade associations. There had been various kinds of committees of a semi-official nature working on these measures. The final basis for the production of this particular bill was the suggestion that all that work should, if possible, be conducted in a small group to endeavor to bring out one bill of this multitude of counsel, in which there might have been wisdom but in which also there was much confusion." (Hearings before 73 Congress on H. R., 5664, House Committee on Ways and Means, p. 84.)

At the Senate Committee hearing of the same bill on May 22, Mr. Richberg speaks of the "multitude of counselors in the preliminary stages" of this particular bill "having within the last two or three years been as the sands of the sea": also within the last two years "a large part of the members of both Houses" were brought into these conferences. (Hearings before the 73rd Congress on S. 1712, p. 30 before Senate Committee on Finance.)

<sup>4</sup> Chamber of Commerce of the U. S. Referendum, No. 59. Quoted by Mr. Harriman at House Hearing on H. R. 5665, p. 137.

<sup>6</sup> At the 22nd annual meeting of the Chamber of Commerce of the United States, the Board of Directors, in their annual report, quote a resolution adopted by the membership of the Chamber in annual meeting held May 3, 4, 5, 1933, which advocates that "Federal legislation affording

Likewise the trustees of labor welfare would, if true to their trust, attempt to counteract paternalistic influence of government regulation of hours and wages through guarantee of collective bargaining.<sup>7</sup> It is important to note that executives and directors of business and labor organizations alike would have been disloyal to their constituencies and to their own standards had they failed to attempt to influence control legislation.

Control of the framing of an act could presumably be achieved in two ways: through having individuals engaged in the actual drafting who were sympathetic to the point of view to be advanced; and by having the act framed in constant consultation with the proponents of the interest in question. The personality of the inner core of drafters changed

opportunity for this [Trade Association] form of self-regulation under government supervision would produce conditions which assure fair competitive opportunity to each enterprise and permit immediate increase in employment, raise earnings, and free the public from the results of destructive competition on the part of the least responsible industrial elements. All enterprise could be held to standards of fair competition properly determined." Concerning this resolution, the directors state: "When that resolution was passed, there was pending in Congress a bill that had been passed by the Senate to impose compulsory 30-hour law limitations on the work week. We urged as a *constructive substitute* that trade organizations be permitted to formulate their standards, in line with conditions in the industries, subject to approval by the Federal government." (Chamber of Commerce of the U. S. Board of Directors Annual Report, Twenty-Second Annual Meeting, 1933-34, pp. 5-6.)

<sup>7</sup> Organized labor throughout the major portion of its history had worked on the hands-off-government theory. The union was the phalanx of the traditional labor attack. Even during the hearings of the Black Bill, the major groups of organized labor demanded only a drastic reduction of hours; they were opposed to the public fixing of wages, even of minimum wages. Traditionally, they wanted higher wages and shorter hours together with certain specified rights, achieved through unionization. The change, then, from the traditional A. F. of L. position in regard to the relations of labor and government was significant in determining what type of clauses the NIRA would contain.

as April and May wore on. These changes seem to have, in general, decreased the liberal and increased the business-minded influence urging self-rule in industry.<sup>8</sup> At the same time, the lines of communication seem to have been kept open between the framers of the Act and certain of the business groups that were interested<sup>9</sup> in it. Section 7A of the labor provisions, on the other hand, seems to have been interpolated into an early draft of the Act by the Department of Labor. In spite of the importance among the Code drafters of Mr. Richberg, who was considered to be sympathetic to the labor cause, modifications in the 7A clause were made

\* General Hugh Johnson and Mr. Donald Richberg sifted to the top in the final stages of code drafting. The first page draft of a bill submitted by Johnson "was an outright grant of power to the President to organize industry, to give to trade associations authority to regulate prices, production, trade practices, wages and hours. It provided for suspending the Sherman Anti-Trust Law. It contained the authority to the President to license industry." It made no mention of collective bargaining for labor. (*Harpers' Magazine*, September, 1934, p. 392, article by John Flynn, "Whose Child is the NRA?").

\* At the House Hearing on H. R. 5664: Mr. Treadway: "I assume, from your statement, that you, like the rest of us did not see this bill until it was made public yesterday."

Mr. Harriman: "Not as a whole. I had seen paragraphs of the bill..."

Mr. Treadway: "Then you were possibly consulted by the proponents of the bill?"

Mr. Harriman: "To a certain extent. Not as to language, but as to the principles involved in it" (p. 137).

At the same Hearing:

Mr. Richberg: "In the process of drafting this measure those conferences and consultations continued, and I had nothing to do with that phase of it. *But I do know, as a matter of fact that there was constant touch kept with those who have been working on this matter for a long time.*" (73rd Congress, Hearings; H. R. 5664, p. 84.)

At the Senate Hearing on S. 1712: Mr. J. A. Emery, representing local, state, and national industrial trade associations, with a membership of manufacturers employing in the aggregate about one-half of the employees in manufacturing, said that "a standing committee of 50 industrialists had engaged in continual study of the measure" (p. 273).

which were thought to outlaw the closed shop.<sup>10</sup> Moreover, the indirect control of organized labor over the proceedings of the inner chamber was deficient in certain respects:<sup>11</sup> the amendments to Section 7A proposed at the Congressional Hearing were submitted at that time because there had been no other opportunity to do so.<sup>12</sup>

Congressional committees introduced two important changes in the proposed bill. In the first place, the immunity from the anti-trust acts which was presumably afforded by the original draft<sup>13</sup> was modified to apply only to practices

<sup>10</sup> The section as recommended by the committee read: "No employee or no one seeking employment shall be required as a condition of employment to refrain from joining a labor union of his own choosing." In the final draft presumably recast by Richberg, it read: "No employee or no one seeking employment shall be required as a condition of employment to join any organization or refrain from joining a labor organization of his own choosing." (*Harpers' Magazine*, Flynn, *loc. cit.*, p. 393.)

<sup>11</sup> John L. Lewis, writing of "Labor and NRA", said: "Moreover, representatives of organized labor took an active part in the Conferences leading to the drafting of the law. What was being done was known in detail by the United Mine Workers, and we had Senator Wagner's assurance, as chairman of the legislation drafting committee, that no law would be drawn which did not meet with the approval of organized labor." (*Annals of American Academy of Political and Social Science*, March, 1934, p. 58, John L. Lewis, "Labor Under the NRA.")

<sup>12</sup> When William Green proposed his amendments to Section 7A at the House Hearing, he was asked by Mr. Treadway: "Were those amendments submitted to the gentlemen who prepared this bill?" He answered, "No sir, we had no opportunity to present these amendments." (73rd Congress Hearings, H. R. 5664, p. 122.)

<sup>13</sup> A comparison of the NIRA and the draft of the act submitted at the Hearing before the Committee on Ways and Means of the House, discloses the following differences in clauses relating to the trust acts.

Both drafts contained substantially the same clauses granting immunity from the anti-trust laws to practices approved in the codes (Section 5).

The last two sentences of Section 3B in the early draft were: "Any violation of such standards in any transaction in or effecting interstate commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended. A violation of any provision of any such code shall be a misdemeanor and



performed in compliance with the provisions of approved codes:<sup>14</sup> moreover a code could be approved only if in the opinion of the President, it would not operate to promote monopolies or eliminate or oppress small enterprises or permit monopolies or monopolistic practices.<sup>15</sup> In the second place, Section 7A was substantially changed after the Congressional Hearings in conformity with two modifications presented by William Green as the price of the "full, complete and hearty endorsement" of the bill by labor.<sup>16</sup> A

upon conviction thereof, an offender shall be fined not more than \$500 for each offense." (73rd Congress Hearings, Committee on Ways and Means, May 18-20, 1933, H. R. 5664, p. 2.)

The NIRA in its final form contained in Section 3B the first sentence quoted above and transferred the second sentence to a different section. To the first sentence was added the phrase, "But nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such Act as amended." It was thought that this phrase would destroy the immunity from the Anti-Trust Acts which it had been hoped would be granted to practices not specifically included in codes. (Public No. 67, H. R. 5755, 73rd Congress, NIRA.)

<sup>14</sup> Section 5, NIRA. This change seems to have been bitterly resented by some business men on the basis that the attack by Senator Borah which introduced the modification was made subsequent to the notification of business men concerning the provisions of the Act and the messages of endorsement sent to congressmen and senators by business men from all parts of the country who approved the Act on the basis of the long-sought-for relief from the anti-trust acts.

<sup>15</sup> NIRA, Section 3A, paragraph 2.

<sup>16</sup> Mr. Green suggested that to paragraph one, which read, "That employees shall have the right to organize and bargain collectively through representatives of their own choosing" should be added: "and shall be free from interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection". He explained that the amendment which he proposed was a verbatim quotation taken from one of the laws of the country—the Norris-La Guardia Anti-Injunction Law. The second change which was suggested by Mr. Green and incorporated in the bill was the substitution of "company union" for "labor organization" in the paragraph referring to employment con-

third change of less general importance but of particular concern to retailers was the stipulation that persons in other steps in the economic process whose interest was affected by provisions in a code should have the right to be heard prior to the approval of the code by the President.<sup>17</sup>

The Act "to encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works and for other purposes," emerged in early spring with the approval of the House and the Senate. On June 16, it was signed by the President. Section 7A had been vociferously fought by business; congressmen and senators had shied at the licensing clause; labor representatives had blessed the final draft. The consumer was silent except for the voice of Benjamin Marsh of the People's Lobby, who liked it not at all. "Government cannot repeal economic laws, nor make profiteering trusts good by going into partnership with industry."<sup>18</sup>

Political events can only be evaluated in terms of politically possible alternatives. In the face of the social and economic philosophy of the President, the political temper of both houses of Congress, and the virtual *fait accompli* of the Black-Connery Bill, the NRA must be adjudged a feather in the cap of industry's spokesmen.

Labor had achieved, in addition to the still to be defined reduction of hours of work and established minimum wages,

ditional to the employee undertaking to "refrain from joining a labor organization ['company union' as amended] of his own choosing." (73rd Congress Hearing on H. R. 5664, pp. 3, 117 and 118.)

<sup>17</sup> Section 3A, paragraph 2, *NIRA*. This clause was added in Senate Committee (73rd Congress Senate Hearings S. 1712, May 26, 1933) and had been suggested and advocated by the NRDGA (*Bulletin*, June, 1933, Editorial, p. 7) and endorsed by the Retailer National Council on June 1st (June 1st session at Palmer House, Chicago, of Retailer National Council. Reported in NRDGA *Bulletin*, June, 1933, p. 13.)

<sup>18</sup> Cf. Senate Hearings, *op. cit.*, p. 316.

a clause which some thought would result in the unionization of industry.<sup>19</sup>

Industry, on the other hand, gained three outstanding advantages. Minimum wages and maximum hours of work were not, under the codes, stipulated rigidly for the country as a whole, but would be determined separately for each industry. The members of the industry would have an important part in determining the rates which would be established. Their knowledge of the implication of what might be thought by an outsider to be unimportant detail frequently afforded a bargaining advantage of great importance. The point will be illustrated from experience with the Retail Code. The right to determine wage rates separately for each industry carried with it the further advantage of a subtle, though very significant, weighting of the balance of power between industry and government. It implied a tacit admission that a knowledge of intimate conditions in an industry was necessary to intelligent social legislation. In the second place, the NIRA was to be administered by NRA rather than by established government bureaus. Later events proved this a chieftain's scalp. NRA, being young, was educable. Finally the NIRA underwrote industrial agreements on codes of fair competition. Fair business practice was to be defined and enforced. Destructive price competition and overproduction might be forbidden; survival value was to be based on efficiency rather than on the willingness to mulct labor, mislead the public and lay waste to competitors. The era of the "just price" was ushered in as<sup>20</sup>

<sup>19</sup> It would seem that certain outstanding leaders of labor felt that time was the essence of the advantage, and that, with speed and decisive action, the position of labor could be substantially improved before the rest of the country awakened to the innocuousness of the clause.

<sup>20</sup> For an interesting discussion of the "just price" and the NRA see *A Short History of the New Deal* by Louis M. Hacker, F. S. Croft and Co., New York, 1935.

the Sherman Anti-Trust Act was ushered out.<sup>21</sup> Fair price to labor, fair profit to business, fair cost to purchaser was to be achieved through the certain magic of the Code of Fair Competition.

A judgment rendered in the light of the political and economic situation of May, 1933 must pronounce NIRA a clear tactical victory for representatives of business. Nevertheless in the minds of many business men it was at best a Pyrrhic victory. Clear it was that business had joined hands with Government. Even the good trade association cooperator grows strangely jumpy at the thought of "government in business". To those business men who disapproved not only of government regulation but also of trade association regulation, the jumpiness approached St. Vitus' dance. As has been suggested at other points in this discussion, the ideology of *laissez-faire* is root and soil to American business enterprise. Such things do not change as the result of a quixotic national mood. In so far as business men *thought* they were giving up, under the NIRA, independence of judgment and action, they were making a genuine and significant sacrifice. It is immaterial whether they actually were making any substantial sacrifice or whether the sacrifices which they would have made under the Black-Connery Bill or substitute legislation would have been worse. The fact that under the NRA they thought they were giving up significant elements of control, is of the utmost importance in determining the actions of business men and their attitude towards the NRA.

<sup>21</sup> The extent to which the Anti-Trust Acts would be suspended would, of course, depend upon the clauses contained in the Codes. Nevertheless, a clear change in pricing theory was involved. No longer was the mere preservation of competition through prevention of acts in restraint of trade, acts tending to promote monopolies, etc., considered an adequate assurance of a proper price structure.

SECTION II. THE NATIONAL INDUSTRIAL RECOVERY ACT

It will be recalled that the purpose of the NIRA, as stated in the preamble, was to "remove obstructions in the free flow of interstate and foreign commerce which tend to diminish the amount thereof." This was to be achieved by the elimination of unfair competition, by the promotion of the fullest possible utilization of the present productive capacity of industry and by increasing consumption through a large public works appropriation, the relief of unemployment, and an improvement in the standards of labor. The means whereby these desiderata were to be obtained and maintained was through the benevolent effect of "the organization of industry for the purpose of cooperative action among trade groups," and the "united action of labor and management under adequate governmental sanctions and supervisions".

What was envisioned, then, was recovery and reform through an initial stimulation and the medium of the "just price". Business was encouraged to organize; labor was encouraged to organize; labor and business were encouraged to cooperate. And in this broad-gauge get-together, the government was assigned the triple role of umpire, catalyst and shepherd. The first two functions were assigned to the administrator and his core of assistants, deputies and assistant deputies and respective staffs. The sheep over which it was the function of government to watch were the black, white and mottled little lambs of public interest. In connection with each code, the general interest of all employers, all labor and the consumer interest were guarded by three boards: the industrial, labor, and consumer advisory boards respectively. Collateral divisions of research and planning and a legal division were constituted to advise on appropriate questions.

The newly fostered cooperation of labor was cast in old forms: industrial, or craft, or company union. Industry also typically utilized as the unit of cooperative activity the time-tested device of the trade association or institute. The final draft of the NIRA seems to have provided no set form in which the cooperation of labor with industry was expected to materialize. This was left essentially to separate determination for each code, although NRA plans clarified in the spring of 1934.

The NIRA was, except for the public works section, essentially an enabling act. Government participation in and cooperation with industry could take one of four forms: (1) voluntary agreements between the President and an industry; (2) voluntary agreements, between employers and employees in an industry, approved by the President. (3) voluntary codes of fair competition; (4) imposed codes. The last mentioned method of effecting Title I of the Act was thought of more as a method of ensuring voluntary agreements than as a desirable method of organizing industry. As further emergency implementation, the President was empowered to require the licensing of firms. The third method, that of the voluntary code of fair competition, was the focus of most of the discussion between trade groups and the Government.

A code of fair competition would, it was intended, be applied for by "one or more trade or industrial associations or groups".<sup>22</sup> Such codes could be approved by the President if he found that various stipulations were fulfilled: (1) That the associations or groups "impose no inequitable restrictions on admission to membership" and are truly representative of the trade or industry or subdivision for which the code is requested; (2) That the codes "are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them,

<sup>22</sup> 73rd Congress Hearings S. 1712, May 22, p. 2.

and will tend to effectuate the policy of this title." "Provided: that such code or codes shall not permit monopolies or monopolistic practices. Provided further that where such codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to the approval by the President of such code or codes."<sup>33</sup> The codes were required to contain Section 7A, to regulate minimum wages and maximum hours of labor, and to define fair business practice.<sup>34</sup>

The original Administration plans contemplated a two-staged process of code-making. The labor provisions were to be the primary and immediate concern of Administration spokesmen. Trade practice provisions were to be the subject of more leisurely analysis. Code clauses would be formulated by reconciling conflicting interests.

But the expected and actual job of code-making diverged in several significant respects. In the first place it was found that conflicting interests could not typically be reconciled but had to be bargained off. The corresponding change in the function of the Deputy from a chairman of a forum to the umpire of an arena complicated as well as altered the task with which Government representatives were confronted.

<sup>33</sup> National Industrial Recovery Act, Section 3A.

<sup>34</sup> In the words of Senator Wagner: "A code of fair competition will set forth the best judgment of those engaged in the particular trade or industry as to the competitive conditions within the industry, specifically: (1) the standards of fair competition; (2) the trade practices which should be banned as unfair, oppressive and designed to give advantage to the employer with the lowest standards; (3) the methods which should be employed to rehabilitate the industry, increase its capacity to give employment, and raise the living standards of those who labor in it." "In this manner we lift the plane of competition to the level of the highest ideals prevailing in the particular industry, and at the same time we avoid the regimentation of all industry under a single inflexible set of rules." (73rd Congress Hearings, S. 1712, May 22, p. 2.)

In the second place, the early planning for code-making had envisaged negotiations starting with ten and ending with perhaps fifty large associations.<sup>25</sup> The 400 codes filed in the first month surprised the Administration and greatly magnified the task which had been undertaken, at the same time that it was welcomed as an opportunity to extend the benefits of the program.<sup>26</sup> In the third place the task undertaken by the Administration was further complicated by the fact that industry soon indicated that it was not interested in negotiating codes governing wages and hours and a few of the more flagrant and destructive trade abuses, but was primarily concerned with the regulation of trade practices,<sup>27</sup>

<sup>25</sup> Brookings Institution, *National Recovery Administration*, George Banta Publishing Co., Menasha, Wis., 1935, p. 87.

<sup>26</sup> *Ibid.*, p. 88. The unexpected character of the rush for codes is indicated further by the fact that on July 26, 1933, there were less than 400 persons having fixed employment in NRA. (*NRA Release No. 93* quoted *ibid.*, p. 88, footnote 5.)

<sup>27</sup> The National Industrial Conference Board drafted a model code which appeared four days after the President signed the NIRA. The code developed the elements in the act which permitted direct and indirect (through statistics) price and production control. It restated Section 7A, contained a section devoted to minimum wages and maximum hours, and significantly contained no provisions concerning prohibition "of reductions of wages" above the minimum. It contained a list of unfair competitive methods, it forbade selling below cost of production, except for valid reasons, cost of production being defined as the average cost of firms submitting figures to the Association. It contained clauses which linked the code to the Trade Association in a variety of ways which ranged from encouraging membership in the Association to requiring, on pain of violation of the code, the submittal of statistics to the Association or "any agency acting on behalf of the association to determine whether there has been compliance with the provisions of the NIRA and this code".

The bond between the Trade Association and the code was finally cemented by the clause on arbitration which read: "Any complaint, difference, controversy or question of fair competition arising under or out of this code or relating to standards as to maximum hours of labor and minimum rates of pay or other working conditions provided for



particularly with controlling and improving prices through collective action.<sup>28</sup>

The Field Day was on. The invitation to write a code had been extended and accepted. Obviously there would be a rush to write into the fair practice provisions of the codes the wish fulfillment of decades of business experience, together with the pet foibles of many business men. The dance began: various industrial agencies of cooperation already existing, together with individual industrialists interested in individual practices, together with contingently interested organized groups, together with government officials, began the intricate masque, with its varied movements ranging from minuet to tarantella, which culminated in the grand finale—the President's signature on another Code of Fair Competition for the ——— Industry.

therein or concerning the interpretation of application of any provision thereof, shall be submitted to arbitration . . ." (Conference Board Information Service, Domestic Affairs, Memo. No. 7, NIRA, *Formulation of Codes of Fair Competition*, June 21, 1933.)

The position taken by the NICB was further bulwarked by the subsequent pamphlet which they issued entitled, "Organization of Industry for the Administration of the Act in the Light of German Cartel Experience". (NICB Conference Bd. Information Service, Domestic Affairs, Memo No. 8, July 7, 1933.)

General Johnson seemed to concur in the thought of trade-association governed industry. "In our eventual pattern, these associations will, in the first instance, and in truly representative fashion govern their trades and industries. The Government will sit in with a veto power, but without vote, to prevent the abuses of monopoly and the oppression of small enterprises and the exploitation of consumers." (Address by General Johnson, quoted in *NRDGA Bulletin*, October, 1933, p. 14.)

<sup>28</sup> Brookings Institution, *op. cit.*, pp. 92-94.

## CHAPTER II

### THE PROCESS OF DRAFTING THE RETAIL CODE

CODE-MAKING impinged on the typical retail business in three ways: the code for the major portion of the business of a store was the trade law under which it operated and therefore of major importance; codes for other branches of retailing might be of significance in so far as a given retailer sold interchangeable products, or products which came under a different code; the retailer would be affected by clauses in the codes of the resources with which he dealt when such clauses affected the cost of the goods purchased or the terms or conditions under which his purchases were made.

#### SECTION I. WHETHER TO HAVE A CODE

The retailer was not required under the NIRA to write a code of fair competition; he was merely afforded the opportunity to do so. The first question that presented itself was accordingly whether or not to submit a code. The decision seems to have been readily made. Nevertheless it is interesting to examine the factors involved, since the area of bargaining over code drafting was always bounded on the one side by the trade's willingness to go without a code and on the other by the administration's willingness to have it do so.

The direct application of a code of fair competition to a retailer's business probably promised less by way of desired ends than was the case in many industries. Production or price control, which formed the major incentives towards codification of many industries, could, in retailing, at best be achieved within rather narrow limits. Moreover, if retailers

had less to gain, they might also have had more to lose. Unionization terrified the storekeeper. A special case against Section 7A and the awakening of labor to a consciousness of rights could be made out on the basis of the importance to the retailer's business of good personnel relations. Moreover in an essentially service industry, work goes on at the pleasure of the customer,<sup>1</sup> not of the power plant. This introduced a need for elasticity in working time, which made the limitation of hours of work in a retail store somewhat more burdensome than a similar limitation in a factory.

Then too, retailers shared the American business man's fear of and distaste for interference of any kind. In fact, retailers as a group hold these beliefs with unusual fervor. In the words of Mr. Hahn, appearing before the Senate Committee at the hearings of the NIRA: "This is not a bill which, so far as I know the will and wishes of the trade I represent would be likely to come here and ask for. . . . We were raised under the old competitive system where it was a matter of everybody looking out for himself and the devil take the hindmost. . . ." <sup>2</sup> In a discussion with a leader of the retail group, the conversation turned to the foolish sacrifices that business men made during the summer of 1933. When the gentleman was persistently urged to state specifically what sacrifices were made other than those caused by Section 7A he finally erupted into the astonished statement: "Why, we gave up our most cherished beliefs!" This re-

<sup>1</sup> A retail sales person spends a large part of his or her time waiting for a potential customer. According to a study made for the Department of Commerce in 1927, thirty-three percent of the time of the average sales person in the stores studied was spent in waiting or idleness. (U. S. Department of Commerce. G. E. Bittner, *Analyzing Retail Selling Time*, Washington U. S. Government Printing Office, 1928.)

<sup>2</sup> 73rd Congress, Senate Committee Hearings S. 1712, May 26, 1933, p. 139.

mark needs to soak well into the understanding of anyone interested in fully realizing the problems involved in NRA.

In spite of the possible basis for sabotage, there were solid reasons why a retailer might find it to his advantage to cooperate with the Government in the business of code drafting. In the first place, by the spring of 1933, a considerable body of retailing opinion felt that the dog-eat-dog type of competition had gone far enough and that a new type of business relationship was needed.<sup>8</sup> In the second place, benefit would accrue to retailers through increased purchasing if the recovery program as a whole was successfully administered. Therefore, it would have been unwise for retailers as a group to have sabotaged the NRA. Moreover it may be doubtful whether they could have done so had they wanted to. The retailer lives on public opinion and can not afford to ignore it. Public opinion, in the summer of 1933 was running high with the President. In the third place, there

<sup>8</sup> In the March 13th, 1933 issue of *Retailing*, the editor urged that the President consider the retailers' need for regulation along six different lines: (1) Some limitation on the opening of new stores; (2) Regulation of opening and closing hours of store; (3) Constructive action to limit the "bankruptcy" racket; (4) Provision of a central agency to enforce cleaning up advertising; (5) The repeal of the anti-trust laws; (6) A national minimum wage that would be a "spending wage".

In the April issue of the *NRDGA Bulletin*, the former President of the Association, Mr. O'Connell, who had ably championed a "quality movement" in department and specialty store merchandising, advocated that retailers do their part to forward the new revival of confidence by making their own business entirely trustworthy. "Let us ban any and all abuse of advertising so that the public can place implicit confidence in every statement we make." In addition to the emphasis on cleaning up advertising, Mr. O'Connell stressed the importance of agreement among retailers to reduce the cost of distribution. "Let us be willing and ready to adopt uniform retail practices that will help to reduce the cost of distribution." Such agreement will at first be local rather than national—retailers must first "come to a point where they can agree locally upon sound, uniform principles of operation and stick to them." (*NRDGA Bulletin*, April 1933, p. 35.)

were two elements of the NRA mechanism which forced retailers to draft a code in self-defense. The NIRA had empowered the President, under certain conditions, to enforce a compulsory code on any Industry which did not cooperate willingly. Also, retailing is a process which cuts across the commodity division of industry; if the retailers did not create a code for the process of retailing, they might well awake to find themselves operating under a large number of manufacturing codes which made provision for the distribution of their products. With manufacturing codes retailers were beginning to have frequent and painful experiences. It will be recalled that Section 3A of the NRA entitled representatives of related stages of production to be heard before any code which affected such interest was signed. As the code-making process continued, it became more and more apparent to retailers that their essential interests were being vitally affected. The NRDGA projected its traditional concern for the retailer side of the retailer-resource relation by organizing a committee whose function it was to analyze proposed codes, select obnoxious features and present the retail point of view in code conferences and hearings. This subject will be discussed in Part IV in connection with the changes in the relationship between the retailer and his resources directly or indirectly attributable to the NIRA. For the moment it is important to remember that there is constant battle on the retailer-resource front and that the heat of the battle is increasing throughout the entire history of NRA. Nothing could have been more disquieting to retailers than to have their business governed by manufacturing codes.

Thus we may see that had retailers engaged in a deliberate balancing of pros and cons it seems likely that they would have determined to cooperate with the government in drafting a code of fair competition. This does not mean how-

ever that any such objective consideration was generally given to the subject. It does not mean, moreover, that action was actually based only on the reasons outlined above. It may well be that a substantial number of retailers determined to march with the recovery program because of a sincere and unselfish belief in its aims. But whether this belief was common in the craft or whether it was the determining factor in individual cases is a question which can not be answered, probably not even by the individuals concerned. Certain it is, that a feeling of altruism was frequently present; equally certain is the marked adequacy of selfish reasons for whole-hearted retailer cooperation in the business of code drafting.

Given the fact that some sort of codification of retailers was inevitable, given the further decision that retailers should, as far as possible, be subject to codes made by retailers themselves, the next question to be decided concerned the number of branches of retailing which should be included in each code. Should each trade association representing each division of the retail trade be encouraged to develop its own fair practice codes or should there be one code, or at any rate as few as possible, to cover the retail trade? On this issue the Administration of the NIRA took a definite stand: General Johnson instructed Mr. Whiteside to develop a Master Code for retailing.<sup>4</sup> Moreover, the influence of the Administration re-enforced retailer solidarity by eliminating the advantage that might result from separatism—of this more later. Then too, the influence of the department stores in general and the NRDGA in particular, weighed on the side of the Master Code. It was clear at the outset that the department store executives would have quite enough difficulty with codes of fair competition without trying to run their own stores with separate codes for each department,

<sup>4</sup> *The Journal of Business of the University of Chicago*, January, 1935, "Retailing under the NRA" by Kenneth Dameron.

codes, indeed, in the formulation of which they could take only a minor part. A third factor tending toward a Master Code was the conviction on the part of some associations that the group working together could get more advantageous wage and hour provisions than they could hope to get individually. These various forces are important since code clauses and the history of code drafting was conditioned by the fact that there were such a large number of interests to reconcile in connection with each clause.

#### SECTION II. FIRST THOUGHTS ON CODE CONTENT

But drafting a code of fair competition is a wearisome job. Getting it approved by the trade, by the administrator, and by the various boards and advisors is a task requiring patience, energy, and a Machiavellian cunning. The persistent effort required for these tasks could not be provided by a general and dispersed intent on the part of the trade as a whole to cooperate with the Administration. An adequate drive could occur only through the leadership of individuals.<sup>6</sup>

<sup>6</sup> An interesting example of good intentions not backed by the aggressive interests of individuals was provided by the relation of the Retailers National Council to the task of code drafting. This body might logically seem to be the group to which one would look for leadership. But the Council was made up of discrete units—trade associations. The individuals responsible for an association were more interested in pushing that group than they were in submerging its individuality in the Council. For that reason, and others, the Council was never important in the negotiation over the Retail Code.

On June 1, at the annual meeting at the Palmer House in Chicago, the Retailers' National Council unanimously adopted a resolution which permitted the Council to "(1) offer its cooperation and support to purposes stated in the bill, and (2) point out that the purposes and intent of this measure can best be served through the adoption of a code or codes for retail distribution by the retail crafts of our country and not through the imposition of codes which control previous or subsequent steps in our economic system and (3) appoint a committee immediately to prepare a statement of fundamental principles which will be applicable to retail distribution..." (NRDGA *Bulletin*, June, 1933, p. 13.)

In part this leadership was inherited from the voluntary cooperation of pre-code days. It came from persons whose job forced them to take a position on public matters, and from trade association presidents and general managers who saw an opportunity to increase the prestige of their associations; moreover activity on the part of any one association of retailers forced defensive activity, which could only take the form of further aggression, on the part of every other association which was not willing to lose prestige. Leadership came also from retailers who had ideas on code-making. Often these ideas concerned what should be left out of codes rather than what should be put into them; but whether negative or positive they could only be defended through taking an active and constructive position in the process of code drafting. Finally, initiative came also from retailers who were sincerely interested in the recovery program as such.

By the beginning of July there were few retail standards of fair practice which had not been suggested at some time with varying degrees of insistence as appropriate material to be written into the Code. Perhaps the most comprehensive proposal was the one submitted by the president of the NRDGA at the mid-year meeting of the Association in Chicago.<sup>6</sup> Trade associations in other branches of retailing

<sup>6</sup>Mr. Hahn suggested that the Code which must be prepared would fall into four divisions: (1) The relation of the retailer to his employees, right of employee to bargain collectively, minimum wage, standard hours of work, continuity of employment, general working conditions, prohibitions against prison-made merchandise and sweatshop labor; (2) The relation of retailer to manufacturer and wholesaler: establishing the sanctity of an order, adherence to established terms and discounts, conditions under which goods may be returned; (3) The relation of retailer to consumer: elimination of dishonesty in advertising statements, a firm stand on the subject of general underselling claims; (4) Relation with other retailers and retailers locally to make minimum price agreements; retailers locally to limit advertising expenditures, retailers locally to agree on date of seasonal openings and clearances. These suggestions were proposed by Mr. Hahn in the course of an



were also interested in inserting into the Code the fair practice provisions for which they had always struggled.<sup>7</sup> To some extent, a brake was placed on the range of suggested provisions by the fact that so many clauses were of necessity matters for local rather than national agreement. However, as may be deduced from the discussion of cooperative activity contained in Part I, there was no paucity of ideas from which to select. But there was, at first, no accepted criteria that determined which of the many possible restrictions were eligible for the NRA Code. Selection of this kind was a function of the negotiations of the summer.

On May 31st, the Board of Directors of the NRDGA authorized the appointment of a committee to draft a code. Retailers from all parts of the country were appointed by Mr. Hahn, who was an ex-officio member of the committee. The function of this committee was to draft a code which would form a basis of discussion between the Administration and department and specialty store men who, it was hoped, would be joined by other types of retailers. Throughout June the Committee of Retailers met in the office of the NRDGA. They battled with the tri-partite task of deciding what type of clause ought to be written into the Code,<sup>8</sup> what the wording

address on the New Deal and the part which retailers in general and the NRDGA in particular ought to pay in the new and balanced economy whose "underlying principle will be cooperation instead of the old cut-throat competition", and in which the price cutter will be "the common enemy of all". (NRDGA *Bulletin*, June, 1933, pp. 16-18.)

<sup>7</sup> Clauses of this kind could be listed *ad infinitum*—the separation of furniture cost and financing cost, definition of "bait" advertising, of premium and free goods advertising, limitation of services such as delivery and returns, price agreements on services, agreements on closing hours, on dates for sales, etc.

<sup>8</sup> Mr. Kirstein, who represented the Administration, though himself a retailer, urged that the Code contain only labor clauses, in accordance with the early plans of the Administration. This suited no one with the exception of Mr. Straus of R. H. Macy & Company.

of such clauses ought to be and of obtaining sufficient agreement to prevent the secession of dissenters.

As finally agreed upon, submitted to a committee of all of the past officers and directors of the Association, and referred to the membership for comment, the labor provisions of the Code were in three parts: Section 1 reproduced section 7A, of the NIRA, this was compulsory by the terms of the Act. Section 2 set maximum hours of work, which did not apply to executives (undefined), at 48 hours per week.<sup>9</sup> Section 3 on minimum wages had a different minimum for cities of over 1,000,000 population, of cities with a population between 250,000 and 1,000,000, and for the balance of the country. For adult males over 18 years of age in cities of each of the three groups, minimum wages were set at \$18, \$15 and \$12 respectively; for females over 18 the minimums were \$12, \$11, and \$10; for juniors and apprentices the wages were \$11, \$10, and \$9 respectively in cities of different sizes.<sup>10</sup>

The trade practice provisions provided a bitter battlefield in these June meetings. As finally developed, they were approved by the committee unanimously except for the dis-

<sup>9</sup> The battle over the hour limitation was led by some of the large retailers outside of New York, notably in Chicago, who felt that it would be impossible to operate their businesses on less than a 48-hour week. It was intimated that the willingness of New York stores to consider what seemed to some of the other members of the conference to be impossible and impracticable hours and wages provisions was due to the all important desire on the part of the New York contingent to work off a life-long grudge against Macy through the writing and enforcement of stringent trade practice provisions for which no price in benefit of labor at the expense of the retailer was too much to pay.

<sup>10</sup> Whether or not this clause was framed to placate and enlist the support of the chain stores, it is interesting to note how well calculated it is to do so, e. g., the unlimited executive hours with no minimum wage requirement, the high differential between men and women and juniors, the very large size of the cities in which the highest wage applies, the long hours of work.

senting voice of the Macy delegate. Five types of practices were declared unfair: 1. Selling below cost plus ten per cent, although clearance, special sales, etc. were permitted, and reductions to meet competitors' prices were exempted from the prohibition of below cost selling. Four other paragraphs forbade misleading advertising and misrepresentation of merchandise, limited the use of comparative prices to statements concerning the advertising store only, outlawed general underselling claims and restricted the sale of merchandise made in penal institutions.

The Administration of the Code was assigned to a National Recovery Board to be composed of one or more representatives from eight national trade associations.<sup>11</sup> The responsibility for the administration was highly decentralized, since the local retail recovery boards were empowered "to draft such regulations as may be necessary to make the provision of this code applicable to the business situation within an area," although the essentials set forth in the Code were to constitute a minimum of fair practice throughout the country. The National Retail Recovery Board would constitute, among other things, a board of appeal before which charges of discrimination could be brought.

On June 21, five days after the President had signed the NIRA, this Code was adopted by the Board of Directors of the NRDGA and submitted to the membership for comment. Presently the code committee was summoned to Washington; shortly thereafter the Bulletin of the NRDGA

<sup>11</sup> A National Recovery Board was to be composed of one or more representatives of the following national associations or of other truly representative national associations which may now exist or may be formed prior to the acceptance of the code: American National Retail Jewelers Association, National Association of Retail Grocers, National Retail Dry Goods Association, National Retail Furniture Association, National Retail Hardware Association, National Shoe Retailers Association, National Association of Retail Clothiers & Furnishers, National Association of Retail Druggists. *Retailing*, July 3, 1933, p. 2.

mentioned the fact that "certain changes in our initial code have been made necessary in order to comply with the wishes of the Administration and to fulfill the purposes of the Act".<sup>12</sup> The Administration demanded a 36-hour week; as to wage minimums, General Johnson was reported to have said in reply to the variety store plea for low wages based on the unskilled nature of the work made possible through efficiency of organization, "any type of efficiency based on exploitation has no place in the recovery program!"<sup>13</sup> The future wage discussion focussed around the \$14 flat minimum for experienced adult workers.

Whether or not the provisional Code was to any significant degree responsible, NRDGA leadership had been established by early July. In spite of the centripetal influences<sup>14</sup>

<sup>12</sup> NRDGA *Bulletin*, July, 1933, p. 7, Editorial.

<sup>13</sup> Dameron, *Journal of Business*, *loc. cit.*, p. 4.

<sup>14</sup> The history of the negotiation of the Limited Price Variety Association furnished an excellent example of a special problem of a special group of stores which tended to exert a centripetal influence on the retail group. At the time when the NRDGA Code was first submitted, the chain stores doing a department store and general merchandise business had agreed that the NRDGA was "the logical body to work out a code of fair competition for the group—chains and independents alike." This decision was in line with the conclusion reached at a Chain Store Conference which lasted from June 22 to June 24. It was thought advisable for each group of chains to either affiliate itself with the existing retail organization in its own field or to organize a special retail group for chains and independents in that field. At the final session of this meeting, the Limited Price Variety Stores Association was formed. It included in its membership practically all of the leading chains and some of the smaller ones. (Membership: 70 chains, 30 of which had less than 10 stores.) About the middle of July, it became apparent that the Administration had ruled emphatically against the minimum wages set in the first NRDGA Code and although a \$2 differential for juniors and apprentices was permitted, the \$14 minimum wage had been set for the largest-city size group. This created a problem for the variety chains. The quandary in the Retail Code was described by Alexander Kaylin in terms of the "impenetrable condition" set by the Administration. "There is

which continued to manifest themselves, representatives of the various types of retail stores were holding regular meetings at the New York office of the NRDGA in order to discuss the provisions of the General Code. The meetings were cloaked in silence. The first NRDGA Code brought forth a flurry of criticism which taught how important secrecy was to successful negotiation.

### SECTION III. NEGOTIATION

The reconnoitering skirmishes were over. A minimum wage and a maximum work day had been suggested by retailers perhaps merely as a basis from which to start negotiation. The Administration had countered with a minimum wage in the neighborhood of \$14 for any kind of employ-

just one fly in the ointment. It seems reasonable to believe that a code which provides for pay at less than \$14 a week and for more than 40 hours will not be acceptable to the federal administration." (*Retailing*, July 17, 1933. "Variety Chains in a Quandary in Retail Code," by Alexander Kylin.)

By the end of July, the variety chains were reported to have decided to draw a code of their own and have it approved. By the beginning of August, it was again reported that General Johnson had said that the Five and Ten Stores would not get a wage differential. (*Retailing*, Aug. 7, 1933.) It was not until the hearing on the Code toward the end of August that the variety chains seem to have finally given up their hope of a wage differential and concentrated their attack on obtaining a 48-hour week in the stores which were open over 60 hours a week, on keeping a \$2 wage differential for juniors and apprentices, eliminating the "trade area" clause, and changing city size groups in such a way as to lower minimum wages in the smaller cities. *Retailing* reports on September 11 that when S. S. Kresge Co., and F. W. Woolworth Co. accepted the wage provisions at the Washington hearing, everyone was astonished. It would seem on the whole that progressive leadership in the Limited Price Variety Stores Association had led the membership to determine that since it seemed out of the question to get less than a \$14 a week wage, it would be wise to accept this provision and make such changes in their management policies as would adjust their costs through a changing personnel policy, at the same time that the advantages of a single Master Retail Code would be achieved.

ment, and a maximum hour provision of 36 hours.<sup>15</sup> The Administration had further insisted on a general code for retailers. The Administration had suggested a code containing wages and hours provisions only, but the retailers had insisted on having fair practice provisions included.

The principals now settled down to a long arctic night of poker. Negotiation continued for four months. There were conferences with Administration representatives. There were innumerable meetings of representatives of interested associations at the New York office of the NRDGA. There were other less formal meetings of small groups. A public hearing provided an opportunity for interested parties to be heard. After the hearing the attempt to reconcile conflicting demands continued. The Divisional Administrator and the Deputy Administrator and selected advisors were particularly prominent in this later phase of the negotiations. The retail group of conferees had grown smaller—only the sturdiest survived through September.

The chronology was relatively simple: the first NRDGA Code was adopted by the Board of Directors on June 21; on July 31 a Code containing labor provisions to supersede those in the Blanket President's Re-employment Agreement was approved and went into effect the next day; on August 5, a Code was formally submitted to the Administration by six retail associations. The labor provisions were changed about a week after submission. From August 22 to 24, public hearings were held which culminated in another draft of a Code of Fair Competition. Protracted post-hearing negotiation resulted in a Code which, on September 21, was released to the press, contrary to usual procedure, in order to get the public reaction to its clauses. After innumerable false alarms it "went up to the President." On October

<sup>15</sup> As indicated in the previous footnote, it seemed to be generally understood that the Administration would accept a 40-hour week.

21,<sup>16</sup> at twelve o'clock midnight, the Code was signed and went into effect as of October 31, 1933.

Negotiation involves a process of bargaining whereby representatives of divergent interests attempt to influence a nascent agreement in the direction of their several particular interests. In the Retail Code, there were, of course, divergent interests of many kinds between various retailers, between branches of retailing, between types of retailers, between retailers and consumers, and between retailers and labor. However, the course of the negotiation was by no means an accurate reflection of real interests involved. It was the resultant of a complicated set of economic, human and fortuitous factors.

### *Retailers*

About 367,000 stores were under the jurisdiction of the General Retail Code. In 1933 these stores, which represented about twenty-four per cent of the total number listed in the census, sold about nine billion dollars worth of goods, or about thirty-six per cent of the total retail sales.<sup>17</sup>

<sup>16</sup> NRA Release 1554, November 5, 1933.

<sup>17</sup> THE APPROXIMATE NUMBER OF STORES UNDER THE JURISDICTION OF THE GENERAL RETAIL CODE. BY TYPES OF STORES, 1933 CENSUS DATA \*

<i>Type of Store</i>	<i>No. of Stores</i>	<i>Sales</i>
<i>General Merchandise</i>		
Country General Stores .....	85,839	\$1,097,437
Department .....	3,544	2,544,900
Dry Goods .....	12,746	150,062
Other General Merchandise .....	21,376	518,083
Women's Ready-to-Wear .....	17,759	568,392
Accessories and Other Apparel .....	24,697	255,874
Family Clothing Stores .....	2,882	92,685
Variety .....	12,046	678,167
<i>Men's Wear</i>		
Men's Stores .....	19,491	489,194
Family Clothing Stores .....	2,883	92,686
Shoe Stores .....	18,836	424,599
Furniture .....	14,418	553,503

Eighteen divisions of the trade were recognized for purposes of administration. Eight of these divisions represented by the nine signatory associations included the large majority of the retail stores which would operate under the General Code.<sup>18</sup> Although it can only be roughly estimated,

Radio .....	8,172	117,030
Other Furniture .....	7,636	92,716
<i>Hardware</i>		
Household Appliances .....	9,750	195,531
Hardware † .....	24,800	369,800
Heating Appliance Stores ‡ .....	1,700	18,460
Other Building .....	10,974	127,675
<i>Miscellaneous</i>		
Accessory, Tire and Battery Dealers § ...	10,684	150,650
Newsdealers .....	6,629	58,071
Other Retail Stores .....	26,254	333,000
Secondhand Stores .....	20,869	195,275
Total .....	366,985	\$9,023,753
	24% of Retail Stores	36% of Retail Sales

Source: United States Department of Commerce, Bureau of the Census, *United States Summary of the Retail for 1933*.

\* The group classifications made in the census have been rearranged to correspond to those made by National Retail Code Authority and stated in the Compliance Division Field Letter 98, April 20, 1934. (Music merchants cannot be listed separately.)

† 32,802 hardware and farm implement dealers are listed in the 1933 census. In the 1929 census 25,330 hardware stores, 5653 farm implement dealers and 6589 hardware and farm implement dealers are listed. If we assume that the proportions have not changed much and that one half of the hardware and farm implement dealers were primarily farm implement, then about 8947 of the 37,572 stores, or about 24.4% were not under the Code.

‡ About 15% of the heating and plumbing shops included in the 1929 census were classed as heating appliance dealers. Apply this percentage to the 1933 figures for heating-plumbing stores and it indicates that about 1700 stores in this category would have been included under the Code.

§ Sales of automobile accessories by garages, automobile stores or tire and battery dealers are not included under the Retail Code. (Advice, December 29, 1933, NRA Legal Division). Two-thirds of the total number are included in this listing.

<sup>18</sup> The signatory associations represented the following divisions: (1) Retail Clothiers and Furnishers; (2) Department Stores and Dry Goods; (3) Retail Furniture; (4) Retail Hardware; (5) Limited Price Variety Stores; (6) Mail Order; (7) Music Merchants; (8) Retail Shoe Stores. The approximate number of stores in the retail fields represented by



it would seem that about 30,000 stores were in the other ten divisions of the trade,<sup>19</sup> leaving approximately 337,000 eligible to membership in the nine associations who submitted the Code.

According to information presented at the Code hearings in September, approximately 33,987 stores were operated by the members of the associations.<sup>20</sup> Thus about ten per cent of the stores operating in fields covered by a signatory trade association were members of the appropriate trade associa-

associations was as follows: National Retail Dry Goods Association, 168,844; Limited Price Variety Stores Association, 12,046; National Association of Retail Clothiers and Furnishers, 22,373; National Shoe Council and National Shoe Retailers Association, 18,836; National Retail Hardware Association, 47,224; National Retail Furniture Association, 33,226. (Data based on National Retail Code authority list of branches of the trade represented by each of the signatory associations. The number of stores listed in each field in the 1933 census are added to give the totals represented by the six associations.)

<sup>19</sup> The Code Authority recognized eight divisions not represented by the eight signatory associations: Art Stores; Books and Stationery; Paint and Wall Paper and Glass; Luggage and Leather Goods; News Stores; Opticians and Optical Goods; Pawn Shops; Pet Shops; Sporting Goods Stores. (Compliance Division, Office Letter No. 98, April 20, 1934.) As nearly as can be calculated, due to the dissimilarity of categories and the fact that some of the stores are not listed separately, these eight additional divisions included about 30,000 stores in 1929. (The 1933 census lists stores in groups much too general to provide the necessary information.) Since there was virtually no reduction in the number of stores between 1929 and 1933, this can be considered a rough approximation of the stores which were said not to be represented by the signatory associations which presented the Code.

<sup>20</sup> The stores operated by the membership of the association in the various fields were: hardware, 11,303; shoes, 6,334 (National Shoe Retailers Association, 3,234; National Council of Shoe Retailers, 3,100); limited price variety, 6,739; furniture, 3,213; clothiers, 1,789, NRDGA about 4,000; (the annual report for 1933 lists 4,500 members, 700 of which were added in the second half of the year) music merchants, about 600; nine mail order companies doing the majority of mail order business formed the Association in the field. (Transcripts of Code Hearings, September, 1933.)

tions<sup>21</sup> or about nine per cent of the stores, which would come under the jurisdiction of the Code, were members of the associations applying for it.<sup>22</sup>

But membership in a trade association did not mean necessarily that the interests of a specific store or of a given group of stores would be urged by the particular retailers or executives of the trade association who were engaged in the negotiations at Washington. Trade associations executives must of necessity consider the wishes of the influential members of the association; such members are for the most part fairly large stores. These same influential members are the ones that were themselves involved in much of the discussion about the Code. The meetings were private. Attendance was by invitation only. The proprietor of the small novelty shop around the corner

<sup>21</sup> But the average of ten percent included very different ratios for various divisions of the trade. The members of the Limited Price Variety Store Association operated fifty-six percent of the 12,046 Variety Stores. The NRDGA, on the other hand, had a membership of about two percent of the stores which it represented on the Code Authority, although within the general merchandise and women's wear division, department stores and large women's specialty shops, which constituted the largest portion of its membership, would have been proportionately well represented. The National Retail Hardware Association claimed as members about twenty-three percent of the 47,224 stores in this division. The two shoe associations included about thirty-three and sixth-tenths percent of the shoe stores listed by the census. Obviously the proportion of the sales represented by the association membership was much higher than the percentage of stores, since the larger stores were more likely to be association members than were the smaller ones.

<sup>22</sup> It was the policy of the Administration to attempt to have fifty percent of the number of units and seventy-five percent of the volume in an industry represented by the association requesting a code. (*America's Recovery Program*, edited by Department of Economics, Swarthmore College, 1934, p. 76, article by A. Heath Onthank, "How Codes are Made.") In actual practice it was not possible to carry out this formula. A trade association which seemed to be representative was permitted to engage in Code negotiation on the assumption that if any powerful groups were not represented, their protests would be heard.

was not invited, nor would he probably have accepted the invitation had it been extended, nor would he have had influence had he accepted the invitation. The executive of the trade association to which he belonged represented his interest within limitations. In the interest of keeping his job, the executive would first have to satisfy the influential members that he was fighting for them, that he was fighting hard, and with reasonable success; he would then have to convince the inactive membership that they had gotten what they wanted, or what was best for them, or as near to this goal as the inordinate difficulties of the situation made feasible. Such conviction could be half-hearted, but any irritation that was felt had to stop short of an impulse to resign from the association. When, as was generally the case, the trade associations were represented not by paid secretaries, but by leading members of the trade who were themselves successful retailers, the purely nominal or at best discretionary character of the representation of the smaller store becomes even more marked in the event that its interests should diverge from those of the larger ones.<sup>23</sup> But as between groups whose interests were actually represented there lies another variable factor: that of skill of the individual negotiator—there was technique involved.<sup>24</sup> But in addition to differential skill in

<sup>23</sup> On occasion, the interest of the "little fellow" became an excellent talking point for desired clauses. Representatives of the large New York department stores approved the September 21st draft of the Code. They suggested, however, that it would be "much more practical for the small store" if the ratio of executives to total workers were one in eight rather than one in ten. And further, the minimum wage of \$35 would be a "great hardship to smaller stores". (*New York Times*, September 22, 1933.) This was doubtless true. However, it was also true that the minimum executive wage probably cost the large New York merchants considerably more money than did the minimum wage of \$14.

<sup>24</sup> No one who has attended meetings of a Code Authority or, for that matter, read the history of the writing of the Retail Code would underestimate the importance of this factor.

urging a point, there was the further differential in the strength of the desire to urge it. Doubtless some of the individuals working on the Code did not wish to press points involving selfish advantage if they thought it was contrary to the larger objects of the recovery program. Similarly individuals who disapproved of the NRA might perhaps have been willing to disregard personal interest in order to sabotage the program.

#### *The Government*

Code clauses, tentatively determined by this tug-of-war which took place for the most part in the NRDGA offices, were subjected to the further necessity of running the Government gauntlet.

The Administration was represented in its negotiation with the retail trade by Mr. A. D. Whiteside. Mr. Whiteside was familiar with trade association problems through his experience as President of the Wool Institute. He had had further experience with business problems as President of Dunn and Bradstreet. The conception of the function of a divisional administrator seemed to carry with it grave responsibility. He was presumably final arbiter in the preliminary stages of a code. Not until the code was recommended by him to the NRA Administrator, General Johnson, was his responsibility shifted to other shoulders. The Divisional Administrator was assisted by Dr. Kenneth Dameron, who had an intimate knowledge of the retail trade through practical experience as well as graduate training in marketing. He was also familiar with the problems of retail trade associations through his work with the National Association of Retail Clothiers and Furnishers, and the National Retail Dry Goods Association.<sup>25</sup> A leave of absence from the Pro-

<sup>25</sup> In August, Mr. Whiteside was made Divisional Administrator of Division 4. Dr. Dameron was made Deputy Administrator of Retail and Wholesale Trades.

fessorial staff of Ohio State University enabled him to devote his energies to code drafting and administration.

The advisory boards whose function it was to protect the interests of their hypothetical constituencies assigned individuals to the Retail Code as they did to all other codes. Rose Schneidermann and Sidney Hillman were the Labor Board representatives.<sup>28</sup> Much of the actual negotiation was done by Mr. Joel Berrall, a student of economics interested in labor problems, who had little direct experience in retail stores, but exhibited a tireless interest in his job. The Consumer Advisory Board was represented by Mr. G. A. Renard and Mr. W. W. Loucks, the Legal Board by Mr. T. I. Emerson, and the Division of Research and Planning by Mr. Hughes. Behind these people doing the actual negotiation was the shadow of General Johnson, who from time to time would emit a two-fisted remark that had a strangely impressive result. The representatives of the various advisory boards were staunch in defending the interests which they represented. It is significant that the formulation of these interests lay, for the most part, with the board representatives assigned to individual codes who did not have the same intimate knowledge of conditions in the industry possessed by the employers with whom they met.

The Consumer Advisory Board presented a point of view which had little explicit history and was not backed by any organized pressure group. They were forced to blaze trails; in so doing they were hampered by the need to determine where they were going. A strict regard for consumer interest, outside of the obvious concern for informative and honest labeling, would lie in obtaining lowest possible prices. But the whole philosophy of the NRA was based on the concept of the "just" price—the price that would benefit all of

<sup>28</sup> NRA Release 419, August 21, 1933.

the interests involved in a national economy. The lowest price would further the consumer interest at the expense of the producer interest of the same person. The paradox was solved by avoiding it. "Consumer interest" was, in many respects, changed to the "public interest."<sup>27</sup> This made possible the formulation of general policy which could be applied through fact analysis or conjecture—how would a given clause in a given code work.

The Labor Advisory Board, in the absence of influential unions, explicitly defended the interests of the employees covered by individual codes. Defending the interests of labor was less a matter of theory than of practice: the objectives were clear; what was needed was the ability to understand the implications of specific clauses in specific codes, and to exert effective pressure in the bargaining process. Failing the backing of organized labor, it was necessary to fight without weapons. For this, it was essential to "play ball" with the representatives of Government and Trade and create the impression of being reliable and "playing fair" at the same time that a firm stand was taken in regard to the crucial clauses. This was a hard job, requiring exceptional ability and experience.

Labor interests were also championed on occasion by the deputy or divisional administrators in charge of a code. These men were put in the difficult position of referees who, in addition to their other duties, were expected to see that the opponents stayed in the ring, that the fight ended in a decision, and that one of the opponents was not routed. The adequate performance of this job seems to have required personality and a diversified ability which combined physical stamina, knowledge of men, knowledge of conditions in the

<sup>27</sup> Cf. Brookings Institution, *op. cit.*, p. 126.

trade, vision and sincerity, and ingenious use of administrative tactics.<sup>28</sup>

<sup>28</sup> One trick that seems to have been found particularly useful by the Administrator was the simple device of getting the trade representatives into a heated argument over a given point and then leaving the room. Re-entrance on the scene after a reasonable length of time could then be utilized to crystallize the previous discussion: "Well, what agreement have you come to?" Bluff seems to have been another device used with considerable success. General Johnson had a magnificent talent for making bluff convincing. Mr. Whiteside also used it on occasion, as when, during the early part of September, it was reported that the Administration might be forced to write a compulsory Code for retailers if they did not agree shortly. In the face of subsequent policy, it would seem that a statement of that kind must be considered excellent poker. But physical stamina was quite as necessary as cunning. The sessions between industry and government representatives would often last late into the night. This provided an opportunity to make a point by wearing down the opposition. Typically the government representatives could win marathons of this kind. They were perhaps less emotionally involved in the issues under discussion or had been toughened through natural selection and the summer's training.

## CHAPTER III

### CODE CLAUSES

#### SECTION I. LABOR

THE Administration representatives had taken the position that the minimum wage must be set in the neighborhood of \$14 for a 36-hour week. The quota of employees to be absorbed by the retail trade had been placed at about 1,000,000 people<sup>1</sup> and nothing less than a drastic reduction in hours would achieve the desired end. The position regarding the minimum wage seems to have been taken with a flavor of finality that lasted. In regard to the maximum work week, however, the Administration was eventually led to compromise. Concerning the clauses involving exemptions from hour limitation and wage differentials for the South, for cities of different sizes, for junior and apprentice employees, the negotiation centered around a fairly narrow, however significant, range of differences.

#### *The Maximum Work Week*

At the hearing of the Retail Code late in August, Mr. C. C. Coulter, who was secretary-treasurer of the Retail Clerks National Protective Association, presented a demand for a 40-hour week (a 44-hour week in towns of 10,000 population or less), a minimum wage ranging from \$20 to \$15, according to the size of the city, a part-time wage which for less than 30 hours of work would be 10 per cent higher than the corresponding full-time wage rate, and an executive

<sup>1</sup> Reported as 1,100,000 in August, 1933, (*NRDGA Bulletin*) and as 900,000 somewhat later in the season.



salary ranging from \$30 to \$40, according to the size of the city. As may be seen, these demands followed along the general lines of the negotiation, with the rather significant difference that the wages were set higher and hours somewhat, though not significantly, lower. The suggested increased rate for part-time workers was a contribution which was discussed though not included in the Code. The general position which was advocated by Mr. Coulter was supported by other labor leaders who, for the most part, differed in particulars rather than in general theory.<sup>3</sup> Essentially, these various points of view were little more than desiderata. There was no mechanism provided either by the government or by the unions to turn talk into pressure. The actual negotiations were largely in the hands of Administration representatives and the Labor Board representatives.

In thinking about the attitude of retailers in regard to negotiation with the government and with one another concerning the wage and hour provisions it is important to remember that a right was being invaded; accordingly there was underlying resentment. To many retailers, as to many business men of all kinds, "the government was trying to tell me how to run my business". The cooperative spirit of the time and belief in the social philosophy of the New Deal might have submerged this feeling for the time being. But the minute demands became unreasonable—that is, too expensive, or too different from established ideas—the resentment reappeared. As between divisions of the trade, the strength of the resentment was, in general, measured by the

<sup>3</sup> The one exception was the statement of Ann Powell, representing the department store workers' section of the Office Workers Union. She advocated a comprehensive program including unemployment insurance, a wage differential between skilled and unskilled salespeople, wages to be changed in accordance with living costs, and a guaranteed number of work weeks per year, together with other provisions concerning improved sanitary conditions and abolition of speed-up.

financial cost. Obviously, the group that would be expected to have the most to say about moderating minimum wage provisions would be the group that paid wages substantially below the anticipated minimum. Likewise, objection to hour regulation would grow more intense as the cost or inconvenience of limitation increased.

The cost of limiting hours of work of employees increased as the store remained open longer hours than those for which an employee was permitted to work—in other words, the number of hours for which it was now, though not formerly, necessary to hire additional help.<sup>8</sup> Reducing employees to a 40-hour week in a store where they had formerly worked store hours of 48 hours per week would theoretically cause a 20 per cent increase in payrolls, other things remaining equal, just as reducing employees to 40 hours in a store which was open 80 hours would cause an increase of 100 per cent in payrolls, other things remaining equal. But other things did not remain equal. Many factors tended to mitigate the rigidity of the relation, the most important of which, for the present discussion, was the reduction of wages in proportion to the reduction in hours worked. This was against the policy of the NIRA. It nevertheless occurred automatically when salesmen were paid on a commission basis. The limitation of hours which employees are permitted to work may thus be seen to affect different stores very differently.

In spite of the protracted negotiation and progressive leadership necessary to arrive at an agreement, six associations were willing to subscribe to the Code submitted July 31 as alternate provisions for the PRA, upon the assurance

<sup>8</sup> Retail employees typically work store hours with time allowed for meals with occasional afternoons, mornings or evenings off. Store hours ranged anywhere from 48 for some large metropolitan establishments to 84 or more hours per week in neighborhood stores.

that it was the best that could be obtained.<sup>4</sup> The signatory associations were for the most part composed of stores less severely penalized by limitation of hours than were certain non-signatory groups.<sup>5</sup>

In response to a growing discontent registered by mail, as well as less formally, by retailers from all parts of the country, the hour provisions of the proposed Code were changed from 40 to 44 on August 12. In the meantime, the associations who had refused to sign the Code of July 31 were working on a different principle.<sup>6</sup>

The essential problem to be solved, if the differences between the signatory and non-signatory associations were to be resolved, was how to graduate hours of employees in

<sup>4</sup>The signatory associations were: The Mail Order Association of America, The National Association of Retail Clothiers and Furnishers, National Retail Dry Goods Association, National Retail Furniture Association, National Retail Hardware Association, National Shoe Retailers Association. The introduction to the Code stated "It is also our view that the code should provide for a longer work week, but in order to expedite compliance with the President's re-employment agreement, we are submitting the code on the basis of 40 hours." (*Retailing*, August 7, 1933, p. 4.)

<sup>5</sup>Department stores typically worked shorter hours; many of them had been on a 48-hour schedule. It has been estimated that 95 percent of the salesmen in furniture stores work on a commission basis; a large number of men's clothing stores pay on this basis, as well as many shoe stores. Mail order houses, in their mail order departments at any rate, are free of most of the service problems of the retail store. The Hardware Association had fought vigorously for longer hours.

<sup>6</sup>The chain shoe stores had withdrawn from the National Shoe Retailers Association since, among other reasons, they were unwilling to concede to the hour provisions which the Association was willing to accept. They formed a separate organization known as the National Council of Shoe Retailers. The newly formed variety stores' Association was definitely opposed to a 40-hour week. The Grocers had demanded a 48-hour week and had gotten it in their revised PRA schedule. The Druggists also stood out for longer hours not only on the basis of the long hours each day that the stores were typically open, but also because of the seven-day week so common among drug stores.

relation to hours of the store, or, in other words how to preserve a constant percentage increase in the costs for different kinds of retailers. There had been several attempts to solve the difficulty during the summer. Provisions had been framed which graduated the hours which an employee was allowed to work according to the hours that the store was open, in order to systematize the contribution that each retailer would make towards employment. According to this plan, the percentage decrease in hours was greater the longer the store was open; there would not be, however, the drastic reduction of all employees to a uniform work week regardless of the differential cost to different retailers.<sup>7</sup> This plan was found to be overcomplicated. The general principle, however, was embodied in a simpler plan in the Code submitted by the Limited Price Variety Stores' Association at the hearing on August 22. Substantially the same scheme was written into the signed Code. It provided for a limitation of employees' hours to 40, 44, or 48, according to whether the store was open less than 56 hours a week, 56 to 63, or over 63 hours, respectively.

This was enough of a concession to bring the variety stores back into the fold, in so far as subscription to the hours provisions were concerned. It was also satisfactory to the seceding contingent of the shoe dealers represented by the National Council of Shoe Retailers. It is interesting to note that the small independent retailer who, as was indicated above, was not represented in the discussions, had more in common with the group demanding a graduated week than

<sup>7</sup> Early drafts of this idea were in the form of an intricate double axis chart with store hours on one axis and employees hours on the other, arranged on a scale which cause employee hours to be decreased by larger relative amounts as the store hours increased. There would thus be a corresponding employee work week for each number of hours that a store could remain open.

he did with the NRDGA group.<sup>8</sup> However, there is every indication that the smaller and less successful neighborhood store was more interested in limiting store as well as employee hours than were the larger chain store owners. This was due to the fact that the proprietor himself, rather than a paid manager, was the person required to work full time. It was also due to the difficulty of paying for additional help, particularly since the smaller volume of such a store made the ratio of expense to sales disproportionately high for the extra hours which competition forced the proprietor to remain open.

However, all of the men and women working in retail stores were not subject to the hour limitations. Four classes of individuals were permitted to work unlimited hours: 1. Executives. An "executive" was an individual acting in a managerial capacity who was either the proprietor of the business, or an employee, receiving \$35 per week in the largest-city size group, and \$30, \$27.50 or \$25 in the other city size groups.<sup>9</sup> 2. Professionals—a limited number of individuals working in a professional capacity for which special training and skill is required. 3. Outside salesmen or collectors. 4. Watchmen or store detectives. In addition to the classes of employees entirely exempted from any limitation of hours of work, maintenance and outside service employees were permitted to work six hours in addition to

<sup>8</sup> An examination of typical figures in specialty shoe shops convinced executives of the National Council of Shoe Retailers that "the less people who are employed per unit, the more costly is it to reduce the work week." (Hearings on Retail Code, August 23, p. 234.)

<sup>9</sup> The top wage range for executives was placed at \$30 in several of the drafts of the Codes. It has been maintained that the wages of executives varied as the size of the store, rather than as the size of the city. If this is true this aspect of the clause works a hardship on the smaller store as well as on the smaller store employee. See following footnote.

the basic work week, or longer, providing that they received time and one third for overtime.<sup>10</sup>

Maintenance and outside service men plus executives, providing they worked over the basic work week, were limited in number to one in five or any fraction thereof for the first 20 workers, and one in every 8 workers when the total number of individuals in the store exceeded 20. This phrase seems to have been inserted in the code relatively late in the summer. The substitute PRA clause did not limit the total number of employees permitted to work unrestricted hours. Although some kind of limitation was necessary, the burden of this clause as worded seems to fall heavily upon the smaller store of the type that was not represented in most of the negotiation.<sup>11</sup>

Whether because of insufficient pressure, or for other reason, a fixed closing hour for stores, in spite of its prevalence abroad, was not considered very seriously by the Ad-

<sup>10</sup> These clauses are interesting in that they served as a basis of evasion of Code restriction. They also were the subject of a disproportionate amount of time and discussion.

<sup>11</sup> The store of less than six workers was entitled to one person who was allowed to work unlimited hours. The proprietor of a small store of that kind would typically employ a "manager" who was paid somewhere between \$20 and \$40 a week (in New York City). The proprietor would have to spend a good deal of his time in the market picking up regular stock and looking for bargains. The manager received a relatively good wage because he worked long hours and was responsible for the store during the absence of the proprietor. It seemed to have created a genuine hardship in this type of store to permit only the proprietor to work unlimited hours. The difficulty, moreover, was not essentially a question of the wage. It would also seem to have been in the interest of the employee to have been permitted to work longer hours, since the failure to do so was most likely to cause his replacement by a lower paid worker. More of this later. The code issued on Sept. 1 allowed a ratio of one to ten for stores having over 20 workers. The one to eight ratio incorporated in the final draft, although it helped the larger stores, did nothing to alleviate the difficulty for the smaller store.

ministration. There were objections to it on constitutional grounds; it would reduce re-employment; it was further thought to be contrary to the recovery program in so far as the consumer was to be encouraged to spend money. The limitation of store hours was not only not to be written into the Codes, but it was definitely to be discouraged. It reduced employment. It restricted spending.<sup>12</sup>

### *The Minimum Wage*

The discussion over the minimum wage provision of the Code was not characterized by marked multiplicity of interests. The cause of low wages was championed by the limited price variety stores for whom a fixed minimum wage of \$14 represented a drastic increase over wages actually paid. In their attempt to obtain a lower minimum, the variety stores were fighting the battle of most stores selling generally low-price merchandise on the basis of a price appeal. The service requirements and expectations of the customers in such a store are relatively low. This is particularly true, of course, in the semi-self-service store. In general, however, a cut-price store employs cut-price employees. Therefore, an enforced minimum wage is expensive and requires far-reaching changes in store policy. Since most of the members of the other signatory associations had

<sup>12</sup> The interests of the family store were also not represented in code making. However, as far as hour regulation was concerned, the interest of these stores was not materially affected. The proprietors of such stores were being introduced to no new type of slavery through the limitation of employee hours, and although they may have hoped for release from the long hours to which they were accustomed, they were at least no worse off than they were before. Their failure to be penalized was recognized. It was reported at one time in the early part of September that a plan had been worked out whereby small stores, particularly family stores, would bear their share of the burden. (*Retailing, Home Furnishing Edition, September 4, 1933, p. 1.*)

a smaller proportion of sub-minimum employees, the major fight on minimum wages was relegated to the variety stores.<sup>13</sup>

It will be recalled that wage minimums set in the first NRDGA Code, which for adult women ranged from \$12 to \$10 for a 48-hour week, seemed to have been greeted, to say the least, with coldness by the Administration. Throughout the summer, the Limited Price Variety Stores Association attempted to batter down the \$14 minimum espoused by the Administration. Its member stores, it was contended, required of their employees a very low grade of skill, the employees were typically young and were being given an opportunity to gain experience. Little headway, however, seems to have been made. In spite of skillful negotiations on the part of the variety store representatives the minimum held—for larger cities.

But in small towns wages were in effect reduced in line with the variety store contention: (1) The trading area clause was deleted and stores in small towns in the neighborhood of large cities were classified on the basis of the population of the towns in which they were located; (2) minimum wages were reduced by \$1 for each of three city size groups, whereas cities of a population of 10,000 and less had an indeterminate minimum wage based upon a percentage increase from the June 1st rate with various provisions regarding maximum required increases.<sup>14</sup>

<sup>13</sup> It is interesting to note that as far back as 1913 we find that in an address delivered before the Second Annual Convention of the NRDGA the following argument was made in favor of a federal minimum wage law, "I am sure that every dry goods man in this country would just as lief pay a minimum wage of seven or nine or ten dollars a week, if his brother merchant had to pay the same amount. *I believe that in the long run the department store would benefit by a minimum wage because of the five and ten cent stores*". (Address by Mr. Christian of San Francisco. Italics mine.)

<sup>14</sup> Out of 4000 stores owned by members of the Limited Price Variety Store Association (exclusive of the Benjamin Franklin League) 63 were



A reduction of the minimum wages was also permitted on each of three other counts (1) Section of the country—they were \$1 less in the South; (2) Inexperience—they were (at various stages of the discussion) \$1 or \$2 less for apprentices; (3) Youth—they were \$1, or \$2 less for juniors. The Southern wage differential was hotly contested by the Labor representatives. The request for a differential was supported by considerable "proof" that costs of living and wages were lower in the South.<sup>15</sup> The minimum wage provisions for juniors and apprentices had varied during the summer; juniors had been defined as under 18 or 18 and under. The time during which an employee was considered to be apprenticed varied from six months to one year; the wage differential was \$2 less for a junior apprentice or \$1 less for either a junior or an apprentice. The group that had attempted to secure a lower minimum wage also tried to obtain a \$2 differential since a large proportion of their employees were inexperienced and young.<sup>16</sup> The issue was fought by the Labor Board. The Code submitted on September 21 contained a \$2 differential for junior apprentices. In the final Code there was a flat \$1 differential for a junior and/or apprentice employee and the term of apprenticeship was reduced from twelve to six months.

It is interesting to note that in all this discussion there was little mention of a differential for different types of workers. This was probably due to the fact that no one

in downtown shopping areas of cities of 1,000,000 or more inhabitants, 451 were in downtown shopping areas of cities of 100,000 population and over. The other eighty-eight percent of the stores were in towns of less than 100,000 population or in suburban and outlying districts of larger cities. Over 2,200 stores were in towns of 25,000 population or under. (*Chain Store Age*, September, 1933, p. 54.)

<sup>15</sup> The basis of these contentions are discussed in Part IV, Chapter I.

<sup>16</sup> At the Retail Code Hearing on August 23, it was reported that over sixty percent of their employees were under twenty-one in July, 1933.

was in favor of it. Retailers certainly did not want it. And strangely enough, the labor unions as well as labor representatives did not seriously advocate differential wages for skilled workers. They seemed to be inhibited partly by the difficulty of establishing standards of skill,<sup>17</sup> partly by the fear that minimums of this kind would become maximums, partly by the traditional position of the A. F. of L. against government fixing of wages, and partly by the related thought that such wage differential should be achieved through union organization. The Code contained a general provision, the purpose of which was to maintain wage differentials: "The weekly wages of all classes of employees receiving more than the minimum wages prescribed . . . shall not be reduced from the rates existing upon July 15, 1933." Very little seems to be known about how this clause was written.<sup>18</sup> The implication of the clause

<sup>17</sup> The wage agreement according to which English department stores operate contains a multiple wage differential: learners, juniors, packers, porters, assistant and departmental clerks, bookkeepers, ledger-clerks, shorthand typists and special posts, all have separate wage schedules the rates of which differ for each year of age from 15 to 28 and for males and females. Minimum wages range from 10 shillings for 15 year old female learners to 69 shillings for 28 year old male bookkeepers, ledger-clerks, etc. For 28 year old retail employees the wage ranges from 57s. 6d. for male and 46s. for female porters to 69s. for male and 55s. for female bookkeepers, ledger-clerks, etc. Further differentials apply for towns having varying cost of living ratings. Except for country towns of under 5000 population the rates stated above are advanced, not lowered, on the basis of cost of living data. This agreement was subscribed to by the Draper Chamber of Trade in 1920 when the establishment of a Retail Trade Board was discussed.

<sup>18</sup> The blanket Code of July 31 stipulated that "compensation for employment" at that time in excess of the minimum wages "was not to be reduced notwithstanding a reduction in hours worked." The pay for such employment was to be increased by "an equitable readjustment of all pay schedules". Some stores did increase some of the salaries directly adjacent to the minimum wage, but for the most part the increases were postponed (indefinitely) until businesses should warrant them. The final

as enforced and interpreted became a matter of primary significance and will be elaborated later.

In general it may be said that retailers had resigned themselves, cheerfully or with reservations, to minimum wage and maximum hour provisions. The recovery program from which they stood to benefit was frankly based on a spread-work theory and elimination of sweated labor. The provisions of the Code which were in accord with this theory were therefore digested without too much difficulty. Differences in opinion concerning desirable clauses were for the most part settled without exceptional delay after the August hearing of the Code. The two months' interval between August 24 and October 23 were occupied essentially not with negotiation over labor clauses but with the problem of rephrasing trade practice provisions—primarily those on loss limitation and general underselling claims. Over these clauses powerful interests clashed.

#### SECTION II. TRADE PRACTICE

The mechanics of Code drafting, based as it was on negotiation rather than preconceived theory, meant that clauses would be extensively discussed only when someone opposed them. The opposition could come from retail groups or from government guardians of the public interest.

In drafting the trade practice clauses the first major difference of opinion concerned the inclusion of any provision of this kind in the Code. It will be recalled that at the early conferences, Mr. Kirstein, expressing the current Administration point of view, had recommended that only labor provisions should be included. This recommendation was almost resented by the group of retailers who felt that the NIRA provided an opportunity to turn trade ethics into law.

draft of the Code made no mention of equitable readjustment of wages. (NRDGA *Bulletin*, August, 1933, p. 19.)

The first group, which was led by Percy S. Straus, President of R. H. Macy & Co., claimed that the discussion of trade practices caused lengthy delay in drafting a program in which speed was an important element. Moreover, there was no reason why retailers should require a reward, in the form of trade practice regulation, for paying minimum wages and limiting hours of work. There was no penalty involved in such action provided it was uniformly enforced for all competitors. He decried the fact that industries were spending so much time bargaining for trade practice provisions, each group agreeing to the "prohibition of the pet abomination of the other, if its own pet taboos were also prohibited."<sup>19</sup> It was further argued that "we need no clauses in our codes to cover unfair competition if hours of labor are limited and minimum wages set. We have ample laws at the present time to prevent dishonesty of all kinds which results in unfair competition".<sup>20</sup>

Diametrically opposed to the position of Mr. Straus was the group of retailers who were anxious to see written into the Code the standards of trade law which had developed over the past twenty years or more. This group included the majority of the larger stores, as well as most of the chains and smaller ones, and was led by Major Namm, who was chairman of the Fair Practice Division of the Code Committee, Philip Le Boutelier and Lew Hahn. The position was well stated by Mr. Le Boutelier when he said: "It is my considered judgment from the record that the retail trade cannot police itself, the whole process of the courts of justice cannot police it, the newspapers cannot police it, Better

<sup>19</sup> NRDGA *Bulletin*, August, 1933, p. 31. This position was shared by a limited number of the representatives of certain other larger stores.

<sup>20</sup> NRDGA *Bulletin*, August, 1933, p. 32. "New Merchandising problems, and their Relations to Fall Business," by Percy S. Straus.

Business Bureaus cannot police it." It was felt by the proponents of this point of view who, incidentally, believed that they represented 95 per cent of the retail industry, that fair practice clauses must be written into the Code in order to prevent what would amount to a regression in the ethics of the trade. This first tilt was unconditionally won by those who advocated the inclusion of trade practices as the *quid pro quo* of the Code.

The next question concerned specifically which trade practices to ban. It was soon determined to have Code provisions refer to matters of general importance. More specific provisions could be supplied through local "application" of the clauses of the Master Code, though the machinery for local definition of unfair competition was eventually deleted.<sup>21</sup>

<sup>21</sup> An example of the way rulings for a local group of a specific type of stores could conceivably further define fair trade practice is provided by the following Code which was approved by the local association and forwarded to Washington. Needless to say, it did not return approved, nor is it meant to imply that any such plan was in the mind of the Code drafters. The proponents of this plan were the Twin City Shoe Retail Recovery Association, composed of 100 retail shoe outlets of all sizes and kinds in Minneapolis and St. Paul. The purpose of the Code was "to clarify and in some respects make more definite the application of the National Code to the retail distribution of footwear in Minneapolis and St. Paul." There were fourteen clauses: 1. Closing hours were stipulated—6 P. M. on week days and 9 P. M. Saturdays. 2. Bait merchandise prohibited in the Code was "construed to mean that it will not be permissible to offer as gifts with the sale of shoes, hosiery, handbags, buckles, polish, or any other merchandise except such items as souvenirs, toys, key rings, matches, bridge pads and other items commonly accepted as advertising." Other provisions further restricted combination sales, replenishment of stock in closing out sales, the use of free souvenirs; services of various kinds were circumscribed by limitations such as a compulsory minimum charge of 50 cents for dyeing shoes, the limitation of returns to 10 days after purchase; dates at which seasonal sales could be started were stipulated. Other provisions forbade underselling claims and guarantees, hosiery clubs, discounts to individuals and

These general clauses dealing with trade practices were written without too much difficulty.<sup>22</sup> In private conferences a rough draft would be drawn up. The proposed wording would then be discussed, changed, re-drafted, re-discussed. Arguments would frequently center around a word. The writing and rewriting would consume much paper and more patience. But essentially there was little organized opposition to most of the clauses; the difficulties involved phrasing rather than principle. With patience and adroitness the disagreements could be eliminated.<sup>23</sup>

The section on advertising and selling methods as finally endorsed contained five paragraphs. The first one provided an interesting comparison with the *Printers Ink* statute: "No retailer shall use advertising, whether printed, radio or display or of any other nature, which is *inaccurate* in any material particular or misrepresents merchandise . . . or credit terms, values, policies, or services; and no retailers

groups. There was also a clause which declared it an unfair practice to "hire in any capacity any person for less than one full day's minimum work based on the national code." (*Twin City Commercial Bulletin and Apparel Merchant*, September, 1933, p. 31.)

<sup>22</sup> The Brookings Institution in its investigation of the NRA found that it was apparently typical for trade practice provisions to become the focus of attention at hearings only when the business group was divided against itself. (Brookings Institution, *op. cit.*, p. 111.)

<sup>23</sup> John B. Swinne, Managing Director, Specialty Stores Association, and formerly advisor to A. D. Whiteside in the preparation and hearing on Retail Codes, said in an article in the November issue of the *NRDGA Bulletin* (p. 41) entitled, "The Retail Code and What It Means," "The advertising section in the final code was not questioned seriously, as everyone wanted honest advertising. Many, however, believe it would have been better to stick to 'honest' or 'truthful' advertising instead of using the term 'accurate', as they believe accuracy is a mathematical standard, which is more difficult to prove than truthfulness. However, the Association of Better Business Bureaus preferred the term 'accurate' as no one objected seriously."

shall use advertising and/or *selling methods* which tend to deceive or mislead the customer."<sup>24</sup>

The next two clauses refer to practices which at worst might become predatory and at best violate the "fair play" standards of the trade: "No retailer shall use advertising which refers inaccurately in any material particular to any competitor or his merchandise, prices, values, credit terms, policies or services"; and "No retailer shall use advertising which inaccurately lays claim to a policy or continuing practice of generally underselling competitors." This last clause was contested by the same group that objected to the loss limitation provision.<sup>25</sup> It will be discussed in connection with the fight in which it became an issue.

The next two clauses have a familiar ring. The first one deals with the problem of discounts: "No retailer shall give anything of value to the employee or agent of a customer for the purpose of influencing a sale, or in furtherance of a sale tender a bill or statement of account to the employee, agent or customer which is inaccurate in any material particular." The second one involves a type of practice which had been condemned by the Federal Trade Commission: "No retailer shall place obstacles in the way of the purchase of a product which a consumer orders by brand name by urging upon the customer a substitute product in a manner which disparages the product ordered."

Section 2 required that retailers support the use of NRA labels. Section 3 makes it an unfair trade practice to buy, after February 1934, goods made in any penal institution which had not promised to sell upon a basis of fair compe-

<sup>24</sup> The italics have been inserted to emphasize the major difference between the NRA clause and the *Printers Ink* statute. See Part I, Chapter II, pages 18, 19, for quotation from *Printers Ink* Statute.

<sup>25</sup> The close relation between the loss leader and general underselling claims has been discussed in Part I.

tition with commercial institutions. Section 4 is a declaration against the acceptance of company scrip or the extension of credit upon the guarantee of an outside employer beginning March 1, 1934, before which time a specially appointed committee would presumably have made a report to the President.

### SECTION III. LOSS LIMITATION

War was declared in regard to the clauses in the Code which affected or referred to prices.<sup>26</sup> Primarily the issue was the loss limitation clause, which forbade, with certain exceptions, the sale of merchandise at less than ten per cent above cost to the retailer. But related to this clause through being defended or opposed by the same group as well as by being related in terms of retail practice, was the clause forbidding general underselling claims.

We saw in Part I how the resentment against the use of loss leaders was reaching the combustion point by the spring of 1933. We also saw how the depression had revived the problem of underselling claims. These were issues which affected prices. Industry was using the NRA as an opportunity for enforcing price controls wherever possible. Retailers' opportunity to do likewise, however grey the replica might be, was through the prohibition of loss leaders and the related evil of general underselling claims.

Accordingly retail opinion formed fairly solidly behind the inclusion of these clauses. The nine retail associations signatory to the Code as well as the Retailers National Council endorsed it.<sup>27</sup> Mr. Harry Van Horn, President of the Na-

<sup>26</sup> The discussion concerning whether any trade practice clauses were to be included in the Code was in reality merely first line defense against such clauses. The question at issue was whether certain provisions which had long been fought by a few powerful retailers were to be written into the Code. One way of excluding undesirable regulation was by excluding all regulation.

<sup>27</sup> NRA Releases No. 858 and No. 894.



tional Association of Better Business Bureaus, said that "Many of the hopes and desires of a century held by fair-minded merchants, trade associations, Chambers of Commerce, advertising clubs, Better Business Bureaus, etc. . . ." would be realized if the Code were accepted and fairly enforced.<sup>88</sup>

For the small store this clause was thought to be particularly significant. "Thousands of these small retailers in Pennsylvania and (all over the United States I feel sure) base their hope to faithfully carry out the hour and wage provision of the proposed retailers code, and stay in business, upon the adoption of the fair practice provisions in the code submitted. Thousands of small retailers in Pennsylvania consider these fair practice provisions to be the heart and soul of the code and that for years and years they have fought, and at great odds often, the unscrupulous type of retailer whose ruthless price cutting and underselling methods coupled with a 'hell fire' type of advertising which has deluded and short-changed the purchasing public, and which at the same time has reduced the effectiveness and value of all advertising copy by almost fifty per cent as statistics have shown."<sup>89</sup> The majority of chains and large stores also favored the loss limitation provision as well as the prohibition of underselling claims.<sup>90</sup> The New York City retailers were particularly active in their support of these provisions.<sup>91</sup>

<sup>88</sup> NRA Press Release, No. 858, September 21, 1933.

<sup>89</sup> Letter to Mr. Whiteside from Mr. William H. Hager, President of the Pennsylvania Retailers Association. Quoted in NRA Release # 858, September 21, 1933.

<sup>90</sup> The editor of *Chain Store Age* said that it is essential to put an end to destructive price competition and that chains, "despite a more or less common misapprehension to the contrary, share in this belief and supported the proposed provision wholeheartedly." (*Chain Store Age*, November, 1933, p. 15.)

<sup>91</sup> In a brief filed by fourteen of the largest New York and Brooklyn

The side of this impressive majority was generated by Major Namm, President of Namm's in Brooklyn, and Philip Le Boutelier, President of Best's in New York City. Namm's was itself a convert that had long ago carried the slogan "Brooklyn's Great Underselling Store."<sup>83</sup> Moreover, several years ago Namm's was asked to discontinue the use of a slogan "Manhattan can Never Compete with Namm's", for which they had paid several thousand dollars.<sup>85</sup> Moreover, Major Namm as a leader in the fair practice movement had fought for the prohibition of general underselling claims and loss leader policies in a fair practice code as recently as the spring of 1932.<sup>84</sup>

stores, in support of the fair practice provisions of the Code, it was said that "in order to survive, there must come with higher wages and shorter hours: A. Security against unfair competition. B. A fair chance to make a fair profit." Major Namm, who submitted the brief, asked approval of the loss limitation and unfair trade practice provisions because "They are the *quid pro quo* of our code. Without such approval we cannot continue in business under increased labor costs made necessary by the New Deal." (*NRDGA Bulletin*, September, 1933, p. 13.)

<sup>83</sup> *New York Evening Journal*, September 11, 1913, advertisement by A. I. Namm & Son.

<sup>84</sup> *NRDGA Bulletin*, May, 1932, p. 316, article by Major Namm.

<sup>85</sup> The discussion arose in the NRDGA in connection with the endorsement of a Code of Advertising and Selling Practices prepared by a committee of merchants, manufacturers and publishers at the invitation of the Affiliated Better Business Bureaus. Major Namm was vice chairman of the committee. The Code which was submitted for endorsement of the association and was referred to the Sales Promotion Division for rephrasing to "meet the needs and conditions peculiar to retail advertising". The original standards had contained two clauses: one condemned descriptive statements accompanying cut prices which were phrased "in such manner as to lead the public to believe that all merchandise sold . . . is similarly low priced when such is not the fact." The others which were on the subject of Unfair Competitive Claims, condemned "statements which might be reasonably construed to lead to false or incorrect conclusions re goods, prices, service or advertising of any competitor . . ." *NRDGA Bulletin*, May, 1932, p. 241. The Code developed by the NRDGA Sales Promotion Division had one clause on a similar subject. "Derogatory

Opposing the inclusion of these claims were a few large retailers throughout the country, certain of the chains,<sup>35</sup> and later a few mail-order houses. But leader and backbone to the struggle was R. H. Macy.<sup>36</sup>

The Code clause over which the tussle raged was literally a loss limitation provision. It did not involve price fixing since ten percent is between a third and a quarter of the usual mark-on for general merchandise stores. It represented an attempt to do away with a loss leader policy which typically was related to an actual or implied underselling claim. It was an attempt to reduce the emphasis on price as a sales inducement. But whatever the actual benefit to the initiators, or cost to competitors, of loss leaders and/or general underselling claims, they were both clearly immoral in terms of the fair trade practice movement. Attitudes of this kind are hard to appreciate when not shared. But after years have been spent by an individual in attempting to abolish a practice, the initial reason for the wish to abolish it

statements are disapproved. Merchants should limit their statements to facts about their own establishments." (NRDGA *Bulletin*, May, 1932, p. 312.)

<sup>35</sup> The officers of these chains felt that though price cutting was an evil that ought to be abolished, the public might think that the contemplated phrasing would permit retailer profiteering, therefore, the loss leader clause was dangerous.

<sup>36</sup> Objection to the loss limitation provision and the prohibition against the underselling claim were not operative on the part of the directors of Macy's. Macy's cash policy together with the skillful management of the store, the huge buying power, and the advertising and loss leader policies had created a popularly believable underselling claim. But because cash sales are inconvenient for the customer, they are probably as much of a help when connected with a bargain aroma as they are a hindrance when not. But if charge business was accepted, then prices would seem higher in proportion to former belief in the cash saving, and much of the former price appeal would be lost. Thus, although there may well have been considerable totemism mixed in the fervor with which the "six percent less story" was defended, there was also urgent self-interest.

is lost in a self-generating drive to overcome resistance. The objectionable act takes on all of the quality of a felony, the moral feelings are massed against its continuance, and the effort to abolish it becomes a crusade. It would seem that much of the self-interest motive, which might at one time have led retailers to combat the Macy policy, had been partially forgotten and the fight was becoming a Wagnerian tilt with the dragon Faffner.

The combatants used all of the weapons available. The approach ranged from pressure in committee to attempts to appeal on the basis of public interest, and in the final phases, to charges of discrimination and selfishness. During the June and July meetings at the NRDGA headquarters, the faction opposing the loss leader clause attempted direct influence: The Code was being drafted and Percy Straus was a member of the committee; as such he was in a position to make his opinions known. However, the fact that so few of the other members of the committee agreed with him limited the usefulness of the direct approach.<sup>87</sup>

The formal arguments on which the opposing positions were based were outlined at the hearing of the Code. Percy Straus delivered a long address in which he requested that virtually all of the trade practice provisions of the submitted

<sup>87</sup> Occasions seem to have occurred at certain phases of the negotiations when it was difficult to find a seconder for some of Mr. Straus' motions. During the latter part of August and most of September, the conferences were more with Administration representatives and retailers, and less between retailers only. The more important members of the latter conferences were probably Dr. Nystrom, Mr. Peterson of the National Retail Hardware Association, Mr. Burke of Altman's, Colonel Robert Roos of California, who operated a men's clothing chain, Bruce McLiesh of Carson, Perie and Scott, Roscoe Rau of the furniture retailers association, Edward Colman, a Brooklyn lawyer and Thomas Emerson of the NRA legal divisions. The NRDGA *Bulletin* said of Mr. Burke that he was one of the few retailers who did not see red when Macy's name was mentioned.

Code be deleted. (He was not averse to the provision against prison-made goods.) The position was grounded on several bases: If the principle of price fixing was once permitted to take root in the document under consideration, there would be no getting it out of retail practice; the initial basis at which it was set might be ten per cent, but if the principle were once admitted, there would be no way of preventing the required mark-on from being increased to dangerous levels. This, it was felt, was a matter of primary concern to the consumer, who was interested in getting goods at low or reasonable cost. Thus the loss leader was linked to price fixing by simply using the two ideas interchangeably and by holding that a ten per cent mark-on provision would lead eventually to a much higher mark-on requirement. In this way the invidious connotation of price fixing in the public mind was enlisted against the loss limitation provision. As to prohibition of the general underselling claim, Mr. Straus said: "It is, of course, plain that the present form of Macy's cash policy statement would not conflict with the restrictive provisions in the proposed code."<sup>38</sup> Since Macy advertised a simple statement of fact in regard to their amply substantiated economies,<sup>39</sup> any attempt to prohibit underselling claims on any basis except their inaccuracy "made irresistible the inference that the framers thereof are not so much concerned that the public will be misled as they are desirous of stifling competition of stores operating on an economic basis which generally permits underselling of competitors operating on a more costly basis."<sup>40</sup>

<sup>38</sup> Retail Code Hearing, *NRDGA Bulletin*, September, 1933, p. 20.

<sup>39</sup> He took the position that the Macy cash claim was clearly accurate since: 1. during the two-year investigation of a formal complaint, the Federal Trade Commission had examined Macy's book and had found no indication of violation, 2. Macy could itself uphold the accuracy of its claim by comparison of the costs of different stores in the company.

<sup>40</sup> *NRDGA Bulletin*, September, 1933, p. 20.

The opposing faction rehearsed the familiar arguments against loss leaders—the fact that they mislead the public, oppressed small enterprise<sup>41</sup> and tended to lower the wages of labor through cutthroat competition. These were all excellent talking points, particularly since the “little fellow” had definite public appeal and the labor interest could be urged by the Labor Board.<sup>42</sup> It was also stated that “limitation of price cutting is in the interest of consumers also as it stops discrimination as between a few customers who benefit at the expense of the many who do not.”<sup>43</sup> The Macy presentation in regard to general underselling claims was refuted on the basis that the claim was in fact inaccurate. Proof of the impossibility of saving six per cent through D. A. accounts was offered at the hearing.<sup>44</sup> Moreover no

<sup>41</sup> Several groups of small merchants at the hearing of the Retail Code and elsewhere expressed opinions that a ten percent mark-on was too low, and that a compulsory mark-on of twenty to twenty-five percent was necessary to protect the independent from the loss leader practice of the chains, department stores and mail order houses. (e. g. presentation of A. H. Goodman and J. U. Rudin at Code Hearing, August 22.) The Furniture Association wanted a twenty percent mark-on requirement.

<sup>42</sup> In rebuttal to these contentions, Macy representatives at times rose to heights of journalistic achievement: “It is neither honest nor fair to talk in terms of idealism if you are trying to get a special money advantage for yourself or to lampoon a competitor in the miasma of an emergency. When a merchant wanting special privilege talks in terms of the evangelist, then it is time for Mrs. Consumer to watch her pocketbook, or if she happens to be a charge customer, to be careful with her checkbook.” (Brief submitted by R. H. Macy, reported in *Retailing*, September 4, 1933, p. 1.)

<sup>43</sup> Telegram from Herbert H. Tily, President of Retailers National Council to Hugh S. Johnson quoted in NRA Release No. 894, September 25, 1933.

<sup>44</sup> At the hearing, Philip Le Boutelier read part of a brief which gave figures in the cost of carrying charge accounts, calculated to prove the inaccuracy of the Macy contention. At a later stage of the negotiation Major Namm issued a public challenge to Macy to substantiate their claim by presenting to the Consumer Advisory Board mark-on figures by departments which could be compared to the figures which other stores were willing to submit.

underselling claim, it was urged, had ever been true and must of necessity be inaccurate.<sup>45</sup>

What retailers could not do individually or through their representatives to influence the Code provisions could perhaps be done by the pressure of Administration representatives who agreed with their point of view.<sup>46</sup> The Administration's position seemed, on the whole, favorable to the proponents of the Code. The loss limitation provision was tolerated on the basis that price wars and cut prices tended to be associated with exploitation of labor and that they tended to be misleading to the customer. The prohibition of general underselling claims was also sympathetically received by Mr. Whiteside, to whom is attributed the introduction of the "loss limitation" concept.<sup>47</sup> The Labor Advisory Board was of course generally in favor of the loss limitation provision since the connection between cut prices and inadequately paid employees is popular legend.<sup>48</sup> The AAA ob-

<sup>45</sup> Mr. Van Horn stated this position in a comment on the general underselling paragraph in the proposed Code. "This paragraph was inserted in the code after months of discussion and after the fact had been established in a clear-cut manner that no merchant, large or small, has been able generally to undersell all of his competitors. In other words, it has been clearly established in the history of the business that general underselling claims when used in advertising have been untrue." NRA Release No. 858, September 21, 1933.

<sup>46</sup> Skillful lobbying and telegrams and letters could do much to make certain that all relevant facts were presented to the appropriate Administration members. Moreover, the letters and telegrams were in themselves argument since the purpose of the Administration was to satisfy the interests involved and obtain voluntary acceptance of a code.

<sup>47</sup> At the Hearing for August 24, Mr. Whiteside told Mr. Le Boutelier: "I am very much in sympathy with what you would like to say," and "I know the subject well enough to know that the differential (between cash and charge) is not great . . ." (Transcript of Hearing, p. 596.)

<sup>48</sup> The contention that price cutting is associated with wage cutting contradicts the theory that cut prices on a leader are made up in higher corresponding mark-on in other items. If this were the case, the gross mark-on for the store would remain the same, and there would be no

jected to a loss limitation provision. The Consumer Advisory Board, although they raised no objections at the hearing,<sup>49</sup> flamed into activity early in September.<sup>50</sup> It was feared that the clause would increase prices and reduce consumer purchasing. A confidential report submitted by this

unusual pressure to reduce expenses through hiring cheap help. The existence of this contradiction does not mean that both contentions cannot be right at different times, such as when increased volume does not counteract the cost of below cost sales.

<sup>49</sup> Mrs. Grace Morrison Poole, President of the General Federation of Women's Clubs telegraphed: "We are in favor of any practical provision which will stop the evil of the loss-leader which misleads shoppers into believing that low prices prevail throughout a store when in all probability, the shopper loses her 'saving' in the unduly higher cost of other goods." Mrs. W. E. Tribley, President of the Chicago Housewives League, also endorsed fair practice provisions. "Intelligent consumers hope that the 'New Deal' will constitute retailers their trusted representatives, rather than mere peddlers for manufacturers. If the consumer continues to be 'baited' by the sale of goods at prices less than cost, knowing full well that the retailer must make up this loss by raising prices on other items, public confidence will not be protected. Business, no more than an individual, can commit suicide and yet continue to live and serve its community." (NRA Release No. 866, September 22, 1934.)

<sup>50</sup> A press release entitled "Consumers Advisory Board on Master Code" (No. 693) was issued on September 8, 1933. "The Consumer Advisory Board of the NRA today urged that final approval of the master code for retailers, and all other pending codes which contain cost-plus provisions, be held up until reports on the significance of the pricing provisions can be made by a special committee now being formed to consider the subject. The Board was informed that this committee would be composed of representatives of the NRA, the Agricultural Adjustment Administration, and one each from the Department of the Treasury, Interior, Commerce, Agriculture and Labor. It is being set up at the recommendation of the Special Industrial Recovery Board.

In asking for the delay the Board recognized the difficulties occasioned, but took the position that a policy of minimum price control has such an important bearing on national policy and on the entire NRA program that delay would be justified. In the opinion of the board, the special committee's report on codes now being drafted could be made within a few days."



board was said to register disapproval of the cost plus ten per cent idea. The objections of the Consumer Advisory Board to the stop loss provision were described by Dr. Dameron as having four bases: 1. The clause was considered "unworkable in the light of the exceptions provided." 2. It was considered a "precedent for limiting losses in the retail trade without the grant of any compensating privilege to the public." 3. It was thought to be "a step in the direction of subsidizing inefficiency" in retailing. 4. It would invite a consumer reaction dangerous to the success of NRA.<sup>51</sup> The Consumer Board also disapproved of the underselling provision since the phrasing of the clause made it a violation to tell the truth. The objections of the Consumer Board seemed to grow as September waned.<sup>52</sup>

In September a delegation of retailers of whom W. H. Hager of Lancaster, Pennsylvania, was the spokesman, had an audience with the President. This conference seemed to convince the President that retailers wanted the loss limitation provision. Towards the end of September the price provisions of the Code were published to obtain the reaction of retailers and the public. The reaction was decisive. Only four tenths of one per cent of the hundreds of letters and telegrams received by the Administration, of which "a surprisingly large percentage came from small independent retailers", registered objections to the "stop-loss" provision.<sup>53</sup>

<sup>51</sup> Dameron, *The Journal of Business of the University of Chicago*, loc. cit., p. 9.

<sup>52</sup> The Washington correspondent of "Retailing", Mr. Atchison, reports in the September 25th issue: "In all probability the retail code would have been approved by President Roosevelt several days ago had it not been for the sudden activity of the *Consumers Advisory Board*, which board at the very last moment brought forth such serious objections to the loss limitation provisions that it was felt best to withhold approval until the price provisions could be thoroughly discussed."

<sup>53</sup> NRA Release No. 916, September 26, 1933.

The long battle ended in compromise. General Johnson took the responsibility for the insertion of the word "inaccurately" in the final draft of the clause on general under-selling claims. In the final draft of the loss limitation provision, the position of the Code proponents was theoretically affirmed. But the power of the opposition was reflected in three important changes from the earlier drafts: 1. The substitution of the word "should" for "must" changed the quality of the phrase "selling price should include an allowance for actual wages of store labor".<sup>54</sup> 2. Though sales below net invoice cost or replacement cost, whichever was lower, were prohibited—the required percentage mark-up was to be set by the Retail Trade Authority at some future time.<sup>55</sup> 3. Competitors were permitted to reduce their prices below their net delivered cost in order to meet the competition of other stores on comparable items.<sup>56</sup>

#### SECTION IV. ADMINISTRATION

Because of the primarily local character of competition in retailing, any considerable amount of local autonomy could serve to increase the amount of regulation to which individual retailers might be subjected at the hands of their competitors. It will be recalled that the original NRDGA Code, as well as the Code submitted at the hearing, provided for local committees, the function of which was to apply the somewhat general code provisions to the specific local problems. This situation was thought by some retailers, notably the same group that objected to regulation in general, to be

<sup>54</sup> The phrase "actual wages of store labor" was presumably suggested by the President.

<sup>55</sup> Some such plan had been suggested to Mr. Whiteside as early as August.

<sup>56</sup> This modification was important since it made the clause extremely difficult to enforce although it prevented the store that could purchase most cheaply from being able to undersell all of its competitors.

fraught with danger on the grounds that the local trade committees denied representation to labor or consumer, and that it would subject stores to "trade 'lynch law' administered by competitors".<sup>87</sup>

The difference of opinion over the section on administration seemed to iron itself out in private sessions. Whether it was because the actual situation which would materialize out of a given phrase describing the administrative set-up was always subject to influence at a later time, or because the major energies had spent themselves on other issues, the fact remains that the clauses were framed without a protracted struggle.<sup>88</sup>

It is significant, however, that the clauses as finally formulated were very different from the first NRDGA Code, in which local committees were empowered and required "to draft such regulations as may be necessary to make the provisions of this code applicable to the business situation within an area. . . ." <sup>89</sup> The final authority was placed in the hands of the Administrator or his deputy who was assisted by the Retail Trade Authority composed of three appointed members. He was also assisted by the National Retail Trade Council, which was to consist of from one to three members of each of the signatory associations having one vote per association. The Council was to have general powers necessary to assist the Administrator or his deputy in the administration and enforcement of the Code. It was also to have general powers to require reports from retailers

<sup>87</sup> Transcript of Hearing on Retail Code, August 24, p. 596. Statement by Percy Straus.

<sup>88</sup> The section was written late in September largely by Messrs. Nystrom, Emerson and Dameron.

<sup>89</sup> As late as October, in a plea for increased membership in the NRDGA, it is asserted that it will be the association's "duty, under government supervision, to administer and enforce the retail code . . ." (NRDGA *Bulletin*, October, 1933, p. 14.)

and make investigations (with the approval of the Administrator), to make recommendations such as interpretations, which, subject to the veto of the Administrator, should become operative as part of the Code; to supervise the settling up of local areas and trade-committees. These local bodies had purely executive functions: to assist in the "administration and enforcement of this code within such local areas."

#### SECTION V. FINALE

On October 23rd the President signed the Code of Fair Competition for the Retail Trade, thereby making the regulations contained in the Code compulsory for all the branches of the retail trade not specifically excluded from its jurisdiction. The document which he signed is reprinted in Appendix A.<sup>60</sup> Approval came as a final climax to the five months of discussion, bargaining, wire-pulling and lobbying that made up the total process of negotiation.<sup>61</sup>

When the President signed the Code it had been recommended for approval by the Administrator; it had been approved by the Industrial Advisory Board and the Legal Division; it had been approved with reservation in regard to the wage and hour provisions by the Division of Research and Planning. The Labor Advisory Board and the Consumer Advisory Board had not graced the document with their approval.

<sup>60</sup> Schedule A "Supplemental Provisions Applicable to Retail Drug Establishments..." has not been reprinted.

<sup>61</sup> For a full month there seemed to be almost day to day expectation of having the Code approved. The September issue of the *NRDGA Bulletin* was held up pending the signature of the final Code, but on September 15, General Johnson announced that the Code would not be ready for submission to the President for another week. (*NRDGA Bulletin*, September, 1933, p. 5.) Similar delay preceded the Administration's request for the Code. There are stories of how false alarms had been so frequent that the staff grew callous to the rumors of impending need to "send up" the Code immediately. When one of the secretaries was called to the office on Sunday because the "President would probably send for the Code" she declared that she had heard that story before and refused to go.

Moreover, there seems to be considerable doubt, whether the Code had actually been submitted by representative trade associations as required under the NIRA. Even if misgiving is waived relative to the extent to which the Code proponents were "truly representative of the trade . . . for which the code is requested", the authenticity of the document as a code actually applied for by the eight signatory associations is open to serious question. We have noted that changes of a substantial nature had been made between the time when it was formally approved by the associations and the time when it was signed by the President. Its authenticity would depend therefore on the extent to which conferees were permitted to change a clause without re-submission to the associations. Certainly some leeway must be permitted—the question is, how much. This problem of authenticity is interesting not as a legal question but as indication that the mechanism of code drafting was such that it was difficult to keep track of what was actually transpiring from moment to moment.

#### SECTION VI. SUMMARY

The NIRA had authorized the retail trade to write a code of fair competition which, if approved by the government, would have the status of law. Two steps were involved in formulating this code: (1) Retailers had to agree among themselves as to clauses which should be included; (2) the representatives of the government charged with the task of protecting various aspects of the public interest had to approve. In actual practice, these two steps were not pursued separately; for the most part they took their turn in the general muddle of negotiation.

A code of fair competition was a human rather than a scientific document. The conflicting interests represented were urged with varying degrees of skill. The clauses were

the resultant of those forces in the underlying situation which rose to the surface of the fight. Any theoretical concept of what a code ought to contain became so deeply buried by the tug of interested parties that the final document could bear little relation to any such theory had there been one.

Underlying the entire process was the assumption that the sections of the trade, the associations and the individuals with whom the government treated were representative of the trade as a whole. This assumption was crucial to NRA theory since the codes were presumably voluntary agreements at the same time that they would be automatically applicable to the entire industry or trade. In practice the government was forced to rely on the belief that adversely affected or unrepresented interests would automatically be heard from if they had anything of importance to say. Implicit also was the thought that since all parties had been given an opportunity to assert themselves, the final draft of a code was a fair product of a fair fight to which the losers as well as the winners were expected to subscribe. It is therefore important to note to what extent the interested parties had actually been able to present their problems with equal force.

We have seen that about nine per cent of the retailers who were to operate under the Code belonged to the trade associations signatory to it. Further, it would seem that the membership in the associations weighed in favor of certain branches of the trade and the larger stores in those branches. Moreover, the individuals actually doing the negotiating could not or did not always speak with equal force for the entire membership. Also, certain of the individuals active in the Code drafting had far more influence than others. The result of all this was that the small store was only adequately represented when its interests coincided with those of its more powerful and more articulate rivals. It also

meant that an influential minority of large stores could, through skillful maneuvering, exert influence for good or for ill out of all proportion to their importance in the trade group.

But this oligarchic color of the Code of Fair Competition under NIRA was not new. Fair practice codes and the more informal business standards had always been designed by a minority of the trade although they might have been approved by the majority. Moreover the particular individuals doing the drafting were in large measure the same people representing the same institutions that had shepherded the fair practice movement in pre-Code days. The difference lay in the fact that the NIRA Code was a law and compliance with the law would be required.<sup>82</sup> Moreover, and the importance of this point will become clear in the following pages—it was a law the enforcement of which depended significantly on voluntary compliance.

The function of the government in code drafting was in part executive—the negotiations had to be kept moving. In part it was that of an interested party—the government espoused the public interest both in securing the success of the New Deal program as a whole and in protecting labor, consumer and employer in each code.

The negotiation between retailer and government took place within an area defined by two limiting factors, both of which arose out of the simple fact that the Code was a voluntary agreement. Retailers must be interested in continuing the negotiation; the government must be interested in con-

<sup>82</sup> Individuals may well have had moments of doubt as to the possibility of enforcement. There may also have been chronic skeptics. Nevertheless, the following quotation is probably characteristic of a substantial body of opinion at that time. "Once the Code is approved in its final form by the Administration and signed by the President of the U. S., it will have the full force of law. Transgressors of the Code will be punished by fines and imprisonment, and even the drastic licensing powers of the Act may be invoked on recalcitrants of an industry or trade." (*NRDGA Bulletin*, August, 1933, p. 10, Editorial.)

tinuing the negotiation. It was clearly the job of the retailer to write into that agreement clauses which over a period of years had been found to embody desirable standards of trade practice, as well as to keep out of the Code unworkable labor provisions which they felt would hinder the progress and profit of their business. Likewise it was the job of the Administration to achieve the greatest possible benefit on behalf of the various aspects of public interest involved, hampered as it was by lack of knowledge concerning the actual way in which clauses would operate when put into practice. But in attempting to further the public weal, the Administration had to be satisfied with the conditions which the industry was willing to accept rather than go without the benefits of the Code; just as, in pressing their demands, retailers had to refrain from driving the government representatives to the point where they were willing to give up the idea of a voluntary Code in favor of none at all, or a compulsory Code. Within these limits a tug-of-war took place which, after numerous changes in fortune, resulted in an approved code.

This NRA Code of Fair Competition made certain explicit changes in the pre-1933 state of social control in retailing.

Paragraph (3) of Section I was a step along the same road as that which had been followed by the fair practice movement in advertising. It was, moreover, a step forward in so far as it banned "inaccurate" as well as "misleading or deceptive advertising". Moreover, it banned not only advertising but also selling methods which tended to mislead or deceive the customer. Accordingly this clause over and above any question of improved enforcement, was clearly a contribution to the truth in advertising movement.

The insertion of the word "inaccurately" in paragraphs (b) and (c) which concerned references to competitors or their merchandise and general underselling claims meant that



in practice the clauses were little more than a statement of principle, owing to the difficulty of proving the inaccuracy of such statements in all but the most flagrant cases.

The section on loss limitation was, as we have seen, an extension of a movement which had been fomenting during the depression. It was an attempt to cork one rather small leak in retailer profits. It was nevertheless the main plank in the retailers' program to improve profits through a code clause; in that respect it was analogous to the price control clauses in industrial codes although it operated quite differently. Moreover it functioned in an area in which voluntary cooperation had clearly and significantly failed.

The labor provisions were largely a new form of regulation in their application to adult males. State minimum wage laws applied almost entirely to women and minors. Moreover, none of the old bills had been declared unconstitutional and the new statutes had not as yet been applied to retail employees. The hour regulations had in no case limited the work week to less than 48 hours per week. The clause which aimed to prevent the reduction of wages above the minimum was certainly a new venture in law making in America.

But perhaps the most important contribution of the NIRA Code was the promise of effective national enforcement. Legal status, though not new in either trade practice or in minimum wage and maximum hour regulation, had never before been applied to as wide a range of practices nor in as wide a geographical area. Extra-legal enforcement of trade standards had of necessity been only partially effective.

If the type of administration was the single element in the Retail Code which contained most of innovation, it was likewise the tool with which the paper and print of the Retail Code would be built into the actuality of specific retail practice. To the Administration, then, we must now turn our attention.

**PART III**  
**CODE ADMINISTRATION**

## CHAPTER I

### ADMINISTRATIVE AGENCIES

THE plan for Code administration had two major aspects: (1) Planning and Progress, and (2) Compliance.<sup>1</sup> "It is fundamental, within both the letter and intent of NIRA . . . , that as much as possible of both aspects of Code administration be effected by Industry itself. This should be done through the Code Authority. . . ." <sup>2</sup> "It is equally fundamental, within both the letter and intent of NIRA, that the ultimate responsibility for efficient Code administration lies with NRA, which will supervise Code administration by Code Authorities."<sup>3</sup> Thus Codes were to be administered by two groups of agents: industry and the government. It was thought that the first aspect of administration—planning and progress—would be carried on almost entirely by in-

<sup>1</sup> "The first aspect includes such functions as economic planning and research for the Industry, reports and recommendations on conditions in the Industry, collections of statistical data, preparation of cost accounting methods, etc. The second aspect includes: (a) The instruction and education of those subject to the Code as to their responsibilities thereunder so as to anticipate and avoid complaints of non-compliance. (b) The adjustment of complaints of noncompliance by education, findings of facts, and the pressure of opinion within the Industry. (c) The adjustment of complaints by conciliation, mediation and arbitration. (d) The rendition of reports to the enforcement agencies of government in those cases where all other means have failed. Such reports should be based upon adequate findings of fact." (*Manual for the adjustment of Complaints*, National Recovery Administration, *Bulletin*, No. 7, January 22, 1934, p. 3.)

<sup>2</sup> *Ibid.*, p. 3.

<sup>3</sup> *Ibid.*, p. 4.

dustry, and that government assistance would be confined largely to the second aspect—compliance.<sup>4</sup>

#### SECTION I. GOVERNMENT MACHINERY

The function of government supervision was discharged by the NRA Administrator, his deputies and staff; it was also in part assigned to the Compliance Division. These two groups within NRA were substantially parallel straight-line organizations.

The Retail Code was assigned to Division IV. Accordingly the first winter of its existence was spent under the direction of the same two men who had supervised its birth: Mr. Whiteside was Divisional Administrator and Dr. Kenneth Dameron was the Deputy in charge of Distribution.<sup>5</sup> Mr. James Yocum<sup>6</sup> assisted Dr. Dameron with the retail codes; Mr. C. Sterry Long<sup>7</sup> was Assistant Deputy Administrator of the Retail Section.

But the turnover in executive personnel was high in NRA. By June, Harry King<sup>8</sup> had become the Divisional Admin-

<sup>4</sup> "In an Industry sufficiently organized to have agreed upon a Code of Fair Competition, there usually will be no need for Government administration in the 'planning and progress' field. These functions Industry is already performing for itself through its trade associations. . . . It is the policy of NRA to build up and strengthen trade associations throughout all Commerce and Industry so that they may perform all Code administrative function." *Ibid.*, p. 4, Section E.

<sup>5</sup> Division IV included most of the distributing trades, textiles and service trades. Prior to October the distributing trade codes were scattered in three different divisions.

<sup>6</sup> Mr. James Yocum had been Research Assistant to the Staff of Bureau of Business Research, Ohio State University in 1932. He had had experience in a retail store as salesman and store manager at Massillon, Ohio in 1930.

<sup>7</sup> Mr. Christopher Sterry Long had been in the automobile business as a promoter and owner from 1920 to 1931.

<sup>8</sup> Harry King had been President of H. O. King Co., manufacturers of brass metal products: president of Houssatonic Company (real-estate builders) and a member of H. E. Talbot Company, bankers.

istrator and Harry Carr<sup>9</sup> became the Deputy for Retailing. Another change took place after another six months when Harry Carr was promoted to Divisional Administrator and Mr. A. S. Donaldson<sup>10</sup> was made Deputy in charge of Retailing. The deputies for wholesale and retail trades were aided by assistants<sup>11</sup> and an office staff of about thirty to forty people.<sup>12</sup>

The work of the Deputy of an individual code was related to the rest of NRA, and code administration was checked from the standpoint of the public interest by approximately the same group of advisory boards that were active in the period of code drafting. Most statements or actions which bore the approval of NRA were submitted by the deputies to representatives of the Legal, Industrial, Consumer, and

<sup>9</sup> Mr. Carr had been manager of the Railway Supply Department of the Simmons Hardware Company from 1911 to 1914, assistant to the President and Export Manager of the Gulf Oil Corporation from 1915 to 1928, managing director of the European Marketing Subsidiary Companies of the Gulf Oil Corporation from 1928 to 1932. He had been the Administration member on the Refractories Industry.

<sup>10</sup> Mr. Donaldson had been employed at R. H. Macy and had left to take over an important managerial position at Gimbels' New York store. His connection with the latter store was severed in the early Spring of 1934.

<sup>11</sup> Mr. Bristol was assistant to Harry Carr. In the Fall of 1934, he was replaced by Mr. Rogers.

<sup>12</sup> The usual method of appointing clerical help in NRA is described as "political clearance". Positions were not filled through the Civil Service, nor was there any public statement of jobs available and the requirements of the position. An applicant for a job presented his application together with endorsements of his senator or representative—in some cases, if no such endorsements were submitted and the applicant seemed to be a desirable person, he was advised to obtain such endorsement, if not as a requirement, then as an assistance in securing the position. It was not usual to correspond with former employers or other references presented by the applicant. (Brookings Institution, *op. cit.*, p. 41, f. n. 13.)

Labor Advisory Boards and to the Code Coordinating and the Research and Planning Divisions.<sup>13</sup>

The Retail Code, unlike most others, had as part of its administrative machinery not only representatives of the advisory boards, but also a Retail Trade Authority consisting of three members appointed by the President as special representatives of labor, consumer and industry.<sup>14</sup> They were expected to advise and assist the Administrator or his deputy. Members of the Retail Trade Authority were members without vote of the National Retail Trade Council, and were, it will be recalled, empowered to fix the allowance for labor in the loss limitation provision of the Code. Because of the intimate contact between retail stores and the general public and the crucial significance to NRA of favorable public opinion, it was important to have public guardians on the Retail Code of a calibre calculated to quiet any embryo popular misgivings concerning abuse of the Code privilege by retailers. Accordingly, it was essential to the purpose of the Trade Authority that its members be well known and respected; but being well known, they were also busy; they were able only in rare instances to attend the protracted meetings of the Code Council.<sup>15</sup>

Such was the broad outline of the Government supervisory machinery for the Retail Code. The Compliance Division had a more specialized task which, as originally conceived, was to "fill in the gaps in industrial self-government".<sup>16</sup>

<sup>13</sup> The Legal Advisory Board seems to have been, in actual practice, the chief agent of coordination. (See Brookings Institution, *op. cit.*, pp. 62-64.)

<sup>14</sup> The members of the Retail Trade Authority were Dr. Leo Wolman, Mrs. Mary K. Rumsey, Mr. Louis Kirstein.

<sup>15</sup> The original members were replaced by Rose Schneiderman, L. F. Boffey and Harry C. Carr early in 1935. These individuals were NRA staff members and attended a large proportion of Code Authority meetings.

<sup>16</sup> "To the extent required, it will act for an Industry while the Industry is organizing to handle compliance problems for itself; or where an

The organizational structure of this section will be sketched later.

#### SECTION II. TRADE MACHINERY

The self-governing tribunal for the Retail Code was the National Retail Trade Council composed of two members and an alternate appointed or elected to represent each of the signatory associations. (Subsequently the words "Trade Council" were changed to "Code Authority".) The delegates were usually men active in the trade association movement either as prominent retailers or as trade association executives.<sup>17</sup>

Industry in a certain territory has no Industrial Adjustment Agencies; or where an Industry, though organized to handle trade practice complaints, has no machinery to handle labor complaints; or where the Industry fails to carry through in its efforts to adjust a complaint; or where for any other reason it is necessary for the governmental rather than the industrial system to act." (*NRA Bulletin*, No. 7, pp. 5-6.)

<sup>17</sup>Members of National Retail Code Authority, Inc., as of April, 1935:

*National Association of Retail Clothiers & Furnishers*: \*Gerald D. Grosner, President, Grosner's, Washington, D. C., Maurice L. Rothschild, Chicago; \*Irving L. Wilson (alternate), Jacob Reed's Sons, Philadelphia.

*National Retail Dry Goods Association*: Davis Ovens, J. B. Ivey Co., Charlotte, N. C., Irwin D. Wolf, Kaufman Department Store, Pittsburgh; Channing E. Sweitzer, National Retail Dry Goods Association, New York City (alternate).

*National Retail Furniture Association*: John L. Young, Young's, Cleveland, \*Roscoe R. Rau, National Retail Furniture Association, Chicago; Nathan Sachs (alternate), Sachs Quality Furniture Co., New York City.

*National Retail Hardware Association*: Rivers Peterson, National Retail Hardware Association, Indianapolis, Ind., \*A. E. Hernstein, Chillicothe, Ohio; H. P. Sheets (alternate), National Retail Hardware Association, Indianapolis, Indiana.

*Limited Price Variety Stores Association*: Dr. P. Nystrom, Limited Price Variety Stores, New York City; E. C. Mauchly, F. W. Woolworth Company, New York City; \*P. B. Scarff (alternate), Limited Price Variety Stores, New York City.

*Mail Order Association of America*: \*C. A. Bethge, Chicago Mail Order Co., Chicago, \*D. M. Nelson, Vice President, Sears, Roebuck & Co., Chicago; G. B. Stockton, Executive Secretary, Mail Order Association of America, Chicago (alternate).

The Council required a permanent office staff. To the lot of the managing director would fall much of the responsibility for Code administration. This office was temporarily filled by Rivers Peterson, president of National Retail

*National Association of Music Merchants:* \*Delbert L. Loomis, National Association of Music Merchants, Miami, \*Homer L. Kitt, Washington, D. C.; Edwin R. Weeks (alternate), Binghamton, N. Y.

*National Council of Shoe Retailers:* \*Ward Melville, National Council of Shoe Retailers, New York City; \*James Wright, G. R. Kinney Company, New York City (alternate).

*National Shoe Retailers Association:* \*A. H. Geuting, Geuting's, Philadelphia; \*Jesse Adler, National Shoe Retailers Association, New York City (alternate).

*National Recovery Administration:* H. C. Carr, Divisional Administrator, NRA, Washington; A. S. Donaldson, Deputy Administrator, NRA, Washington; R. C. Rogers, Assistant Deputy Administrator, NRA Division Four, Washington; G. B. Goldin, Legal Division, NRA, Washington; Louis E. Kirstein, Vice-President, William Filene's Sons, Boston; Ernest Osborne, Consumers' Advisory Board, NRA, Washington; Joel Berrall, Labor Advisory Board, Washington; Rose Schneiderman, NRA Labor Advisory Board, Washington; \*\*L. F. Boffey, Consumers' Advisory Board, NRA, Washington.

#### COMMITTEES

*Administration:* Ward Melville (chairman), Rivers Peterson, Paul Scarff, Gerald Grosner, G. S. Stockton, David Ovens.

*Finance:* Gerald Grosner (chairman). All members of Administration Committee.

*Trade Practice:* Roscoe R. Rau (chairman), A. E. Herrnstein, A. Geuting, Edwin Weeks, Maurice Rothschild, Irwin Wolf.

*Labor:* C. Bethge (chairman), Dr. P. Nystrom, Homer Kitt, John Young.

*Committee on Research and Planning:* Irwin D. Wolfe (chairman), Roscoe R. Rau, Gerald Grosner.

\* Member also on the Code Authority in March, 1934. The following individuals who were members of the Code Authority in March, 1934 were no longer on the Authority a year later: Almer Wiebold, Wiebold Stores, Inc., Chicago, R. L. Mehornay, North-Mehornay Furniture Co., Kansas City, A. D. O'Shea, National Association of Retail Clothiers and Furnishers, David M. Lentz, Stern & Co., Philadelphia, William H. Hager, Hager Brothers, Lancaster, W. M. Schnading, Chicago Mail Order Company.



Hardware Association, and Harold Young, who had for years been the Washington representative of the National Retail Dry Goods Association. Mr. Richard Neustadt, who became managing director, had two special assistants, one for trade practices and the other for labor. Harold Young was the legal advisor.<sup>18</sup> A clerical and secretarial staff of about fifteen people completed the National headquarters.

The Code Authority was empowered to assist the Administrator in the administration and enforcement of the Code. Its special powers and duties included requisition of reports and investigation of Code functioning, subject to the approval of the Administrator, as well as the presentation to the Administrator of recommendations which could be incorporated into the Code, and the supervision of the setting up of local code authorities. The Authority had an advisory capacity in Code interpretation.

For the purpose of performing these multiple functions the Code Authority was divided into five committees: Administration, Finance, Trade Practice, Labor, and Research and Planning. The members of these committees would meet in order to discuss problems in their specific fields and arrive at majority recommendations which would then be presented at a general meeting of the Code Authority. Much of the most important work of the Authority was done at the committee meetings or at informal gatherings some of which were participated in by NRA officials. Nevertheless the sessions at which the Code Authority met as a whole were numerous, particularly in the early days of the Code. They constituted a serious drain on the time of busy men.<sup>19</sup>

<sup>18</sup> Appointed Administration Member, February 23, 1935. (NRA Release, No. 10232.)

<sup>19</sup> Mr. Peterson was made chairman of the Code Authority.

<sup>20</sup> In the month between October 26th and November 26th, 1933, Code Authority meetings were scheduled on eleven different days, often for

The organization of the trade for self-government was to have a capillary system as well as an aorta—local offices were to be established throughout the country. These Councils (or Code Authorities) "shall be the representative body from the trade within a local area and, subject to such regulations as may from time to time be issued by the National Retail Trade Council [later National Retail Code Authority] and approved by the Administrator, or by the Retail Trade Authority, shall be charged with the responsibility for the trade's share in administration of the Code within such local area".<sup>20</sup>

Regulations for the setting up of local offices suggested that the initiative should be taken by merchants associations, by local members of the national trade associations signatory to the Code, by retail divisions of chambers of commerce, or by the concerted action of local merchants.<sup>21</sup> The boards were to be composed of representatives of each of the eighteen branches of the trade included under the general code.<sup>22</sup> But organization proceeded slowly. Most typic-

all day sessions. By the spring of 1934 the work had become sufficiently organized to require no more than one scheduled meeting a month which, when necessary, continued for a second day.

<sup>20</sup> *NRA Retail Bulletin, No. 1, p. 44.*

<sup>21</sup> The regulations issued by the National Retail Trade Council with the approval of the Administrator provided that: "2. If in any retail trade area, as provided above, no local Retail Trade Council is organized by January 1, 1934, the National Retail Trade Council or the NRA may take such steps as it shall deem necessary to aid in the creation and organization of such local Retail Trade Council." (*NRA Retail Bulletin, No. 1, p. 43.*)

<sup>22</sup> *Divisions of the Retail Trade defined for Organisation of LRTC.* (a) Retail Clothiers and Furnishers Division; (b) Department Store and Dry Goods Division; (c) Retail Furniture Division; (d) Retail Hardware Division; (e) Limited Price Variety Store Division; (f) Mail Order Division; (g) Music Merchants' Division; (h) Retail Shoe Division; (i) Art Stores, including art dealers and art galleries; (j) Books and Stationery, including stores dealing in accounting machines,

ally, code authorities were fathered by some previously existing agency. In such cases the new functions were often thought of as a method of giving new life to the old organization. Of the fifty most important locals, half were affiliated with the local merchants' association; in fourteen cities the code authority and the Better Business Bureau had the same executive or were otherwise jointly administered; in four of the cities the code authority was connected with the Chamber of Commerce. Only in seven of the fifty cities were the code authorities independently organized.

By Christmas, 1933, about 200 local code authorities had been authorized. A year later about 780 offices had been set up. About 400 of these had answered one or more communications addressed to them by the National Retail Code Authority; the others were either not functioning or preferred to remain independent of national headquarters. Clearly the original plan of establishing a local authority in all trading centers having a population of over 2500 inhabitants was not working adequately.<sup>28</sup> In the fall of 1934, the

artists' supplies, badges, office supplies; (k) Florist Shops (Subject to this Retail Code as to wages and hours provision only. Trade practices of such stores are governed by a Code under supervision of the AAA.); (l) Paint, Wall Paper and Glass Stores; (m) Luggage and Leather Goods Stores; (n) News Stores, including news stands and news dealers selling at retail. (Not including Newsboys or stands selling Newspapers only); (o) Opticians and optical goods; (p) Pawn Shops; (q) Pet Shops (Sellings dogs, cats, birds, fish and kindred merchandise); (r) Sporting Goods Stores, including stores dealing in bicycles, cameras, golf instruction shops, toys and playthings, tricks and games.

<sup>28</sup> In metropolitan districts several trading centers of over 2500 inhabitants might be grouped under the code authority for the district. The 97 metropolitan districts tabulated in the 1930 Census included about 885 incorporated places. Since there were about 3165 places having a population of 2500 and over (376 places having a population of 25,000 and over) almost 2000 local code authorities would have been required even if only one authority was established for the many incorporated places included in each metropolitan district.

Division of Research and Planning of NRA suggested a plan of administration based on the existence of 641 natural trading areas within 37 natural areas of supervision. During the winter of 1935, the National Code Authority staff was working on a plan for revising the network of local units of administration.

Both the local and national code authorities were financed through an assessment of a maximum of one dollar per employee.<sup>24</sup> The budget for the first year was set at \$125,000 for the national office.<sup>25</sup> Estimated budgets for the second year totalled \$949,860 for the Code Authorities throughout the country;<sup>26</sup> The National Authority again required \$125,000 of the total.<sup>27</sup> Failure to pay second-year assessments was made a Code violation, for which a large mail order house had its blue eagle removed.

<sup>24</sup> Every full-time employee and every part-time worker employed for more than sixty percent of the work week on October 20, 1933, was subject to assessment. Twenty-five cents of the dollar maximum assessment per employee was to be contributed to the national office and the rest of the funds could be used for the support of the local code authorities. The local offices were required to have their budgets approved before being supplied with the equipment necessary to collect assessments. The new Code insignia were distributed upon payment of assessment. (*Revised Bulletin A-2*, January 9, 1934.)

<sup>25</sup> The budget for the calendar year 1934 totalled \$125,000. This included the salary of the managing director at \$12,000; of two assistant directors at \$5,000 each and of an annual retainer for counsel of \$5,000. The salary for the secretarial and clerical staff of fifteen members totalled \$21,420.00 and offices, expenses, taxes, traveling expenses, etc., totalled \$40,000.00. (NRA Release, June 22, 1934, No. 5943; Budget of \$125,000 approved July 19, Release, No. 6568.)

<sup>26</sup> The assessment was fixed at sixty-two cents per employee; seven cents went to the National Code Authority to cover expenses from January 1st to June 16th and the rest to the local authorities for expenses from October 30th through June 16th. (NRA Release, No. 9592, January 11, 1935.)

<sup>27</sup> NRA Release, No. 8188, October 10, 1934.

## SECTION III. CODE JURISDICTION

But in a sense, preliminary to the problem of Code financing and also to that of compliance, was the question of jurisdiction. We have met this same problem in past cooperative activity and in Code drafting. It arose out of two characteristics of retailing: its compound nature and its horizontal relation to the rest of the process of distribution and consumption.

It will be recalled that one of the reasons why certain retailers wanted a single code to include as many types of stores as possible, was to minimize the number of codes under which any single store would be required to operate. The solution was a compromise: eighteen divisions of the trade were included under the master code, but forty-one different kinds of stores were excluded.<sup>28</sup> Obviously jurisdictional disputes would rise between conflicting retail codes. A similar struggle was also bound to occur between retailers and manufacturers when there was room for doubt concerning which code covered a group of workers in departments such as millinery, trucking or made-to-order clothing.<sup>29</sup>

<sup>28</sup> The following types of stores were not included under the General Code according to a February, 1934 listing of NRCA: Agricultural Implement Stores, Artificial Limb Stores, Awning and Tent Stores, Baked Goods Stores, Barber Service Shops, Beauty Service Shops, Beverage Shops, Building Supplies Stores, Coal Retailers, Drug Stores, Dry Cleaning Establishments, Egg Stores, Feed Stores, Florists, Food Stores, Garages, Grocery Stores, Hair Dressing Shops, Ice Establishments, Jewelry Stores, Job Printing Shops, Lumber Yards, Meat Stores, Monument Establishments, Mortuary Service, Optician and Optical Goods, Photographers, Plumbing Supplies Stores, Poultry Stores, Restaurants, Seed Stores, Sewing Machine Stores, Shoe Repairing Shops, Soda Water Fountains, Stone Cutting (not construction), Surgical Appliance Stores, Surgical Instrument Stores, Undertaking Service.

<sup>29</sup> The complicity of the problem may be appreciated by a glance at a request by the New York Code Authority for a ruling regarding jurisdiction of the RCA in the following cases:

The question of jurisdiction involved the right to assess, the right to control labor practices, and the right to control trade practices. All of these issues were characterized by long wrangles. As early as September, 1933, the difficulties were foreshadowed by recommendations from retail and wholesale sections of NRA that a distribution section be established which would supervise all of the retail and wholesale codes which were at the time scattered through several divisions. The establishment of the distribution division which included a majority of the retail codes did not, however, solve the problem.

Clearly the more codes that were approved the more complicated would become the problem of jurisdiction. Accordingly both the Administrators and the members of the National Retail Code Authority opposed separatism.<sup>30</sup>

On February 16th, 1934, Dr. Dameron called a meeting attended by representatives of eight retail code authorities. It was planned to discuss measures designed to eliminate multiple assessments, to coordinate local retail code auth-

1. When alterations and workrooms were in establishments and departments selling merchandise to the consumer.

2. When custom establishments or departments produced merchandise to special order for sale directly to the consumer.

3. When establishments or departments produced merchandise for stock for sale directly to the consumer.

In connection with each of these cases the Code Authority wished to know whether the decision would differ in the case of separate departments, separate personnel, or when there was no physical separation between selling and manufacturing functions of the store. It was earnestly urged that such departments ought to come under the Retail Code. Hour provisions were more advantageous in the Retail Code.

<sup>30</sup> There were only about ten codes and three supplements which applied to the sale of retail products other than foods typically bought for personal consumption. But the inclusion of service codes and those under the AAA and articles sold under vertical codes brings the number to over forty.

orities,<sup>21</sup> and to integrate and simplify code administration. It was suggested that it might be possible to have a joint administration of retail codes in order to simplify code administration in towns of over 2500 inhabitants. But considerable jealousy was exhibited by individual representatives concerning the right to keep control over their particular branches of the trade. The representative of the jewelers, for example, suggested that it might be possible to use a joint staff, but that affairs relating to the jewelry business ought to be decided by a committee of jewelers only. There seemed to be little inclination on the part of the officials of the various code authorities to be willing to give up any of the autonomy of the individual groups which they represented. A resolution to establish a coordinating committee was placed before the meeting. There was a sharp conflict as to the basis of representation. It was held that the Code Authority of the General Retail Code ought to have a representative on the committee for each signatory national association. Other branches, notably the representative of the Grocery Code, objected that this would be an unfair method of representation and that the Authority for the General Code ought to have the same number of members as the other Code Authorities. It was further stipulated in the resolution which was finally adopted that none of the decisions of the National Retail Code Coordinating Committee were to be binding on any National Code Authority without its express endorsement.<sup>22</sup>

<sup>21</sup> Dr. Dameron estimated that approximately 28,000 persons were on the paid and unpaid personnel listings of various retail code authorities. They were doing the work which could be done more efficiently by 5,000 under a more adequate plan of operation. Some observer was quoted as having said that the average department store was governed by twenty-five codes and hardware stores by ten or twelve. (Manuscript by Dr. Kenneth Dameron.)

<sup>22</sup> Transcript of Hearing, February 16, 1934.

The chief achievement of the meeting was a succession of informal luncheons attended by the general managers of the various retail code authorities having headquarters in Washington. This was useful insofar as it worked towards mutual understanding, but it certainly fell far short of the hopes of anyone interested in seeing an efficient enforcement of codes in the retail trade, and an effective front of retailers in their dealings with manufacturers and wholesalers.

The problem of inter-trade jurisdictional conflicts continued and took its most aggravated form in the tussles over the right to assess for code authority administration. During the spring of 1934 some of the local code authorities took matters in their own hands and attempted to come to an understanding with other retail code authorities whereby it was agreed that stores would pay assessments only to the authority covering the major portion of the business of each store.<sup>88</sup> Discussion concerning jurisdiction of manu-

<sup>88</sup> The New York Code Authority informed its member stores to pay all assessments to the Retail Code Authority and to refer any further requests for contributions to the Retail Authority. They also entered into discussion with the Drug Code Authority in response to a communication from the latter group listing a number of department stores that had not paid assessments to the Drug Code. It was pointed out that the Retail Authority had not attempted to assess stores the major portion of whose business was subject to other codes. It was suggested that since a large number of stores had already paid assessments on employees in their drug departments to the Retail Code that it would be inequitable to request them to also pay assessments to the Drug Code Authority.

An agreement was arranged between the local Jewelry and General Retail Trade Authority in New York whereby it was decided that assessments in stores under the General Retail Code and under the Jewelry Code would be collected only by the Authority covering the major portion of the store's business. It was pointed out by the secretaries who negotiated the agreement that although the National Jewelry Code Authority had not agreed to the arrangement, the fact that the national assessment was collected by the local authority would probably avoid any difficulty which might otherwise arise.



facturing codes over sections of a retail store also continued in terms of local vortexes of excitement.<sup>84</sup>

In the spring of 1934 a temporary order was issued relieving retailers from paying assessments on any but the principal lines carried by a store. Relevant wage and hour provisions were to be selected according to the principal occupations of each employee, and trade practice provisions were to be separate for each division of the store.

On January 8th, 1935 the National Industrial Recovery Board approved an order whereby every firm engaged in the retail business would pay the assessments to one Code Authority only, but the amount paid would be based on all of the business done in the store. The acceptance of an assessment on a minor line obligated the major line code authority to give any assistance in the enforcement of the code provisions covering the minor lines which might be requested by the code authorities in those fields.<sup>85</sup> Although the January order probably represented an improvement over the earlier compromises, it was not a solution to the problem. Code administration was still much too expensive; moreover the multiplicity of regulations as well as regulators was bound to cause inconvenience and inefficiency.

Complication and inefficiency had also characterized the structure of the pre-Code machinery for cooperation. But

<sup>84</sup> The deputy administrator of the Dress Code Authority appeared before the New York Code Authority early in February in a plea for cooperation between retailers and manufacturers in enforcing the labeling provisions of the Dress Code. He said that it was his personal opinion that employees in departments making alterations on goods purchased for retail trade could operate under the Retail Code, but when dresses were manufactured in a retail establishment, the goods ought to be produced under the stipulations of the dress manufacturing codes. The question of custom-made clothing had not been thought through.

<sup>85</sup> A firm might, if it wished, elect to pay separate assessments to the authorities of all of the codes under which it sold goods. (NRA Release, No. 9544, January 8, 1935.)

there were two aspects which made inefficiency somewhat more serious under the NRA: the function of the trade association, merchants association and the like were not assigned by some external agency, they developed out of the potential field for useful effort and the efficiency of the management of each organization. But under the Code, functions were allocated; therefore if a job was not performed by the Authority having jurisdiction, it would not be done at all unless the authorization was withdrawn by NRA and re-assigned to a different group. In the second place, under voluntary cooperation, the competition between different groups resulted in the survival of the fittest associations. Under the Code there was little possibility of recognizing inefficiency that was less than abject neglect of duty.

At the same time that these inelasticities resisted correction from within the organization of NRA and code authorities, the possibilities of change from without were also limited. Any attempt to introduce order and direction into the confusion would have required, in the first place, an adequate plan, which no one seemed to have evolved. In the second place it would have necessitated breaking through the vested interests of code authorities and code authority staffs as well as reassuring groups of retailers who, insisting that their problems were "different", feared being outvoted when merged in a larger group.

## CHAPTER II

### COMPLIANCE

#### SECTION I. COMPLIANCE PROCEDURE

THEORETICALLY, compliance was to be achieved through self-government in industry and trade with a minimum of assistance or censorship from NRA. When once a code authority had been properly constituted with proper representation of labor and consumer, it was thought that complaints of all kinds could be handled by that authority "in the first instance". Only when cases were unadjusted would the responsibility shift to other shoulders—the Compliance Division of NRA in Washington, the National Compliance Board or the Federal Trade Commission, and ultimately the Department of Justice.

But only very few Code Authorities were constituted in a way which entitled them to the privilege of handling complaints in the first instance. For the most part the Compliance Director carried much of the burden of inducing and educating industry to live up to the terms of its codes—of securing "compliance through education and explanation."<sup>1</sup>

Although the code authorities might assist and advise him, the Compliance Director was exclusively responsible for compliance under the following conditions: before a local or national authority was set up; in local areas in which no local authority would be established; for codes in which no authorization to handle trade practice cases or labor cases had been granted. The Compliance Director had supervisory responsibility for trade practice cases or labor cases which were "handled on reference".

<sup>1</sup> NRA *Bulletin*, No. 7, p. 11.

As it became increasingly clear that achieving compliance with code provisions was a hard and elaborate undertaking, the organization of the Compliance Division changed. Though always a straight line organization paralleling that of the Divisional and Deputy Administrators, the connection between the two aspects of code administration was made, through re-organization, increasingly separate.<sup>2</sup>

In the winter of 1935 the Compliance Division had a national office in Washington, nine regional offices, and fifty-four state offices. The regional director supervised the executive and staff personnel for legal, publicity, and inspection work. But attached to the regional office was also a compliance council composed of a chairman and a representative of industry and of labor. This labor representative had an important trust, since no such individuals were attached to the state offices. The state offices were under the direction of a state director with his administrative assistants. A trade practice compliance officer and a labor compliance officer, together with the staff of adjusters, undertook the work of achieving code compliance.<sup>3</sup> There were resident field adjusters in some localities not convenient to a regional or state office.

The entire system of national enforcement was coordinated by records from each state office, which were required to be submitted to the National Compliance Director at bi-weekly intervals.<sup>4</sup> These reports contained numerical sum-

<sup>2</sup> See Brookings Institution, *op. cit.*, p. 74; also charts pages 49, 55 and 69, for organization plans prior to March, 1934, March, 1934 to September, 1934, and from September on.

<sup>3</sup> There were about three or four hundred adjusters and a total staff of about 1200 in these local compliance offices.

<sup>4</sup> Before June the reports were submitted each week, but because of the difference between listing of items before and after June 15, 1934, absence of sufficiently specific instruction and the unorganized condition of many of the offices the early reports can hardly be compared with the later ones for the purpose of compiling annual statistics.

maries of the number of cases handled under different codes, the nature of the findings in closed cases, the number of cases referred to (and reported from in the case of "reference" procedure) industrial adjustment agencies and the number of and disposition of cases reported as unadjusted. In addition to general instructions and frequent further advices, the work of the regional and state offices was subject to inspection by a flying squadron of investigators.<sup>8</sup>

#### *The Question of Representation*

The method of handling labor complaints in the Retail Code had a long and checkered career. The question was discussed extensively during the early organizational meetings of the Retail Code Authority. Suggested procedures ranged from setting up local bi-partisan committees to permitting trade associations to adjust complaints and report on achievements to local code authorities. Discussion was terminated for the time being at a conference between members of the Authority and representatives of the Administrator<sup>9</sup> on November 7, 1933 at which it was agreed that NRA would issue to the National Retail Trade Authority temporary authorization, for a period of ninety days, to handle labor complaints on reference from the Compliance Director. This arrangement gave to the Code Authority the opportunity which they desired to handle their own problems and to "wash their own dirty linen". The Authority accordingly set to work to see that they washed it clean.<sup>†</sup>

<sup>8</sup> There were nine special investigators, attached to the National Office and delegated to make thorough examinations of the detailed operation of the local offices.

<sup>9</sup> The Administrator was represented by Mr. Kirstein, Dr. Wolman, and General R. E. Wood, Chairman of the Labor Advisory Board.

<sup>†</sup> Shortly after the conclusion of the agreement a resolution was passed by the National Retail Code Authority and forwarded to the Local offices: "Resolved that the Local Retail Trade Councils be instructed in all cases

In the meantime it was necessary to develop a more permanent scheme. The *Manual for Adjustment of Complaints* issued by NRA in January, 1934, prescribed that "If the industry desires to adjust its own labor complaints, it must provide adequate adjustment machinery. The interests of the employees in the Industry must be protected by this machinery".

The earlier discussion centered on the appointment to code authorities of one or two individuals who would be in a position to represent the interests of the employee and the consumer. But such individuals required to be selected and approved. There seems to have been little intention of inviting an official of a retail union to represent the interests of labor; <sup>8</sup> eligible representatives were, accord-

to take up problems involving labor ahead of any others". Shortly thereafter it was determined to engage someone fitted for the handling of labor complaints to visit the large cities and aid in proper enforcement and handling of the labor provisions of the Code. Somewhat later periodic reports were requested by NRCA from the local offices concerning the progress of their compliance work.

<sup>8</sup> In the New York Authority when the group was first authorized to handle labor complaints the question came up as to what ought to be done about the handling of labor disputes. One such case was pending at the time. One member of the Authority was particularly averse to having labor disputes handled by the Regional Compliance Board which was said to be nothing more than a "court for bulldozing and coercing employers". It was suggested by another member that it might be possible to ask a certain well known labor leader to sit in at only those sessions at which labor disputes were handled. This was proposed in accordance with the fear of one of the members that if labor complaints were handled, it would inevitably mean that labor would be constituted part of the board. It was finally decided that the case at hand should be heard, and then, if it were thought necessary to have the labor leader sit in on another hearing, this could always still be done. Nothing more was heard of this suggestion.

However, the case was presented before the next meeting of the Authority. It illustrated some of the fundamental problems involved in the method of procedure. It concerned an application for an exception on the part of a regional merchants association in a specialty trade from

ing to the earlier tentative plans, to be drawn from the ranks of teachers, economists, engineers, or lawyers. This sort of labor representation received a hostile reception at the hands of the Labor Board.

On March 14th the temporary authorization to handle complaints on reference was extended for a period of sixty days. Around the same time, a series of Executive Orders demanded that proper representation of consumer and labor through a bipartisan board become a pre-requisite to the continued permission to adjust labor complaints. Accordingly negotiation veered to discussion of duties and constitution of such a board.<sup>9</sup> Another temporary authorization was granted on May 12th and plans were made and unmade in this new vein. The central idea involved the setting

the maximum hour provisions of the code. It was urged that a union contract had stipulated a wage rate far in excess of the wages required under the Code, or current in non-union stores, and that a limitation of hours to less than those called for by the union contract would mean an insupportable labor cost. Representatives of the union claimed that Code hours should be applied and that the union wage contract should be upheld. The union gave the appearance of being relatively small and unorthodox. One of the members of the Code Authority had a chain store in the same district. This store had not been unionized because, being one link in a large system, it was not worried by threat of being closed by pickets. If this member voted to refuse the application for exception he could be accused of ruining his competitors for his own personal advantage. On the other hand, if the Authority ruled against the union, they would be bound to be accused of being a prejudiced group and an unfair tribunal. Eventually they did so rule and were reversed in Washington. No more labor disputes cases were tried by the New York Code Authority.

<sup>9</sup> Some of the members of the Code Authority felt that interest of employees and consumers were properly protected by the non-partisan champions and Government representatives, since labor disputes were "traditionally non-existent in the retail trade" and because "organized labor is practically non-existent in the retail trade, as in some instances there is no line of demarcation between employer and employee". (Minutes of the National Retail Code Authority Inc. Meeting of April 6th, 1936.)

up of an Industrial Relations Committee or National Distributors' Review Board. There seemed to have been general agreement that the board should be bi-partisan and that it should supervise the local code authorities and the handling of labor complaints and labor disputes.<sup>10</sup> But the representative of the Labor Advisory Board differed from the National Retail Code Authority on several important points, including the appointment of a chairman and the Authority's disinclination to see the Board interpret the Code and grant exceptions.<sup>11</sup>

One more extension past the June 15th limit would, it was hoped serve to bring the plans to completion, but new obstacles loomed. The Chief of the Compliance Division objected that the plans, as finally formulated<sup>12</sup> would not

<sup>10</sup> The latest drafts (December 28th, 1934) left the adjustment of labor disputes to the National Labor Relations Board.

<sup>11</sup> The Code Authority suggested that the bipartisan board have a chairman appointed by the Administrator from a panel presented by the Code Authority and that its duties be confined largely to authorizing and supervising the work of the Local Code Authorities. Labor disputes, it was thought, ought to be settled by boards appointed from the employees and employers involved in the dispute in question, and an impartial chairman agreed upon by the special board or appointed by the national chairman appointed as mentioned above. Mr. Berrall suggested that a bipartisan board be appointed, composed of three members approved by the Labor Advisory Board and three members of the National Retail Code Authority. In case of non-agreement the Administration member of the Code Authority should take the chair. The duties of the National Board were to include the supervising the compliance work of local authorities, granting exceptions, making interpretations, and suggesting modifications for the labor provisions of the Code.

<sup>12</sup> After lengthy discussion on the part of the Deputy Administrator, the Labor Relations Board, the Labor Advisory Board and the National Retail Code Authority, an Administrative Order setting up a National Distributors Review Board was drafted on December 28, 1934. It called for a bi-partisan Board of four members and a chairman empowered to authorize local code authorities to handle labor complaints in the first instance, to exercise general supervision over compliance work, and cooperate with National Code Authority, Inc. The board was to have no juris-



insure adequate control over the small cities. The Compliance Division was prepared to issue, to such code authorities as had proved themselves worthy, authorization to handle labor complaints (not labor disputes) under the supervision of the Compliance Division. This was done on the basis of an informal agreement the termination of which was lost in the uncertainties of the Senate Investigation Committee and the demise of NIRA. In long last, then, the retail trade continued to handle labor complaints on reference during the entire life of the Code. The interest of consumer and labor were protected by the presence at National Code Authority meetings of individuals from various walks of life acting as representatives of NRA advisory boards and of the NRA Administrator. The local code authorities were for the most part without representation of labor or consumer.

#### *Complaints "on reference"*

The procedure of handling labor complaints on reference may be briefly described: Complaints were supposed to be filed with the office of the local compliance director. No complaints were to be filed with the code authorities.<sup>28</sup> A

diction over labor disputes which were to be left to the National Labor Relations Board. (History of the Code for the Retail Trade Submitted October 21, 1935 to Dr. L. C. Marshall, Chief of the Division of Review, NRA.)

<sup>28</sup> There seemed to be an inclination on the part of some of the local code authorities to handle complaints which were registered at the office without going through the formality of referring them to the State Director who would then re-route them to the code authority office. (Field Letter 188, December 12, p. 34.) On September 12, an NRA Field letter calls the attention of the state compliance directors to this practice on the part of several offices of the Retail and Retail Drug Codes. The case reports from local code authorities sent to the NRCA Inc., list for the first year 2428 labor complaints received from state compliance directors and 2733 from "other sources".

The New York Code Authority had an elaborate discussion on this

digest of the complaint was to be prepared by the office of the state director, omitting the name of the complainant. This digest was to be forwarded to the local retail code authority. Progress reports were to be submitted to the state director at stipulated intervals. When the complaint was adjusted, the director was to be so notified; if the complaint was not satisfactorily adjusted by the adjustment agency, the complaint was to be referred to the state director. Code authorities were later authorized to institute legal proceedings with the approval of the state director in cases involving local firms.<sup>14</sup>

If a labor case was handled by the office of the state director, rather than referred on reference to code authorities, the complaint was supposed to be adjusted in much the same way as previously described.

subject with the State Compliance Director and the National Authority. The labor complaints were handled by a paid staff and therefore names of complainants were not known to the members of the Code Authority. It was thought to be more expedient to handle such complaints directly without more than a final report to the State Director. The Deputy Administrator was in general sympathetic to simplification of compliance machinery, but a misunderstanding and unfortunate publicity on the part of the New York office caused brakes to be applied. The New York Code Authority was given permission to receive complaints providing the original and two copies of the digest of the complaint were sent to the office of the State Director and the usual progress reports submitted. It was also entitled to be given the name of the complainant providing this name should be known only to the office staff not to members of the Code Authority. The subsequent discussion will indicate the importance of knowing the name of the complainant in securing any kind of adequate adjustment.

<sup>14</sup> The average case involving small and local concerns not directly engaged in interstate commerce was to be brought in a state court where the litigation counsel for the region was expected to advise and assist either code authorities or state enforcement official. Short-cut procedure was permissible providing the state director's approval was obtained. In New York State, for example, the Code Authority was informed by the State Director that summons against the violator, brought under Chapter 781 of the Laws of New York for 1933, could be obtained

If a case was not adjusted either by the office of the state director or by the local or national trade adjustment agencies, the case was to be referred by the state director to the state adjustment board, to the National Compliance Director, or to state or national courts.<sup>18</sup>

### SECTION III. ENFORCEMENT OF LABOR CLAUSES

Probity, like most attributes, is not a black and white concept, but is possessed in varying degrees ranging in continuous sequences from complete absence of probity—improbability—to the equally theoretical concept of complete probity. An individual having a natural tendency of a certain intensity to abide by the law will, in actual practice, do so depending on the type and extent of the pressures which push towards law breaking, to which he is subjected. His natural resistance to law breaking may be largely a question of learned moral or ethical standards, reinforced in specific instances by fear of direct punishment or of inexpedient results. Similarly, the pressures tending towards law breaking vary in quality and extent. The general attitude may be conditioned by distaste of restrictions of any kind, and this is particularly important in the case of new laws since unaccustomed restriction is likely to smack of oppression. The general attitude is reenforced in particular instances by the inconvenience and cost attached to abiding by the law. In the case of the Retail Code this could range from slight additional cost to a financial burden that would mean business failure.

after April 30 at the Commercial Frauds Court. (Letter from Chief Field Branch to Regional and State Directors, January 30, 1935, also letter to all Code Authorities, December 20, 1934, and Field Letter 195.)

<sup>18</sup> The nature of the routing of unadjusted cases changed with the various changes in the organization of NRA.

*The Compliance Problem*

Since the NRA labor regulations constituted a new kind of law, they were not supported by strong moral feeling. There had probably developed in America a general antipathy to "sweating" labor, but the clauses other than those defining minimum wages were supported perhaps more by patriotic fervor than by popular ethics; accordingly only individuals possessed of natural probity to the extent that would make them obey practically any law just because it was a law followed the provisions of the Retail Code on the basis of moral feelings only.

However, expediency dictated compliance for a considerable number of retailers; this was particularly true of the large stores which were dependent on the good will of the consumer. Here discovery of non-compliance might mean disastrous publicity. This was true as long as such non-compliance was considered wrong in the eyes of the store's customers.<sup>18</sup> In such stores the problem of compliance concerned primarily control of hours of work, it was a problem in store management: how to devise a method whereby the entire net-work of delegated authority could be controlled.

In order to achieve compliance in all of the departments of a large store, technique was required: in the first place, it was found that the emphasis with which the management expressed its intention to comply with the provisions of the Code, the absence of winks, either actual or implied, in instructions given to personnel managers and departmental heads, was a matter of prime importance if the store were to have a clear record with the Code Authority. In the second place, a workable schedule had to be arranged whereby

<sup>18</sup> It is important to remember, however, that the inhibitions applied only to non-compliance, not to evasion of "the spirit of the law". This involved a question of interpretation and will be discussed later.

employees were given an adequate amount of time in which to check their clothes and report for work, whereby peak loads could be met and special events properly serviced without a too varied and intricate schedule of hours in any department.<sup>17</sup> In the third place, the technique of reporting hours of work had to be adequate and exact. This meant, for the most part, that time had to be kept by the employee or departmental manager at the point at which the employee reported for duty. The time reported had to be accurate actual time rather than scheduled time. In addition to the departmental reporting, there was typically either time-clock or doorman supervision, which was connected with the comptroller's office and used to check payrolls. But in a retail store the exact leaving time cannot be rigidly set. Therefore a method had to be devised whereby additional time worked on one day could be compensated for by time off on another day of the same week.<sup>18</sup> Whatever the control system, one fact was clear—there was a noticeable difference in the success with which different stores managed their new personnel problems if the criterion of judgment was the number of complaints registered against them.<sup>19</sup>

Chain stores substituted notices from the central office for the more personal contacts in the department store between

<sup>17</sup> Certain stores felt that it was impossible to keep adequate control of the weekly hours of work if some employees in a department worked on a five-day basis and others on a six-day basis.

<sup>18</sup> This check could be made either in the department in which the time records were originally kept or through the central office. One of the most effective systems was a weekly "more or less" form on which plus and minus time was recorded on a daily basis.

<sup>19</sup> Since complaints seemed often to have been unfounded and motivated by a general feeling of discontent, it might well be that the fact that a store had a large number of complaints registered against it meant a deficiency in general personnel relations rather than in the actual mechanics of controlling hours of work.

the store manager and departmental managers. The visits of the district supervisors could be made to impress managers with the attitude of the central management relative to compliance with the Code. The mechanics of recording time still had to be adequately handled in order to minimize violations. But the choice of methods was wide—systems of bells, employees signing in and out, managers recording time—the variety of techniques was endless, providing the will to enforce them was there. The difference in the adequacy with which the problem was solved in different chains, as in independent stores, is reflected in the fact that the number of complaints per store varied drastically.

For the smaller store in which the management was interested in complying with the Code there was no problem. The owner was in close enough contact with his employees to control the situation without difficulty. A simple weekly time sheet on which employees recorded the exact hour in which they came to work and left the store was all that was needed.

But in the smaller store there was, in the first place, far less of a financial penalty attached to disobedience to Code provisions. The customers of neighborhood stores are in greatest part people who live in vicinity and are familiar with the owner and the employees of the shop. Customers are attracted not so much by abstract qualities such as "good name", as by personal liking and convenience. No news value is attached to Code violation on the part of such a store in a large city. Therefore, even if a lawsuit were to follow refusal to comply, few of the store's customers might hear of it. If, as was typically the case, the violation was corrected if proved, the only penalty attached to the violation was the one imposed by the Authority—a financial one, which was seldom as great as the cost of original compliance.

In the second place, in the small store, the financial motive to violate the Code was probably greater because of the indivisibility of units which made it impossible exactly to adjust personnel to needs. Moreover, the less skillful management probably lacked much of the ingenuity which devised economical methods of meeting Code requirements in the larger stores and chains.

In the third place, there were probably several important psychological reasons for unwillingness on the part of many small store proprietors to abide by the Code: the typical resentment against someone "telling me how to run my business" was probably aggravated by the fact that "someone" was the "big" competitor, who, it seemed, both framed the Code and was sitting on many of the Code Authorities.<sup>20</sup> Also, many of the older generation shop-keepers were reared in their trade at a time when shops opened at seven or eight in the morning and closed at ten o'clock at night, and shop-keepers as well as helpers were in the store most of the time. Obviously, then, a forty-eight hour week was insane and degenerate in the light of "when I was a boy".

Given this background, the problem of obtaining compliance in the smaller store assumed rather large scale proportions. To this problem was added the job of enforcing compliance in the larger store that, for one reason or another, also refused to comply.

#### *Complaints*

To obtain compliance it was first necessary to discover the violations. Since NRA did not undertake routine inspection, the ferreting out of non-compliance took a passive form. The offices waited for complaints. These com-

<sup>20</sup> It may also be that resentment against any attempt to domineer is as great, if not greater, in the small store in which the proprietor earns not much more than he could earn at a salary, but has, as additional compensation, the feeling of mastery and independence.

plaints came from employees, ex-employees, "citizens",<sup>21</sup> and competitors; some were anonymous.<sup>22</sup> At the New York Code Authority the largest portion of the complaints came from employees either employed or discharged.<sup>23</sup> Judging from the experience at the New York office, very few complaints were said to come from competitors; it is, of course, impossible to say how many of the "citizens" were competitors and how many of the anonymous complaints came from that source.

Of the 4288 labor complaints adjusted by code authorities throughout the country during the first year of the Code, 2440 or fifty seven per cent were found, upon investigation, to have been justified. It is interesting to note that, judging from the experience of the Retail Code Authority-City of New York, investigation substantiated a considerably larger number of the complaints emanating from employees either current or discharged, than it did those registered by the competitor-citizen-anonymous groups.<sup>24</sup> The highest

<sup>21</sup> It seems likely that a large proportion of this group were competitors.

<sup>22</sup> The Director of Compliance was instructed to investigate anonymous complaints at his discretion.

<sup>23</sup> At the New York Code Authority there seemed to be a tendency for the proportion of the total number of complaints which came from discharged workers to increase slightly. In a sample of complaints registered in November and December of 1933, forty-four percent of them were from employees and sixteen percent from ex-employees, together totalling sixty percent of the cases. In a sample of complaints registered for the most part during April of 1934, thirty-six percent of the complaints came from employees and thirty-two percent from ex-employees, totalling sixty-eight percent of the cases.

<sup>24</sup> In part that may be due to the difficulty of substantiating a complaint without the cooperation of one or more of the employees in a store. But it would seem that this did not provide the entire explanation. It is my impression that an employee had considerably more resistance against complaining than did the others, who were often likely to make complaints emanating from a general feeling of dissatisfaction or from spite. An employee might lose his job through a bungled investigation. If already laid off, a complaint might injure his trade reputation, if it was badly investigated or if he permitted his name to be used.



proportion of substantiated complaints came from employees still at work in the store.<sup>25</sup> Doubtless fear of jeopardizing their jobs made employees loath to complain. No amount of tact in investigation could prevent the average employer from being consumed with the desire to know who complained about him. Frequently he would suspect his competitors more readily than his employees. I have no doubt that warranted or unwarranted suspicion about having registered an NRA complaint made it extremely difficult for many employees to obtain jobs.<sup>26</sup>

<sup>25</sup> For the first sample (complaints registered in November and December, 1933) fifty-five per cent of the complaints made by employees were found to be substantiated. In the second sample (complaints registered for the most part in April, 1934) the proportion substantiated had increased to seventy-eight percent. This increase was in part caused by the fact that the increase in hours under the Retail Code as compared to the PRA had led many employees to believe that the law was being violated when during November and December of 1933 the situation of which they complained did not constitute a violation of the Code. The additional hours which were worked during the Christmas "peak period" were thought to be a Code violation by some employees. (There seemed to be almost more resentment against this than against any other condition of employment. An employee, required to work at top speed for long hours, seeing her employer taking in large sums of money feels that she should be paid for her overtime.) In part the increased percentage of justified complaints was the result of improved technique of investigation. Complaints from ex-employees were found to be substantiated in forty-two percent of the cases in the first sample and forty-six percent of the later sample. The complaints registered anonymously or by citizens or competitors were found justified in forty-seven percent of the cases in the early sample and in twenty-one percent of the cases in the later sample.

<sup>26</sup> It was a Code violation to discharge an employee for registering a complaint, but obviously the reason for the discharge was almost impossible to prove, particularly if a short time was allowed to elapse before the action was taken by the employer.

A common, if not typical, employer attitude is illustrated by a letter which was received by a complainant who had received help at the office. He reported that the firm had a meeting and said that "if they could find out who turned them in, they would fire the man or men and blacklist them in the \_\_\_\_\_ business."

The majority of complaints (75% at the New York Office) concerned violations of the hour provisions of the Code.<sup>27</sup>

But reliance on complaints rather than on inspection ought theoretically to be based on the assumption that the absence of complaints indicates compliance. For the retail trade any such assumption would have involved serious error. It had been thought that employers, forced to increase their cost to conform to Code wage and hour provisions, would insist that competitors do likewise. In the retail trade, however, there seemed to be a general feeling about "minding one's own business", that made merchants hesitant about "snitching" on each other. There seemed to be more of a brotherhood between a conforming merchant and a non-conforming merchant than between the former and the employees of the latter. It had been said that this refusal of employers to "snitch" on each other was at the bottom of most Code Authority difficulties.<sup>28</sup>

In the entire country for a period of one year 5161 labor complaints had been received by 235 code authorities; seven, or three per cent of the code authorities received 2918 or fifty-six per cent of the labor complaints in the country. That means that in the other forty-one states the average number of cases handled by the code authorities throughout the first year of the Code was approximately fifty-five or about one case a week per state. Obviously this could represent only a small proportion of the violations of the Retail Code in the forty-one states. In addition to the complaints received by the retail code authorities, the state and di-

<sup>27</sup> At the New York Code Authority in the first three months period, fifty-six percent of the labor cases charged violations of the hour provisions of the Code, nineteen percent violation of wages and hours provisions and fifteen percent wage violations alone. The remaining ten percent involved unjust discharge, employee classification, etc.

<sup>28</sup> Mr. Hager, Minutes of NRCA meeting, December 27, 1934.

visional compliance offices handled in the neighborhood of 4500 complaints. Allowing for duplication in reporting, the number of complaints of violation of the labor provisions of the Code during the first year may be estimated as about 9300.<sup>29</sup> Although at first glance this may seem like a rather large number of violations, further consideration leads to the opposite conclusion. The geographic distribution of the complaints indicates that they were concentrated in large cities. Concerning relatively few of the 360,000 retail stores that were subject to the code was there any one sufficiently anxious to seek redress from grievances either to risk the danger of being discharged or brave the social stigma attached to the epithet of "snitcher".

#### *Adjusting Complaints*

In addition to the fact that many cases of non-compliance were not reported, there was the further difficulty of obtaining compliance in cases brought to the attention of the adjustment agencies.

<sup>29</sup> Previous to June 15 compliance directors reported, for the most part, total cases received including those sent to code authorities. After that date cases sent to code authorities were not docketed. For the last half of the year about 2200 cases were reported by compliance directors—these previously had either not been sent to code authorities for reference, or had been returned by code authorities as unadjusted. If we assume that the number handled by the Compliance Department in the first half of the year was about twenty percent more, since complaints tended to fall off and fewer code authorities had been set up, then the total handled by compliance directors was about 4640 for the calendar year. Adding to this figure the 5161 handled by code authorities, and subtracting the 515 recorded by code authorities as referred to state directors, we arrive at a total of approximately 9300 complaints. A further inaccuracy is involved in the fact that code authority summaries are for the year of November 1, 1933 to November 1, 1934. The Compliance Director reports complaints from December 26, 1933 to December 22, 1934. However, it seems unlikely that this would introduce a discrepancy of any considerable amount. The inaccuracy in reporting these data, particularly in the early part of 1934, makes any attempt to arrive at more than a general estimate foolish.

A complaint outlined either in general or specific terms, a set of facts which were thought to be in violation of the Code. It was, accordingly, the duty of the complaint adjuster to discover (1) whether the facts as stated constituted a code violation.<sup>80</sup> (2) whether the complaint was true, (3) whether the firm was complying in other respects, (4) to see that restitution was made for violations in the past, and (5) that the firm complied in the future. The concrete forms which this four-cornered problem assumed may be illustrated by and from the work of the New York office which handled twenty-nine per cent of the labor cases reported by code authorities throughout the country during the first year of the Code.<sup>81</sup>

If a proprietor violated the Code because he did not know the law, there was little difficulty in proving whether the violation existed, since the proprietor, not knowing that he was confessing a misdemeanor, unconsciously would admit it. At first, emphasis was placed on informing retailers of Code provisions; there was less inclination invariably to require restitution than to emphasize education and voluntary cooperation. But after the first month or so the situation changed. It was then fairly safe to assume that retailers knew when they were violating the Code. This meant that they would frequently be unwilling to admit to conduct in violation of the Code, and this was particularly true when they realized that they would be required to pay back wages.

The first step in the compliance technique advocated in *Bulletin No. 7*, proved impractical because it was not wise to tell an unknown respondent the nature of the complaint reg-

<sup>80</sup> E. g., if a complainant said that employees were required to work forty-eight hours, it was necessary to know the schedule upon which the store operated before determining whether there had been an infringement of the Code.

<sup>81</sup> From complaint reports submitted by local code authorities to NRCA for November 1, 1933 to October 31, 1934.

istered against him, since, if he happened to be a small retailer, the complaint would frequently identify the complainant.<sup>32</sup> Only the most general descriptions of the complaint could therefore be forwarded in the first letter to the respondent.<sup>33</sup> Since it was not wise to state the specific complaint, it was also not possible to follow the second step in the *Bulletin No. 7* procedure: obtain, by mail, an admission of the violation and restitution for past conduct.<sup>34</sup>

When it seemed that the practice complained of, if true, probably constituted a violation of the Code, the respondent was asked to phone the office for an appointment. Frequently several follow-up letters were required before he finally appeared. In the meantime, it was frequently found

<sup>32</sup> *Bulletin No. 7* outlined the following procedure: Upon the receipt of the complaint the code authority was to inform the respondent of the nature of the complaint, the clause of the Code which he had been accused of violating, and to enclose a copy of the Code. If the respondent admitted the violation and made "equitable restitution for past violations", the case could be considered adjusted. If the respondent denied the violation, he was to be invited to appear at the office, or a field adjuster was to be sent to make an investigation on the premises.

<sup>33</sup> In cases where there seemed to be considerable doubt as to whether the practice complained of was actually a violation of the Code, it was found useful to enclose a simple questionnaire that would provide information concerning the schedule under which the store operated, the number of employees, and their job distribution. At other times a special letter could be written asking questions designed to reveal information pertinent to the specific complaints in question.

<sup>34</sup> It is most interesting to find a suggestion of this kind in the official instructions. It emphasizes the extent to which the administration actually misconceived the process of obtaining compliance to codes as a problem in education of a group of willing cooperators. Obviously the only firms that would promptly admit a violation and forward a check for wages due would be a limited number of those firms that intended to comply with code provisions but had made an unintentional slip in compliance. Even among such firms there might well be a considerable difference in the mind of the management between correcting a mistake—this they were typically willing to do—and making restitution, which was frequently thought to be prejudicial to store discipline.

useful to write to the complainant for further information, or, when a serious violation seemed to be involved, to urge an interview with the complainant. The more specific the description of conditions in the store which could be obtained before the interview with the proprietor, the easier it was to obtain a true account from the respondent. At times it was useful to discover in advance whether the complainant was willing to appear at a conference arranged at the office between the proprietor, the complainant and a member of the Authority staff.<sup>85</sup>

It is to be noted that direct evidence could not generally be obtained either before or after the interview. The only way definitely to establish actual conditions of work would have been to watch the store for several days (ideally a week) to find out when the employees went to work and when they went home. A vigil of this kind would typically have to be kept before the respondent had been notified of the complaint, since he would have been likely to reform his work schedules upon notification from the office, at least pending the interview with the code authority. Obviously it would not be possible to assemble a staff large enough for this type of approach. It was useful largely where a complaint which had been difficult to verify had already been registered against one store in a chain, and a second complaint came in concerning a second store in the same chain. This store could then be watched. It was also useful for check investigating when a definite work schedule for employees was on file at the office.

At the interview with the respondent it was typically necessary to find out the hour at which the store opened and

<sup>85</sup> In most cases, even if an employee were willing to have his name used, it was thought unwise to do so, since it seemed likely to involve the employee in difficulty when trying to obtain another job. But when an employee wanted back pay which was due him, there was frequently no alternative to using the name or having a three-cornered meeting.

the hour at which it closed on different days of the week, the salaries of employees and the hours of entering the store, the time out for lunch and the hour of going home each day of the week for each of the employees of the store. In a larger store it was sufficient to obtain these data for each group of employees. It was also essential to review the method of recording the time worked and wages received by each employee. By asking for each of these items in detail it was frequently possible to discover Code violations where the answer to a question such as "How many hours a week do your employees work?" would have disclosed no violation. It was also possible to ask questions involving the original complaint without casting suspicion on the complainant.

In the course of this interview it would sometimes be useful to resort to simple tricks to obtain honest information, such as unexpectedly verifying statements by the use of the telephone and catching the respondent in contradictory statements on cross examination. Another device which was found useful was the notary seal. The seal seemed to carry an official pomp that made a lie accompanied by a notary stamp the sort of things that Saint Peter might be critical about.<sup>26</sup> The suggestion that an apparently inaccurate statement be typed and notarized frequently brought a series of "well, buts" and "perhaps I had better ask my manager to make sure", etc.

At the close of an interview of this kind, one of several situations would have developed; it was necessary for the adjuster to arrive at a judgment concerning subsequent procedure:<sup>27</sup>

<sup>26</sup> In New York State a notarized falsehood does not constitute perjury as it does in some states.

<sup>27</sup> The procedure here outlined, since it is based on the work of the New York Code Authority might perhaps be more complicated than that

1. The respondent might have admitted violations of the Code and agreed to make restitution which would compensate for the violations. The adjuster would then have to determine how the restitution had best be made in order to assure future compliance and the receipt of the money by the employees entitled to it. Typically the respondent would be required to give the money to the employees either in the presence of or through the agency of a member of the Code Authority staff. Prevention of the all too frequent return of the money by the employee to the employer created a serious problem. It was typically not difficult for the employer to indicate to the employee that he was subjecting his employer to a genuine hardship which the latter could not help but resent.<sup>88</sup> To the employee, the job was more important than the unexpected extra pay.<sup>89</sup> When

used by many of the smaller offices, but essentially the situations which developed and the range of choice of action could not have differed much in different offices except in certain technical details.

<sup>88</sup> In the words of the manager of a store in a small chain—a German round and jolly, who had been working seven days a week (about 84 hours a week) and had received a check for back pay from the company: “When you know how to speak a language well, if you can’t say things one way you can say them some other way. It is like if I talk to my boy to get him to do things. They said business was very bad and it was a shame they had to pay those fines because they would have to close the stores. I am going over to the office now and give them back the money. I don’t really care for it. I didn’t expect it and I don’t care. All I care is that they should keep the hours now”.

<sup>89</sup> Repeated cases of returned restitution caused a change in tactics. It was determined that requiring of the respondent a signed document such as the following might have occasional salutary effects.

“The adjustment of the complaint which has been registered against \_\_\_\_\_, arranged by this office, involves the payment of the following sum to specific employees: (here list names of employees)

“If any of the above mentioned employees returned to \_\_\_\_\_ Company, all or part of the monies which they have been paid in pursuance of the agreement reached at this office, either of their own free



restitution was paid to a discharged employee, this particular difficulty was avoided.

2. If violation was admitted, or, without admission, evidence seemed clear, and the respondent was nevertheless unwilling to make the required restitution, the case was typically heard by the Code Authority; if the respondent was still unwilling to make suitable restitution, the case could be forwarded to the office of the State Compliance Director or to the National Code Authority; by the Spring of 1934 another alternative was available—a complaint could be sworn to and the case brought before the appropriate state court.

3. The discussion with the respondent might have failed to indicate that there had been any violation of the Code and the adjuster might have decided that probably an unjust complaint had been made. Typically a signed statement in corroboration of the verbal statements concerning present and future compliance would be required. The adjuster, interested in obtaining continued cooperation, might also have a friendly discussion about helpful techniques of control.

4. The respondent might have refused to admit conduct in violation of the Code at the same time that the adjuster felt that there may well have been Code violations. In that case, if it was not possible to obtain additional evidence or information it was necessary to consider the case tempor-

will or because of statements made to them by their employers, the adjustment will be considered void and the case re-opened.

"Needless to say any cases re-opened for reasons of returned restitution will be handled by this office with the utmost severity. The National Industrial Recovery Act provides for a penalty of \$500 for each day's violation of a code of fair competition. Administrative Order No. X13 provides that cases can be forwarded by the local Compliance Director to the local district attorney for prosecution upon the recommendation of the Retail Code Authority. \_\_\_\_\_."

arily closed, at the same time that the respondent was requested to state the schedule according to which he expected to operate in the future and sign a notarized statement of future compliance in terms of his specific store, which would be kept on record at the office. The respondent would be informed that investigators would drop in to check his store. The approach, in other words, would be directed towards an attempt to prevent future non-compliance.

In this connection it was found that a strict posting of individual schedules and the keeping of accurate time records seemed to assist in reforming the half-hearted criminal. The best control system for the small store was the simplest one—a posted weekly sheet providing blanks on which each employee could report time in and time out for each day of the week. True, the employee could be required to make up a schedule that would conform to the Code, while he or she was required to work overtime, but as long as the time was reported to the nearest five minutes by each employee in his own handwriting, it made the illegality slightly more explicit for both employer and employee. This additional discomfort attached to misconduct, together with the improved mechanics for salutary conduct, might well swing the scales in the border-line cases. In chain stores, where the technique of control really presented problems, it was necessary, in addition to providing control mechanics in each store, to get store managers to feel that Code compliance was considered an important part of their job by the central management.<sup>40</sup>

<sup>40</sup> In several cases the office prepared a letter for a chain owner to send to all of his managers, e. g.: "Information has been brought to our attention which raises the question of strict compliance on the part of \_\_\_\_\_ stores to the hour provisions of the Retail Code. In case there has been any misunderstanding on the part of managers of individual stores of the position of the Central Management in regard to Code Compliance, we wish to re-state our feeling in the matter :

In many cases, particularly in those in which it was feasible to contact or talk with the complainant, it was possible to obtain additional evidence. Further investigation typically started with a flat contradiction between the statement of the complainant and that of the respondent. It was the job of the complaint adjuster to find out the truth and to get the respondent to admit it in the face of his knowledge that it would cost him money to do so, or at least to make restitution with or without explicit admissions. To accomplish this, no statements under oath could be required nor could witness be subpoenaed. The adjuster was largely dependent on his own ingenuity aided by a collection of all too blunt tools, such as cross-questioning, verification of statements through telephone calls, examination of accounts, a certain amount of badgering, obtaining additional testimony, investigations, etc. In part decisions had to be judgments about people; it was sometimes necessary to play

"We expect to have all employees of the \_\_\_\_\_ stores limited to 48 hours of work per week, and 10 hours per day (with the exception of one day in each week on which they are permitted to work 11 hours). *The manager in each store is our personal representative charged with the responsibility of seeing that this intention is carried out.*

"If it has been found that any of the schedules do not fit the needs of the stores in which they are posted we will discuss the question of a change in that schedule; however, when once posted we expect the hours as stated to be lived up to *exactly*. In the event that any employee is required to work longer than his scheduled hours on any one day, through an unforeseen emergency, he should be given compensating time off some other day that week.

"We wish to re-state the fact that individual store managers are our personal representatives in the stores in which they have jurisdiction. Any violations of the Code on their part involves us in liabilities for back payments of wages and unfavorable publicity. *We do not wish it to occur.*"

Obviously the letter could be supplemented by a meeting of store managers addressed by the owner in words the burden of which was a large-sized wink. Nevertheless, here, too, the misconduct was made more explicit.

a hand and watch reactions. The means had to differ with the opportunities available.

The central difficulty in all this lay in the fact that a genuinely adequate complaint adjuster should have combined the talents of Sherlock Holmes, King Solomon, a Philadelphia lawyer and an Irish cop. The inadequacy of the ordinary human for the job may be indicated by a few examples which illustrate the use to which the few tools available could be put. It is important to note that in the cases described the office had the cooperation of the complainant; also that the investigations consumed more time than could be accorded to many cases registered at the office.

It was sometimes possible to verify statements made at an interview. Mr. Brown<sup>41</sup> was accused by two brothers, Jim and Bill, of having employed them for two months at a joint salary of between \$20 and \$22 a week. Jim claimed that he worked from eight in the morning till seven o'clock at night and on Saturday night until eleven. Bill, who went to school, said that he worked from 1:30 P. M. to 9:00 P. M. on weekdays, and from 8:00 A. M. to 11:00 P. M. on Saturday. Mr. Brown claimed that Jim worked from 8:15 A. M. to 5:00 P. M. and Bill from 2.30 to 8:00, that they had purchased a vacuum cleaner on which only partial payments had been made and that Mr. Brown's brother who was a dentist had done over \$50 worth of work for the boys by putting in eight silver fillings, for which he had been paid by Mr. Brown. (Jim claimed they weren't even polished.) The dentist was telephoned in the presence of Mr. Brown, and it was found that he had received no payment for the work done, which he valued at about \$20. The telephone proved to be useful both in obtaining information and in confusing someone who was trying to concoct a story. In this case the presence of the

<sup>41</sup> All names used in the following discussion are fictitious.

two brothers, their mother and Mr. Brown made possible cross-examination that indicated quite clearly the approximate time worked by the boys and the amount of back wages to which they were entitled.

The verification of information through the examination of ledgers was particularly useful when the examination could be made before the respondent was able to inform his bookkeeper or to prepare a statement. Mr. Fuller, who ran a local chain of about five stores, had been accused by Mr. Brandon, who was an experienced salesman, of having employed him as a manager of one of the chains at a salary of \$30 a week. During December Brandon was required to sign a check for \$35 which was cashed by Mr. Fuller, but Brandon was paid only \$30. In response to questioning, Mr. Fuller disclosed that he kept a monthly sheet on which salaries in each store were recorded. He denied keeping books until he happened to mention the name of his accountant, who was telephoned and described the bookkeeping system used. The appearance of this sheet was described in detail. After further discussion, it was suggested that an investigator go immediately with Mr. Fuller to his store where he would be shown the desired information. The investigator was shown a small notebook; he asked for other material and in the course of the search for papers, caught sight of a sheet answering the description previously given at the interview. An examination of this paper disclosed various irregularities. In this case, the respondent refused to make the required restitution and the case was referred to the Compliance Director.

An investigation could be advantageously arranged when the complainant was able to give information concerning the timing of store events. Mr. Herman was the manager of a store which was owned by Mr. Rand, who was a wholesaler and had taken over the store for non-payment of bills

from Herman who had owned it. Several complaints had been received stating that wages of \$12 a week were being paid. Questioning of Mr. Herman and Mr. Rand and an examination of the books as well as the cancelled vouchers for payrolls had failed to substantiate the complaint and it had been filed as unjustified. The second complaint occurred when Miss Jennings was discharged. It was determined that the only way to verify the fact that the girls were receiving \$12, since they were unwilling to provide any information for fear of losing their jobs, was by being present at a time when they were paid. Miss Jennings said that one of the salesgirls, Miss Hart, would probably receive her pay envelope at one o'clock when she was due to appear at the store for the late shift. The girl was described and the probable way in which she would be paid indicated. The presence of a member of the staff in the store at the appointed time in the guise of a customer enabled her to request the girl for her pay envelope at the moment that she received it. It was found that this envelope contained the sum of \$12 as mentioned by the complainant. It was interesting to note, however, that the books of the company, which were large and elaborate double-entry ledger accounts, showed a weekly salary bill totalling the amount of the correct rather than the actual salaries. It would seem that the violation had perhaps been disguised through the use of the cash drawer and a bogus account from the wholesale firm. There was the further possibility that the manager of the store was accustomed to appropriating the difference with or without the knowledge of Mr. Rand.

But in cases where the employer was willing and able to stick to his story with all the tools at his command, not even a convincing body of evidence could always require the enforcement of the law. This situation can be illustrated by a

depressing story, one which might well have had a tragic ending for the employees concerned.

A complaint against one of the stores of a very successful local chain had been reported and investigated, and, although it had appeared that all was not as represented, no actual evidence could be obtained. A second complaint against a different store was made shortly after. It was possible to arrange a meeting with the complainant, who was employed at the store and appeared to be a very intelligent young man. He explained the schedule on which the other salesman worked, and described their general appearance.

An investigator spent three days checking on this schedule and found the hours to be substantially as described. The salesmen were apparently working between 60 and 70 hours a week.

The complainant and all of the other boys came to the office and made out schedules of the time that they typically came to work and went home. They were told that they would be requested to notarize the statement, and that it would be far wiser to understate than to overstate their hours of work.

An interview with the management of the firm was then arranged, which had interesting consequences. The store owners claimed that their manager informed them that everyone was working Code hours and that it was not reasonable to ask him to pay overtime when he had no way of telling that any had been worked. He was told of the investigator's report, but did not consider that convincing evidence. He suggested that the statement of the boys that worked there would be quite convincing. Since the affidavits had been obtained under a promise of secrecy, it was not possible to display them at that time, although the dramatic effect might have been highly satisfactory. Instead, it was suggested that if the management would supply the Code

office with the names of his employees, we would attempt to obtain a considered statement from them. It was pointed out that such a statement would have to be made under conditions which would relieve the employees from fear of losing their jobs.

The district supervisor for the firm was sent to the store that evening with schedules arranged in strict accordance with the Code. The boys were told to sign them. They did. Disturbed by this attempted "coup" on the part of the management, the other employees of the store decided that they were willing to have their original affidavits shown providing the Code Authority was willing to take the case to court if no satisfactory adjustment could be made.

The management was called in and told that the affidavits of all of the employees, which had been obtained by the Code Authority when the men were not being threatened with discharge, together with the investigator's report, constituted what was considered convincing evidence that the hour provisions of the Code had been exceeded, and that the case could be filed as adjusted upon the payment of wages due and the management's undertaking to provide adequate assurance that the men would not be "ridden" or discharged or laid off. The management refused to concede to these stipulations. The alternative of a court trial was explained. There was no need to explain it. The management was entirely aware of the procedure, including the court at which the case would be tried. It was impossible to suppress a flickering thought that the owners were all too aware of these details.

A hearing of the case before the Code Authority did not change their position: There had been no violation; they were willing to go to court. \*

The date for the trial was set. After a hurried hearing the decision was rendered in favor of the company.



The loss of this case was significant because the evidence was about as complete as it was possible for it to be. Moreover, as the material developed, it became increasingly clear that the firm felt that their employee discipline and morale were at stake. The importance of preserving control over employees was emphasized by the existence of considerable union agitation. Besides, the familiar plaint, "they try to tell me how to run my business", started to ring through the last meetings. There were issues in this fight which made victory worth any effort or cost.

#### *Summary*

We may conclude that there were marked deficiencies in the enforcement of the Retail Code. There were several reasons for the significant difficulties:

In the first place, the NRA compliance work was based essentially on the thought that the large majority of employers would conform to Code provisions. Although this assumption seemed more or less true of the larger stores in the larger cities in which popular feeling was generally sympathetic to the New Deal, it was not true in the smaller store and in certain localities.

In the second place the method of administering the Code did not serve to improve and to reinforce compliance because, (1) many cases of non-compliance were known to have escaped the attention of the authorities; (2) many cases of non-compliance, when reported and investigated, were not effectively punished because it was impossible to establish proof of guilt in the face of the fear of employees to testify, the willingness of employers to lie, the inability to dispatch investigators with enough time to make conclusive investigations, and the absence of reliable records. Moreover, when guilt had been established and the employer refused to comply, court action was slow and uncertain.

(3) When a complaint had been established as justified and the basis for the adjustment of the case had been outlined, restitution seldom involved a penalty more serious than initial compliance. No value as an example or as a deterrent rested in the punishment for a proved violation. There was no reason not to take a chance at "getting away with it".

In the third place, the failure of voluntary compliance was not recognized, and accordingly no substitute theory and practice were introduced. Such machinery, in order to have been effective, would have required that the investigation of complaints be supplemented by routine inspections. In order to make these inspections effective it would have been necessary to require a posted schedule giving the time at which each employee was supposed to be in the store on each day of the week; it also would have been necessary to require adequate payroll records. When a violator had been apprehended, the punishment would have had to be routine, clear, and swift; routine, in that the rights of the employee must be clearly defined and the discretion of the enforcement officer minimized; clear, in that ambiguity of any kind must be minimized both in the cases of doubtful interpretations by the enforcement officer and by the courts; swift, in that delay mitigates against the employee and in favor of the employer.

Obviously there may be good and sufficient reasons why enforcement at the price of this kind of machinery would have been undesirable or impossible in the face of the legal situation. There might also have been adequate reasons for not worrying about compliance in the small store. These problems will be discussed later. For the present it is sufficient to note that, given the objectives, the means were limited and expensive.

## SECTION III. TRADE PRACTICE

The adjustment of trade practice complaints was thought of as a retail family affair. Accordingly, the chief responsibility for their adjustment lay with the National Retail Code Authority rather than with the National and State Compliance directors. Local offices received and tried to adjust the complaints registered with them. If they were unable to do so, they were forwarded to the national office with the official opinion of the local retail code authority and with a summary of the evidence on which the opinion was based.

The complaint system of bringing violations of trade practice clauses to the attention of the code authority seemed far more adequate than when the same system was applied to labor violations. Better Business Bureaus had for years received complaints referring to trade practice. An infringement of accepted trade practice procedure harmed either a competitor or a customer. Both of these groups were typically in a position in which they could afford to report the infringement; particularly was this true since the complaint could be registered anonymously. Accordingly the source of a large majority of trade practice complaints was competitor's statements; trade and civic organizations accounted for most of the remainder.<sup>48</sup>

The subjects of the complaints ranged through the entire list of practices banned by the Better Business Bureaus. The presence of the word "inaccurate" in the section of the Code delimiting proper selling and advertising methods made it possible to advance the growing edge of definition

<sup>48</sup> During the first quarter of the Code year, about seventy-seven percent of the trade practice complaints received by the New York office had been registered by competitors, twenty-one percent by trade and civic organizations. (Quarterly Report submitted by Grover Whalen to Code Authority.)

of a fair advertisement a little further along the line that it had been travelling since the beginning of the century. But essentially the material dealt with was the same. A usual type of complaint concerned misrepresentation of merchandise through inaccurate or misleading claims concerning value, quality, price, makes, or attributes. Claims of the inaccurate advertising of special sales and auctions, the addition of new merchandise to closing-out sales, etc., the advertising of merchandise as bait which was not readily purchasable—all these things appeared under the Code as they had without it. But perhaps the most common kind of complaint involved the type of trade inducement which gave the impression of a price concession or of getting something for nothing. Included in this group were complaints concerning the advertising of premiums, "free gifts", "one cent sales", "two for one sales", "dollar sales", lotteries and the like. These practices, like loss leaders, were related to price, to bargain psychology, they tended to break down price structure through what was considered misleading statement.

The problem of achieving compliance in trade practice cases was less difficult than in labor cases for two reasons. In the first place the facts could be established without over-elaborate procedure cases. In the second place, the cost to the respondent of correcting the violation was for the most part less than it was likely to be in labor cases.

The facts of the case could usually be ascertained by one or all of the following methods. An investigator could be sent to purchase the merchandise, which could be examined at leisure and its qualities determined. An investigator could be sent to test selling methods in cases involving misleading selling methods of bait advertising. In such cases the investigator would impersonate a prospective customer, ask for the advertised article and report her conversation

with the salesman, his general attitude, the apparent quantity of the article in stock, and other information pertinent to the particular case in question. Obviously a trained and experienced girl could do a much better job on this kind of a report than an inexperienced one, but the difficulties were not great enough to cause any serious personnel problems. Better Business Bureaus had been making precisely the same kinds of investigations for years.

The chief difficulty in determining and establishing facts occurred when it was necessary to prove the inaccuracy of a statement, particularly a general statement. Therein lay the importance of the insertion of the word "inaccurate" in the clause of the Code referring to general under-selling claims. One such case was heard during several special sessions of the New York Code Authority, in the course of which the evidence and testimony were recorded in a report of over 400 pages. The case was finally referred to the National Retail Code Authority where the results were again more or less indeterminate.

After facts were determined, the questions of whether a violation of the Code had been committed involved, in a large number of cases, a decision as to whether a certain specific set of circumstances had fallen to the right or to the left of a largely theoretically defined line between fair and unfair methods of competition: A ten thousand dollar stock of handbags advertised at "\$2.95, formerly up to \$10" ought to contain what proportion of the stock formerly sold at \$10, and what proportion reduced from \$5, in order to justify the epithet "accurate" advertising? Might a closing-out sale contain merchandise transferred from another store, might it contain goods purchased for the occasion if so marked, how prominently need it be marked? If a salesman shows a radio set that was advertised, and

does not try to sell it but does not try to switch the customer, is the merchandise being "freely offered for sale"?

Thus, no matter how clear the Code interpretation from the national office, there was always a residual judgment which had to be made "at the scene of the crime" concerning the application of a general law to a specific set of facts. For trade practice cases this residue was of necessity large because the contributions made by the Code to trade ethics were at the growing edge of an already existent movement. Though it might well have required no fine interpretation to decide that a bait advertisement was forbidden by the Code if the article advertised was not available in the store, the question of degrees of availability was more subtle and involved a considerable element of judgment. But local code authorities were only authorized to make this decision when the judgment involved was one concerning which no "reasonable men, equally well informed, might differ". As will be indicated presently, it was practically impossible to confine judgments to matters of this kind and to continue to function as a compliance agency.

Having once determined whether a specific set of circumstances were or were not "fair", it was obviously necessary to take the third step in the compliance procedure—that of inducing the respondent to correct the violation.

The adjustment of the complaint could, in cases where the error was due to an unintentional slip, often be accomplished by a telephone call. Printed corrections, developed by Better Business Bureaus in their compliance work, were sometimes used to prevent "slips" from becoming chronic. This procedure was recommended by the National Retail Code Authority.<sup>43</sup> In other cases the respondent was called

<sup>43</sup> A letter from the NRCA on April 12 recommended and outlined the "correction system". A correction box headed, "A Correction" (in not less than 20 point type) occupying three inches of display space and

to the office, interviewed by the secretary or the staff member responsible for trade practice work, and cajoled, badgered, or debated into the recognition of his past mistakes. Frequently the trade practice adjuster was consulted on the wording of advertisement before, as well as after, circulars had been prepared.<sup>44</sup> In a number of code authorities, trade practice cases which were not immediately adjusted by the secretary were heard by the code authority or by a committee of merchants. In some of the larger offices, such as the New York City office, only the cases which could not be adjusted by the staff were heard by the members of the Authority.

#### SECTION IV. LOSS LIMITATION

The enforcement of the loss limitation provision was a new and difficult task. The problems of enforcing the provision can be illustrated by the experience of the New York Code Authority, since loss leaders were probably as prevalent in New York City as anywhere in the country.<sup>45</sup>

surrounded by a black border was to contain the following statements:

1. Name of article and date of advertisement.
2. True facts concerning it.
3. Unconditional offer to refund the purchase price on the return of merchandise in good order.

The correction was to be published in 8 point type without excuses or extenuating circumstances.

<sup>44</sup> Occasionally, where advertisements had already been distributed containing a statement of doubtful probity, the store was permitted to set its house in order as of a certain date in the future.

<sup>45</sup> The clause would certainly have been easier to enforce had it been left as originally written—without the phrase permitting the reduction of price below cost to meet the price of a competitor for merchandise which was identical or essentially the same. On the other hand, the Code requirement that such reduction would be considered a violation of the Code unless the nearest Code Authority was immediately notified, did all that could be done to facilitate enforcement of the clause which, as finally written, was far fairer to the small store.

From the effective date of the Code, the Authority received daily reports from, for the most part, the large stores that featured price appeal; these reports listed articles which were reduced below cost to meet a competitor's price. It became immediately apparent that it would be an almost impossible task to correct the entire list at once; the difficulty lay in discovering the first price cutter, whose prices were presumably being met by the other stores. The situation changed in the time required for an investigation, so that the original sinner was about as hard to locate as a member of the Tweed Ring.

At a meeting of the Code Authority in December 1933 it was decided that a limited list of twelve articles which appeared frequently as loss leaders should be selected by the Code Authority, and a special test investigation made for the purpose of developing compliance techniques.<sup>46</sup> Twenty-two of the largest stores in New York and Brooklyn cooperated in the study. The list of articles, together with

<sup>46</sup> As of January 15, these 12 articles were selling at the following prices in the three stores competing most intensively:

Article	Test Study Cost	Store No. 1	Store No. 2	Store No. 3
Pyrex Bottle 4 oz. ....	\$.08	.09	out	.09
" " 8 oz. ....	.14	.14	.19	.21
Toast Master 1 slice ....	6.76	6.76	6.76	6.76
" " 2 slice ....	9.41	9.41	9.41	9.41
Dr. Denton size No. 1 ....	.55	.57	.59	.59
" " 2 ....	.67	.69	.73	out
Birdseye Diapers 27 x 27 ....	1.16 doz.	.93	1.07	.93
" " 20 x 40 ....	1.30 doz.	1.19	1.37	1.19
"Anthony Adverse" book ....	1.76	1.77	1.77	1.77
"Two Black Sheep" book ....	1.41	1.47	1.47	out
"Behind the Doctor" book ....	2.20	3.18	out	3.49
Wright & Ditson tennis balls ....	.25	.29	.25	.25
Katnip Balls large ....	.52	.52	.52	.60
" " small ....	.26	.26	.26	.30
Bon Ami Powder kitchen can ....	.10	.10	.10	.10
Mason Jar per doz., ½ pt. ....	.54	.54	.54	.63
" " " " 1 pt. ....	.61	.84	out	out
" " " " 1 qt. ....	.70	.89	.89	.89
" " " " 2 qt. ....	.95	1.24	1.24	1.24
Flit pint ....	.34	.34	.34	.34



the lowest cost (determined through examination of costs submitted to the Code Authority by the cooperating stores) was sent to each store with the further statement that:

These articles are to be marked above or at your cost, beginning Wednesday morning, January 3, 1934. We are requesting that if your selling price for any of these 12 articles is set below your cost to meet competition that you report this fact by telephone to us promptly. (Cost is defined in the Comment on the Retail Code contained in Retail Bulletin Number I, as "the actual net delivered cost, less discounts, or current replacement cost, whichever is lowest.")

*Should you contemplate setting a price below the cost price given on the attached list, you should telephone this Authority before doing so, and permit us to have as much as 48 hours to try to correct the competitive price situation revealed.<sup>47</sup>*

This study disclosed the following facts: 1. Mail was too slow to accomplish results in stabilizing prices; therefore reductions below Cost to meet competitors' prices should be reported by telephone. 2. Oral statements needed written confirmation which was best supplied on a form requesting information concerning the time at which the change was made, the name of the competitor whose price was being met, the former price, the new reduced price and the cost of the article to the reporting store. 3. It was necessary for investigators to check the prices reported by the stores. 4. It was possible to enforce the provision if these stipulations were lived up to.

Obviously any store interested in making such enforcement difficult could sabotage the process by pleading complications of internal management by inaccurate price reporting, and by refusing to give its own cost. In the case of one store, the refusal to report cost was based partly on

<sup>47</sup> Letter sent to cooperating stores by New York Code Authority.

the fact that it caused embarrassment for the manufacturers from whom the purchases were made,<sup>48</sup> and partly because the management objected on principle to giving out information of that kind to competitors. These two arguments were bound to appear often in a control system based on the thought that the business man, knowing the intricacies of his business, best understood how to regulate it, at the same time that competitors were, in fact, jury and judge.

Although it required the services of about three people to enforce this provision in the New York metropolitan area, it was found generally possible to stabilize prices in the large department stores at the cost price to the lowest cost competitor. When the administrator set the allowance for labor to be added to cost at ten per cent, a technique had been developed which could be applied to the enforcement of the provision in its revised form.

<sup>48</sup> It is common practice for a buyer who wishes to use a certain article as a loss leader to insist on a special price for the particular size which will be used as a leader and tolerate a better profit for the manufacturer on the other sizes. If a manufacturer is brought to task by retailer B for giving retailer A a preferential price on a given article, he is placed in a position in which it would be undesirable to admit the convenient pricing on the leader at the same time that it is not possible to offer all sizes at the same price.

## CHAPTER III

### CODE MODIFICATION

#### SECTION I. INTERPRETATION

A CODE clause may be thought of as a geographical boundary line. The area to the right is Goodland, the area to the left is Badland. The nature of the line differs depending upon the place at which the decision is to be made. In some places a meridian provides the boundary—a line fine and precise. In others, the boundary is more difficult to define. Thus it might be said that the ocean is part of Badland, whereas the rivers belong to the continent of Goodland. It is clear then that Goodland commences where the river flows into the ocean. But in order to determine where the ocean ends and river begins, it is necessary to have a basis of judgment. This criterion might be supplied by the statement: The river may be said to begin where the water turns fresh. Obviously, there is no difficulty in applying this criterion of saltiness to, say the Hudson river at Albany or at 14th Street, New York City. But in order to apply it between Peekskill and Newburg a further set of criteria are necessary—questions of degrees need to be defined. One might say that water may be considered fresh when it is possible to drink it. This statement offers a better basis for a judgment, but it does not do away with the necessity for making a value judgment concerning when it is no longer "possible" to drink the water of the Hudson because of its saltiness.

*Procedure*

In order to enforce the Code it was, as we have seen, necessary for a local office to determine whether a specific set of circumstances fell to the right or to the left of these different types of boundary lines which varied according to the clause involved. This required a value judgment. But a local office was authorized to proceed only up to a certain point in making this necessary judgment. "Where no decision is required on which reasonable men, equally well informed, might differ, the ruling is not an interpretation but merely an 'explanation'."<sup>1</sup> But "where the intent of that language is in doubt, i. e., where a knowledge of surrounding circumstances and of the general policies of NRA on the part of the person or body making the ruling fails to remove the necessity of a decision on which reasonable men, equally well informed, might differ";<sup>2</sup> the machinery of interpretation was called into action.

Interpretations could presumably originate in two ways: The Code provided that the "Administrator may from time to time after consultation with the National Retail Trade Council, issue such administrative interpretations of the various provisions of this Code as are necessary to effectuate its purposes".<sup>3</sup> But the Code also provided that the "National Retail Trade Council may from time to time present to the Administrator recommendations (including interpretations) based on conditions in the trade, which will tend to effectuate the operation of the provisions of this Code and the Policy of the National Industrial Recovery Act. Such recommendations shall, upon approval by the Administrator, become operative as part of this Code."<sup>4</sup>

<sup>1</sup> NRA *Bulletin*, No. 7, p. 8.

<sup>2</sup> *Ibid.*

<sup>3</sup> Retail Code, Article X, Section 5, "Interpretations".

<sup>4</sup> Retail Code, Article X, Section 2(d), "Recommendations".

The comment in Bulletin No. 1 endorsed the method whereby the administrator made interpretations after consultation with the Code Authority. The alternative method was dismissed with the suggestion that it provided flexibility.<sup>5</sup> But these comments were merely "explanatory comments, in anticipation of some of the problems which will arise in the operation of the Code". They were "provisional" and not to be considered as interpretations under Article X, Section 5 of the Code." They were "subject to revision as the Administrator and the National Retail Trade Council may deem necessary".<sup>6</sup> It would seem, however, that the use of the words "provisional" and "revision" seems to indicate that the statements could be regarded as interpretations unless superseded by others.<sup>7</sup>

<sup>5</sup> The comment relative to this provision given in *Bulletin No. 1*, p. 48, says, "Interpretations of the Code which may become operative as a part of it can be made only by the Administrator for Industrial Recovery after consultation with the National Retail Trade Council. Such interpretations will be made from time to time when experience with the practical application of the Code indicates their necessity. All other official or unofficial information and explanations must, therefore, be distinguished from such official interpretations and are necessarily provisional and subject thereto."

The comment to Article X, Section 2(d) says "This section provides a flexible method of amending or modifying the Code as circumstances may make necessary". It thus seems to ignore the parenthetic statement "(including interpretations)".

<sup>6</sup> *Retail Bulletin No. 1*, p. 1, paragraph on "Purpose of comments in this Bulletin".

<sup>7</sup> This point of view is further reinforced by the Foreword to *Bulletin No. 1* by Hugh S. Johnson, in which he says, "These comments upon the provisions of the Retail Trade Code and Retail Drug Code may be subject to modification or revision after the Code Authority and the Retail Councils have had an opportunity to analyze the effect of these provisions from actual experience in operating under the Code". In any event the commentators seem to have built a sound and forward-looking foundation. It seems unfortunate that it was not considered more, rather than less, final.

Actually, interpretation seems to have been made only with the approval of NRCA; in fact, the majority were initiated by them often in response to informal prodding by the Deputy. An interpretation would usually germinate in the meeting of one of the sub-committees of the NRCA. The language would be discussed with the Deputy Administrator or his assistant. When informal discussion had come to rest, copies of the proposed draft would be sent to the office of the Deputy, who would send them to the Labor, Industry and Consumers' Advisory Boards, as well as to the Legal Division and to the Review Division. In the meanwhile, time was passing.<sup>8</sup> If the suggested interpretation was successful in running the gauntlet of scrutiny prerequisite to the necessary O. K.'s, it was sent to the Administrator for his signature.

The emphasis in the actual interpretation procedure of the importance of the Code Authority was in part the result of the basic self-government theory of NRA. In part it was a compromise between the formal set-up as written into the Code and the wishes of the trade associations signatory to it. We can compare the last paragraph of the comment in Bulletin No. 1, "Requests for official interpretations, where a situation is not clearly provided for in the Code, as explained in this Bulletin, should be addressed, pending further announcement, to the Retail Division, NRA, Washington, D. C.," with a statement made in the November, 1933 issue of the National Retail Dry Goods Association Bulletin, "members are strongly urged not to write or telegraph to Administration officials in Washington asking for interpretations on questionable provisions of the Code. The administration officials are not in a position to make any official

<sup>8</sup> In May, Dr. Dameron found it necessary, when submitting a proposed interpretation for approval, to state that the failure to report in a reasonable length of time (about 48 hours) would be assumed to mean approval.

interpretations unless such interpretations *emanate from* and have the approval of the Code Authority."<sup>9</sup> In fact, a motion was carried at a meeting of the Code Authority early in November suggesting that because of the press of work, requests for interpretations of the Code be forwarded to the various national trade associations who would be authorized to reply for members and non-members.<sup>10</sup>

The operation and implication of the process of Code interpretation can best be developed by examining in detail several cases in which this process was evoked. It will be convenient to select as the example to be scrutinized in the trade practice field the attempt to define fair advertising of premium and gift merchandise; in the labor field, the provisions of the Code involving the definition of "professionals" and the prohibition of reduction of wages above the minimum will be studied.

#### *Premiums and "Free" Gifts*

The Retail Code contained no provision expressly prohibiting the use of premiums. Any attempt to do so would have had to proceed either through the clause requiring the cost to the merchant (plus ten per cent) to be included in the selling price, or through the prohibiting of inaccurate advertising.

It will be recalled that a large number of the complaints charging violation of the trade practice provisions of the Code concerned premiums and gift merchandise. In order

<sup>9</sup> NRDTA *Bulletin*, November, 1933, p. 40. Italics mine.

<sup>10</sup> Minutes of the Code Authority meeting, of November 8th, 1933. At one of the organizational meetings of the Code Authority, on the other hand, a resolution was submitted by the Committee on Interpretations: "that no association or body other than the National Retail Trade Council (with the approval of the Administrator) be authorized to make and/or issue interpretations of the Retail Code." (Minutes of the October 26, 1933 meeting.)

to adjust such complaints it was necessary for the local code authorities to come to a decision concerning whether a particular set of circumstances did or did not constitute a violation of the Code. Typically such cases ranged from ones involving a clear violation to those certainly involving no violation, with the large majority of cases falling in an area of doubt. This can be illustrated from the group of cases which came to the attention of the Code Authority—City of New York in the first days of its work:<sup>11</sup>

A complaint against a shoe store indicated that the store advertised a pair of stockings absolutely free with the purchase of a pair of shoes, for \$5.95; the regular price of these shoes was \$4.95. They had sold at this price prior to the "free gift" offer.

A furniture store offered a free gift, which could be selected from articles illustrated in a circular, providing a gift certificate attached to this circular was presented. Different articles could be obtained in connection with purchases in three different price ranges.

A clothing store offered a free hat with every purchase of a suit at \$16.50. The suit was the usual \$16.50 value.

An oil mop was offered for sale at its usual price with a free offer of a box of floor wax made in a special size not otherwise obtainable. The cost of the mop and wax to the retailer was the same as the usual price of the mop. The wax was "free" to the retailer and was being offered "free" to the public.

It will be recalled that the fair practice movement had regarded as misleading the use of the word "free" in connection with goods contingent on a purchase. Manufacturers, interested in using free offers as a sales inducement preferable to cutting prices, and as an effective method of introducing a product, have always felt that there

<sup>11</sup> Some of the facts in these cases are changed to prevent identification.



was nothing misleading in itself in the use of the word. This opinion was shared by some retailers who wanted to continue "free" goods offers as a form of advertising. An intermediate position was taken by those who claimed that when "free" was used to describe a gift contingent on a purchase this fact should be stated "clearly" or "plainly" or in the same size as the word free.

On the grounds of violation of the loss limitation provision of the Code, objections to advertising of this kind could only be based on a decision concerning whether the cost of the article plus the cost or the premium together was less than the price at which the article was sold (later the price plus ten per cent). Such a decision involved questions concerning the time interval and the number of articles to be included in the calculation of cost. If a free gift of a tie was given with every order at a haberdasher's regardless of whether the order involved the purchase of a shirt or of \$15 worth of clothing, was it proper to average the sales checks of the entire store for one day and add the cost of the tie to the average cost of the merchandise sold in this average check, or would it be necessary for the cost of the tie plus the cost of the smallest single sales check to equal the amount of that check? If a premium was offered with every purchase made at a store, did the cost of the article with which the premium was given away have to include the cost of the article to be redeemed by all of the coupons necessary to redeem the premium or merely that fractional portion represented by each coupon?<sup>12</sup>

<sup>12</sup> This question was answered by an interpretation dated March 26, National Retail Code Authority, *Bulletin*, T. P. 8, "In calculating the cost of trading stamps, premiums, articles, or shares-in-a-premium, such cost is the pro-rata portion represented by that stamp or premium of the cost to the retailer of the merchandise, service or other thing of value which is redeemed by the stamp or premium".

Further, how were premium and souvenir defined? The distinction between them seemed to involve a question of absolute value and of the relative importance of the printed advertising on the souvenir.<sup>18</sup>

When it is recalled that complaints involving premiums, one-cent sales, and free offers were one of the largest groups in the trade practice field; when it is further recalled that the early days of NRA were confused and mail was slow in being answered, the problem faced by the local offices becomes clear. Obviously, the large majority of these cases involve judgments concerning which reasonable men might well differ. It would have been as much a usurpation of power for someone who felt definitely, as many did, that the use of the word "free" was inaccurate in any connection, to say that it was permitted by the Code, as for someone holding the reverse opinion to say that it was outlawed. The only alternative to taking a position was taking none, which would have meant that about a quarter of the trade practice cases would have been allowed to accumulate pending a formal ruling from Washington. Accordingly many local offices proceeded along the lines which were thought to be desirable by the individuals in a position to make such decisions.

But no formal ruling specifically referring to the legitimacy of the use of the word "free" was made, although in the course of the year minor clarifications of the section dealing with the relation of premiums to loss leaders were

<sup>18</sup> E. g., a blotter was clearly a souvenir. Was a pencil a souvenir, was a fountain pen, when marked with the name of the store, was an infant's chair a souvenir when sold unwrapped, marked with the name of the store and carried home by the customer who thus became a sandwich man for the retailer? How prominently need the advertisement be displayed?

issued.<sup>14</sup> Nevertheless the National office apparently made a preliminary interpretation which, being a negative one, was not thought to be one at all:<sup>15</sup> It seemed to take the position that without a specific ruling to the contrary, the use of the word "free" in connection with the articles contingent on a purchase did not come under the ban of inaccurate advertising. In the meantime, the attempt to agree on an interpretation of the section of the code on advertising and selling methods continued.

On December 21, 1933 the NRCA sent a letter to the Deputy Administrator, Kenneth Dameron, suggesting as an interpretation of the Code that "The use of the word 'free' in connection with advertised offerings of merchandise shall not be permitted". The argument was based on the clause in the loss limitation section of the Code which required that the cost of the premium must be included in the price of the article with which the premium is given; if this was true then the article could not be said to be given "free", and a written claim to that effect constituted inaccurate advertisement under Article IX, Section 1 of the Code.

<sup>14</sup> An NRA press release dated November 5, 1933 seemed to add nothing of importance to Article VIII, Section 2, paragraph c of the Code. It stated that "Premiums may be given away with merchandise. But the cost of the premium to the retailer must be included in the price at which the retailer sells the article with which the premium is given away". (NRA press release, No. 1554, p. 6.)

<sup>15</sup> It is curious to find NRCA in effect anticipating an interpretation by making an interpretation. If the situation was, to begin with, one concerning which reasonable men may differ, then saying "no" would seem to involve as much responsibility as saying "yes". Actually, however, neither of these statements is entirely true. In the first place, it seems to be a psychological characteristic of men that saying "no" seems to relieve one of responsibility, whereas saying "yes" creates it. In the second place, the process of interpretation was, as we shall see, in reality not a juristic process, but one of making the Code conform to the attitudes, often changing attitudes, of the trade. What was involved in many interpretations was therefore *change* rather than *choice*.

On January 19 a hearing of the NRA Committee composed of representatives of the advisory boards was held to discuss Code interpretation. A minority and majority report were submitted. The majority report stated, "The use of the word 'free' in the advertising of . . . [premiums]<sup>16</sup> which are, in fact, gifts contingent upon the purchase of other merchandise, shall not in itself be construed as inaccurate or misleading to the customer, so long as the advertisement clearly and plainly states that the gift of the premium is contingent upon the purchase of other merchandise, and so long as the advertisement is not inaccurate in its description of the premium, the merchandise, or the price or values thereof."<sup>17</sup> The representative of the Legal Division, Mr. Emerson, in voting for the majority report, said that his reason for so doing was "that the Code definitely contemplates that premiums can be given away with merchandise, and the essence of premium advertising is that something is given away free, and that is not by itself misleading to the public."<sup>18</sup> The minority report of the Committee stated that it was incorrect to say that an article was "free" when it was contingent on a purchase, although it was proper to say so if it was not. A second paragraph said that the word "free" could not be used in an advertisement if it were more prominent than the contingent circumstances.

<sup>16</sup> The text in the transcript substituted the word "agreements" for "premiums". This was doubtless an error. The majority report as submitted to the NRCA used the word "premium". The clause as submitted to NRCA also added the phrase in italics: "The use of the word free, or a word or words of similar or identical meaning in an advertisement of premiums which are in fact gifts . . ." Report submitted by NRCA, January 25, 1934.)

<sup>17</sup> Transcript of hearing of NRA Committee, January 19, 1934, p. 105.

<sup>18</sup> *Ibid.* Compare this lawyer's statement with the argument at the close of the previous paragraph which was also based on the loss limitation section.

On February 2nd at a meeting of the NRCA a report was adopted which incorporated paragraph one of the minority report. This recommendation was restated at the meeting of the retail authorities held on March 30: "No article of merchandise or service shall be advertised as free when delivery of said article or performance of said service is contingent on the sale of an additional service". The representatives of the Retail Food and the Drug Code Authorities reported that these groups also recommended the adoption of this interpretation.<sup>19</sup> Two for one sales were also ruled out by an interpretation proposed at this hearing which suggested that in addition to the fact that the combined cost of the two articles must be less than the combined selling price, if the price of one of the articles is mentioned, then the price of the remaining article must be greater than the cost of that article.<sup>20</sup>

But the NRA contingent seemed as unwilling to approve the Code Authority's interpretation as the latter were to approve the majority report of the NRA Committee. By the spring, the attempt to incorporate a prohibition against the use of the word free in an interpretation seems to have stalled in permanent disagreement.

Accordingly tactics shifted. A hearing on Code *amendment* was scheduled for May 4th, 1934 and amendments referring to one-cent sales and free goods advertising were incorporated in the NRCA program. A vigorous opposition to the amendment referring to one-cent sales was put forth by several large drug companies.<sup>21</sup> It was contended that one-cent sales were not a violation of the loss limitation provision and were good sales promotion. Mr. Peterson, on

<sup>19</sup> Transcripts of Hearing, March 31, 1934, p. 3.

<sup>20</sup> *Ibid.*, p. 7.

<sup>21</sup> Roy Stern, appearing in behalf of Liggett, Rexall and United Drug Companies. (NRA Release, No. 4845, May 4, 1934.)

behalf of the Code Authority, defended the amendment as a means of safeguarding the consumer, who might be led to believe he was getting something for nothing or at least for a penny. On August 23rd the approval of the amendment referring to one-cent sales was announced by NRA. The amendment did not apply to drug stores.<sup>22</sup> The proposed amendment<sup>23</sup> barring the advertising of free goods was opposed on behalf of a group of merchants in New York, New Jersey, Pennsylvania and Missouri; it was argued that "free" gifts were a venerable custom and a most desirable form of advertising.

On July 5, 1934, Mr. Neustadt wrote to Deputy Administrator Carr and enclosed a rewording of the proposed amendment to the Retail Code which had been prepared as paragraph (f) of Section 1, Article IX: "No retailer shall

<sup>22</sup> "The prohibition of combination of group sales is an addition to the code's article on loss limitation. It provides that '*in group offerings or sales of merchandise, the selling price of the group shall not be less than the sum of the minimum selling prices of the individual items of the groups*' as determined in accordance with provision already in the code.

"It is added that '*in group offerings or sales of merchandise, where the selling price of one or more items of the group is indicated, the price indicated for each item or items, expressly or by inference, shall not be less than the minimum price of each item or items*'.

"The amendment provides that the added section shall not be construed to apply to the use of bona fide premiums.

"Sales methods of drug stores will have to undergo little revision, since it is stated that the addition to the code shall not apply '*to the sale of drugs, medicines, cosmetics, toilet preparations, drug sundries and/or allied items*' described in the supplemental provisions of the code applicable to retail drug establishments." (NRA Release, No. 7417, August 23, 1934. Italics mine.)

<sup>23</sup> "No article of merchandise or services shall be advertised as '*free*' when delivery of said article or performance of said service is contingent upon the sale of an additional article. Anything freely given to anyone without restriction may be advertised or offered as '*free*'." (Notice of Hearing, May 4.)

use the word "free" or a word or words of similar import with reference to an article or service, when the receipt of such article or service is contingent upon the purchase of another article or service and/or when the use of such words is with the purpose or effect of misleading or deceiving customers". The NRA countered by a suggested amendment to the Code which was the same as the one proposed by the NRCA except that the words "and/or" were changed to "and". The NRCA unanimously refused to accept the amendment as changed by the NRA.<sup>34</sup>

On December 6, 1934, an NRA general office memorandum regarding policies intended to govern clauses in Codes relating to premiums and free deals. It

declared against the use of premiums or "free deals" in ways which involved misrepresentation or fraud or deception in any form. It should be noted that the use of the word "free" or "gift" or "gratuity" or language of similar import in connection with premiums or "free deals" can not be declared deceptive in and of itself. It will be proper, however, to prohibit the use of this or any other language with intent to deceive, or in such a way that it does in fact mislead or deceive customers in some material particular.<sup>35</sup>

Mr. Carr said in connection with this memorandum that the distributive trades had probably not been considered in its

<sup>34</sup>The attitude of the NRCA is confusing since in the letter from Mr. Neustadt to Mr. Carr, in which the amendment was proposed, the further statement appeared: "It is understood that an interpretation will be issued specifying that this does not prohibit the use of the word free or any words of similar import when the price of the article with which the free article is given away is the regular price for that article and there are no other circumstances of deception". (Letter, Neustadt to Carr, July 5, 1934, NRCA files.) This statement would seem to withdraw from the position that the use of the word in connection with a purchase was misleading under any circumstances and to emphasize the particular and contingent inaccuracies involved.

<sup>35</sup>NRA Office Memorandum, 316, December 6, 1934.

wording and that Division 4 had not been consulted in its drafting. In view of this fact it was suggested that the former recommendation of NRCA be submitted without the last clause beginning "and/or". At a meeting of the Code Authority on December 27, 1934, it was concluded that the situation had reached a deadlock concerning which nothing could be done at the moment.<sup>26</sup> The moment has been prolonged.

Over a year after the beginning of the discussion, premium definition, like the season, had returned to the point of departure. The discussion was not, however, entirely devoid of conclusions: Although no formal interpretation had been rendered, a negative decision had been reached—the Code as written did not forbid the use of the word "free", nor did it brand as essentially inaccurate or misleading promotions such as one-cent sales, dollar-sales, and the like. This position was tacitly taken early in the winter of 1934. At that time, however, it was thought that an interpretation could be made to wrap the disapproval of the law around these practices.<sup>27</sup> But both the attempt to draft a satisfactory interpretation or to incorporate the prohibition in an amendment were prevented from materializing by final disagreement.

Perhaps the most interesting aspect of the discussion was the way in which old wine was being poured into new bottles. The Better Business Bureau disapproval of "free" gifts was revitalized by influential and vocal re-

<sup>26</sup> Minutes of NRCA Meeting, December 27, 1934.

<sup>27</sup> It is interesting to note that probably an important reason for amendment rather than interpretation was that premiums were, rather than were not, regulated by the Code. I refer to the argument by Mr. Emerson (*supra*, p. 274), in which he states that the mention in the loss limitation provision of rules for the sale of premium goods, the essence of which is a free gift, implies that the Code cannot be said to outlaw a "free" gift as such.



tailers who were anxious to prevent their competitors from using a type of advertising which appealed to bargain psychology and dulled the public palate; the manufacturers and wholesalers to whom premiums were useful as equivalent to, but better than, a price concession, sided with the regulatees rather than the regulators. The game ended in a checkmate.

This battle of interest was injected into what was, at the start, at any rate, presumably a judicial procedure.

### *Professionals*

In regard to the labor provisions of the Code it has been noted that the larger retailers, those for example who were influential in the trade association movement as well as those on the code authorities, typically found that they had to comply with the letter of the law. But the law was subject to amendment and to interpretation. It is therefore important to attempt to analyze this procedure in so far as it could be used to make the Mountain come to Mohomet. The machinery of interpretation made it possible to translate into the law the change in retailer attitude from the prayerful mood of the summer of 1933 to the growing self-confidence of 1934. The nature and the limitations of this process can be illustrated by tracing the interpretations of two of the labor provisions of the Code—the one involving professionals and the one prohibiting reduction of wages.

Article II, Section 5b of the Code states, "The term 'Professional Person' as used herein shall mean lawyers, doctors, nurses, research technicians, advertising specialists and other persons engaged in occupations requiring a special discipline and special attainments." The maximum periods of labor prescribed in Section I did not apply to persons working at their professions.<sup>23</sup>

<sup>23</sup> Retail Code, Article V, Section 4a.

The membership of the NRDGA typically employed a number of individuals who could conceivably have been classed as "professional". The attitude of the NRDGA was, therefore, of considerable interest. This attitude seemed to have changed in the course of the delays and uncertainties of the Fall of 1933. In August, the *Bulletin* carried a question and answer exposition of the Code, containing entirely unofficial explanations made "largely on the basis of conferences held in Washington leading to the adoption of the Code." On the subject of professionals the NRDGA definition included "such persons as registered pharmacists, doctors, dentists, and registered nurses. According to official information, store detectives and artists are not properly classified as professional employees, and are restricted to a forty-hour maximum week. *Also according to our interpretation sign writers, window trimmers and display men are not properly classified as professionals. Advertising copywriters could, under certain circumstances, be considered executive, but never professional.*"<sup>29</sup>

The November issue of the *Bulletin* also contained an unofficial interpretation of the Code prepared by the Store Management Advisory Council. This list included the following among the jobs properly classified as professional: doctors, dentists, nurses (who engage in professional work), advertising specialists, decorating specialists<sup>30</sup> (*including window and interior display and interior decorating*), stylists, teachers, research and technicians.<sup>31</sup>

The actual classification in different stores seems to have varied even more than the August to November shift in the Association's attitude. One of the largest stores in New

<sup>29</sup> NRDGA *Bulletin*, August, 1933, Editorial, p. 21. Italics mine.

<sup>30</sup> Furniture salesmen were classified as professionals by many furniture stores on the basis of their knowledge of decoration.

<sup>31</sup> NRDGA *Bulletin*, November, 1933, p. 35. Italics mine.

York had 250 employees classed as professional including forty-three "research technicians" in the comptroller's office and fifty-four "teachers" in the training department and thirty-one individuals doing window display work. Another large store had thirty-two employees so classified. The proportion of the total number of employees classed as professionals was almost five times as high in the first department store as in the second. Moreover, these differences could not be explained in terms of the kinds of jobs available at the two stores, because employees having the same job were classed as professionals in one store and not in the other. Thus it may be seen that the application of the criteria for professionalism in the Code did not provide a single answer concerning which no two reasonable men could disagree.

The first official explanation appeared in the comment in *Bulletin I*

This definition includes only a very small class of persons, engaged in the designated professional callings or otherwise specially trained in creative as distinguished from routine occupations. It does not include persons possessed only of a particular manual skill nor most persons with superior education whether specialized or not.

Accordingly, artists, interior decorators (but not window trimmers), or persons employed for their recognized literary ability are professional, but engineers, printers, or other highly skilled artisans, and efficiency, merchandising, or personnel experts are not.

Obviously these definitions state two things—certain specific types of occupations may be considered professional; there are specified criteria on the basis of which certain individuals occupying eligible jobs may be selected as properly classified "professional".

This double standard of an eligible job and a particular kind of work was applied in a letter from the Assistant Deputy to an inquiry concerning window trimmers in the middle of November. Window trimmers and their assistants, he said, are not ordinarily classed as professionals; they can only be so classed if (1) they are employed primarily in their profession or if (2) they are highly trained and highly skilled, and if their work is creative rather than routine.

A further clarification of criterion of creative as opposed to routine work in window dressing was supplied in a letter from Sterry Long written on December 19; a window trimmer could be classed as professional if employed for his recognized ability as a creator of effective window display; he was not professional if employed for his ability to put merchandise in a window in an effective and symmetrical manner. The criterion was the work performed, not the departmental connections.

The next day the much harassed Mr. Long wrote again, in answer to a question from the New York Code Authority, that "furniture salesmen are not considered as professional under the Retail Code". But since statements of opinion of the Assistant Administrator were merely statements of opinion and not official interpretations, furniture salesmen continued to be classified as professionals for the ostensible reason that they had to have most of the qualifications of an interior decorator. In the course of the winter other official interpretations appeared clarifying the status of employees in specified jobs.<sup>23</sup>

<sup>23</sup> E. g., Bulletin L1, December 6, 1933: "Professional photographers come within the definition of professional persons under Section 5b, Article II of the Retail Code. However, this interpretation shall not apply to developers, helpers, or persons employed in a department store photograph studio that are not primarily professional photographers." Bulletin L6, December 22, 1933: "An employee engaged primarily as a

The question of how to define "professional" had been submitted by the National Retail Code Authority to the signatory trade associations but no agreement had resulted. Accordingly, in the middle of June, Divisional Administrator H. C. King, made a formal interpretation which was presumably a résumé of their comments.<sup>33</sup> This interpretation added the adjective "creative" to the much discussed category of "decorators". The very elastic designation of "research technicians and statisticians" continued to warrant professional classification. But the interpretation was chiefly useful in supplying additional criteria for the selections in specific stores of those individual employees who were and those who were not entitled to be considered "professional".<sup>34</sup>

Obviously any attempt to apply criteria in order to check a list of professionals submitted by a store required an individual job analysis for every person mentioned. But there

routine show card writer cannot be considered as a professional under the definition of Article II, Section 5b."

<sup>33</sup> NRA Release, No. 5810, June 15, 1934.

<sup>34</sup> Quoting from NRA Release, No. 5810, June 15, 1934: "Under the definition given only the following can be properly classified as professionals: Chemists, physicists, dentists, physicians and surgeons, registered nurses, chiropractors, pharmacists, optometrists, architects, artists and creative decorators, training directors whose entire time is devoted to education or training, research technicians, statisticians, engineers (who hold degrees from qualified institutions of higher learning).

"The interpretation defines as a professional 'a person whose work is: (1) Predominantly intellectual or mental in character as opposed to purely physical work or work involving the application of manual, mechanical, physical or operative technique or skills, and (2) based upon educational training in a specially organized body of knowledge as distinguished from training of a manual, mechanical or operatively technical type, or the performance of routine mental processes in accordance with a previously indicated or standardized formula, plan or procedure, and (3) of a nature that is creative and cannot be carried on by anyone not having a similar training or qualifications without losing its unique characteristics'."

was no reason why this could not be done—it was a relatively simple task though a somewhat painstaking one. It is important to observe, however, that in analysis of this kind there is of necessity considerable ground concerning which individuals equally conscientious are almost bound to differ. The judgments involved are too delicate for absolute agreement. Consequently, the store that was unwilling to risk popular disfavor by outright violations of the Code could still save a substantial amount of money and inconvenience through a liberal definition of the term professional followed by prolonged discussion and argument if the Code Authority attempted to prune the list.

A further criterion was provided early the following year through a Code amendment requiring that individuals exempted because of a professional rating must receive a minimum salary similar to that of an executive in the same store.<sup>85</sup> It is interesting to note that it was estimated that possibly 100,000 people would be affected by the ruling.<sup>86</sup> The uncertainty over interpretations had provided a six months opportunity for Code evasion, but the final interpretation had, in general, improved the extremely unclear wording of the definition in the Code. The success of the labor board in urging that the executive minimum wage should apply to professional positions exempted from the code work week restrictions should also have helped to eliminate abuse of the provision.

#### *Wages above the Minimum*

The retail schedule of the President's Re-employment Agreement contained a clause stating that retailers undertook "not to reduce the compensation for employment now

<sup>85</sup> The National Code Authority originally made their approval of this amendment a "trade" for the elimination of restriction on the number of properly qualified executives permitted to work unlimited hours.

<sup>86</sup> NRA Release, 9486, January 3, 1935.

in excess of the minimum wages hereby agreed to (notwithstanding that the hours of work in such employment may thereby be reduced) and to increase the payment for such employment by an equitable readjustment of all pay schedules". But there seems to have been little indication that salaries above the minimum were adjusted except in a few cases which had been, prior to the Code, at just about the minimum Code wage.<sup>87</sup>

The clause in the PRA schedule suggesting the upward readjustment of salaries was dropped from the General Retail Code which provided in Article VI Section 5 that "The weekly wages of all classes of employees receiving more than the minimum wages prescribed in this Article shall not be reduced from the rates existing upon July 15, 1933, notwithstanding any reduction in the number of working hours of such employees". *Bulletin No. 1* supplemented the clause with useful comment:

This Section means that the compensation of any class of employees above the minimum wage group (whether previously fixed by the hour, day, week, or otherwise) shall not be reduced.

<sup>87</sup> Mr. McComas, writing in the October, 1933, issue of the *Bulletin* says, "We believe most stores have not, as yet made 'equitable adjustment in those salaries above the minimum provided by the Code'." But he adds hopefully that this will doubtless occur before the first of the year if sales go up enough to allow it. This optimism seems to have been unwarranted. The problem is stated by Miss Sydney, personnel director of Gimbel Brothers, writing in March, 1934, "I have no authentic figures on the question, but it seems to be pretty generally true that the *average salary has not been much changed*. The difference between the required minimum and the regular salaries for the rank and file employees is badly out of proportion now, but there seems to be little that can be done about it until business improves with some assurance of permanency. When that time comes we have much adjustment to make. *Some stores have increased the people in the salary brackets just above the minimum, but this has proved to be too costly for most of us as well as somewhat discriminatory.* (NRDGA *Bulletin*, March, 1934, p. 60, Italics mine.)

Therefore, employees previously paid by the day, week, or month will receive as much for the shorter day, week or month. And if employees were previously paid by the hour, since the shortening of hours would reduce actual earnings per day or week, the hourly rate must be increased so as to give the same compensation for the whole week as previously received.

The purpose of this Section is to maintain at a level at least as high as previously all wages paid in excess of the minimum, so that with the rise in minimum wages there will be an increase in total purchasing power.

In the interpretation of Article VI Section 5, the first question that needed to be decided was what constituted a weekly wage to which the prohibition against reduction should apply. If the same rule had been applied to commission payment as was applied to a straight salary, the commission rate should have been increased in order to maintain earning power in the face of a reduction in hours worked.<sup>38</sup> The fact that this was typically not done<sup>39</sup> meant that average weekly earnings of workers paid on a commission basis was not considered a "weekly wage" under Article VI Section 5 of the Retail Code. Further interpretation of the status of workers paid on a commission basis or on some analagous plan stipulated that a worker must receive a weekly drawing account of the appropriate minimum wage, but commissions above the minimum earned in one week might be applied to the drawing account on some other week when earnings were less than the guaranteed amount.<sup>40</sup>

<sup>38</sup> The decrease in weekly earnings was typically less than the decrease in hours of work since business improved and a staggered schedule concentrated employment during the busy hours of the day.

<sup>39</sup> Not a single instance of such an increase in New York City came to my attention during the winter of 1934.

<sup>40</sup> Interpretation 60, 18c., issued March 6, 1934.



Another method of reducing weekly earnings permitted by the Code and its interpretation was through the extensive use of part time workers. It was not considered wage reduction to take a worker off of full time work and put him or her on a part time schedule. In fact the "evasion" clause of the code was not invoked in a case submitted for interpretation which stated that *all* of the employees of a store had been put on a part time schedule.

These interpretations permitted serious inroads on the original intent of NRA to raise the purchasing power of the worker. But perhaps the most important question that needed to be clarified in connection with the wage reduction clause was the meaning of the phrase "classes of employees". Depending on whether the emphasis fell on the word *classes* or on the word *employees*, a vastly different result would ensue.

If one bears in mind certain facts about the operation of a retail business, the importance and the meaning of the discussion over Article VI, Section 5, will be more intelligible. They are:

(1) The typical large retail store has an extremely high labor turnover rate varying for the average department store from fifteen to over one hundred per cent per year.<sup>41</sup>

(2) The adequacy of a given salesperson in a given job is typically calculated in important part on the basis of his selling cost—the ratio of his salary to his sales. Periodic

<sup>41</sup> Dr. Nystrom states that the ratio of separations to average number of employees in a store ranges in the Department and Specialty field, from over 100% to 10% averaging 45 or 50%. (Dr. Paul Nystrom, *The Economics of Retailing*, Retail Store Operation, p. 278.) A study made of eight large department stores in 1930 reported a turnover which ranged from 212% to 83%. (*Journal of Retailing*, October, 1930, p. 89, article by O. Preston Robinson.) Personnel managers are likely to feel that a substantial amount of labor turnover, perhaps 25%, is necessary to prevent stagnation in the staff.

personnel reviews are held in which an employee who rates poorly in the various methods of measuring efficiency has his salary reduced, is transferred to another job, or is discharged.

(3) It is usual for each department in a large store to have a minimum wage at which employees are hired. This does not necessarily mean that all workers are taken on at the minimum. But the wages in each department range from the minimum hiring rate to the top salary of the most experienced and skillful worker with the longest record. Prior to the Code, the minimum hiring rates in a main floor small wares department would be higher than the minimum hiring wage for stock girls or messenger boys and lower than the minimum hiring wage in many of the ready-to-wear and house furnishing departments.

(4) In a small store a salary well above the minimum wage is often paid to salesmen or assistants for very long hours of work.

At a meeting of the NRCA, C. Sterry Long's position on the wage reduction question was discussed. He had said that technically it was possible to reduce the wages of individual employees providing that by so doing the wages of a given class of employee were not reduced. The Labor Committee of the Code Authority did not concur in the opinion of Mr. Long and claimed that no reduction of wages of any employee could be permitted except only in cases where an employee, working under a specific classification, was transferred to a job falling under a different classification for which a different scale of wages existed.<sup>43</sup>

In the early spring of 1934 three complaints were registered against large department stores in New York City. The adjustment of these cases required a clear definition of the meaning of the wage differential clause.

<sup>43</sup> Minutes of NRCA Meeting, January 25, 1934, p. 32.

The first case involved a complaint that employees receiving above the minimum wage had been discharged and that they had been replaced by employees receiving a lower wage. The investigation of this complaint disclosed the following facts:

1. The store frankly admitted a reduction in the *hiring wages* in the same departments of one and two dollars from the July 15 level, i. e., vacancies that had formerly been filled for a salary of \$16 and \$17 a week were now being filled by employees receiving \$15 a week.

2. The management refused to submit to any general investigation of changes in average selling wages throughout the store or average wages in a department.

3. The management held that the changes in hiring rates did not constitute a violation of the Code since they had not been used as a subterfuge: no employee had been discharged for the purpose of replacing him at a lower wage. The store was willing to submit any individual case of discharge to inspection on the charge of subterfuge. Although the rate of labor turnover had increased somewhat since the Code, it was attributed to other causes.

A second case involved the reduction of the wages of eight employees below that which they had received prior to July 15. In each case the reduction was an alternative to discharge, since they were receiving a salary considerably above the average salary for the department and the kind of work which they were doing. Their percentage selling cost was far too high. No hiring rates had been reduced since July 15.

The third case involved a petition for an exception filed by a department store requesting to be permitted to reduce the salaries of certain girls. In the course of the regular personnel review it had been found that the decrease in the sales of these girls had brought their selling cost outside of

the range of tolerance in the department. The Local Code Authority was on the verge of recommending to Washington that this petition be granted when a member of the Authority suggested that such a recommendation would constitute an admission that the practice was contrary to the Code; he questioned the advisability of this admission. The petition was referred to the NRCA without formal recommendation.

On Friday the 13th of April there was a conference at the Washington Hotel at which the representatives of the various advisory boards and others<sup>43</sup> conferred on the subject of the interpretation of Article VI, Section 5, which, in the words of Mr. Raffa, the Assistant for Labor at NRCA, "is fast becoming as much a subject for interpretation as the Fourteenth Amendment to the Constitution, or Section 7-A of the Industrial Recovery Act".

Discussion started with a proposed interpretation of the clause in question: "The wages of any employee shall not be reduced except in the instances where an employee working under a specific classification is transferred to a position falling under a different classification and for which a different scale of wages exists. If an employee is moved back to his former position, the wages shall be reinstated. The employer shall not reclassify employees in such a way as to defeat the spirit and intent of this provision".<sup>44</sup> Mr. Berrall expressed the fear that since there was typically no definite wage for a department, the clause might permit employees that were on the top of the range for one department to be transferred to the bottom of the range in another depart-

<sup>43</sup> Mr. Yocum presided at the meeting, Mr. Meyers represented the Industrial Advisory Board, Mr. Berrall the Labor Advisory Board, Mr. Chandler the Consumers' Advisory Board, Mr. Davis and Mr. Sokolve the Division of Planning and Research, Mr. Raymond the Legal Division, and Mr. Neustadt the NRCA.

<sup>44</sup> Transcript of meeting of Code Committee.

ment. He suggested the use of the word "demoted" instead of "transferred".

Mr. Yocum then said that a question had come up, particularly from ——— store, the New York store mentioned above which had reduced the hiring rate: "They have a situation where they have a certain department with a certain range of wages existing on July 1, 1933. Now they add new employees. They want to know at what wages they may hire the new employees, whether it shall be the top wage or whether they can come down to the minimum as provided in the code, or whether they can place them within the range existing on July 1st, according to the qualifications of the particular employees that they are hiring."

The managing director of the National Retail Code Authority, Inc., said, "Do you think it is possible to work out anything besides the freedom above the minimum? The ——— Case is where I should say that it meets this practice, which as you know is rather widespread, of firing old employees and rehiring new ones at the minimum".

Mr. Yocum suggested, "Couldn't we say, if a certain range of wages existed for a particular job or group of jobs on July 1st, 1933, new employees of matched qualifications which came up to the qualifications set up by the store would have to be hired at somewhere within that range, rather than at the minimum?"—Mr. Berrall suggested that if there were minimums "for a particular job which has a range, that is the thing which can't be reduced". Thus if wages in that department ranged from \$35 to \$20, the \$20 minimum could not be reduced.

Mr. Neustadt again objected that "My only fear is that it is inadministrable. In ninety-nine per cent of the stores of the country, you could not prove what the range was".

Further discussion led to the conclusion summarized by Mr. Yocum: "If you feel there is danger in it, and there may be, perhaps we had better leave it alone."

Mr. Neustadt said that the inquiry mentioned was the only one that had come up and that "it should be handled on an individual basis".<sup>45</sup> Mr. Yocum, in response to a question concerning whether a ruling had been requested by the store, said, "I told them, speaking personally, that it would appear reasonable to me, pending a definite ruling, that they could hire an employee on the basis of his qualifications at the minimum prevailing in the department, but they should not attempt to come down to the minimum provided in the Code just because they could. Evidently that is what they have been doing." Mr. Neustadt said, "I would hate to see that put into the Code as a rule for everybody, because you could not administer it. Not possibly."<sup>46</sup>

Bulletin L12, issued April 30 on the subject of the reduction of wages by means of reclassification, contained the following stern interpretation of Article IV, Section 5: "The wages of any employee shall not be reduced below what the wages of that employee were on July 15, 1933, except in instances where the employee, working under a specific classification, is demoted to a position falling under a different classification involving a change in duties, responsibilities and qualifications, and for which a different scale of wages exists. If an employee is promoted back to his former position, the former wages of the employee shall be reinstated. An employer shall not reclassify employees in such a way as to defeat the spirit and intent of this provision".

<sup>45</sup> The absence of the records of the case, involved in this discussion, in the general Code Authority files make it impossible to outline the form which the "individual basis" of handling complaints took in this case. Rumor has it that the store did not raise its hiring rates to the pre-Code basis.

<sup>46</sup> Although I have not discussed the question with Mr. Neustadt I feel confident that the sentiments which he expressed at this meeting did not represent his own opinion. The fact that he felt obliged to take this stand is of the very essence of the difficulty involved in NRA.

This interpretation, of course, simply avoided the important issue—that of wage reduction through hire and/or fire. It puttered with a minor evil which was only to limited extent subject to control. Translated into fact, it meant that any employee who was found to be receiving a wage which he failed to earn, according to the standards of efficiency set by the store, would be discharged. The wage reduction would then take place, if the employee was lucky, between stores rather than between departments. It would also, in all probability, be greater than it otherwise might have been. If the employee was not so lucky, it would take place on the street, which was not under the jurisdiction of any NRA code.

In the meantime, the ebb and flow of new workers exerted a gravitational pull on wages above the minimum which tended to reduce their height above the wage "floor". More of this later.

#### SECTION II. EXCEPTIONS

Another type of elasticity in code clauses was provided by the machinery outlined in the Retail Code for the granting of exceptions.

Where the operation of the provisions of this Code impose an unusual or undue hardship upon any retailer or group of retailers, such retailer or group of retailers may make application for relief to the Administrator or to his duly authorized agent, and the Administrator or his agent may, after such public notice and hearing as he may deem necessary, grant such exception to or modification of the provisions of this Code as may be required to effectuate the purpose of the National Industrial Recovery Act.

The comment to this section in Bulletin I is "The Code is the result of the careful efforts of representatives from all branches of the Retail Trade to establish a standard that would be uniformly fair for all retailers. It contains such options and provisions for flexibility as were deemed neces-

sary to do justice to all types of employers and employees. The granting of numerous exceptions to the Code is therefore not contemplated. Indeed most Codes of Fair Competition have no provision for exceptions. Retailers are therefore urged, when difficulties in the application of the Code arise, to make every effort to work out an equitable program for compliance therewith. An exception will be granted only in cases of unusual or undue hardship." It was further suggested that "undue hardship" as a valid plea for an exception ought to rest on the basis of an operating rather than an expense difficulty. This criterion was outlined by a member of the NRCA at a meeting of the New York Code Authority in December and proved a useful basis for the selection of individual cases which ought or ought not be recommended for an exception.

The routing of requests for exceptions changed from time to time. Essentially the responsibility rested with the Administrator or his deputies. The local code authorities were expected to recommend the granting or denial of the petitions before forwarding a case, together with their recommendations, to the National Code Authority who would make further recommendations to NRA. The final verdict was rendered by the representatives of the Administrator who had final authority to grant or reject petitions after such public hearings or notices as he deemed necessary.

The subjects of petitions ranged through the list of Code labor clauses. In the early days of the Code there were many requests for permission to reduce wages on the basis that they had been maintained in the particular establishments during the depression whereas competitors had reduced wages, thereby placing the petition at a competitive disadvantage.<sup>47</sup> Officials seemed loath to let a firm go out

<sup>47</sup> Statement by Mr. Yocum, Transcripts of Committee Meeting, January 19, 1934, p. 110.



of business because of a Code provision which seemed to operate with more than usual severity in the case of the firm in question, although it was recognized that the Code would of necessity be the last straw for many tottering enterprises. On this basis several exemptions to the prohibition against wage cutting were granted.<sup>48</sup> Exceptions to the hour provisions of the Code were in many cases based on the necessity to service peak loads such as inventory periods and holiday rush seasons when additional employees were not available.

Although for the most part it was thought advisable to keep a central control over such cases by granting individual exceptions in cases of individual operating difficulties, a few blanket stays were passed. One of these general exemptions permitted especially skilled employees to work for the purpose of taking inventory for any number of hours a day on any one week providing the weekly hours were not exceeded; compensation at one and one third the normal rate was provided for hours in excess of the daily maximum.<sup>49</sup> A general exemption was also granted to permit an additional eight hours overtime (at time and one-third) for skilled packers and alteration hands in cases of emergency during the holiday season.<sup>50</sup>

In general it would seem that the original intention of not granting a great many exceptions to the Code was fairly

<sup>48</sup> Doubtless the contemplation of the alternative to granting the exception—employee discharge—influenced the Administrator in granting such exceptions. With the interpretation of the wage reduction clause in the form in which it finally stood, not only could the wages of individual jobs be reduced by discharging the old employee and hiring new ones, but the total wage level in the store could be reduced by speeding up the labor turnover by means not easily identifiable as subterfuge.

<sup>49</sup> NRA Release, No. 9737, January 19, 1935; see also Release, No. 6838, July 28, 1934, for general exemption for the August and January, 1934 inventory period.

<sup>50</sup> NRA Release, No. 8863, November 19, 1934.

well adhered to. During the life of the Code 211 exemptions were passed upon, 116 of which were approved and 95 denied.<sup>51</sup>

### SECTION III. AMENDMENT

Change in the Code which was recognized as definite modification occurred either by amendment or through the carrying out of specific instructions in the Code such as the incorporation of the Committee Report on Prison-made Goods, company scrip and the allowance for store labor in the loss limitation provision.

The allowance for store labor was fixed by the Administrator upon recommendation of the NRCA, Inc. It was set at "not less than ten (10) per cent of the cost to the merchant of the article sold", the "selling price shall include with the cost to the merchant of said article said allowance for wages of store labor".<sup>52</sup> The order was dated April 5th and became effective in two weeks.<sup>53</sup>

The provisions dealing with company scrip were stayed to May 1, 1935.<sup>54</sup> The report of the committee submitted October 22, 1934 recommended substitute provisions for those which had been stayed, but it further recommended

<sup>51</sup> History of the Retail Code, submitted to the Board of Review of NRA.

<sup>52</sup> In January, General Johnson was presumably contemplating a 9% mark-up figure. The representatives of all of the retail trade associations on the Code Authority except the mail order association held that 10% would be a more convenient as well as more realistic figure. All of the Authority members believed that labor costs ran well above 10% except Mr. Nelson who claimed that labor cost on some articles sold by mail order companies was typically less than 10%. (Minutes of NRCA Meeting, Jan. 16, 1934.)

<sup>53</sup> NRA Release, No. 4265, April 1, 1934, Order No. 60-26.

<sup>54</sup> The Code had provided for the appointment of a committee to investigate the social and economic implications of company scrip. The members were: Charles Fowler, chairman, Daniel Bloomfield, Henry Post Dutton. The life of this committee was extended for another six months in June of 1934. (NRA Release, No. 5862, June 19, 1934.)

that the "scrip problem be approached in the codes of industries issuing scrip for wage payments, rather than in the codes of trades accepting such scrip".<sup>65</sup>

Article X, Section 2 (d) provides "a flexible method of amending or modifying the Code as circumstances may make necessary".<sup>66</sup> The NRCA was empowered to "from time to time present to the Administrator recommendations . . . based on conditions in the trade, which will tend to effectuate the operation of the provisions of this Code and the Policy of the National Industrial Recovery Act. Such recommendations shall, upon approval by the Administrator, become operative as part of this Code."<sup>67</sup> This provision is interesting in so far as it gives the Administrator veto power only. It provides that amendments may originate only from the Code Authority.

After the amendments were discussed and formulated, a public hearing was typically announced "for the purpose of obtaining in the most direct manner the facts useful to the Administrator. . . ." "Opportunity to be heard . . .", it was said, would be given "to persons or groups who can show a substantial interest as workers, employers, consumers or otherwise, in the effect of any provisions of these proposed amendments".<sup>68</sup>

In the course of the winter of 1934, trade associations had collected reports of difficulties which their membership had experienced with the Code. From various trade sources came requests: National Retail Dry Goods Association wanted a minimum wage for outside salesmen "as a means of insuring a fair minimum wage for such employees and as

<sup>65</sup> NRA Release, No. 9966, February 5, 1935.

<sup>66</sup> Bulletin I, Comment, p. 42.

<sup>67</sup> Retail Code Article X, Sec. 2 (d).

<sup>68</sup> Notice of hearing dated April 23, 1934, for Hearing on Code No. 60 to be held May 4, 1934.

a means of protecting retail stores against unfair competition from house to house canvassers"; they suggested a restriction of the work-week to fifty-six hours for watchmen without further definition of the number of hours a day or number of days a week permitted; they wanted to allow employees to work two rather than one extra hour on any one day of the week, providing total weekly hours were correctly limited; they wanted resort stores to be permitted temporarily to increase store and working hours. Suggested changes in trade practice provisions included further definition of use of comparative prices and the advertising of sales, strict restrictions of prize contests, and the deletion of the word "inaccurately" from the clause on underselling claims. The National Retail Furniture Association wanted clearer advertising of installment purchases.

The list of amendments proposed by the NRCA comprised the conflicting desires of the associations represented on the Authority. Projected changes in labor clauses included (1) the authorization of temporary reductions in store hours providing weekly wages of employees were not reduced. (2) Outside salesmen and outside collectors were not to be limited in hours of work or put on a minimum salary, but watchmen, guards and store detectives were to be limited to a flat fifty-six hour week in all types of stores. (3) Maintenance and outside service employees were to be added to the list of employees working more than the basic week not to be limited by the specified ratios to total number of store employees: (4) this ratio was to be based on average number of employees for twelve months of the year. (5) The stipulations concerning consecutive hours of work were not to apply to firemen. (6) Modifications of trade practice clauses suggested by NRCA included the limitation of one-cent sales by making the loss limitation provision apply to each article individually, if the price of one of the

articles was mentioned; (7) the prohibition of the use of the word free when delivery of the advertised article was contingent on a purchase; (8) outlawing sales involving elements of chance and (9) making compulsory the statement of terms and charges involved in the purchase of merchandise on the installment plan.

The Consumers' Advisory Board also proposed an amendment covering the subject of installment sales. It was thought necessary for the proper protection of the public for the latter to know the actual cost of installment sales. This meant that the actual percentage interest on *unpaid declining balances* should be stated. A representative of the Board cited an example: a \$25 article sold on a \$3 carrying charge with a \$5 down payment and payments of \$5 a month, carried an actual interest rate of seventy-two per cent. The Code Authority opposed this amendment on the basis that it had been improperly submitted, since the Consumers' Advisory Board was not empowered to present amendments. Although Dr. Dameron permitted the presentation of the testimony at the Hearing, the amendment was not formally considered at the time.<sup>89</sup>

<sup>89</sup> Amendment submitted by NRCA: Article IX, Section 1: "Advertisements offering merchandise for sale on installment payment plan shall clearly and unequivocally indicate all terms and charges which must be complied with in order to obtain the merchandise so advertised."

Amendment submitted by Consumers' Advisory Board: Article IX, Section 1: "It shall be misleading advertising and a violation of Article IX, Section 1 (a) of the Code, if any retailer, in advertising merchandise and/or services for sales on deferred or installment payments, shall quote a price for such merchandise and/or services without stating clearly whether that price does or does not include financing and/or other charges for the deferred or installation payments.

"'Exact carrying charges' or 'monthly rate of percent on actual unpaid (declining) balances' must be stated in sales contract. If no sales contract is used, written statement must be given buyer stating (a) Cash price of merchandise; (b) Deferred payment price; (c) the amount of carrying charges stated, same as above."

At the hearing, most of the discussion focused on the amendments relating to installment purchases and one cent sales<sup>60</sup> and the use of the word free for premium merchandise; of these three amendments the one relating to one cent sales was approved in August,<sup>61</sup> the others were not approved at all. The rest of the amendments submitted at this hearing, except the one relating to fireman were eventually approved by NRA.<sup>62</sup>

#### SECTION IV. EVALUATION

We have seen that there were three methods whereby the Code was kept elastic. The exception procedure was not supposed to be used extensively and was not so used; accordingly its influence was negligible. Amendments might well have been important had the Code been in effect for a longer time. But since the life of the Code was practically coterminous with the time required to formulate and put through

<sup>60</sup> The debate over the amendment suggested by the Consumers' Advisory Board was spirited. The amendment was supported by representatives of the National Grange, the American Federation of Labor, the Department of Remedial Allowances of Russell Sage Foundation, the Federation of Women's Clubs, etc. These groups contended that a sales contract or a written statement ought to state the credit price, the cash price and the "monthly rate percentage on actual unpaid declining balances", in order that the customer could make an intelligent choice between purchasing for cash or on the installment plan. (Transcripts of Hearings, May 4, 1934.) Retailers contended the customers were not accustomed to thinking of credit costs in terms of a percentage rate on declining unpaid balances. These rates would accordingly seem high and would discourage purchasing. Retailer interest in reforming installment selling seemed to lie in preventing other retailers from publishing advertising which would create the false impression that customers of the store were able to make installment purchases on better terms than they could at other installment houses or for the same price as at cash houses.

<sup>61</sup> See *supra*, p. 276, note 22.

<sup>62</sup> NRA Release, No. 4845 and Transcripts of Hearings, May 4, 1934. See also NRA Code of Fair Competition for the Retail Trade approved Code 60, Reprint 4-22-35.

an amendment, the opportunity of using the procedure was limited. Moreover since proposed amendments could only be presented by the Code Authority, the desire to use them was also limited. The most important element of elasticity occurred through the necessity for interpretation. The way in which the interpretive machinery operated was therefore a matter of prime importance.

Clearly, decisions were not made primarily on the basis of a legalistic dissection of word and phrase which searched for the intent of the law. Interpretations in most cases were a means of bending the Code or of extending it in the direction which the majority of the articulate trade wished it to follow. Moreover, since attitudes towards NRA changed in the course of the year and a half, some of the lessening enthusiasm towards regulation was also bound to be reflected in the interpretations advocated by NRCA.

In this process of re-tailoring the Code we find the same kind of tug-of-war that was the outstanding feature of Code drafting. The attempt of many retailers to outlaw "free" gifts was fought by manufacturers and certain NRA officials. The attempt to expand the professional classification was fought by certain members of the retail group and by the Labor Advisory Board. The emasculation of the wage differential clause took place apparently before the eyes of the defenders of the public interest. It is not clear whether this occurred because the guardians of the public actually believed that no workable alternative interpretation was possible or advisable, because their efforts on behalf of labor were unavailing, or because they simply did not realize the significance of what was occurring. Certainly, an interpretation which had attached the prohibition against wage reduction to a given *class of employment* would have been as capable of enforcement as the hour provision of the Code. Payroll data kept by all but the smallest retail stores, contain

ample information by means of which to determine departmental hiring rates and average wages or wage range within a department. Upon information of this kind, a judgment could be based which, though not guided by a mechanical rule of thumb would have been as well grounded as most of the decisions which the enforcement of the Code necessitated. The plea of unworkability must, it would seem, be thought of as another case in which "it can't be done" was successfully substituted for "I don't want to do it".

In Code interpretation it would seem that NRA was unable to function as a reliable check on behalf of the public interest when the wishes of retailers in the inner circle diverged significantly from the interest of labor or consumer. Some of the problems faced by NRA will be discussed in the last chapter in this section. Concerning the interpretation of labor cases, however, it is important to note that many of the inhibitions against behavior on the part of retailers contrary to the labor interest, which prevented such conduct in the field of compliance or amendment, did not operate in relation to interpretations. The important check of "it would look bad" did not function when no one could see.

The significance of the inadequate mechanics of interpretation increased as there was more rather than less elasticity in code clauses, and yet the code clauses had, of necessity, to be elastic. An individual drafting a law can proceed along one of two lines: He may itemize the situations which he intends to regulate and exactly describe the nature of the regulation; or he may outline criteria for selecting the situations to which the clause applies and again describe the regulation as exactly as possible. But the two methods cannot be combined without weakening both. Thus if it is not possible to enumerate all of the cases to which a law refers, the mention of any of them may elicit the objection that because some other case was not specifically mentioned it



was not meant to be included. Thus the field of regulation in a code clause had of necessity to be bounded by largely theoretical criteria requiring interpretation in their application to manifold real situations. Accordingly it would be almost impossible to minimize the need for interpretation in the NRA type of industrial regulation.<sup>68</sup>

<sup>68</sup> It is important to distinguish between the necessarily vague definition of the field to which a law applies and the designation of conduct within the field, which can presumably be specifically and clearly stated. Thus although it would seem well nigh impossible to avoid the need for interpretation concerning who precisely was a professional and what precisely was a premium, there was less need for misunderstanding concerning the wages and hours to which professionals were entitled, whether premiums should be prohibited or to what wages certain classes of employees were entitled if their wages were not to be reduced.

## CHAPTER IV

### ADMINISTRATIVE MACHINERY AND THE PUBLIC INTEREST

WE have reviewed some of the major problems involved in the administration of the Retail Code. Some of the difficulties encountered under NRA could doubtless be circumvented by analogous legislation that viewed objectives more clearly and was more realistic in calculating and facing the cost of desired achievements. But basic to specific difficulties was a fundamental problem of control which it will be useful to outline at this point.

Operation under a code of fair competition meant that the trade or industry had purchased power in enforcing aspects of trade ethics by acceding to specified labor standards and to government supervision. The NRA lent the dignity of the law to trade ethics, it encouraged self-government of industry, but it insisted on government supervision. The NRA was watch-dog for the public interest. This exchange of power for control was embodied in a pervading dualism of code administration: the work of code authorities was checked at every turn by NRA divisions.

A system of this kind could serve the public under one of two circumstances: either the code authorities spontaneously acted in accord with the public interest and therefore required no watching; or the officials of NRA were effective guardians of the public interest wherever and whenever it required protection.

The elasticity of each code achieved through interpretation and amendment, the newness of compliance problems, and the changeableness of NRA organization meant that the

entire process was in constant flux. Subtle changes could occur all along the line of intricate control machinery; major changes occurred through the formal channels of code modification which were duplicated for each of the several hundred codes and were of necessity only indirectly connected with any central person or board. *The public interest could only be guarded at these many points at which change occurred.* Accordingly, it was imperative that the NRA officials to whom authority was delegated have the ability to judge where the interest of labor and consumer lay and to urge their opinions with effectiveness in the event of a disagreement with the code authority. But two sets of difficulties tended to aid the trade and hamper the government in the inevitable jockeying for control: In the first place, important centrifugal forces were exerted by the nature of code problems; in the second place, NRA faced a terrific personnel problem.

#### SECTION I. NRA AS GUARDIAN OF THE PUBLIC INTEREST

In the first place, the magnitude of the task of enforcing the codes seems to have been largely unanticipated: the self-policing machinery as a *preventative* of code violation did not work as well as expected; there seems to have been more non-compliance than was foreseen; complaints did not disclose all of the violations; the ambiguity of fact made non-compliance, when discovered, difficult to correct. The resultant disorder and the terrific press of work made it highly desirable to delegate work to any group ready and willing to assume the burden. The Retail Code Authority was organized speedily. Retailers wanted to handle their own compliance problems. Willing cooperation of members of the trade was essential to code enforcement; especially was this true in the retail field since Federal regulation of retail trade had a highly questionable legal status. When we reflect that

the situation in retailing was multiplied by similar situations in many other industries, we can readily understand why the government seemed more willing than it might otherwise have been to permit code authorities to assist in handling labor complaints on a temporary basis prior to the code authorities having arranged for bipartisan labor boards. But typically responsibility breeds further responsibility and in the Retail Code the typical sequence seems to have been followed.

Significant centrifugal influences made it difficult to keep control centralized in Washington. It would, under any circumstances, have been difficult to devise a system which would have been at once elastic and adequately coordinated to answer the needs of a country as large as the United States, but several factors tended to magnify the problem. We have noted that retailers, not unlike most men and women, are jealous of their personal and civic rights and therefore in most cases favor home rule.<sup>1</sup> But the conscientious administration of the Code actually required a certain amount of usurpation of power and accordingly re-enforced an individual's inner necessity to be important. We have noted that a substantial amount of bluffing was necessary both in determining whether firms were complying and in correcting non-compliance. The bluff of official perogative ranged from the impressive noise of a complaint adjuster trying to prevent a respondent from committing future violations, through official emblems on letterheads<sup>2</sup> to the

<sup>1</sup> It should be noted that the store which used methods which many of its competitors thought improper was often opposed to home rule, or the "lynch law of competitors", and in favor of central control.

<sup>2</sup> On December 22, in Bulletin A 3 signed by Lew Hahn, the temporary chairman, the Code Authority gave instruction concerning insignia: names of officers and name of local Code Authority could be stated on letterheads. It also said, "No attempt shall be made on such printed matter to

use of the government franking privilege by the New York Code Authority.<sup>8</sup> We have also noted the unavoidable necessity when applying Code clauses to specific cases, for local offices to make judgments concerning which reasonable men might well differ. Thus both the nature of compliance work and the nature of people encouraged separatism.

The personnel problem of NRA lay in collecting a large group of men who had the necessary knowledge, ability and independence effectively to champion the public interest in all the codes.

The nature of the subject matter of the Retail Code, and in fact of most codes, meant that it was necessary to have

indicate that a LRCA is a branch or agency of the NRA of any other department of the Government."

The change in name from "Council" to "Authority" was related to the need for official sound. Whatever the actual cause of the shift, it would seem that most of the trade groups would have shared Grover Whalen's objection to the word "council". It was thought at the New York office that in order to enforce the Code a certain show of officialdom was essential. The necessary quality seemed entirely lacking in "council" and present in "authority". The office, in applying for a certificate of authority requested to be permitted to call itself Retail Code Authority—City of New York. Bulletin A-1 (Order No. 8) issued December 6th by General Johnson changed the name of the National Retail Trade Council to National Retail Code Authority. A similar change was authorized for local bodies and embodied in the Code as an amendment.

<sup>8</sup> Franked envelopes had been used by the Chairman of the Code Authority in his capacity of Compliance Director. The desire to continue to use them was motivated in part by the economy that would result in collecting assessments from the many thousands of retailers, many of whom would require three or four communications. Moreover, the penalty privilege is used for government business; therefore if the Code Authority could be empowered to use the frank they would, by definition, be engaged in official business. There ensued elaborate discussions, in which Mr. Whalen insisted that the sanction of a Code Authority came directly from the Government, and without official backing no compliance could be achieved, whereas NRA, with the exception of General Johnson, and Post Office officials held that no such privilege could be granted. The N. Y. office discontinued using the frank on January 8, 1934.

an intimate and sure knowledge of the practices of the trade in order to be aware of the implication of actual or suggested phrasing and to be proof against being told that "it can't be done". In any argument over a phrase, which took place between two individuals, one of whom had, the other of whom did not have such knowledge, the former had a distinct and most important advantage. But winning a point at a code authority meeting or in the informal conference preceding the meetings involved not only knowledge but technique. This is a fact which can not be over emphasized. Skill in negotiation is a fine art that takes time and experience to master: the human animal is not born with the ability to play off factions against each other, to inject the proper remarks at the proper time, to know when to press a point and when to let it ride. Moreover, only certain men and women have the natural attributes necessary to the acquisition of the technique: mental ability, judgment, tact, insight.

The nature of the administrative jobs meant that their proper execution required, in addition to a rather rare combination of abilities, an unusual independence. Many of the officials of the Government were men who had come from trade or industry. But if officials of the NRA came from business life, there was considerable probability of their returning to it. Governmental positions paid relatively low salaries, they paid lower salaries than many code authority jobs,<sup>4</sup> or many business jobs of equal responsibility.<sup>5</sup> Work

<sup>4</sup> Interesting in this connection is an order issued by General Johnson (NRA Release No. 3226, Feb. 9, 1934) "No person who has served with the National Recovery Administration will be permitted to appear before the Administration in the interest of any trade or industry with which his former official duties brought him into relationship or to serve on the Code Authority of such industry... except as a government member in an industry in which he has no interest."

<sup>5</sup> The salaries of men occupying important positions were: Divisional Administrator between \$6800 and \$8000, a Deputy not over \$6800, Assistant Deputy not over about \$4500. It is interesting to note that a secretary of a deputy or divisional administrator might receive \$2600.

for the government, in spite of its lower monetary remuneration might well have been preferred by many individuals for various reasons including a genuine idealism and joy in doing something that seemed worth doing; this idealism seemed to fire a very significant group of NRA employees, particularly in the early days of NRA.<sup>6</sup> But even had men preferred to dedicate the rest of their lives to government service, the uncertain future of NRA made the possibility of having to return to business as a means of livelihood, failing a university position, a probability that needed to be faced. Accordingly, the direct alienation of business interests in defense of the public interest required courage, inward honesty and independence. We have noted in the previous paragraph that it also required knowledge, a specialized skill and high mental ability of a particular kind. A set of attributes of this sort meant that the number of really effective government officials would necessarily have to be counted well at the upper end of a Bell curve. At the same time, as in the case of the specially appointed Retail Trade Authority, people who possessed the necessary attributes were often too busy to attend even the formal meetings of the Code Authority, whereas, in order actually to exert important influence, it would doubtless have been necessary to have been present at many of the informal conferences as well.

But the "Government" in terms of any individual code was Mr. Jones of the Labor Board, Mr. Smith of the Consumers' Board, Assistant Deputy Black, etc. If these men were less free, less knowing, or less skilled in the art of negotiation than their brothers in trade, then to these brothers belonged control. If their job was, either because of

<sup>6</sup> The hours which were kept and the amount of work which was accomplished by some NRA officials during the summer of 1933 and winter of 1934 were astounding. Professor Dameron, in the ten months during which he was working in NRA, put in ninety days, or over three months of overtime.

its subjective or objective characteristics, a nearly impossible job to perform, then the public interest, their ward, must suffer. In the Retail Code, in spite of conscientious effort, the active representatives of advisory boards and government were, it would seem, unable adequately to protect the labor interest. Much of benefit was accomplished, but the much was not enough to warrant confidence in the machinery. Interpretation, formal and informal, broke down Code restrictions on the reduction of wages above the minimum; moreover, long negotiation failed to develop adequate labor control over national and local Code administration. Such representation would have become increasingly important for adequate Code enforcement as well as for proper Code interpretation had the life of NRA been prolonged and a change in popular sentiment made members of the Code Authority less interested in enforcing the letter of the law.

#### SECTION II. THE CODE AUTHORITY AS GUARDIAN OF THE PUBLIC INTEREST

But the control over the Code administration which was gained by the Code Authority could well have been entirely consistent with the public interest: The members of the Authority were able men; they gave a great deal of time and conscientious effort to their jobs; the office staff was able and hard working.

The difficulty lay in the nature of the job, given the nature of man. Adequate performance of all the aspects of the administration of the Retail Code by members of the Code Authority would have meant a disregard for self-interest which ran counter to all the training that American society imposes on an individual. Each member of the Authority was caught in a paradox that only a magician's wand could dissolve. In the first place, the members were either individual retailers occupying high offices in their companies or



officials of retail trade associations. In the second place, they were representatives appointed by trade associations to a representative assembly. In the third place, they were representatives of the trade as a whole as opposed to labor or customer or resource. In the fourth place, they were members of a governing body charged with the administration of a law designed to achieve the well being of labor, consumer and retailer. Moreover, this bewildering fourheaded monster had three functions—he was executive, legislator, and judge. There was little wonder that members of the Authority had considerable difficulty in deciding which head was speaking at any given time.<sup>†</sup>

The multiheadedness of the Code Authority members became important when the animal disagreed within itself. The incidence of this conflict of interest between I, the President of Blank Company; I, the Trade Association member; I, the Retailer; and I, the citizen, depended on the particular subject or circumstances under consideration. The adequacy of the Code Authority as a piece of Government mechanics depended, therefore, on the subject before the meeting.

When the subject under debate was one in which the interests of individual retailers conflicted, the round table afforded a very adequate method of reaching a reconciliation or at least, a decision.

Also when the issue under discussion involved a conflict between trade associations, the representative assembly was perfectly adequate. It meted out justice in the manner of

<sup>†</sup> The struggle would assume the most amusing and confused form in the New York Code Authority. A decision would be reached. Then someone would say, "But speaking as a Code Authority, I don't think we ought to say that." The voice of the Code Authority might then boom for awhile. Or else it might be decided to let the opinion issue from store offices rather than from the Authority. The variations of this theme were infinite.

a representative assembly—on the thoroughly unrealistic assumption that the just and right cause, rather than the most skillfully argued cause, would win. The trading, bargaining, badgering, and maneuvering brought forth an answer which, if not a good answer, was a democratic answer and would pass.<sup>8</sup>

But difficulty might arise when the subject before the assembly was one on which the Authority spoke for the trade. Here the question of adequacy of representation entered. It was clear that small retailers whose interests in many matters were substantially different from those of the chain, mail order houses and large stores, were noticeably absent from the council.<sup>9</sup> The absence of any association of wide enough membership to constitute a genuine voice of the trade, together with the increased need for retailers

<sup>8</sup> Obviously the jockeying for power by different trade associations representing somewhat divergent groups and interests was marked. The appointment of Mr. Peterson of the Hardware Association, and Mr. Young of the NRDGA as joint directors of the Code Authority represented an initial attempt to trade off conflicting interests of different groups. The process was almost bound to continue in the National and most of the local code Authorities, although it often took a subtler form. When a group of men meet, questions of skill in negotiation are often more important than a forthright trial of strength. In the National Code Authority certain of the members became the most important individuals in the group because of their superior penetration into the significance of what was transpiring and their ability to shape and lead discussion. In the New York Code Authority this ability was exercised by certain of the members with a smooth and conservative precision that was a joy to watch.

<sup>9</sup> The officials of the Retail Hardware Dealers Association on the Code Authority might, in representing trade association interest, be said to urge the cause of small retailers. The National Shoe Retailers Association was also composed of independents rather than chain stores. But all associations had some small members. It was only when the controlling body of merchants in the association were small and the individual representative on the authority was not himself a large retailer that the small merchant in that branch of trade could, for the purpose of the present discussion, be said to be adequately represented.

to present a unified front on several subjects, created pressure for representatives of the Code Authority to appear on behalf of retailers. The matter was put to a vote in an Authority meeting and favorably reported in connection with the question of sending a representative of NRCA to express the opinion of retailers at the NRA price fixing hearing. The problem is perhaps best illustrated in a proposed amendment to Article X, Section 2, of the Retail Code which was passed by the Authority and ordered submitted to the signatory trade associations: (The words added to the original section are in italics) "That the NRCA, Incorporated, may from time to time present to the Administrator *objections* or recommendations (including interpretations) based on conditions in the trade, which *will promote the interests of the Retail Trade* or tend to effectuate the operation of the provisions of this Code and the policy of the National Recovery Act." <sup>20</sup>

When the problem before the meeting involved the interests of labor and to a lesser extent the consumer, the absurdity of the Code Authority as a governmental form grew blatant. Here were nine Code Authority members—for the most part employers of labor—sitting as an impartial judicial body on interpretations of labor clauses under which they operated their own businesses. As watch-dog at their meetings was a young man whose function was to defend the interests of labor; he formed judgments according to his humanly fallible opinion; he defended them as best he could, having for his chief bargaining instrument a nuisance value. The Administration members and representatives of the Advisory Boards could also debate for the public interest. They had no vote. As a matter of workaday and reliable motives, it would seem that to *count* on altruism from members of the Code Authority was a rank injustice

<sup>20</sup> NRCA meeting, December 12, 1934, Minutes.

to the intelligence of the group. Their adequacy as a governing body would accordingly depend upon the extent of the conflict between the public interest and that of the members of the Authority, and on the nature and strength of the motives that influenced their behavior.

Code Authority members had to conform to the *clear* tenets of the Code. They ran retail businesses which are curiously vulnerable to public opinion. To be a member of the Code Authority and to pay employees less than the minimum wage or work them longer than maximum hours would "look bad". It might, if found out, actually alienate customers. Thus, in enforcing the Code, the members of an Authority were, in a sense, seeing that their competitors did what they themselves were obliged to do. Besides, if they did not do what seemed to be a fairly good enforcement job, the Compliance Division might cease to refer complaints to the Authorities, which would weaken their position with NRA.

From the point of view of self-interest then, the code authorities could be expected to perform the executive aspect of their work with reasonable efficiency. In other words—if a definite and adequate plan of procedure had been laid out, it seems likely that it would have been followed by the code authorities, although this might have ceased to be true had NRA continued and codes become increasingly less popular. Moreover this does not mean that code authorities would generally have taken the initiative in planning aggressive enforcement. A certain essential lack of sympathy of the employer for the point of view of the employee, as well as a group solidarity among employers—the feeling that attached the word "snitch" to reporting a labor violation of a competitor—would in many cases, particularly in the smaller communities, have prevented over-playing the role of compliance officer. But it would seem that had

expectancies been clearly defined they would have been met. The inadequacies in enforcement were due primarily to the essential difficulty of the problems, to lack of any adequate plan for enforcement work, and to the innate fear of employees of bringing their troubles to a tribunal of employers. This last was probably particularly marked in small towns.

It was when expectancy and meaning were not clear that social sanctions no longer required action identical with group interest. The inadequacy of the code administrative form increased in inverse relation to the clarity of the law—it increased as functions grew interpretive and judicial as opposed to executive. It was when retailers were, within margins, writing their own laws, after the fervor of the early days of Code writing had cooled, that the inadequacy of the Code Authority as a social tribunal sharpens. Moreover if the National Code Authority bent the law to its advantage, meeting as it did in Washington under the hard gaze of ardent young eyes, how much more obviously unable to function as administrators of social law would the local code authorities have been.

This inability is illustrated by the answers to a questionnaire that was sent out by the National Code Authority to the local authorities asking for suggestions for Code modification. The covering letter stated: "What is sought is your earnest judgment on the provision of the Retail Code as a reflection of your experience in its administration". "This questionnaire is submitted not to your merchant members as individual retailers, but as official representatives of their trades on your LRCA."<sup>11</sup> The questionnaire mentioned a specific section of the Code and asked: "What difficulties have you experienced in the administration of this provision?"<sup>12</sup> There were 353 comments in response to

<sup>11</sup> Letter, November 7, 1934, "To All Local Code Authorities".

<sup>12</sup> The following groupings are made on the basis of summaries of the

the questions on labor clauses. Fifty-four of these comments appeared to deal with difficulties in administration from the point of view of a code authority trying to enforce them; twelve of the comments urged difficulties which pleaded inconvenience or hardship for labor. (Ten of these claimed that minimum wages were too low.) The other 287 referred to management problems in stores.

The questionnaire also asked: "As a result of your experience, what modification and changes do you suggest"? There were 566 answers to this question. Seventeen of these answers suggested changes for the purpose of facilitating administration; eleven proposed changes that might be said to advocate modification in favor of labor. (Ten of the eleven claimed that minimum wages should be raised, in five cases to correspond to state laws.) The other 538 suggestions aimed to make the Code less burdensome for store management.<sup>18</sup>

The incidence of the many cross pressures that have been outlined may perhaps best be tested by the final result—the effect of the Code on retailers, employees, consumers and resources. In the next part of this study we will accordingly attempt to picture the changes in established practice which occurred contemporaneously with the Code and to evaluate the causal relationships that seem to have existed.

answers made at the office of the National Retail Code Authority. It is possible that the grouping would have been slightly different had the original questionnaires rather than the summaries been used; it seems most unlikely, however, that the changes would have been very extensive.

<sup>18</sup> Twenty-eight answers to the first question suggested that limitation of hours of work caused hardship for trainees; forty-three answers to the second question suggested that trainees be permitted to work longer hours. The reader may feel that these answers should be classified as advocating a change advantageous to labor.

## **PART IV**

### **THE RETAIL TRADE UNDER THE N.R.A.**

## CHAPTER I

### LABOR CLAUSES IN THEORY

WHAT was the relation of the wage and hour requirements set in the Code to those existing in the spring of 1933?—in other words, what changes in employment and payrolls were theoretically required by the Code as drafted?

What was the relation of actual employment and payrolls under the Code to the theoretical Code requirements?

The following discussion will attempt to develop answers to these questions. On the basis of the answers, it will be possible to form a judgment concerning the extent of Code compliance and of the success of retail management in alleviating the burdens which would have resulted from the labor provisions of the Code, had actual conditions coincided with hypothetical requirements.

Unfortunately, statistics on retail employment and wages are scarce and for the most part unreliable.<sup>1</sup> It has been necessary to draw on all kinds of sources in an attempt to

<sup>1</sup> Most statistical series of employment or payrolls in the retail field are relatively new, therefore samples tend to be small as well as shifting. The difference in conditions in various types of stores makes any series for retailing as a whole of doubtful value, particularly if there has been any shift in the number of firms reporting from different branches of the trade. Then, too, average wages in small stores and in large stores may vary considerably at different times, thus emphasizing the need for a consistent sample. But the basic data themselves may be unreliable, particularly where a large number of small firms report. The sketchiness with which accounts are typically kept in a small shop may make it easier to add a little wish-fulfillment to pay roll reports to the government particularly at a time when the government is known to be urging re-employment.



fill in the broad outlines of the picture and to verify the reliability of the statistical material used. With few exceptions, credence must rest on a general agreement of various channels of information rather than on the reliability of any one set of data.

## SECTION I. CHILD LABOR

Section 2 of Article IV of the Code prohibited the employment of children under fourteen years of age. Children of fourteen and fifteen years were not to be permitted to work for more than three hours on three days of the week or eight hours on one day in the week. A Presidential Order subsequently forbade any employment of children under sixteen years of age. It would be interesting to know how many retail employees were affected by these provisions.

The number of children gainfully employed has decreased in the last three census periods although the proportion of the total number of children gainfully employed who are employed in trade has increased.

TABLE I  
NUMBER OF CHILDREN OF SPECIFIED AGES GAINFULLY EMPLOYED ON SUCCESSIVE CENSUSES AND PER CENT OF TOTAL GAINFULLY EMPLOYED CHILDREN IN TRADE

Census Year	Number of Children Employed in Trade			Per Cent of All Employed Children in Trade			Per Cent of Employed Children in Agriculture
	10 to 13 yrs.*	14 & 15 yrs.	16 to 17 yrs.*	10 to 13 yrs.*	14 & 15 yrs.	16 to 17 yrs.*	10 to 15 yrs.
1910	17,519	53,181	70,700	2.0	4.9	3.6	72.0
1920	17,213	46,155	63,368	4.6	6.8	6.0	61.0
1930	14,746	34,869	49,615	6.3	8.1	7.4	70.4

Source: 1920 and 1910 Data: 14th Census of the United States, Vol. IV, p. 477.

1930 Data: 15th Census of the United States, Vol. V, p. 345; Vol. IV, p. 88.

\* Inclusive.

The elimination of gainfully employed children from trade in 1930 would thus have affected 6.3 per cent of the children of ten, eleven, twelve, and thirteen years of age who were

working, (about 70% of them as news boys), a significant proportion of the total, since it would have taken all of the rest of the employments in the country with the exception of agriculture, to provide an equally large number of gainfully occupied children. Of the children fourteen and fifteen years of age who were gainfully employed, trade accounted for 8.1 per cent, (about one-third of this total in the capacity of news boys). This percentage represented one quarter of the employed children of those ages in all of the industries of the country.

The table also shows the absolute decline in children employed in trade in 1930 as compared with 1920. The decrease of 22.1 per cent was compounded of declines in most of the important types of work in which children in trade were employed, the most important exception being delivery boys in stores, the number of whom increased 83.9 per cent.<sup>3</sup>

On the basis of the Census figures it is impossible to tell the exact proportion of the employees reported in "trade" who work in the retail field. However, an examination of the classes of employment listed seems to indicate that the majority of the children under sixteen reported in trade are retail employees and news boys.<sup>4</sup>

Although the children under sixteen years of age who are employed in trade constitute an important part of the gain-

<sup>3</sup> 15th Census of the United States, 1930, vol. v, p. 351. Total number of children 10-15 years in trade is here given as 63,724 and 1920. This figure is slightly different from the one reported in the 1920 Census volume.

<sup>4</sup> The number of children 10-15 years employed in trade in 1930 is classified in the following way: Canvassers, 467; 'Clerks' in stores, 4799; Deliverymen in stores, 7910; Hucksters and Peddlers, 296; Laborers, coal yards and lumber yards 359; Laborers, Porters and Helpers in stores, 4144; other laborers in trade, 130; Newsboys, 21,783; Salesmen and Saleswomen, 8,564; all other occupations, 1163. (15th Census of the United States, 1930, vol. v, p. 351.

fully employed children in the country, they represent a very small portion of the total population ten years of age and over employed in trade. They would probably constitute about one per cent of all retail employees.<sup>4</sup>

Under the Retail Code and the Presidential Order, the 49,615 children under sixteen years of age who were employed in trade in 1930 was presumably reduced to zero. The acceleration of the trend of decreasing gainful employment of children was a luminous spot in NRA.

#### SECTION II. WAGE DIFFERENTIALS

It is most convenient to work backwards in the attempt to evaluate of the gains for labor which ought theoretically to have resulted from the Code. Starting with an examination of differentials in minimum wages, we can determine the justification of the actual differentials in the Code. In the course of this analysis much of the material will have been developed which can be used to indicate the actual minimum wages current in the spring of 1933 and, accordingly, the number of employees who might have been benefited by the minimums in the Code.

##### *Minimums in the Code.*

The Retail Code contained a series of minimum wage rates. Entering into the selection of the appropriate minimum wage for a specific worker were several criteria concerning the amount and quality of work required: 1. *The length of the working day.* The wages for a 48-hour week were greater by \$1, and for a 44-hour week greater by 50

<sup>4</sup> Percent of total workers in trade at specified ages: 10-13 yrs. 0.2, 14 yrs., 0.2, 15 yrs., 0.4; total under 15 yrs., 0.8 (15th Census of the United States, vol. iv, p. 43, Table 21). But since the figure 0.8 percent is for all of trade and since the proportion of children in retail trade seems to be somewhat higher than in wholesale trade, it seems reasonable to say that the proportion in retail trade is about 1 per cent.

cents than the compensation for a 40-hour week; an unlimited working day under certain conditions entitled a worker to an executive salary.<sup>5</sup> 2. *The age and skill of the worker.* Employees under 18 years of age or having less than six months' experience in the retail trade were entitled to minimums which were \$1 lower than those received by experienced adult workers; an "executive" having a managerial capacity working unlimited time was entitled to a minimum wage which was over 100 per cent higher than the basic minimum;<sup>6</sup> the prohibition against wage reduction also set what was in fact a series of minimum wages for each employee or for each job, depending upon the interpretation placed on the words "class of employee".

The appropriate minimum wage for individual worker was also based on certain geographic considerations: 1. *The section of the country*—workers in the South were entitled to

<sup>5</sup> The exemption of "professionals" and watchmen from the limitation of hours of work was an exception to the thought that wages should be governed in part by the length of the working day. A further exception to this principle was involved in the six-hour extension of the hours which service and delivery employees were permitted to work without payment for overtime. It should also be noted that although employees working 48 hours are paid more than those working 40 hours, they are receiving a lower hourly rate of pay.

<sup>6</sup> In order to qualify as an "executive" the employee was required to work in a managerial capacity. The wage was thus based on the double concept of a high degree of skill and responsibility, and on the longer hours worked. For such work he was required to receive wages equal to or in excess of the following:

Size of City	Salary per week in the	
	North	South
Over 500,000 inhabitants .....	\$35.00	\$31.50
100,000 to 500,000 inhabitants .....	30.00	27.50
25,000 to 100,000 inhabitants .....	27.50	24.75
Under 25,000 inhabitants .....	25.00	22.50

Source: National Recovery Administration: *Retail Bulletin No. 1, Retail Code and Retail Drug Code*, Article V, Section 5.

minimums of \$1 less than those in the North. 2. *The size of the city* in which the store was located. The highest minimum wage applied to cities of over 500,000 inhabitants. This minimum was reduced by \$1 for employees in cities having a population between 500,000 and 100,000, and by \$2 for workers in cities having between 100,000 and 25,000 inhabitants. If the city had less than 25,000 inhabitants, the minimum wage was fixed at a point 20 per cent above the appropriate wage of the same class of employee on June 1, 1933, providing this increase did not bring the minimum wage above \$11 in towns of between 25,000 and 2,500, or \$10 in towns of less than 2,500 (\$10 and \$9 respectively if the towns were located in the South). 3. *The size of the store*, in towns of less than 2,500 inhabitants employees in stores of less than five employees were not entitled to the protection of a minimum wage.<sup>7</sup>

The minimum wages of the Retail Code varied from \$15 to an indeterminate lower limit. Since the range of minimum wages was so large, it is important to determine approximately the number of workers that would be entitled to specified minimums.

It is impossible to estimate the number of workers who had been employed for less than six months and would therefore have been classified as apprentices. But since most new entrants were likely to be under 19 years of age, the number of apprentices who were not "juniors" was probably never very large. Employees under 19 years of age were classed as "juniors" and were entitled to \$1 less than the appropriate wage for adult workers. Approximately 232,836 young people, 15 to 18 years inclusive, according to the 1930

<sup>7</sup> This provision was contained in an Executive Order issued October 23, 1933. It exempted employers having not more than five employees in towns of less than 2500 population which were "not in the immediate trade area of a city of larger population".

Census listing, were engaged in trade.<sup>8</sup> This represents approximately 3.8 per cent of the 6,081,467 individuals engaged in wholesaling and retailing.<sup>9</sup> It is impossible to say what the influence of the depression had been on the number of junior workers employed in trade. But it seems likely that the Code tended to reduce the number of juniors and apprentices employed since the price concession at which they could be hired was decreased.<sup>10</sup>

The differential in wage minimums based on the size of the city in which the store was located was a most significant determinant of prevailing minimum rates. The United States Department of Commerce, Bureau of the Census, has compiled data from the 1933 Census of Distribution on retail sales and retail stores listed by size of city. The

<sup>8</sup> 18 and 19 year old employees are listed together in the Census tables. It has been assumed for the purposes of this approximate calculation that two-fifths of the total were 18 years of age and three-fifths 19 years of age. Although this is a guess, it seems to be on the whole more accurate than assuming an even division between the two ages; at any event, the error involved is small.

<sup>9</sup> Since the number of employees in retail stores, according to the 1929 Census of Distribution, was almost six times the number in wholesaling, and since in addition, the detailed tables seem to indicate that the proportion of juniors employed in retailing is far in excess of those employed in wholesaling, the proportion ought probably to be slightly higher for the retail trade.

<sup>10</sup> If an employer can hire all of the experienced workers that he needs, his acceptance of an inexperienced one is likely to rest largely upon a price concession. His willingness to hire such workers would depend on the kind of store he operated, on conditions in the market and on the amount of the price concession for which they could be employed. These factors are impossible to calculate. One thing, however, is clear. There would have been fewer apprentices and juniors employed at a \$1 price differential than at the much larger one that was current prior to the Code. Therefore, although we cannot tell how many employees were being trained prior to the effective date of the Code, it seems safe to say that the number was substantially reduced after November 1st.

material is further subdivided by section of the country<sup>11</sup> and type of store. Selecting approximately those stores which come under the general Retail Code,<sup>12</sup> it has been possible to calculate the approximate number of stores and the approximate amount of sales which would be conducted in areas subject to each of the basic minimum wage provisions of the Retail Code.

TABLE II\*  
ESTIMATED NUMBER OF STORES AND AMOUNT OF SALES WHICH WOULD  
OPERATE UNDER SPECIFIED BASIC MINIMUM WAGES †  
FOR A 48-HOUR WEEK

Minimum Wage	Stores		Amount	Sales	
	Number of	Percent of Total		Total	Cumulative Percent
\$15	95,555	17.5	\$3,333,332	26.9	26.9
14	55,655	10.2	1,910,815	15.4	42.3
13	71,168	13.0	2,118,724	17.1	59.4
12	13,127	2.4	400,328	3.2	61.6
10-11	88,084	16.1	1,740,944	14.0	75.6
9-10	32,773	6.0	688,493	5.6	81.2
to-10	116,643	21.4	1,421,907	11.5	92.7
to-9	73,460	13.4	780,494	6.3	100.0
Total	546,465	100.0	12,395,027	100.0	

Source: Compiled from U. S. Department of Commerce, Bureau of the Census, *Census of American Business, Retail Distribution, 1933, Stores and Sales by Size of City*.

<sup>11</sup> The area listed under the three southern geographical divisions is the same as that contained in the definition of "South" in the Retail Code, except for the inclusion of New Mexico in the Code listing.

<sup>12</sup> The figures here given include a total of 546,465 stores as compared with a more detailed enumeration in which 366,985 stores were found to have been subject to the General Retail Code (See Part II, page 163n). Included in the former total are all of the stores listed with the exception of the food group, restaurants and automotive group. The classifications of the stores preclude any further refinement of the tabulations. There seems to be no reason, however, why the data in Table II would not be generally characteristic of the smaller list of stores under the General Code.

\* Total retail trade exclusive of restaurants, food group and automotive group.

† Stipulated wages are for cities having the following number of inhabitants: \$15—Northern Cities of over 499,999; \$14—Southern cities of

The table indicates that about 60 per cent of the sales under the General Code are conducted by employees subject to a basic minimum rate of \$15, \$14, \$13, had they been working 48 hours a week under Schedule C. Twenty per cent of sales was transacted by employees subject to minimums ranging from \$12 to \$9; the other twenty per cent was transacted in towns under 2500 inhabitants that had virtually no minimum wage requirements. Thus forty per cent of the average sales of 1933 were conducted in stores having a minimum wage rate equal to or below the \$12 minimum originally proposed by the NRDGA and emphatically opposed by the Administration. The per cent of sales is a very rough approximation of the percentage of employees, although the larger cities probably account for a larger percentage of workers than of sales. The reverse would be true, of course, in the smaller cities.<sup>18</sup>

Wage differentials were, in effect, a method of lowering minimum wages from the \$14 level on which the Administration ostensibly insisted. It is therefore important to analyze the validity of the arguments and facts on which they were based.

over 499,999 and Northern Cities of 100,000-500,000; \$13—Southern Cities of 100,000-500,000 and Northern Cities of 25,000 to 100,000; \$12—Southern Cities of 25,000-100,000; \$10-11—Northern Cities of 2500 to 25,000; \$9-10—Southern Cities of 2500 to 25,000; to \$10—Northern Cities of less than 2500; to \$9—Southern Cities of less than 2,500.

<sup>18</sup> The 1929 Census of Distribution lists data separately for cities of over 30,000 inhabitants, cities of from 30,000 to 10,000 inhabitants, and for cities of under 10,000 population. The percentage of the total retail sales of the country done by stores in each of the city size groups is 58 percent, 11.8 percent, and 30.2 percent respectively; the percentage of the full-time employees to the total for the country employed in each group is 64.3 percent, 12.0 percent and 23.6 percent. A large part of the difference in the relative number of employees and sales in the different city size groups is doubtless in part explained by the larger proportion of proprietors to employees in the smaller towns.



These arguments were of four types: 1. Differentials should be set in such a way as to maintain the status quo. 2. A differential should preserve fair competition by equalizing competitive disadvantages. 3. There should be no differentials but a uniform minimum wage. 4. The wage structure should start with the status quo and by gradual steps arrive at a uniform minimum throughout the country.<sup>14</sup> In the retail field the justification of wage differentials must have rested largely on the first argument—the maintenance of status quo.<sup>15</sup>

The preservation of the status quo must rest on the thought that the disturbance of existing wage differentials is in itself undesirable; this in turn must derive from the belief that either the market price of labor represents a fair estimate of what the employer is able to pay in any given locality or that it represents an adequate income for the employee because of cost-of-living differentials. It is useless to argue the theory of these points.<sup>16</sup> But it is important to decide, disregarding the question of validity of the theory,

<sup>14</sup> NRA, Division of Research and Planning: *Geographic and Population Differentials in Minimum Wages*. Prepared for the Hearing on Employment Problems of Codes of Fair Competition.

<sup>15</sup> Labor unions were not powerful; therefore there could be little effective urging of a uniform rate for the country, although the Southern differential was bitterly contested by the Labor Board and the Department of Labor. Since retail competition is largely local, the argument concerning the maintenance of fair competition could not be strenuously urged.

<sup>16</sup> On a theoretical basis the first point is hard to justify in connection with minimum wage legislation, since it implies a belief in the market process for determining wage levels, which is implicitly denied when wages are regulated by legislation. Dr. Leo Wolman reported in the late fall of 1933 that the status quo formula did not prove satisfactory for very long, and was practically discarded in industries in which labor was well organized. (*America's Recovery Program*, edited by Department of Economics, Swarthmore College, Oxford University Press, N. Y., 1934, pp. 93-94.)

whether on either basis, facts justified the differentials contained in the Code. A study of the existing wages, in addition to indicating whether actual wage rates explain Code differentials, will also provide information which can be used in an attempt to estimate the hypothetical changes in payroll and employment that compliance with the Code would have required.

#### *Cost of Living and Wage Differentials*

Wage differentials based on cost of living imply a difference in the cost of maintaining a "decent" standard of living in different localities.<sup>27</sup> Unfortunately, the questions

<sup>27</sup> The standard of living to be embodied in NRA Codes seems to have been most frequently described as a "decent" living standard. This derives directly from the early group of state minimum wage laws.

The standard of "health and decency" has been defined in the course of its use as a basis of wage adjustment. It may be contrasted to such inferior standards as "the pauper or poverty" level, the "minimum subsistence level" or to a superior standard which has also been used for wage adjustment,—the "minimum comfort level".

The items included in the "standard of health and decency" were itemized for government employees in Washington in August, 1919. The standard included: (1) A sufficiency of nourishing food for the maintenance of health, particularly the children's health. (2) Housing in low-rent neighborhoods and within the smallest possible number of rooms consistent with decency. (3) The upkeep of household equipment such as kitchen utensils, bedding and linen necessary for health, but with no provisions for the purchase of additional furniture. (4) Clothing sufficient for warmth, of sufficiently good quality to be economical, but with no further regard for appearance and style than is necessary to permit the family members to appear in public and within their rather narrow social circle without slovenliness or loss of self-respect. (5) A surplus over the above expenditures which would permit of only a minimum outlay for such necessary demands as; (a) street car fares to and from work and necessary rides to stores and markets; (b) the keeping up of a moderate amount of insurance; (c) medical and dental care; (d) contributions to churches and labor or beneficial organizations; (e) simple amusements, such as moving pictures once in a while, occasional street car rides for pleasure, some Christmas gifts for the children, etc.; (f) daily newspapers. (Cf. *Monthly Labor Review*, "Tentative Quantity-Cost Budget

involved in any complete treatment of the subject are so numerous and would require such extensive discussion that it will be possible to give only a most cursory presentation, the purpose of which will be more to present the problems than to answer them.

Working class incomes are lower in the South than they are in the North. But families over a period of years spend approximately what they make.<sup>18</sup> One would assume, therefore, that average expenditures as well as average incomes are lower in the South than in the North. Fragments of direct evidence in regard to expenditures seem to substantiate this deduction. But in general it would seem that indication of a difference in income would constitute adequate indication of a difference in expenditure.

The crucial question to be answered if minimum wage legislation is to be based on cost of living data is not whether families in one place spend more than in another, but whether they buy more. This question can in turn be split in two parts: do they buy more goods; do they buy more

Necessary to Maintain a Family of Five in Washington, D. C.," December, 1919, pp. 23-24.)

The cost of this budget for a family consisting of a husband, wife and three children below 14 years of age for August, 1919 in Washington, D. C. was estimated at \$2,262.47 (*ibid.*, p. 28). In 1933 dollars this would be about \$1635 a year or \$31.45 a week. (Bureau of Labor Statistics Index No. of cost of living, June, 1919—177.3, June, 1933—128.3. This estimate was made by the United States Bureau of Labor Statistics for the National War Labor Board, and was used for the Joint Reclassification Committee as a basis for salary recommendations in Congress. "While it was recognized by the committee that its recommendations did not in most cases equal the amount of the budgets, yet the cost of living was taken into consideration and the salaries recommended were as near to the budget requirements as it was thought would be approved by Congress." (*Cf. The Use of Cost of Living Figures in Wage Adjustments*, Bureau of Labor Statistics, Bulletin No. 369, vol. 506, p. 3.) It would seem that the nature of the use of cost of living figures for wage adjustment had not changed much in the past decade and a half.

<sup>18</sup> See *supra*, p. 21.

satisfaction? Although the second question is really the more fundamental, there seems to be no standard of measurement which provides vocabulary for such a discussion.<sup>19</sup> This means that the analysis must be confined to a comparison of living costs in various localities. The only nationwide study of standards of living which has been completed (several government bureaus are at the present time engaged in a new one), was finished in 1919;<sup>20</sup> the material assembled in this study throws a little light on the problems with which we are here concerned.

When the data for families spending between \$1,200 and \$1,500 are arranged in five city size groups for the 93 cities included in the study, the following tabulation may be derived.

This table seems to indicate that rents tend to occupy a progressively smaller proportion of the family income in cities of decreasing size. Since rent is one of the least flex-

<sup>19</sup> The question of *satisfaction* rather than goods purchased becomes more important as communities which are to be compared become more separate. Anthropomorphism has gone a long way with most Westerners—it is hard to believe that our way of life is not the only way. Nevertheless it would seem that this is a very real question in international standard of living studies. It is possible, for example, that Henry Ford was attacking a largely imaginary problem when in 1930 the United States Bureau of Labor Statistics made a survey of the budgets of his \$7-a-day men in Dearborn with the idea of discovering the wage which would produce an equivalent working drive in employees of Ford plants in the various countries of Europe. (*Monthly Labor Review*, June 1930, pp. 11-54, "Standard of Living of Ford Employees in Detroit.")

<sup>20</sup> Investigators of the United States Bureau of Labor Statistics interviewed 12,096 working class families in 92 cities in 42 states of the country and obtained a detailed list of expenditures. The basis of selection of families involved three criteria: the family must be white, not slum or charity family, and have been in the country for at least five years; they should represent proportionally the wage earners and low or medium-salaried workers of the locality; the family must consist of a husband, a wife and at least one child, without boarders.

TABLE III

DISTRIBUTION OF EXPENDITURE FOR ONE YEAR, 1918-19, FOR FAMILIES  
WITH INCOME OF BETWEEN \$1,200 AND \$1,500

Cities with Population of	Total Average Income	Proportion of Total Income Used For			
		Food	Clothing	Rent	Sundries and Savings
Over 200,000	\$1,302	39.9%	15.4%	14.4%	30.3%
200,000-50,000	1,304	38.5	16.2	13.8	31.5
50,000-25,000	1,323	40.2	15.5	12.8	31.5
25,000 under	1,296	39.2	17.0	11.6	32.2

Source: Based upon United States Bureau of Labor Statistics, *Bulletin* 357, pp. 7 to 68, "Cost of Living in the United States."

ible elements in the budget of a working class family, and since there seems to be no marked difference in the proportion of the incomes required for food, the proportion of the budget which may be spent on clothing, sundries and savings is larger in the smaller cities than in the larger ones. This is clearly true, if the two central city size groups are combined, and the comparison is made between large cities of over 200,000 inhabitants, cities between 200,000 and 25,000 inhabitants, and towns of under 25,000 people.

When the same type of calculation is made for the different geographical divisions no very significant difference in distribution of expenditure is disclosed for families in different sections of the country. Families in New England are apparently forced to spend a somewhat higher amount on food and rent, thus leaving a smaller percentage of the family income for clothing and the miscellaneous group of expenses. This might be interpreted as meaning that, for the sample studied, a given money income did not provide as adequate a supply of commodities in New England as in the rest of the Country.

The contrast in expenditure for rent as between cities of different sizes and the different sections of the country can

TABLE IV

DISTRIBUTION OF VALUE OF GOODS USED DURING ONE YEAR, 1918-19. BY FAMILIES WITH AN INCOME OF BETWEEN \$1,200 AND \$1,500

Section of Country	Total Average Income	Proportion of Total Income Used For				
		Food	Clothing	Rent	Sundries	Saving
North Atlantic	\$1,302	41.6%	16.0%	14.1%	22.7%	5.6%
South Atlantic	1,334	38.4	16.8	12.4	26.8	5.6
South Central	1,290	39.8	15.7	13.0	26.6	4.9
North Central	1,289	38.9	15.6	14.2	25.0	6.3
Western	1,374	37.6	15.6	13.3	27.6	5.9

Source: Based upon United States Bureau of Labor Statistics, *Bulletin 357*, pp. 7 to 68, "Cost of Living in the United States."

be stated in terms of the average rent paid by families having an income between \$1,200 and \$1,500 in 1918:

TABLE V

COMPARISON OF AVERAGE RENT IN DIFFERENT SECTIONS OF THE COUNTRY FOR FAMILIES WITH AN INCOME OF BETWEEN \$1,200 AND \$1,500

Section of Country	Average Rent	Percent More Than in South Atlantic
South Atlantic .....	\$163	
South Central .....	168	3.1
North Atlantic .....	176	8.0
North Central .....	177	8.6
Western .....	180	10.4

Source: U. S. Bureau of Labor Statistics, *Bulletin 357*, pp. 7-68.

TABLE VI

COMPARISON OF AVERAGE RENT IN DIFFERENT CITY SIZE GROUPS FOR FAMILIES WITH AN INCOME BETWEEN \$1,200 AND \$1,500

City Size Groups	Average Rent	Percent More Than in Cities Under 25,000
Under 25,000 .....	\$147	
25,000 to 50,000 .....	170	15.6
50,000 to 200,000 .....	180	22.4
Over 200,000 .....	189	28.6

Source: U. S. Bureau of Labor Statistics, *Bulletin 357*.

These comparisons seem to indicate clearly that at least in 1918, for the sample studied, families living in the South paid on the average slightly less rent than did families living in the North and West, but that the largest differentials were between families living in small and in large cities.<sup>21</sup> But comparison of accommodations purchased for the same average rental in different cities show wide variations. For example there are a somewhat larger number of dwellings with bathrooms and inside water closets in the larger cities than in the smaller ones. Scraps of information of this kind seem to at least raise the question as to the extent to which the lower housing cost is due to poorer facilities as well as to local market conditions.

In regard to the difference in the amount spent for food there seems to be scattered evidence to indicate that low expenditures do not necessarily mean cheap food. Particularly in the South, the smaller amount spent on food seems to occur in spite of relatively high food costs; the economy is achieved through the selection of lower priced foods.<sup>22</sup>

<sup>21</sup> The survey made by the British Board of Trade in 1907 also indicated that rent varied by size of city. The following index number of rent paid by workingmen's families was calculated: New York City, 100; cities of 500,000 and over, 78; cities of 250,000 to 500,000, 73; cities of 100,000 to 250,000, 69; cities under 100,000 inhabitants, 64. (Great Britain Board of Trade, *Cost of Living in American Towns*, 1907).

<sup>22</sup> Food purchased by working class families in different sections of the country was itemized by the United States Bureau of Labor Statistics in their 1918 study. The National Industrial Conference Board in 1926 made a comparison of prices of the regional food budgets developed in the Labor Bureau study, as well as of the budget averaged for the United States. The articles of food priced were the forty-two foodstuffs priced periodically by the United States Bureau of Labor Statistics, whereas the amounts consumed were based upon the budget studies. The price of a uniform list of food in the various sections of the country was: North Atlantic, \$433; South Atlantic, \$435; South Central, \$418; North Central, \$401; Western, \$393. (National Industrial Conference Board, *The Cost of Living in the United States, 1914-1927*, New York, 1928, chapter II.)

Further comparisons of expenditure distribution as between different articles purchased by families in different sections of the country fail to indicate that families in the South were, on the average or for different income groups, able to purchase a more adequate supply of commodities than could families in other parts of the country. Comparison of expenditure for clothing for different items making up the miscellaneous budget group did indicate, however, that there were expenditure patterns which tended to weight the importance of certain types of purchases in certain sections of the country.<sup>22</sup>

In conclusion, it would seem that this brief review of the differentials in living expenditures of working class families in different sections of the country and in cities of different sizes would arrive at largely negative conclusions. The comparisons indicate that the major differential lies in the item of rent. The difference between rent costs for families in similar income groups in the North and in the South is not large, and the difference as between cities of different sizes would justify a difference in minimum wage of less than \$1 a week between cities of over 200,000 inhabitants and under 25,000. As between cities of different sizes, it would seem that if the ability to piece out an inadequate in-

<sup>22</sup> One of the most interesting comparisons refers to expenditures for sickness which averages \$71.97 and \$70.18 for the South Atlantic and South Central sections and \$52.32 and \$53.37 in the North Atlantic and North Central sections of the country. The higher costs in the South seem to be due to a larger proportion of families using doctors' services, and to a larger amount spent on medicine in the South Atlantic section. Other interesting comparisons can be made, such as one indicating that the amount spent on amusements and vacation in the South Atlantic section averages \$8.40 per family in comparison to a range of from \$7.83 to \$22.51 for all incomes in the other sections of the country. This contrast is interesting when compared to a high expenditure on clothing in the South Atlantic district. (United States Bureau of Labor Statistics, *Bulletin* 357, pp. 402-455).



come with homegrown food is to be taken into account in the setting of minimum wages, there can be no differentials for cities in which private gardens are not an actual economy. This would hardly be true in towns larger than 50,000 inhabitants, at the most optimistic estimate.

We are forced to conclude that a large portion of any difference in expenditure which exists in large and small cities, and particularly in the North and South, which could be cited as a justification of a differential wage rate must be explained in terms of different living standards rather than different living costs.

#### *Ability to Pay*

A differential ability of retailers to pay a given wage ought ideally to be determined by difference in profit if wages are held constant or by a difference in wages if profits are held constant. Obviously no data exist with which to perform an experiment of this kind. It would seem reasonable, however, to base a judgment as to the ability of a retailer to pay a given wage on the fact that he does so. Accordingly, an examination of wages in cities of various sizes ought to give some indication of whether the differentials in the Code seem to represent the natural differentials enforced by the necessity to survive.

The Census of Distribution for 1929 records the average annual wages of full-time employees as \$1312 or approximately \$25 a week. The retail census for 1933 records the average salary of a full-time employee in the retail trade as \$986 or approximately \$19 a week. The United States Bureau of Labor Statistics reports that the average weekly salary of full-time and part-time employees in the retail trade was \$18.94 in July, 1933; the average hourly wage rate reported for July, 1933, was 40.9 cents.

But an average is a composite photograph blending diverse images into an amorphous blur. Included in these average

wages are the compensation of the substantially remunerated executives of a large store, as well as that of the new messenger boy who has just been hired by this gentleman, an old negro salesman in the South, as well as that of an aggressive union man in the North; included also are workers in small towns and in large towns, in furniture shops as well as in five-and-ten cent stores. These factors influence average wages. It is important to learn something of the nature of the influence.

Perhaps the most definite variation within the average figures occurs in different kinds of stores. Average full-time wages for 15 types of stores listed separately in the Census material and included in the Retail Code are listed below:

TABLE VII  
AVERAGE WAGES IN 15 TYPES OF STORES UNDER GENERAL RETAIL CODE

Type of Store	Average Annual Wage 1933	Percent Change From 1929
Men's Stores .....	\$1,291	-27
Furniture Stores .....	1,223	-25
Shoe Stores .....	1,188	-26
Other Furniture and Household .....	1,166	-28
Family Clothing .....	1,141	-21
Radio Stores .....	1,107	-29
Hardware Stores .....	1,068	-25
Household Appliance .....	1,065	-30
Accessory and Other Apparel .....	998	-29
Women's Ready to Wear Specialty Stores .....	991	-23
Department Stores .....	990	-20
Drug Stores .....	985	-22
Other Gen'l. Mdse. ....	894	-18
Dry Goods Stores .....	883	-18
Variety Stores .....	760	+8

Source: Derived from Department of Commerce, Bureau of the Census, *15 Census of the U. S. 1930, Distribution, Volume I, Retail Distribution, Part I* and the *United States Summary of the Retail Census for 1933*.

The table indicates that there is a very substantial difference between average wages in different kinds of stores; employees in men's stores must have received about twice the amount of weekly wages as did employees in variety stores before the New Deal program went into effect.<sup>24</sup>

Although less pronounced than the variation between different types of stores, the variation in average full-time wage rates in different parts of the country was, nevertheless, substantial in 1933. Average wages were \$1,063 in New England, \$1,092 in the Middle Atlantic States, \$971 in the East North Central States, and \$903 in the West North Central section of the country.<sup>25</sup> In the Southern states, average wages were \$889 in the South Atlantic, \$790 in the East South Central, and \$826 in the West South Central sections of the United States. The Mountain and Pacific sections had average wages of full-time employees of \$997 and \$1079 respectively.<sup>26</sup> The average wages in individual states ranged from \$1,231 (\$23.67 a week) in Nevada to

<sup>24</sup> The average wage of \$760 in variety stores doubtless reflects the influence of 4 months operation under New Deal legislation, since wages could not possibly have increased through the depression. If they decreased only 10 percent, rather than the average of 25 percent, the average wage would have been \$684 per year of full-time work.

<sup>25</sup> The states included in each of these geographical divisions are as follows: New England—Massachusetts, Rhode Island, Connecticut, Maine, New Hampshire, Vermont; Middle Atlantic—New York, Pennsylvania, New Jersey; East North Central—Illinois, Michigan, Wisconsin, Ohio, Indiana; West North Central—Missouri, Minnesota, Iowa, Nebraska, Kansas, North Dakota, South Dakota; South Atlantic—Maryland, Georgia, District of Columbia, Virginia, Florida, Delaware, North Carolina, South Carolina, West Virginia; East South Central—Alabama, Tennessee, Mississippi, Kentucky; West South Central—Texas, Louisiana, Oklahoma, Arkansas; Mountain—Colorado, Utah, Arizona, Montana, New Mexico, Idaho, Nevada, Wyoming; Pacific—California, Oregon, Washington.

<sup>26</sup> United States Department of Commerce, *United States Summary of the Retail Census for 1933*.

\$722 (about \$14 a week) in Mississippi.<sup>27</sup> In other words, wages in the section of the country having the highest average were about 37 per cent higher than in the lowest section, whereas the difference between the average wages in the lowest and highest states were over 70 per cent.

Differences in average wage rates of the kind here noted might result from the effect on average wages of the presence in one section of the country of a larger or smaller number of the type of stores typically paying a higher wage. In order to eliminate this factor, average wages for the same types of stores were compared in 20 different states having extreme average wages; a similar comparison was made for the nine South Atlantic States.<sup>28</sup> The examination seemed to indicate that there was a general, though far from constant, tendency for states with high wages in one kind of store to have relatively high wages in other types of stores

<sup>27</sup> United State Department of Commerce, *Retail Census for 1933, State Reports*.

<sup>28</sup> The twenty states were ranked from one to twenty according to the height of their average wages for the retail trade. Average wages for specified types of stores were then calculated for each state and the 20 states ranked again according to the amount of the average wage for each of the nine types of stores. A similar calculation was made for all of the states in the South Atlantic group. (Twenty rather than 48 states were selected because if all the states had been arranged in ranked order there would have been very little difference between average wages in many of them. It therefore would have been useless to inquire whether differences in average wages in all stores were caused by similar differences in wages in many different kinds of stores).

The rank of each of the 20 states for the height of the average wage in department stores fell within approximately the same third of the table as its rank for the height of the average wage in retail trade, (e.g., the two rankings for the same state were within five places of each other) in all but three states. The corresponding figures for the other kinds of stores were: general merchandise—2, variety—2, hardware—2, and drug-stores—1. For the nine South Atlantic states, the ranking for average wages in different kinds of stores and for all retail trade fell within approximately the same third of the table (was less than three places

and vice versa. This would seem to suggest that low wages in a given section of the country were caused by general labor market conditions rather than by the prevalence in the locality of a type of store normally having a low wage scale.

The variations in average wages in different parts of the country might be due in part to the uneven distribution of cities of different sizes in the various sections of the country, were wages in small cities uniformly lower than those in large cities.

Although the 1933 Census has no similar tabulations,<sup>29</sup> the 1929 Census of Retail Distribution contains data for the country as a whole and for individual states for cities of over 30,000 inhabitants, for cities of from 10,000 to 30,000 inhabitants and for places of under 10,000 people. The average wages for the three size groups were about \$2 a week less for each of the two smaller groups, or \$1,388, \$1,255, \$1,134 per year per full time employee respectively. (Weekly wages of \$26.69, \$24.13 and \$21.81 respectively). It is important to remember that for the most part the average size of stores varies in accordance with the size of the city: the average number of employees per store was 3.6, 2.8, 1.3, and average annual sales were \$416,000, \$35,200 and \$21,300 respectively.

above or below) in all cases for department and drug stores, in all but one case for general merchandise and variety stores, and in all but two cases for men's wear and hardware stores. Wages in the other three kinds of stores in the South Atlantic States showed no significant relation to average wages in retailing. (The tables on which these statements are based were derived from the State Reports of the Retail Census for 1933).

<sup>29</sup> In the 1933 tabulations of the retail distribution data, there is no enumeration of wage material by size of city except for individual cities of over 10,000 inhabitants for which cities wage data are listed separately for 13 store groups; in the rest of the stores for each county, material is not enumerated separately for different types of stores. On the whole it has seemed futile to make any comparisons for small samples when types of stores are not even divided into the group classifications.

The average figures hide the variation for different kinds of stores which in six selected groups ranged as indicated by the accompanying table.

TABLE VIII  
AVERAGE FULL-TIME ANNUAL WAGES OF EMPLOYERS IN SPECIFIED KINDS OF STORES IN THREE CITY SIZE GROUPS IN 1929

Type of Store	Cities Having a Population of		
	Over 30,000	30,000-10,000	Under 10,000
Department Stores	\$1,254	\$1,152	\$1,219
Grocery Stores	1,299	1,211	1,171
Hardware Stores	1,592	1,532	1,294
Variety Stores	737	642	661
Furniture Stores	1,721	1,549	1,307
Shoe Stores	1,670	1,421	1,176

Source: *15th Census of the United States, 1930 Distribution*, Volume I, Part I, Tables 16, 19, and 22.

In order to eliminate any possibility that a large part of the differential in the average wages in cities of different sizes was a reflection of various regional factors which operated as concealed weights, comparisons were made for selected types of stores in individual states.<sup>80</sup> In general, average wages were lower in the smaller cities, particularly in stores selling shopping goods rather than convenience goods such as apparel and furniture. In the general merchandise group there was less consistency of variation, with very little correlation between average wages and the size of the town in variety stores, and a very sporadic relationship in department stores and general merchandise stores.

Neither the 1930 nor the 1933 Census contains summary listings of wages in stores grouped by size of city for cities larger than 30,000 inhabitants. In order to find out whether, as between the several groups of larger cities, the Code wage differentials seemed to correspond to typical conditions, comparisons have been made of average wages in selected types

<sup>80</sup> 1930 Census data.

of stores in eighty-three individual cities.<sup>81</sup> Average wages for different kinds of stores, were computed. Five general conclusions seem warranted from an examination of these data: (1) There was a large range in average wages of retail employees in specified classes of stores in individual cities of the same size in the same section of the country. (2) For the country as a whole, there seems to have been no consistent tendencies for average wages to vary directly with city size. (3) In any one section of the country, with the exception of the Pacific area, there was a general, though inconsistent tendency for average wages to be lower in the smaller cities. (4) Average wages seem to have been generally higher in the New England, Middle Atlantic, Mountain and Western sections of the country than they were in the South Atlantic, East South Central, and West South Central sections. The East North Central and West North Central divisions typically occupied a somewhat intermediate position. (5) Individual cities that diverged from the median average wage of the section of the country in one type of store tended to have similar divergence in other types

<sup>81</sup> Eighty-three cities of over 10,000 inhabitants in different sections of the country were selected from the list of cities prepared under the supervision of John H. Cover, to present varying price conditions which in the aggregate would be representative of the entire United States. (John H. Cover, *Retail Price Behavior*, University of Chicago, 1935). The group prepared by Dr. Cover lists 165 cities of over 10,000 inhabitants. I have selected 83 in an attempt to have a sample of four cities with diversified occupational characteristics in each of the size groups enumerated in the Code in each section of the country. The choice was limited to cities of 10,000 inhabitants and over, since this was the smallest city for which data for the 13 types of stores were tabulated separately in the 1933 Census. Average wages in department stores, general merchandise stores and variety stores were compared in cities of over 50,000 inhabitants, since these further classifications were available for the larger cities. For the towns of 50,000 to 10,000 population, wages in the general merchandise group were compared with those in the apparel group, and in the furniture group.

of stores. This was true for small cities with high wages, as well as for large cities with low wages, and for cities with wages which varied directly with the size of the city.

A comparison of wages in stores of different sizes may be made on the basis of data collected annually by the National Retail Hardware Association. If the size of the city is held constant and stores having annual sales of \$60,000 to \$100,000 are compared to those having sales of under \$25,000 in 1932, the wages of clerks in the larger stores (when averaged for the four city size groups) were 36.2% higher than in the smaller stores; the corresponding difference in average wages for office employees was 64.0%. But if the size of the store was held constant and cities having a population of 1000 to 3000 inhabitants are compared with cities having a population of over 50,000, then the wages of clerks in the larger cities (when averaged for the four store size groups) were 10.4% higher than in the smaller cities; the corresponding difference in the average wages of office employees was 9.0%.<sup>22</sup> It may well be that the variation in average wages is caused in part by a greater percentage of supervisory employees in the larger stores. It is also possible that more part time help is employed in the small store. However, it seems likely that explanations of this kind would at best account for only a part of the increase in average wages as the sales per store increase. Unfortunately data for other stores on which to base sim-

<sup>22</sup> The city size groups in which the data are arranged are 1000 to 3500, 3500 to 10,000, 10,000 to 50,000, over 50,000 inhabitants. The figures quoted in the text do not include wages in the towns under 1000 inhabitants since no stores having sales of over \$40,000 have reported information in those cities. The store size groups are annual sales under \$25,000, \$25,000 to \$40,000, \$40,000 to \$60,000, \$60,000 to \$100,000. The figures given in the text do not include wages in stores having sales of over \$100,000 since such stores are to be found only in the larger cities. Figures derived from data collected by the National Retail Hardware Association and published in the *Hardware Retailer*, July 1933.



ilar comparisons are not available.<sup>53</sup> Logic, however, might urge that the findings for hardware stores might have general applicability.<sup>54</sup>

#### *Summary*

As a result of our examination of average wages in retail stores in the United States, certain tentative generalizations may be drawn in regard to the relationship of wage differentials in the Code clause to the current wage practice at the time that the Code was submitted:

1. The greatest differential in average wages is one which was not recognized in any Code clause—the variation between different kinds of stores.

2. Average wages in the South are somewhat lower than those in the North.

3. Average wages in genuinely small towns of under 10,000 inhabitants tend to be somewhat less than those of larger cities. This is more pronounced in some kinds of stores than in others. It should be noted, however, that wages differ most between cities of various sizes in stores selling shopping goods which typically have a relatively low proportion of workers who would, in any event, benefit from minimum wage legislation. Wage differentials for the

<sup>53</sup> The relative uniformity of wages in Department Stores in the three city size groups listed in Table VII is interesting in this connection since the size of department stores is controlled at one end, at any rate, by the census definition, departmentalized stores having an annual business of over \$100,000.

<sup>54</sup> Payrolls constitute the largest item of expense in a retail store; therefore in the event that a store is unable to gain a sufficient volume of sales to cover overhead, the payrolls are bound to be a subject of close scrutiny; the fine points of selling and service become less important than the hard fact of the balance sheet; the proprietor makes up for the lack of skill of his employees by his own presence in the store. Likewise, when a store is prosperous and sales are relatively high, it is frequently less costly to pay a good employee more, than it is to hire additional help.

country as a whole for cities larger than 10,000 are, if they exist, hidden by regional differences. However, in any given section of the country, there seems to be a general tendency for average wages to decrease as the size of cities decline. There is, however, a wide area of overlapping in regard to these generalizations, into which area falls, in all probability, the major portion of the retail structure of the country.

4. Available data though sadly incomplete suggest that the size of the store is an important factor in determining the average wages of employees. It may well be that a large part of the variation in the average wages in cities of different sizes is caused by the fact the store size is likely to vary directly with city size.<sup>85</sup> Were it true that the real criterion of ability to pay a differential wage is based on the size of the store rather than on the size of the city then the differentials in the Code would have been likely to work considerable hardship on the small store in the large city just as they would have been highly advantageous for the large store in the small city.<sup>86</sup>

<sup>85</sup> If there is any doubt as to the validity of the differential minimum wage as between the various city sizes, then there must certainly be a fundamental questioning of the validity of the differential in the executive wages. Particularly in the small store there seems to be considerable evidence to indicate that the wages of managers vary more in accordance with the size of the store than they do in accordance with the size of the town in which the store is located.

<sup>86</sup> The Annual report on Department Store operation of the Harvard School of Business Administration for 1934 comments on the improved showing made by the smaller stores, which are frequently in the outlying sections of large towns or in the smaller cities (p. 6). "The most important recent development of possible long-run significance is the sharp decrease in the difference which formerly existed in the profit rates of large and small stores" (p. 1) The ratio of total salaries to sales in department stores having sales of less than \$500,000 per year was 20.45% in 1932 and 17.55% in 1934; the index of dollar value of total salaries had decreased from 70.5 in 1932 to 69.8 in 1934, in

5. But qualifying any generalization that can be made about differentials in prevailing retail wages is a significant eccentricity of any given market. Wages of employees, like retail sales, seem to be controlled by local areas of competition. The local labor market is, like other markets, a function of demand and supply. As such, it is influenced by a variety of supply factors: the availability of unemployed workers in other trades, the occupational habits of the population, the existence of Negro labor accustomed to a low standard of living, or the availability of a number of young girls or boys living at home and partially supported by their parents, who are willing to work for "pin-money", or the ability of the inhabitants of small towns to piece out their inadequate earnings by home-grown food. Demand factors also enter, such as the rate of growth of the town, the extent to which it is a center of retail trade, and an infinite number of other elements which it is impossible even to name.

We must conclude on the basis of both cost of living data and admittedly incomplete material on wage rates throughout the country that there was little factual basis for the *extent* of the differentials contained in the Code.

spite of the fact that the index of average dollar sales had increased between 1932 and 1934 from 60.5 to 69.8. The ratio of total salaries to sales for department stores having annual net sales of over \$2,000,000 in 1930 was 19.0% in 1932 and 18.0% in 1934. The index of total dollar payroll had increased from 73.8 in 1932 to 76.0 in 1934 (p. 10); during the same period, the index number for typical net sales had increased from 68.0 in 1932 to 74.0 in 1934 (p. 12). Although the difference in the absolute and relative increases in payroll expenses between small and large stores may be entirely unrelated to the rates at which minimum wages were set in the Code, it seems clear that the phenomenon has as yet not been adequately explained (See discussion in the report entitled "Improved Position of Small Stores", pages 3-6.)

It is also interesting to note that the ratio of salaries to sales in variety stores reporting to the Harvard Bureau of Business Research, increased between 1932 and 1933 by 1.2 percent in towns of under 10,000 inhabitants and by 9.2 percent in towns of over 10,000 inhabitants.

It is necessary then to look for other reasons for writing the differentials into the law. Action was in part governed by a tactical necessity. In order to keep the heterogeneous group of retailers together it was necessary to make concessions to the articulate members. Some of these concessions were in the form of wage differentials in towns of different sizes,<sup>27</sup> whereas concessions to groups divided on a regional basis were made in the form of a \$1 differential between North and South.<sup>28</sup> The Administration had taken the stand that \$14 was the lowest minimum wage that could be tolerated. Differentials for cities of various sizes was an effective and easy method of lowering the actual minimum at the same time that public opinion could remain focussed on the \$14 limit.

<sup>27</sup> It may be recalled that the original NRDGA Code divided the country for the purpose of minimum wage regulation into three groups of cities and their metropolitan areas: over 1,000,000 inhabitants; 1,000,000 to 250,000 inhabitants, and the rest of the country. In the next code this was changed to four groups: over 500,000; 500,000 to 100,000; 100,000 to 2,500; and the rest of the country. The elimination of the trading area clause which was included in the PRA categories, and the addition of the fifth city size group of 25,000 to 2,500 may be related to the flood of comment that was aroused, and by such facts as those stated in the Brief presented by the Variety Store Association, which claimed that thirty-eight percent of the stores of the members of that association were located in suburban or outlying areas of larger cities, and fifty percent in cities of less than 25,000 inhabitants.

<sup>28</sup> It seems likely that the major portion of the controversy over this point during the drafting of the Code was in reality a racial question. The wages of Negroes in the South working on unskilled jobs were without doubt, extremely low. It was felt that the insistence on a high minimum wage would be in the first place cause the discharge of large proportion of the colored help, as well as disturb existing wage differentials. Moreover, the argument concerning the difference in the cost of living was vociferously urged.

## SECTION III. STORE WAGE STRUCTURE

The foregoing analysis has indicated something of the way in which average wages differed throughout the country. But essentially we are interested in specific, not average wages, and more particularly in those which fell below the Code minimums. There are two other methods of attack which can be used in an attempt to complete the picture of pre-Code wage rates: In the first place it is possible to determine typical wages for various kinds of jobs at the same time that job distribution is analyzed in different kinds of stores. In the second place the changes which occurred immediately after the Code went into effect ought to indicate the number of workers involved and the extent to which they were affected by the minimum rates of the Code.<sup>89</sup> On the basis of these data it should be possible to estimate the approximate increase in employment and payrolls which the Code should theoretically have caused. This judgment can then be compared with the actual post-Code conditions.

*Employees who work for sub-minimum wages*

The average wages in individual stores are governed by the absolute level of the low and high wages, and by the proportion of the total number of employees receiving the various wage rates. Thus two stores having ten employees and an average wage of \$17 may in the one case be paying ten employees \$17 per week, or in the other may be paying nine employees \$8 each, and the tenth employee, the owner's wife's brother, \$96 a week; the averages are silent. But

<sup>89</sup> Currently reported data can be used to indicate hypothetical rather than actual conditions on the assumption that a firm would not report to the government wages less than legal minimums unless such legal wages were reported as payments for part time work. A similar assumption seems less safe when made in regard to employment data, although the tendency would certainly have been to exaggerate rather than minimize employment in the fall of 1933.

for the most part the wage that a worker receives is governed by the work which he does. In any one market there is a limited price range for a given job; this is particularly true in the larger stores. Although the policy of the management may determine whether a delivery boy will be paid \$9 or \$15, it is most unlikely that he would under any circumstances be paid \$5 or \$20 in the same locality. In order to estimate the approximate number of employees that might have been benefited by the Code minimums, it is therefore necessary to learn something of the typical job distribution and the range of salary paid for different kinds of work. But since the wage structure varies so drastically in different kinds of stores, an understanding of the incidence of the minimum wage in retail trade as a whole can only be compounded from the several pictures of its incidence in different branches of the trade.

In department stores, certain jobs are likely to be assigned to the lowest paid employees. The description of the work of a junior worker presented at the Washington hearing in defense of a wage differential for juniors, enumerates the unskilled occupations in department stores. Included are such categories as the work of runners, price marking of merchandise, stock keeping, routing, clerical occupations such as filing, checking, sorting and copying, distributing and collecting mail, internal package delivery, and wrapping and packing.<sup>40</sup> Dr. Nystrom in *Economics of Retailing*, gives figures on the percentage distribution of different kinds of occupations in a large department store. On the basis of these figures it may be estimated that in a large department store having an unusually low wage scale about thirty-nine per cent of the employees might have been receiving less

<sup>40</sup> *Retailing*, September 4, 1933, article by Ruth Fugendus, Personnel Director of Hochschild and Kohn & Co. Figures applied largely to mid-Western and Eastern department stores.

than the minimum.<sup>41</sup> Typical experience would doubtless have indicated a far lower figure.

The extent to which the employees of any individual store would have been receiving less than the minimum wage would of course have depended upon the labor market in which the store was located as well as on the policy of the store. We have noted that the labor market seems to be largely a matter of local conditions, whereas the store policy depends upon the personal inclinations of the management, the type of goods sold, the type of customers catered to, and the services rendered. Unfortunately figures on individual store experience are all too rare.

The most detailed picture available has been drawn by Dr. Kenneth Dameron as the result of a study of a large mid-western department store.<sup>42</sup> In accordance with the provisions of the Retail Code, 1,772 employees of this store had received salary increases. This constituted about twenty per cent of the total store personnel. The total weekly payroll increased \$2,800. Listed as part of the selling group

<sup>41</sup> Cleaners represent 2.7 percent of the total personnel; employees engaged in receiving and marking, 3.9 percent of the total; cashiers and wrappers, 9.6 percent of the total employees. It is altogether probable that the greater part of the employees in the above occupations would be among the lowest paid workers in the store. Other departments, such as accounting, elevator operators, alterations, delivery, mail and telephone, might also have a substantial proportion of workers receiving less than the minimum wage. Dr. Nystrom allocates 19.9 percent of the typical store employees to this group. If we assume that in an extreme case half of the workers in those departments might have been receiving less than the minimum, the percent of the employees who might have been affected by the minimum wage in a large store with the addition of the categories previously mentioned, would be 26.1 percent of the total. If to this we add one third of the selling force in order to include salesgirls in the small wares departments and stock clerks, the figure rises to thirty-nine percent.

<sup>42</sup> *Harvard Business Review*, Spring, 1935, "The Retail Department Store and the N.R.A.," by Kenneth Dameron.

were 775 of the employees affected. It seems reasonable to suppose that this constituted in the neighborhood of twenty per cent of the entire selling force.<sup>43</sup> The increase in selling payroll was \$1,200 a week, or an average of \$1.67 per employee. The 997 non-selling employees who received wage increases were in largest part—670—engaged in clerical, accounting, and similar work; 136 employees were in the workrooms, and the remainder in the tea room and miscellaneous non-selling occupations and porter work. The total increase in the non-selling payroll amounted to \$2,600 per week, or an average of \$2.60 per employee. Although the individual wage increases in the store ranged from fifty cents to \$9, the major portion of them—1,200 instances—were between fifty cents and \$2. The general experience of this store was found by Dr. Dameron to be characteristic of two other stores in the same section of the country.

In New York City most of the large stores were affected relatively slightly by the basic minimum wage provisions of the Code.<sup>44</sup> The number of employees whose salary was raised as a result of the provision was typically over fifty and under 200, varying from under ten per cent to about twenty per cent of the total personnel. The experience of one store is characteristic. This store reports 153 employees whose salary was raised by \$4 or less: forty-seven packers, thirty markers, and seventy-six clerks who had been receiving anywhere between \$10 and the required minimum. The adjustment of the salaries of these workers made it necessary to raise the wages of thirty-five girls who had been receiving \$14 to \$15. The introduction of the minimum salary for executives meant that about 20 section managers, who were

<sup>43</sup> Calculated on the assumption that approximately forty percent of the total store personnel were salespeople, stock clerks, etc.

<sup>44</sup> The information concerning New York stores was obtained in the course of the work at the Retail Code Authority—City of New York, Inc.



required to work unrestricted hours for a minimum salary of \$27 were raised to the required \$35. Two of the 13 stores from which information was obtained had instituted storewide salary increases in July, 1933.<sup>45</sup>

"Retailing" collected information covering current wage data before the adoption of the Code in different cities. These data, published in the July 3, 1933 issue are summarized below:

TABLE IX  
MINIMUM WAGES FOR DEPARTMENT STORE EMPLOYEES IN VARIOUS CITIES

City	Minimum Wage		
	Adult Male	Adult Female	Juniors
Pittsburgh .....			\$10
New Orleans .....		\$8	
New Haven .....	\$12	9	4
St. Louis .....		12	6
Atlanta .....	5 *	5	
Savannah † .....	14	8	6
San Francisco .....	16	16	14
Denver .....		9	8
Peoria, Ill. ....	12		6
Detroit .....	6.50	6.50	
Philadelphia .....		17	5
Los Angeles .....		16	10

Source: *Retailing*, Executive Edition, July 3, 1933.

\* On a commission basis.

† Main business district; other sections lower.

Prior to the effective date of the Code, the Women's Bureau of the United States Department of Labor collected wage data in five stores in New Jersey in cities with a popu-

<sup>45</sup> One of these stores had a low wage level and had reduced salaries in the spring by the same amount as the later increase. The other store employed a relatively high type employee, and the wage increase brought the salary of practically all of the employees above the minimum. A third store, having a medium to high wage rate, increased the salaries of almost 60 percent of their staff by an average amount of \$1.80 per week per employee.

lation between 100,000 and 500,000. The modal wage rates in the five stores were \$18, \$15, \$12-\$15, \$13 and \$12.60 respectively. The highest Code minimum that would have applied to these stores was \$14 for an adult experienced employee working a 48-hour week. For the five stores, twenty-two per cent of the employees received less than this amount for a full time week (in two stores, only four per cent of the employees would have been in the sub-minimum class). The lowest minimum and the most probable one,<sup>46</sup> that would have applied to some of the workers in the stores, was \$12, (for a 40-hour week for juniors or apprentices). Three per cent of the workers of the five establishments received less than this amount. In the different stores the proportion varied from 0 to 29.5 per cent of the employees.<sup>47</sup> The Women's Bureau also obtained wage data from three stores in Denver, Colorado, which also falls in the second city size group. The modal wages in these stores were \$15, \$12, and \$12. For the five stores, fifty-nine per cent of the employees were paid at a rate of less than \$14 per week for full time work ; eighteen per cent received less than \$12 per week. The proportion paid less than \$12 in each store was 1.9, 13.2 and 32.6 respectively.<sup>48</sup>

Of the employees who received less than the minimum wage in department stores, the large majority were certainly women since most of the lowest paid occupations are held

<sup>46</sup> The scheduled hours for employees were between 46.5 and 49.7 hours per week; therefore, it seems likely that under the Code they would operate on schedule A with a 40-hour work week.

<sup>47</sup> An average of 31% of the employees of all five stores were working for a salary of \$13, \$14 or \$15 per week. However, the percentage in this class varied for the five stores. It was 0, 27%, 42%, 60%, and 55% respectively. Thus in two of these stores the majority of the employees were receiving between \$12 and \$15, with only 7% and 2% of the total store personnel in the two stores receiving \$20 and more per week.

<sup>48</sup> Women's Bureau, *Op. Cit.*

either by women or young men. A study of eighteen stores in Pennsylvania employing a total of 12,900 workers in 1926, showed clearly the contrast between typical salaries of men and women.<sup>49</sup> Weekly earnings of full time workers (not including executives) were calculated for one week in March, 1926. Thirty-seven per cent of the women in selling and forty-six per cent of the women in non-selling occupations were found to have had full time weekly earnings of less than \$15 a week in 1926; the corresponding figures for male employees were nine per cent and fourteen per cent. Moreover, twenty-one per cent of the women in selling and thirty per cent in non-selling received less than \$13 for a week of full-time employment, whereas nine per cent of the selling and eleven per cent of the non-selling female employees received less than \$11 a week.

On the basis of the relation of the average wages in the cities for which specific experience has been cited, and the average wages in department stores in other cities of the country as given in the 1933 Census of Distribution, it would seem that although the New York market is well above the average for the country, most of the other stores described are characteristic of medium to lower type of wage structure. It would seem therefore that as a usual result of the Code, between twelve and thirty per cent of the employees in a department store might have received wage increases; twenty per cent would probably have been a fairly typical figure.

The variety stores had been paying the lowest wages of any large group of retail stores. They were accordingly most affected by the minimum wages in the retail Code.

<sup>49</sup> Commonwealth of Pennsylvania, Department of Labor and Industry, Special Bulletin No. 13, Harrisburg, Pa., *The Personnel Policies of Pennsylvania Department Stores*. Thirty-two stores were included in the study, ranging in size from twenty-five to 5,000 employees. The information cited above was, however, collected for only eighteen stores.

The personnel of the average variety store is described by Mr. L. L. Freed, the comptroller of H. L. Green and Company. It consists of a manager, an assistant manager, and/or floorman, a stock man who acts as receiving and marking clerk and dresses windows and helps on the floor, a cashier who is usually hired untrained rather than at the rate of an experienced person, and salesgirls.<sup>60</sup> The average size of the variety stores in different cities seems to center around ten to twenty employees per store. This picture indicates why the Limited Price Variety Store Association claimed that between seventy-five and eighty per cent of the employees of member stores would have wage increases under the Retail Code.<sup>61</sup> The average wage of full time rank-and-file workers was reported as \$11.84 on July 1, 1933 and as slightly less than \$14 for the first week in January, 1934.<sup>62</sup> The range of salaries for female clerks without supervisory duties was from \$6 to \$30 according to the information presented at the Code Hearing. The Federal Trade Commission reports a range between the dollar-limit variety store reporting the highest average wage and that reporting the lowest average full time wages exclusive of managers for 1931 from \$7.58 for the lowest store to \$20 for the highest, with an average for the country of \$16.03. For unlimited price variety stores, the low average wage was \$11.35; the high was \$21.59; and the average \$13.08.<sup>63</sup> The managers of stores in variety chains were probably not much affected by the minimum managerial wage provision. In 1930 they typically received about \$40 to \$80 a week.<sup>64</sup> In the early

<sup>60</sup> *Retailing*, March 11, 1935, p. 9.

<sup>61</sup> Transcript of hearings on the Retail Code, August 23, 1933.

<sup>62</sup> Discussion with Dr. Paul Nystrom.

<sup>63</sup> Federal Trade Commission, *Chain Stores: Chain Store Wages*, Washington, D. C., 1933, p. 47.

<sup>64</sup> Nystrom, *Economics of Retailing, Store Operation*, Vol. I, p. 368.

summer of 1933, "Retailing" obtained information from its correspondents concerning wages in variety chains. The reports are summarized in the following tabulation:

TABLE X  
MINIMUM WEEKLY WAGES IN VARIETY CHAINS

City	Minimum Wage		
	Adult Male	Adult Female	Juniors
Pittsburgh .....	lower than \$7		
New Orleans .....	\$8*	\$8*	\$5
St. Louis .....	15	10	7
Atlanta .....	6†		
Denver .....		6	
Detroit .....		6	

Source: *Retailing*, July 3, 1933.

\* Experienced.

† Reported as one dollar per day.

There is no material available which would permit any generalizations concerning the typical personnel structure in general stores and in other than chain variety shops. In general it seems reasonable to suppose that the typical small store with an owner and two employees is likely to pay at least one of those employees a fairly low salary; this is particularly true when the position is held by a young person who does odd jobs and delivery. The salaries paid to salespeople are likely to be substantially influenced by the amount of time that the owner spends in the store. If he is there comparatively little, he requires someone to take his place in whom responsibility can be placed. This would probably mean that such a person had been receiving above the Code minimum. However, it is highly questionable whether he would have been likely to have been paid the executive salary, in the event that his duties and the number of people in the store would have qualified him to work unlimited hours under the Code. In a small store the manager is essentially

a salesman, since most of the actual managing and buying is done by the proprietor. Therefore, though he receives a higher wage than a salesman, his salary is related to that of a good sales clerk. It would seem that in small general stores, the manager's salary would probably have been frequently below the Code minimum for executives, and consequently would have necessitated considerable increase in wages in order to permit him to work unlimited hours.

Men's clothing stores have, according to 1933 census data, an average wage which is the highest for any group which comes under the general Code. Dr. Nystrom describes the "typical distribution" of occupations of seventeen large men's wear establishments:<sup>66</sup> The executive and buying functions account for 8.6 per cent of the personnel; the office for 21.3 per cent; receiving and stockroom 1.7 per cent; shipping and delivery 4.6 per cent; the tailor shop 12.1 per cent; maintenance and related occupancy work for 8.6 per cent; and selling 43.1 per cent. This distribution would seem to indicate that even in a large men's store with highly specialized work, relatively few of the employees could be receiving close to the minimum since such jobs would have to be confined largely to the receiving and stock room, shipping and delivery, and porter functions. The rest of the work involves a fairly high degree of skill. The manager of clothing stores would probably have been little affected by the minimum salary for executives since, as a skilled salesman, he would probably have been receiving close to the Code managerial minimum.

In the type of store in which a large proportion of men is employed, the selling jobs are usually relatively skilled and are not likely to be affected by the wage provision of the Code. This is not necessarily true of some of the rout-

<sup>66</sup> *Ibid.*, p. 271.

ine non-selling jobs such as delivery, maintenance and unskilled clerical work.<sup>56</sup>

The speciality shops employing a large proportion of women as sales girls are more likely to be on the border of permissible wage rates. Particularly was this true of women's accessory shops and millinery shops which seem to have had a fairly low average wage. When a store is run by a manager or proprietor who spends the larger part of his or her time in the store, additional help is likely to be hired at as low a wage as the market permits. If a difficult customer comes in, he or she can be directly or indirectly waited on by the proprietor. Besides, since the volume of such stores is frequently small, the pressure to hire low salaried workers is great.

The Federal Trade Commission in its investigation of chain stores collected information on average full time wages. Although data for chains are not necessarily characteristic of independent stores,<sup>57</sup> it would seem that they give a fair

<sup>56</sup>In hardware stores reporting annual data to the National Retail Hardware Association, no figures were submitted for delivery boys, and managers were excluded. The average wages of salesmen were consistently higher than for office help. The average annual wages for salesmen in 1933 ranged between \$761 (\$14.63 per week) and \$1,323 (25.40 per week) with slightly less than half of the 21 sales-volume and store size groups reporting average salaries of over \$1,000. Average wages for office help ranged from \$613 (\$11.80) to \$1,016 (\$21.20) with slightly less than half of the twenty-one groups, for the most part the smaller stores, reporting average salaries of less than \$683, or about \$13.10 per week. Thus the median average wage is about thirty-five percent higher for salesmen than for office help in the reporting hardware stores in 1933. It is impossible to say to what extent the figures are influenced by part time employment. (*Hardware Retailer*, July 1934, pp. 65-80.)

<sup>57</sup>The Federal Trade Commission made comparisons of wages in chain store and in independent stores and found that in general the average wages in the chains were somewhat lower than in the independents. But too many other differential factors might have influenced the very small

TABLE XI

RANGE OF AVERAGE WEEKLY WAGES PAID EMPLOYEES AND MANAGERS FOR WEEK ENDING  
JANUARY 10, 1931, BY KINDS OF CHAINS

Kind of Chain	Employees			Managers		
	Low	High	Average	Low	High	Average
Variety, unlimited .....	\$11.35	\$21.59†	\$13.08	\$23.00	\$46.37	\$32.90
Variety, \$5 limit .....	6.00	15.50	13.53	20.00	53.80	43.90
Variety, \$1 limit .....	7.58	20.00	16.03	15.00§	108.00	68.50
Dry Goods .....	11.67	26.14	17.97	25.00	50.00	42.64
Dry Goods & Apparel .....	10.51	31.17	19.61	25.00	189.08	60.44
Millinery .....	13.50	25.00	21.30	16.75	95.00	48.29
Women's Accessories .....	16.00	27.80	21.59	23.64	100.00	27.39
General Merchandise .....	10.71	36.17	21.97	22.50	80.00	42.12
Department Stores .....	12.63	33.18	22.96	40.50	454.33	69.69
Women's Ready to Wear ....	11.49	38.84	23.21	20.00	261.00	67.80
Men & Women's Ready to Wear	10.61	40.10	23.59	22.50	184.00	59.61
Drug Stores .....	10.64	50.00	24.15	32.50	106.00	53.84
Men's Shoes .....	14.00*	35.00	25.22	31.75	67.00	42.80
Men's & Women's Shoes ....	11.00	40.00	26.13	20.00	111.67	44.93
Women's Shoes .....	14.10	43.03	28.46	23.00	100.00	52.95
Hardware .....	18.00	40.67	28.55	30.85	100.00	46.87
Musical Instruments .....	19.88	39.01	29.51	41.75	173.00	75.42
Furniture .....	17.94†	50.00	30.89	30.63	180.63	90.75
Hats & Caps .....	15.00	40.00	31.41	22.00	87.50	45.90
Men's Ready to Wear .....	17.63	58.76	31.92	30.00	160.00	57.81
Men's Furnishings .....	20.00	47.00	34.37	31.63	110.00	48.39

Source: Federal Trade Commission; *Chain Stores: Chain Store Wages*, Washington, D. C., 1933, pp. 47-48 and 50-51.

\* Exceptional figure—next highest 18.00.

† Exceptional figure—next highest 26.57.

‡ Exceptional figure—next lowest 14.50.

§ Exceptional figure—next highest 20.21.

|| Exceptional figure—next lowest 81.27.

picture of some of the major differentials in typical store practice. The material has the advantage of showing extreme stores as well as giving average wages in these stores

samples to rest much weight on this conclusion. It does seem to be fair to assume, however, that the salaries of managers are likely to be larger in chain stores than in independent stores where the proprietors assume a great deal of the responsibility that falls to the manager of a chain store. (*Chain Stores: Chain Store Wages*, p. XVI.)



for employees exclusive of managers, and for managers alone. It is important to remember that the figures in Table IX relate to early in 1931.

In conclusion of this circuitous discussion it may be useful to estimate the percentage of the total number of retail employees who were receiving less than the minimum wage before the Code and consequently were supposed to benefit immediately from the minimum wage provisions of the Code and the Presidents Reemployment Agreement. If a guess is made as to the percentage of employees affected in each type of store and these percentages are weighted by the number of employees listed in the 1933 Census of Distribution, a weighted average for all of the major types of retailers included under the general Code is obtained.<sup>68</sup> This average is 18.6 per cent.

<sup>68</sup> The following table presents the weights used. The different percentages were estimated on the basis of the foregoing discussion, on the relative size of the average wages of full time employees in the different types of stores, and on other factors such as particularly long hours of work, etc., which would be likely to influence average wages. The percentages were weighted by the average number of full and part time employees in 1933 in each type of store as indicated by the Retail Census for 1933.

*General Merchandise*

Department Stores .....	20
Dry Goods Stores .....	22
Variety Stores .....	60
Other General Merchandise .....	25

*Other than General Merchandise*

Men's Stores .....	5
Women's Specialty Stores .....	13
Family Clothing Stores .....	10
Shoe Stores .....	5
Accessories & Other Apparel .....	15
Accessories & Tires .....	5
Furniture & Household group .....	5
Lumber building and Hardware group .....	7
Other classifications .....	7
Second hand stores .....	25

*The Incidence of Code Minimums*

Another method of calculating the relation of Code minimums to prevailing wages is by noting the increase in wages which was reported in the Fall of 1933 by the PRA and Retail Code. Since wage data is reported to government bureaus it seems likely that for the most part proper Code wages would have been reported. When less than legal minimums were paid the store would probably not report at all, falsify payroll figures, or report a full time wage as a part time wage.

The Industrial Commission of Ohio receives reports from retail and wholesale establishments employing over three workers. In addition to average wage and employment figures, reports are obtained which permit the data to be grouped according to the number of employees who receive wages of specified amounts. The changes in the percentage of stores in the various wage groups between 1932 and 1933 are indicative of some of the adjustments which, it would seem, were due to the Retail Code and the PRA.

TABLE XII  
NUMBER OF EMPLOYEES RECEIVING SPECIFIED WAGES IN RETAIL AND  
WHOLESALE STORES IN OHIO

Wages \$	1929		1932		1933	
	Number Employees	Cumulative Percent	Number Employees	Cumulative Percent	Number Employees	Cumulative Percent
Under \$10	2,040	4.08	14,168	11.70	7,397	5.74
10-12	1,795	7.66	11,485	21.19	6,110	10.48
12-15	4,057	15.77	18,409	36.40	40,407	41.82
15-20	7,764	31.28	24,318	56.49	30,935	65.81
20-25	9,306	40.87	18,631	71.88	16,481	78.60
25-30	9,486	68.83	13,624	83.13	10,193	86.51
30-35	6,827	82.47	8,609	90.24	5,722	90.95
35-40	3,986	90.43	4,629	94.06	6,300	95.84
40-50	2,966	96.36	4,688	97.93	3,705	97.70
50 or over	1,821	100.00	2,501	100.00	1,670	100.00

Source: Industrial Commission of Ohio. Based on figures published for Wholesale and Retail Trade.

These data are interesting for several reasons. In the first place, they give a dramatic presentation of the reduction of wages from 1929 to 1932.<sup>59</sup> In the second place, a very considerable amount of wage reduction between 1932 and 1933 is indicated.<sup>60</sup> Part of this downward shift in wage distribution was doubtless due to increase in the proportion of part time workers. Clearly, however, a large amount of wage reduction was also involved.<sup>61</sup>

The table seems also to indicate a shift from the two lowest wage groups between 1932 and 1933; whereas in 1932, 21.0 per cent of the employees received less than \$12 per week, in 1933, the percentage had been reduced to 10.5 per cent at the same time that the number who received less than \$15 increased during the year from 36.4 to 41.8 per cent. It seems reasonable to suppose that this shift involving some 12,000 workers was due to the minimum wage

<sup>59</sup> Whereas in 1929 thirty percent of the workers were receiving less than \$20 a week, in 1933 over twice as many, 65.8 percent, were receiving these wages. In order to include 68.8 percent of the employees in 1929, it was necessary to advance to the group receiving \$30 or less.

<sup>60</sup> The number of employees receiving over \$20 per week decreased by 10,711 between 1932 and 1933. These employees, or substitutes for them, were in part—6,617 of them—reemployed at from \$15 to \$20 since that class increased by that number. The rest were reemployed at \$12 to \$15. This last class was accordingly increased between 1932 and 1933 by (a) the 12,146 workers who had formerly received less than \$12, (b) the 5,758 new workers, total employment having increased by that amount, (c) the 4,094 workers that had formerly received higher wages. Obviously workers shifted within these categories (e.g. new employees were often put on at more than \$15, etc.), but the net effect of the various changes was as described above.

<sup>61</sup> The proportion of part time employees reported in the 1929 census averaged about fourteen percent, whereas it was about twenty-four percent in 1933. It seems likely, however, that a considerable number of part time workers were not reported by the employers in Ohio, since the material was collected in connection with the compulsory workman's compensation law, and the questionnaires did not specify that both part and full time employees should be reported.

provisions of the wholesale and retail codes. It is likely that the employees reported at the end of 1933 as receiving less than \$15 were either part time workers or were in cities of population groupings requiring a lower minimum wage.<sup>62</sup> In all, about 9.5 per cent of the employees in wholesale and retail stores employing more than three people in 1933 in Ohio received, according to these data, a hypothetical raise in wages.

The United States Bureau of Labor Statistics collects monthly information on the number of wage increases or decreases from about 18,000 retail establishments employing about 400,000 workers.<sup>63</sup> From July to December, 1933, inclusive, a total of 5.5 per cent of the number of employees reported each month received wage rate increases. This figure seems surprisingly low. However, it is likely that stores paying especially low wages would be unwilling to report payroll and employment data to the Bureau of Labor. It is therefore probable that this sample which is small is also selective.

The United States Bureau of Labor Statistics obtains reports from retail establishments on monthly changes in payrolls and employment. These data have recently been divided so as to show separately changes for retail trade as a whole for general merchandise stores, and for retail trade other than general merchandise. If these indices are put on a base of July, 1933, equals 100, the following comparisons may be made:

<sup>62</sup> There seems to be no reason to suppose that the shift was due to the decrease in the number of part time workers. The relation of the part time workers in 1929 to the proportion in 1933 in the first part of the year and in the last part of the year when the NRA was in effect did not change noticeably.

<sup>63</sup> The number of establishments reporting during 1933 varied from 14,863 to 19,062. By the end of 1934 the number had almost tripled. (United States Bureau of Labor Statistics, *Trend of Employment*, monthly issues for 1933.)

TABLE XIII  
 CHANGES IN EMPLOYMENT AND PAYROLLS IN RETAIL TRADE, GENERAL MERCHANDISE  
 AND OTHER THAN GENERAL MERCHANDISE, 1933  
 July 1933 = 100<sup>64</sup>

Month	Total Retail Trade		General Merchandise		Retail Trade Other Than Gen'l. Md.	
	Payrolls	Employment	Payrolls	Employment	Payrolls	Employment
June	102.4	103.1	107.4	107.0	101.2	102.1
July	100.0	100.0	100.0	100.0	100.0	100.0
August	107.6	106.2	110.6	104.9	107.0	106.6
September	115.1	113.5	127.3	119.1	112.2	112.0
October	120.8	117.3	133.5	125.3	117.8	115.1
November	120.4	118.2	134.9	129.8	116.8	114.5
December	125.5	125.5	159.7	159.2	117.4	116.1

Source: United States Bureau of Labor Statistics, *Trend of Employment*, monthly is for 1933. Base changed from average for 1929 = 100 July to 1933 = 100.

The relative changes in the payroll and employment figures for the trade other than general merchandise and for the general merchandise group seem to indicate that the largest portion of the increase in payrolls other than that due to increase in employment occurred in stores selling general merchandise.

The meaning of the indices will be clearer if a series of possible relationships are worked out for general merchandise and other than general merchandise stores. We will make the arbitrary assumption that new employees were hired between June and September, 1933 at an average weekly wage of \$15 in general merchandise stores, and \$16 in other than general merchandise stores.<sup>65</sup>

Average employment and payrolls in general merchandise stores are stated in the Census for 1933. By applying the

<sup>64</sup> A small error is involved in shifting the base of these indices. But the advantage of using July 1933 as a base seems to outweigh the disadvantage of the slight inaccuracy.

<sup>65</sup> The difference between average wages in general merchandise stores and in other stores is typically over \$5, but since the number of part time workers in other than general merchandise stores increased considerably between June and September, it seems better to use a low average wage.

United States Bureau of Labor Statistics indices of monthly change in employment and payrolls to the census figures, the number of new employees hired between June and September is found to be 74,189 and the increase in payrolls \$1,762,601.<sup>66</sup> If we further assume that the average increase of weekly wages per employed worker whose wages were raised was \$2.50, then 259,906 employees or 39.9 per cent of the total number of workers on the payrolls in June would have had their wages raised between June and September. If we assume that the average increase would have been \$2.00, then 324,883 or 49.9 per cent of the workers in general merchandise stores would have been affected.<sup>67</sup> Thus, on the assumption that new employees were hired at an average salary of \$15 per week, the 18.5 per cent increase in payrolls between June and September in general merchandise stores was compounded of an 11.7 per cent increase for hiring new employees and a 6.8 per cent increase for raising the wages of employed workers.

<sup>66</sup> The method of arriving at these computations for general merchandise stores is indicated in the following table:

	BLS Indicates		Census Data		Computed **	
	Employment	Payrolls	Employment	Payrolls	Employment	Payrolls
Annual						
Average	84.2	65.4	686,551	\$10,292,330 †		
June	79.6	60.6	663,331	*	651,490	\$9,536,929
September	89.0	71.8	714,552	*	725,689	11,299,530
Increase .....					74,199	\$1,762,601

\* Since no monthly payroll data were collected, it was not possible to compare Census payroll information with information based on Bureau of Labor Statistics indices. The Census figures for payrolls are therefore given for comparison only.

\*\* Bureau of Labor Statistics indices were applied to Census annual averages for payrolls and employment data to give the figure in the last column.

† Annual total divided by 52.

<sup>67</sup> 74,199 new employees at \$15 per week equal \$1,112,985. This figure accounts for the part of the total payroll increase which was used for hiring new workers; the remaining increase of \$649,616 was presumably used to raise the salary of employed workers. When this figure is divided by \$2.50 it equals 259,846; divided by \$2.00 the result is 324,808.

In other than general merchandise stores the increase in employment was 270,261 and in payrolls \$4,731,210, \$4,324,176 of which was used to hire new workers if the average salary was \$16 per week. If the average increase received by employed workers was \$2.50, 162,814 employees or 5.8 per cent of the total employed in June would have received raises; if the average increase was \$2, 7.3 per cent of the employees would have benefited. On the basis of these calculations the payroll increase of 10.9 per cent was in major part—about 10 per cent—caused by additional hiring; only 0.9 per cent was the result of raised wages. Moreover, a substantial portion of the increased wages in this group of stores might have been caused by additional commissions resulting from better business rather than by the minimum wage requirements of the Code.

The estimate for general merchandise stores and other than general merchandise stores can be combined by weighting for the number of employees in each group.<sup>68</sup> If the average increase was \$2, then 23.1 per cent of the employees on the payrolls in June, 1933 received wage increases by September, 1933; if the average increase was \$2.50, then 18.4% of the employees in the stores under the general Retail Code would have benefited. These figures seem to agree in general with the estimates derived from our analysis of job distribution and typical wages in various types of retail stores. Though both estimates were derived independently of each other, neither is more than an informed guess as to the number of employees who would have received increase in wages had the clauses of the Code been accurately translated into practice.

<sup>68</sup> Restaurant, Food and Automotive groups were subtracted from the total. A more exact listing of employees under the Retail Code would raise the percentage figure by diminishing the weight for other than general merchandise stores: The weights used were June employment—total retail trade, 3,372,255; exempted group 1,582,955; general merchandise stores 663,311; other than general merchandise stores 1,125,989.

## SECTION IV: HOURS OF WORK

The length of time that an employee was to be permitted to work was to bear an approximate relationship to the hours that the store remained open. For stores that were open between fifty-two and fifty-five hours per week, inclusive, the percentage reduction of employees' time, if they had been working three hours less than store hours,<sup>69</sup> would range from 15.4 to 23.0 per cent; for stores on the fifty-six to sixty-two hour schedule, the reduction would range from 17 to 25.4 per cent; and for those open sixty-three hours and over, the percentage limitation would range from 20 per cent to any upper limit—36.8 per cent if the store had been open eighty hours and the employees had worked four hours less than the store had been open.

Sample studies have been made of the hours worked by the employees of retail stores. A report prepared under the direction of Dr. David Friday was presented at the hearing of the Retail Code. It purported to estimate the reduction

<sup>69</sup> Employees in retail stores usually have time off for lunch. This would mean that if they were not required to be in the store before opening or after closing, they would be working four or six hours less than store hours, depending upon whether they were given a full hour off for lunch. But a situation of this kind is the exception rather than the rule. Stock work is best done after closing time. It was typically done at this time. In stores that are open evenings, salesmen were sometimes given an evening or afternoon or morning off each week. "In many cities, especially in smaller stores, the general practice has been such as to bring about a work week approximately equal to and sometimes in excess of, the store trading week." This statement was made in the brief in defense of a forty-four hour week presented at the hearing of the Retail Code. It was therefore special pleading—the longer hours had been, the more reemployment would result from a forty-four hour week. (*NRDGA Bulletin*, September 1933). Nevertheless there seems to be little conflict of opinion concerning the extremely long hours of employees of retail stores. In general it seems safe to say that retail clerks are accustomed to work hours only slightly less than those during which the store is open for business.



in the hours of retail employees that would be required to restore employment in existing retail stores to the 1929 level. Information was obtained from 2,216 stores in all parts of the country, although the sample was thought to be composed chiefly of stores in the larger cities. The average hours that all of the stores remained open, weighted for the importance of the type of store reporting, was 55.05 hours per week. It was thought that employee hours would therefore average about 52.25 hours per week after allowing for time deducted for lunch hours and adding hours spent in the store prior to its opening and after its closing. The average hides the very considerable variation for different kinds of stores. The 149 furniture stores reported an average week of sixty hours; the 890 hardware stores, sixty-six hours; the eighty-seven clothing stores, 55.75 hours; the ninety shoe stores, 56.6 hours; and the 1,000 dry goods stores—53.2 hours.

Neighborhood stores have very long hours. They open early to serve the local trade and close late in order to secure the evening trade of people who have been at work during the day. The National Shoe Retailers Association claimed that stores in metropolitan areas were often open until 10:30 every night except Saturday when they were open until midnight. Thus store hours would range up to eighty hours a week. A net week for employees of sixty hours a week was thought to be common in more than half of the shoe stores of the country, which are principally two or three-man stores in small cities or in metropolitan areas.<sup>70</sup> Reports of store hours in the Pittsburgh district further illustrate the long hours of neighborhood stores.<sup>71</sup>

<sup>70</sup> *Boot and Shoe Recorder*, September 16, 1935. Brief filed with NRA by the National Shoe Retailers Association.

<sup>71</sup> *NRDGA Bulletin*, September 1933, article by Edgar Kaufman reports that neighborhood stores are open between sixty-four and sixty-

A questionnaire issued by *Retailing* and answered by 1,473 stores revealed that about half of the stores reporting operating schedules were on the forty-eight hour week. An average of about fifty per cent of the stores were open sixty-three hours a week or more. Obviously this is in no sense representative of a cross section of the stores of the country, in which a far larger proportion of establishments responsible for a substantial majority of sales, would be operating on the schedule appropriate to stores open sixty-three hours or longer.<sup>78</sup>

We may accept a conservative figure of twenty-three per cent as a criterion of the average reduction in the hours of work for employees whose hours were limited by Code provision. But in order to derive a figure for percentage increase in total retail employment this figure must, in the first place, be corrected for the proportion of the total employees who were exempted from the maximum hour provisions of the Code. If we assume that out of the 1,789,300 full and part time employees who were employed in June 1933 in approximately the group of stores subject to the Retail

eight hours a week, and various outlying stores are open seventy hours a week; drug stores are open between eighty-four and 144 hours, whereas department stores typically work on a fifty-two hour schedule.

<sup>78</sup> This total of 1,473 stores that answered the questionnaire issued by *Retailing* was made up of 367 department stores, thirty per cent of which were on the forty-eight hour schedule; 508 men's clothing stores, fifty-one per cent of which were asking employees to work forty-eight hours per week; 271 women's specialty shops, which were in only thirty-four per cent of the sample working Schedule C; and 327 furniture stores, seventy-one per cent of which were on a forty-eight hour employee work week.

The NRDGA obtained reports from 849 stores on payroll and employment changes. These stores also reported store schedules: 211 stores, (24.8 per cent)—Schedule A; 466 stores, (54.9 per cent)—Schedule B; 172 stores, (20.3 per cent)—Schedule C. (NRDGA Store Management Group, *Employment and Payroll Increases Experienced by Department, Dry Goods and Specialty Stores operating under the Retail Code*, November 1934.)

Code,<sup>73</sup> one out of every six workers, or 16.7 per cent was exempted from the hour limitations on the basis of a managerial status,<sup>74</sup> then the total number of employees so exempted would be 298,813. These people, as well as the proprietors, would be managing stores and working an unlimited length of time.

Maintenance and delivery men were also subject to a modified form of hours regulation. If we assume that every store has at least one worker in this category, then one out of each 3.3 employee worked six hours longer than the basic minimums. Although these employees were originally allowed to work longer than the others on the theory that they already did so, it will be more conservative to assume that their hours are reduced on the average eighteen per cent rather than twenty-three per cent.

When the approximate per cent reduction for each of the three types of workers is weighted by the estimated number of such workers reported on July 1933, an average reduction of about eighteen per cent in hours of work of all retail employees under the general Code is computed.<sup>75</sup> This

<sup>73</sup> Employees in the food group, restaurants and automotive groups have been excluded.

<sup>74</sup> *Retailing* reports on July 31 that between eight and twenty percent of the employees are considered exempt on the basis of the managerial exemption from the limitation of hours of work. In the above calculations it is assumed that the proprietors are permitted to work unrestricted hours. In addition to the proprietors, one out of six employers have been calculated as exempted. (The number in any one store could be one out of six to one out of ten for the first ten workers. Thereafter the number would be two out of eleven to fifteen for the first fifteen workers, three out of sixteen to twenty for the first twenty workers, and four out of twenty-one to twenty-seven, five out of twenty-eight to thirty-five, etc., workers in any one store.)

<sup>75</sup> Weights:

Total employed June 1933 .....	1,789,300
Executives one out of six .....	298,813
Delivery employees one out of 3.3 .....	546,465
Other employees .....	944,022

would mean that the employment of men and women to cover store hours no longer serviced because of the shortened work week would have required a twenty-two per cent increase in employment.<sup>76</sup> This would have involved reemployment of approximately 393,646 full time workers. This figure may be compared with the objective of 550,000<sup>77</sup> reemployed workers which was the basis for much of the discussion of Code clauses.

<sup>76</sup> Since eighteen is about 22.0 per cent of 82.0.

<sup>77</sup> Cf. *supra*, p. 172n.

## CHAPTER II

### LABOR CLAUSES IN PRACTICE

RETAILERS, like other business men, attempt to make a profit; this is a duty which they owe to themselves and to their partners or to their stockholders. The Retail Code aimed to raise wages and spread employment. But the earnings of the employees are the operating expenses of the employer. Expenses diminish profits, other things being equal. Accordingly it was obvious that retailers should attempt to minimize the additional expenses imposed by NRA. One method of achieving this end has been reviewed in the previous chapter—"proper" framing of Code clauses. Other methods available were Code violation, Code interpretation and economical store management. In this chapter we shall attempt to analyze the aggregate effect on total reemployment and on retail wage structure of individual and collective attempts to solve business problems.

#### SECTION I: EMPLOYMENT

In order to evaluate the effect of the Code clauses as distinguished from that of a general trade revival, it is desirable to attempt to isolate the proportion of the Fall increase in employment which resulted from hour limitation. It will then be necessary to determine what changes in the initial picture occurred in the course of the next two years.

#### *Employment Changes in 1933*

By the middle of December 1933 the number of employees subject to the Code had increased over July by 412,405 or 23.4 per cent—approximately the number anticipated. But

41 per cent of the added workers were on a part-time schedule. Moreover, there had been a large increase in trade as well as the usual seasonal increase in business.<sup>1</sup>

Between July and November<sup>2</sup> inclusive, 216,278 employees, 30% of whom were on part-time schedules, were put to work in approximately the group of stores subject to the General Retail Code;<sup>3</sup> this was 12.3% of the number employed by these stores in July.<sup>4</sup> Of this total, 59,914 (about 26% on part time) were hired during months when either a special PRA schedule or the General Retail Code became operative.<sup>5</sup> Thus 3.4% of the number of workers employed in July were put to work at times which coincided with NRA developments. Their employment is reflected in August (Variety stores in September) and November census

<sup>1</sup> For the year for which the index was computed, the percentage increase in employment for the total retail trade from July to December was as follows: 1921—14.9; 1930—10.2; 1931—7.6; 1932—10.7; 1933—25.4; 1934—15.0. (Computed from U. S. Bureau of Labor Statistics revised index.) The seasonal changes in business during 1929 to 1932 inclusive are diminished by the downward trend of the index. Seasonal variations are further minimized by the inclusion in the index of data on stores selling food.

<sup>2</sup> In calculating the reemployment due to the Code it seems wise to disregard the December increase since even if a portion were attributable to shortened hours, the jobs lasted only for a few weeks of the year and accordingly did little permanent good.

<sup>3</sup> Approximate grouping: Total retail trade minus food and automotive groups and restaurants (1933 census data).

<sup>4</sup> The increase in employment between July and November as recorded by the U. S. Bureau of Labor Statistics Index was 1929, 7.0; 1930, 4.1; 1931, 0.7; 1932, 3.1; 1933, 18.2; 1934, 6.0.

<sup>5</sup> The special PRA schedule for retailing went into effect on August 1st, 1933. Between July and August the number of employees increased by 30,397. Variety stores subscribed to a schedule one month later and put on 12,000 additional employees in September. The Retail Code was effective as of October 31; between October and November the number of employees subject to the Code increased by 17,521 individuals, 12,302 of whom were on part-time.

data. If we assume that all of these workers owed their employment to Code clauses, and obviously this assumption is not entirely true, if we further assume that for every five people whose employment is recorded in September and October one additional person was employed because of the shorter hours of the other five, we may calculate the reemployment directly attributable to the Code and PRA. Thus we arrive at an estimate of 4.9 per cent of the workers on the payroll in July, or about 86,000 men and women who received jobs in the Fall of 1933 because of the shortening of the work week in Retail Stores under the General Code.

#### *Employment Changes 1932-1935*

The United States Bureau of Labor Statistics computes indices for changes in employment for the retail trade as a whole.<sup>6</sup> This index, converted to a July 1933 base, may be

<sup>6</sup> These indices for retail trade suffer from three general types of disabilities:

1. They are typically new indices. The Bureau of Labor Statistics has been collecting data on payrolls and employment since 1929 but the information concerning hours of work and average hourly earning, etc. was published for the first time in the fall of 1932. The contacts made by census enumerators made it possible to start to compile information concerning different kinds of stores in the summer of 1933. These data are not published. Another large increase in reports occurred in the summer of 1934. The Bureau attempts to minimize the inaccuracies which might result from change in sample by obtaining information each month concerning employment and payrolls of the previous as well as the current month. Index numbers are constructed as linked relatives. The various State reports on employment in different kinds of retail stores have been commenced relatively recently except in Massachusetts where the samples are extremely constant.

2. The problem of getting a sample of stores which adequately represents the diverse influence in the retail trade is particularly difficult. The Bureau has recently revised the index of payroll and employment in order to diminish the importance of the general merchandise group in the indices for the trade as a whole and to adjust the data to census figures.

3. The accounting of many retail establishments is notoriously sketchy. There is always therefore a serious doubt as to the accuracy of the material

compared with increases in the combined chain store sales index published by the *Chain Store Age*.

Table XIV indicates that when the first half of 1933 is compared with the first half of 1932 sales and employment decreased by about the same amount. Moreover the percentage increases from the second half of 1932 to the second half of 1933 were approximately the same for sales and employment. The relation between changes in sales and employment is discussed in the next chapter; for the present we may observe that employment follows changes in the number of transactions more closely than changes in dollar sales, that when prices increase there is a tendency for transactions to increase somewhat more slowly than dollar sales (but not as slowly as a deflated dollar volume index) and that an increase in transactions or sales would in any event cause a smaller percentage change in employment.<sup>†</sup> Accordingly, the roughly equal change in the sales and employment indices when the last halves of 1933 and 1932 are compared, would, particularly in view of the increase in prices, seem to indicate an increase in employment due to the Code provisions.

But the increase in employment which may be attributed to the Code must be considered in the light of an interesting fact: the per capita weekly hours reported to the Bureau of Labor Statistics averaged almost 6.1 per cent lower for August, September and November than for April, May, June and July of 1933. This meant that in spite of the increase in employment the index for total man hours was

reported by a large number of the smaller stores. This is particular true at a time when the retailer is under social pressure to increase payrolls and employment. It would seem that the total man hours reported are particularly subject to question.

<sup>†</sup>Note, however, that the decline of sales of 7.3 per cent in the first half of 1933 was accompanied by a larger rather than a smaller decline in employment.



TABLE XIV  
 CHANGES IN EMPLOYMENT, PER CAPITA WORK WEEK AND SALES IN THE  
 RETAIL TRADE, 1933-1935  
 July 1933 = 100

Month	Employment *		Percentage Changes From Same Six Months Previous Year	Average Weekly Hours per Employee † Six Months Average	Sales Percenta Change From Sa Six Mont of Previo Year ‡
	Index Number Monthly	Index Number Six Month Average			
1933					
January	101.5				
February	99.2				
March	97.0	100.9	-8.4	101.7	-7.3
April	103.2				
May	101.5				
June	103.1				
July	100.0				
August	106.2				
September	113.5				
October	117.3	113.4	+7.0	95.6	+7.8
November	118.2				
December	125.5				
1934					
January	112.4				
February	112.1				
March	114.8	114.8	+13.8	92.8	+13.5
April	116.2				
May	116.8				
June	116.3				
July	111.3				
August	109.6				
September	115.1	116.3	+2.6	94.3	+7.2
October	116.3				
November	117.9				
December	127.9				
1935					
January	113.7				
February	111.5				
March	113.0	114.6	-0.2	95.0	+4.3
April	117.7				
May	115.8				
June	115.7				

\* U. S. Bureau of Labor Statistics, *Trend of Employment*. Revised index for total Retail Trade. Base changed to July 1933 = 100.

† *Ibid.*, Monthly issues.

‡ *Survey of Current Business*. Combined chain store index for grocery, variety, shoe apparel and drug chains. Average same month, 1929-31 = 100.

slightly less for August, September, October and November than for the four previous months.<sup>8</sup> When the very considerable increase in business is considered, this is an astonishing tribute to the ingenuity of retailers. One fears that the explanation lies less in the ingenuity of the retail executive than in his ability to "wink" at disobedience to his orders when such orders refer to leaving the store after the "reported" work week is completed.<sup>9</sup>

Table XIV seems to indicate that retailers did not find it necessary to augment their staff considerably after the first increases had been made. In spite of the fact that trade continued to increase, the index of employment for the first half of 1935 was the same as for the first half of 1934 and about one per cent higher than for the last half of 1933. (For the 12 months of 1934 employment was 6.8 per cent higher than for 1932.) Total man hours for 1934 averaged 2.1 per cent less than in 1933 and 5.4 per cent less than in 1932.<sup>10</sup> The combined sales index was 10.3 per cent higher in 1934 than in 1932.<sup>11</sup>

<sup>8</sup> Index for total man hours (Average for 1932—100) averaged for April, May, June and July—94.2; average for August, September, October and November—93.3. (*Monthly Labor Review*, March, 1935, "Employment, Hours, Earnings and Production, January, 1933—January, 1935," by Wit Bowden.

<sup>9</sup> Employment in manufacturing industries increased much more than did employment in the retail trade. In part this would be expected because of the more stable nature of the retail business. Nevertheless, a complete explanation would involve questions of Code clauses and enforcement. Number of Employees—per cent change in annual average 1932 to 1933; manufacturing + 7.6, retailing — .9. From 1932 to 1934—Manufacturing + 22.8, retail trade + 6.8. *Monthly Labor Review*, Bowden, *loc. cit.*

<sup>10</sup> *Monthly Labor Review*, Bowden, *loc. cit.*

<sup>11</sup> The lack of parallelism between sales and employment is not found

*Geographic Differences*

The figures for the country as a whole may be examined in order to discover the range and type of variation which is blended in the average figures.

The Bureau of Labor Statistics has published data on pay-rolls and employment in Retail Trade for individual states. Nineteen states have been selected. Data are presented with the thought that they may be suggestive of the geographical divergencies in average conditions in a country as large as the United States.<sup>12</sup> These data have been augmented by information collected by the U. S. Bureau of the Census.

Table XV demonstrates the range of variation in different parts of the country both as to increase in employment during the life of NRA and during its birth. Employment, like

in the British figures for Retail Sales and Employment in Retail Stores.

Years *	Per Cent Change From Previous Year			
	Great Britain		London (Central and West End)	
	Total Sales	Employment	Total Sales	Employment
1932 from 1931	-4.1	-0.4	-4.0	-0.9
1933 from 1932	0	+1.7	+2.8	+2.3
1934 from 1932	+3.3	+3.0	+2.1	+2.6

Source: *Board of Trade Journal*, March, 1935 and 1934.

\* Comparisons are for years beginning February and ending January, e.g. 1932 is February 1932 through January 1933.

<sup>12</sup> The sample for the large majority of the series has changed radically in the last two years. Besides, in a large proportion of the states the number of reports received are far too small to provide an adequate sample of a trade which is as widely diverse as that of retailing. The 19 states have been selected which seemed to have the most adequate sample when considered from the point of view of size and, more especially, constancy of sample.

TABLE XV  
CHANGES IN EMPLOYMENT AND PAYROLLS IN 19 STATES FOR SPECIFIED PERIODS

	Increased Employment July Through November 1933.	Per Cent Change First Six Months, 1933 to First Six Months, 1935 †		Average Wages ‡
	Ratio to July 1933 *	Employment	Payrolls	
Arizona .....	19.8	35.1	31.0	-3.2
Mississippi .....	19.5	17.7	33.4	+13.3
D. of C. ....	17.3	24.0	25.2	+1.0
New York .....	16.3	4.4	5.8	+1.3
Oregon .....	14.7	24.7	30.0	+4.2
Wisconsin .....	14.4	38.0	31.3	-4.9
Minnesota .....	13.9	5.6	5.1	-0.5
Massachusetts .....	12.8	8.1	4.3	-3.5
Pennsylvania .....	11.7	16.6	24.2	+6.5
Utah .....	11.2	13.7	32.9	+15.4
California .....	10.8	24.2	32.4	+6.6
Washington .....	10.5	14.7	17.4	+2.4
Michigan .....	10.2	27.8	50.5	+17.8
Rhode Island .....	9.7	9.8	9.8	0
Virginia .....	9.4	25.1	26.1	+0.8
New Jersey .....	9.3	4.9	12.5	+7.2
Ohio .....	9.1	22.8	35.2	+10.9
Colorado .....	7.8	19.2	18.9	-0.3
Kansas .....	6.8	14.2	18.3	+3.4

\* U. S. Bureau of the Census. *Retail Census: 1933*, State Reports.

† U. S. Bureau of Labor Statistics, *Trends of Employment*, monthly issues.

‡ Computed from Employment and Payroll Indices.

sales, increased less in the East and more in the regions of the Great Lakes and the South. It is interesting to note that a large increase in employment did not necessarily mean a maintained increase for the next year and a half.

#### *Variation in Different Groups of Stores*

But changes in employment in 1933 varied also by types of stores. There is a sharp contrast between general merchandise stores and the rest of the trade, as well as between kinds of stores within these categories.

According to the B. L. S. Index, the general merchandise group hired more people than did the rest of the retail trade between the first six months of 1933 and the corresponding period of 1935. The increase was 18.5 per cent for general merchandise and 11.9 per cent for the rest of the Trade. But much of the reemployment indicated by these figures was the result of improved business rather than of the limitation of hours of work.

At the beginning of this chapter we computed that from July to November 1933, inclusive, a 4.9 per cent increase in employment had occurred in the stores under the General Retail Code which could be attributed to the operation of Code clauses. A similar computation for stores selling general merchandise would indicate an increase in employment of 8.3 per cent and in the other than general merchandise group of 2.2 per cent.<sup>13</sup> The same relationships may be stated differently: Out of the 85,973 men and women whose employment in August, September, October and November of 1933 might have been directly caused by the limitation of hours of the PRA and the General Retail Code, 74 per cent worked in stores belonging to the general merchandise group and 26 per cent in the various specialty shops.<sup>14</sup> Department and variety stores alone were, on a similar basis,

<sup>13</sup> Included in the computation were employees hired during months in which special PRA schedules or the Retail Code went into effect plus one-sixth of employment increases at other times. See page 373 above. The general merchandise group includes the farmers' country stores group and the general merchandise group, e. g. drygoods stores, department stores, variety stores, and other general merchandise stores. For the variety and department stores alone the percent increase in employment is 9.4% according to the Census data.

<sup>14</sup> The number of employees in the general merchandise group and the farmers' country stores group were 768,164 in July. Variety and department stores accounted for 551,944 of this total. For the other than general merchandise group 991,517 employees were reported to census enumerators.

responsible for 60% of the total increase in employment, although they employed only 31% of the workers in July; the corresponding figures for Apparel stores were 7.3% of the increase and 13.5% of July employment; for Furniture household group—5.8% of the increase and 8.9% of the employees in July; Hardware stores accounted for 0.7% of the increase and 2.2% of the July employees.<sup>15</sup>

#### *Summary*

Several conclusions are suggested:

1. Employment in Retail Stores increased about 13 per cent from the first half of 1933 to the same period two years later. This increase occurred almost entirely in the last half of 1933 and was maintained throughout 1934 and 1935 without substantial change even in the last half of 1934 when the seasonal requirements would typically cause additional employment.<sup>16</sup> It seems probable that the increase in employment due to the hour limitations of PRA and the Retail Code was approximately five per cent of the number employed in July 1933.

2. In various parts of the country the extent of reemployment seemed to depend significantly on the extent of trade recovery.

3. The increase in employment in the general merchandise group was considerably larger than for the rest of the stores under the Code. This, too, may have been a reflection of

<sup>15</sup> If the comparison is limited to the months when the special PRA schedules or the Code went into effect, then of the total of 59,918 employees put to work at these times 76.5 per cent were in the stores selling general merchandise, 67% in department and variety stores. The apparel group had a decline in employment during these months, the furniture and household group accounted for 5.8%, and hardware stores for 0.7% of the total increase in employment from July to August and from October to November (from August to September in variety stores).

<sup>16</sup> Cf. *infra*, p. 385, Table XVII.

differential improvement in trade. In the other than general merchandise groups the types of stores that had little seasonal increase in business seemed to show little increase in employment in the figures reported to the census enumerators for the Fall of 1933.

4. The reemployment attributable to the Code fell far below any hypothetical level estimated on the basis of 100 per cent compliance and the maintenance of the working force at the pre-Code level. It fell even farther below the terms in which it was discussed during Code drafting. It did not restore employment to the 1929 level—in fact, as is indicated in the following table, it did not restore employment to the 1931 level, for the retail trade as a whole. The index for general merchandise stores just about reached the 1931 level.<sup>17</sup>

TABLE XVI  
EMPLOYMENT IN RETAIL TRADE  
1929 = 100

Year	1929	1930	1931	1932	1933	1934
Total Retail Trade . . . .	100.0	96.8	87.7	76.8	76.1	82.0
Other Than General Merchandise . . . . .	100.0	97.5	86.7	75.2	74.0	79.2
General Merchandise ..	100.0	94.1	92.2	82.6	84.2	92.7

Source: U. S. Bureau of Labor Statistics.

<sup>17</sup> Sales of department stores, variety chains and mail order houses when combined (simple average) indicate that dollar sales in 1934 fell further below the 1929 level than did employment in general merchandise stores. But employment is influenced by the number of transactions, which in turn is influenced by price level. If the sales index is deflated for price changes (Fairchild index) the second line in the table is developed. But this is also an inaccurate picture of changes in the number of transactions. The subject will be discussed in the next chapter. For the moment the negative conclusions should be kept in mind.

	1929	1930	1931	1932	1933	1934
General Merchandise Sales . . . . .	100.0	91.8	83.0	66.7	67.3	77.7
Deflated for Change in Price Level . . . . .	100.0	100.4	106.8	103.0	104.8	104.4

## SECTION II: WAGES

There is no way of comparing the number of workers who actually received wage increases to the hypothetical number estimated in the previous chapter. The margin of error in the estimate is large, and it is not possible to compare hypothetical and actual conditions. On the whole, it would seem that an estimate based on data reported to a government bureau would be likely to exaggerate rather than to minimize wage increases.

But we are interested not only in the number of workers who benefited from the minimum wage increases but also in the subsequent history of wage rates during the life of NRA. It is frequently alleged that enforced minimum wages tend to become the maximum, that a minimum wage narrows the wage margin by lowering the higher wages as well as by raising the lowest ones. Do the available data indicate that forces of this kind were at work under the Retail Code? Reports of hiring and firing in order to reduce wages buzzed at the NRA and National Code Authority offices during the early winter of 1934.<sup>18</sup> Many incidents of reduced hiring rates were known to officers of employment exchanges and local code authorities. It would be useful to obtain a quantitative expression for any wage rate changes that may have occurred.

<sup>18</sup> E. g., in the course of NRA discussion of a petition for an exception allowing wage reduction, C. S. Long wrote—"There is evidence that that code provision preventing the reduction of wages above the minimum is definitely resulting in the discharge of employees, which is unfair to the employees." Dr. Peck—"You mean everywhere?" C. S. Long—"The complaints indicate that that is going on." (Transcripts of NRA Hearing Jan. 19, 1934. Page 31.) From the Executive Director of the code authority comes the statement that firing old employees and hiring new ones at the minimum is "rather wide spread." (Transcripts of Conference of the Retail Committee of NRA, April 13, 1934.)



*Wage Rate Changes in the Retail Trade*

Data collected by the United States Bureau of Labor Statistics for the total retail trade are summarized in Table XVII.

Between the first and second halves of 1933 average weekly earnings<sup>19</sup> reported to the U. S. Bureau of Labor Statistics increased six-tenths of one per cent in the retail trade. It would seem that the major portion of that increase could be attributed to the PRA or Code minimum wage provisions. Between the first half of 1933 and the 1st half of 1934 average wages increased 2.3 per cent. It seems likely that a substantial part of this increase also may be directly attributable to the minimum wage regulation since the increase in part time and "extra" employees which

<sup>19</sup> The Bureau of Labor Statistics computes average weekly earnings by dividing aggregate payrolls by aggregate employment. (For the total retail trade, the aggregate payrolls and employment in general merchandise stores and other than general merchandise stores are weighted by census payroll and employment data.) Accordingly it should make little difference whether changes in weekly earnings are computed by using index numbers of employment and payrolls or by using the Bureau's data on percent change in weekly earnings.

Whether average earnings are computed from index numbers or from the actual aggregate data of payrolls and employment, the figure is sensitive to the absolute height of the average wages in reporting stores and therefore is distorted by change in sample. E. g., there are three stores having one employee each receiving \$10, \$15, and \$20 respectively. The following month two stores report 10% increases in wages, making the new rates \$10, \$16.50, and \$22. Total payrolls would now be \$48.50. Thus "average weekly wages" would have increased 7.8%. If, on the other hand, the second months' report for the three stores had again shown an increase in wages of 10% in two stores, but the new structure was \$11, \$16.50 and \$20, the total payrolls would have been \$46.50, an increase in average weekly wages of only 3.33%. If per capita weekly earnings had been computed on the basis of the percentage change in wages in each of the stores, the change would in both cases have been 6.66%. The distortion in the figures is greatest in series including groups of stores having drastically different average wages.

TABLE XVII  
 PAYROLL AND EMPLOYMENT DATA FOR THE RETAIL TRADE  
 1932 TO 1935  
 July 1933 = 100

Period	Employment *	Pay-rolls *	Per Capita		
			Weekly Earnings †	Man Hours ‡	Hourly Earnings ‡
Indices					
1932					
1st 6 mos.	110.2	132.6			
and 6 mos.	106.0	115.4			
1933					
1st 6 mos.	100.9	101.7	100.7	99.5	102.1
and 6 mos.	113.4	114.9	101.3	91.4	108.7
1934					
1st 6 mos.	114.8	118.2	103.0	88.1	114.8
and 6 mos.	116.3	120.5	103.8	89.7	115.6
1935					
1st 6 mos.	114.6	119.8	104.8	90.8	116.4
Per Cent Change					
1st 6 mos.					
1933					
to					
and 6 mos.	+12.3	+13.1	+0.6	-8.1	+6.5
1933					
1st 6 mos.					
1933					
to					
1st 6 mos.	+13.7	+16.4	+2.3	-11.5	+12.4
1934					
1st 6 mos.					
1934					
to					
1st 6 mos.	-0.5	+1.3	+1.7	+3.1	+1.4
1935					
1st 6 mos.					
1933					
to					
1st 6 mos.	+13.1	+18.0	+4.1	-8.7	+14.0

\* United States Bureau of Labor Statistics, *Trend of Employment*. Revised indices. Base changed to July 1933 = 100. Per cent changes calculated from figures with base 1929 = 100.

† B.L.S., unpublished data. Index of weekly earnings, base changed to July 1933 = 100.

‡ B.L.S., unpublished data. Index calculated directly from monthly per cent changes, July 1933 = 100.

occurs during the Christmas season is likely to cause a decrease in average wages between the first and second halves of the year because of seasonal factors only. Therefore some of the increase in wage rates which occurred in the fall of 1933 were counteracted in the average figures by the seasonal decline in average per capita weekly earnings and did not show in the data until the following spring. A comparison of the first half of 1934 and the first half of 1935 indicates that average earnings continued to increase by 1.7 per cent. The fact that per capita hours increased during the same period by a larger amount than the increase in earnings (3.1 per cent) would suggest that hourly earnings had decreased. But contradiction in the data seems to exist. This is doubtless due to the fact that weekly earnings are reported by a larger number of stores than report data on hours.

This is perhaps the bare outline of the story which we are seeking. But in this as in similar quests we must attempt to come at the problem from different angles, hoping both to amplify information and to bolster by confirmation the necessarily dubious materials. Included in an average wage are several independent variables: Conditions in different parts of the country; the proportion of employees working in different kinds of stores; the proportion of skilled and unskilled workers; the average per capita hours of work. It may be possible to develop a certain amount of information concerning some of these variables which will aid in interpreting the average figures.

#### *Geographic Differentials*

In different parts of the country we find wide variation in the history of average wages under the NRA. Of the nineteen states having the most constant and adequate sample

of reporting stores, four show increases in average weekly wages of over ten per cent and four report decreases between the first half of 1933 and 1935.<sup>20</sup>

Data for individual kinds of stores in five states for which such information is available show equally marked differences, varying from the frequent declines in average wages in the Republican stronghold of Kansas to rather extravagant increases in Maryland, where many wages, particularly in general merchandise stores, had doubtless been below the Code minimums.<sup>21</sup> On the whole, however, the data are too desultory to afford the basis for definite conclusions concerning changes in wage rates in different parts of the country. We can be sure only of the fact that wide geographical differences existed.

*General Merchandise Stores vs. Other than General  
Merchandise Stores*

Concerning changes in different kinds of stores somewhat more information is available. We noted in the previous chapter that general merchandise stores had lower wages than many specialty stores. They seem also to have had a somewhat different wage history under the NRA than did the other than general merchandise stores.

Table XVIII indicates that per capita weekly earnings increased considerably more in general merchandise stores than in specialty shops, not only as a result of the impact of the NRA program, but also during 1934 and the first half of 1935. In order to analyze further the nature of these changes it will be useful to study data for specified types of stores in each of the two major classifications.

<sup>20</sup> See Table XV, page 379.

<sup>21</sup> Employment and wages data have been examined for department stores in Massachusetts, New York State, Illinois, Kansas, and Maryland; for apparel and for furniture stores, in Kansas, Massachusetts, and New York State; for variety stores, in Kansas and Maryland.

## CONTROLLING RETAILERS

TABLE XVIII

INDICES OF PAYROLLS, EMPLOYMENT AND PER CAPITA WEEKLY EARNINGS 1932 TO  
IN GENERAL MERCHANDISE AND OTHER THAN GENERAL MERCHANDISE STORE  
AND PERCENTAGE CHANGE FOR SPECIFIED PERIODS

July 1933 = 100

	General Merchandise			Other than General Merch		
	Employ- ment *	Pay- rolls *	Weekly Earnings †	Employ- ment *	Pay- rolls *	We Earn
1932			Indices			
1st 6 Months	110.2	128.5		110.2	133.4	
2nd 6 Months	111.0	117.9		104.7	114.8	
1933						
1st 6 Months	102.5	104.2	101.7	100.6	101.0	10
2nd 6 Months	123.1	127.7	103.9	110.8	111.9	10
1934						
1st 6 Months	119.4	128.2	107.4	113.5	115.8	10
2nd 6 Months	128.8	137.5	107.4	112.9	116.5	10
1935						
1st 6 Months	121.5	133.5	110.7	112.6	116.5	10
			Percentage Change			
	Employ- ment *	Pay- rolls *	Weekly Earnings †	Employ- ment *	Pay- rolls *	We Earn
1st 6 Months 1933 to 2nd 6 Months 1933	+20.1	+22.4	+2.2	+10.1	+10.7	+0
1st 6 Months 1933 to 1st 6 Months 1934	+16.6	+23.0	+5.6	+12.9	+14.7	+1
1st 6 Months 1934 to 1st 6 Months 1935	+0.7	+3.9	+3.1	-0.9	+0.4	+1
1st 6 Months 1933 to 1st 6 Months 1935	+17.4	+27.8	+8.8	+11.9	+15.5	+3

\* United States Bureau of Labor Statistics, *Trend of Employment*. (Percentages based on data with unchanged base—1929 = 100.)

† Average wage computed from indices of employment and payrolls by the U. S. Bureau of Labor Statistics.

*Department and Drygoods Stores*

Information on hourly and weekly wage rates as well as on total man hours are collected by the United States Bureau of Labor Statistics for a group of department stores which has increased during the period under consideration from about 150 to over 500 establishments. A substantial number of large stores must be included in this group since the average number of employees per establishment has been over 300 at all seasons of the year.

TABLE XIX  
EMPLOYMENT, PAYROLL DATA IN DEPARTMENT STORES  
UNITED STATES 1933-35, JULY 1933 = 100

Period	Total Man Hours	Em- ploy- ment	Per Capita			
			Pay- rolls Index numbers	Weekly Earnings	Weekly Hours	Hourly Earnings
1933						
2nd 6 mos.	112.8	121.7	126.2	103.9	92.8	112.5
1934						
1st 6 mos.	106.2	122.2	128.2	104.4	87.7	119.9
(1st 4 mos.)	(104.9)	(120.6)	(125.8)	(104.1)	(87.8)	(119.0)
2nd 6 mos.	113.2	129.9	136.3	105.5	87.6	120.9
1935						
1st 4 mos.	104.3	120.9	129.9	107.3	86.8	124.0
			Per Cent Change			
2nd 6 mos. 1933-1934	0.4	6.7	8.0	1.5	-5.6	7.5
1st 4 mos. 1934-1935	-0.6	0.2	3.3	3.1	-1.1	4.2

Source: Computed from United States Bureau of Labor Statistics, Unpublished Data.

Perhaps the most striking fact contained in this table is that total man hours remained virtually the same from the last half of 1933 to the last half of 1934—a period in which sales increased 8.2 per cent. The increase in employment meant apparently that more people were put on a part time

schedule. But the increase in hourly earnings caused a slight improvement in average weekly earnings. Payrolls increased by about the same amount as sales. When January, February, March, and April 1935 and 1934 are compared, we find that sales increased about 2.6 per cent; payrolls improved proportionately; the total number of hours declined slightly. The increased payrolls took the form of increased hourly and weekly earnings rather than of increased employment. It is unfortunate that there is no way of telling what proportion of the increased payrolls went to executives.

It is interesting to compare the data for department stores with the information reported by a group of general merchandise and drygoods stores averaging between fourteen and twenty-eight employees per store.

TABLE XX  
EMPLOYMENT AND PAYROLL DATA IN DRY GOODS AND GENERAL  
MERCHANDISE STORES 1933-1935  
July 1933 = 100

Period	Total Man Hours	Em- ploy- ment	Pay- rolls	Per Capita		
				Weekly Earnings	Weekly Hours	Hourly Earnings
1933						
2nd 6 mos.	97.9	113.3	123.2	108.7	86.8	126.3
1934						
2nd 6 mos.	102.5	110.5	131.8	119.5	93.3	128.6
(1st 4 mos.)	(101.5)	(109.0)	(130.9)	(120.3)	(93.6)	(128.9)
2nd 6 mos.	108.2	161.1	134.9	116.6	93.9	121.2
1935						
1st 4 mos.	104.9	109.8	134.5	122.9	96.5	123.6
				Per Cent Change		
2nd 6 mos.	10.5	2.6	9.5	7.2	8.2	-4.0
1933-1934						
1st 4 mos	3.3	0.7	2.8	2.2	3.1	-4.1
1934-1935						

Source: Computed from United States Bureau of Labor Statistics Unpublished Data.

There are apparently three major differences in the experience of these smaller stores and the department stores: total man hours increased markedly; there seems to have been a decreased rather than an increased use of part time workers; hourly earnings decreased. Total payrolls increased by around the same amounts in both groups of stores between the last half of 1933 and 1934 as well as between the first four months of 1934 and 1935.

Further information which throws light on the experiences of stores of different size was obtained from member and non-member stores by the NRDGA. These reports on changes in payrolls, employment and transactions between June 1933 and 1934, and January 1933 and 1934 are arranged by size of store. Since the smallest size group is for stores having sales of under \$1,000,000 a year, the comparisons, in terms of popular verbiage, is between various degrees of large stores. No marked difference between the larger and smaller store is suggested by the table with one exception: the increase in payrolls in January 1934 over January 1933 is very small for the stores with a sales volume of over five million dollars: size group 5 to 10 million dollars—employment January 1933 to January 1934 + 9.2, payrolls + 4.8, transactions + 5.0; size group 10 million dollars and over—employment January 1933 to January 1934 + 11.8, payrolls + 4.5, transactions + 6.2.<sup>22</sup> This is doubtless partially explained by the fact that there had been considerable wage reduction between the first of the year and July. Although the stores reporting employment and wages were not entirely identical, the comparisons would seem to suggest that average wages were lower in those stores in January

<sup>22</sup> Store Management Group, National Retail Dry Goods Association: *Employment and Payroll Increases Experienced by Department, Dry Goods and Specialty Stores Operating Under the Retail Code, November, 1934.*



1934 than they were in January 1933.<sup>23</sup> This tendency can be illustrated in the New York market where four out of six large stores reporting average wages for a comparable week in January 1933 and 1934 show a decrease in average wages between the two dates; average selling salaries had decreased in all but one of the stores.<sup>24</sup>

The operating data supplied annually to the Harvard Bureau of Business Research by a large group of department and specialty stores provides further indication of the reduction in the average wages of retail employees. By mathematical manipulation of published data it is possible to calculate the average wages<sup>25</sup> of employees in department

<sup>23</sup> Number of stores 5-10 million dollar volume group: 23 on Jan. 1933, 22 on Jan. 1934; Number of stores over 10 million dollar volume group: 15 on Jan. 1933, 16 on Jan. 1934. The report states the per cent of the total non-executive force which was on a full time schedule on each of the four dates. The data are not given by store size groups: June 30, 1934, 86.1 per cent; July 1, 1933, 85.1 per cent (both of these days are Saturdays), January 15, 1934, 88.0 per cent; January 16, 1933, 88.8 per cent (both of these days are Mondays.) (*Ibid.*)

<sup>24</sup> In this store the decrease in the average salaries of the store as a whole were influenced by a very large decrease in the average wages of delivery employees. It is rather amusing to note that certain of the executive staff were discharged during 1934 and the executive in charge of managing the delivery section was promoted to a high position in the store.

<sup>25</sup> Figures are given for typical sales per employee, for typical sales per store, and for the ratio of payrolls to sales. Average dollar per capita earnings may be computed as follows:

$$\frac{\text{Store Sales}}{\text{Sales per employee}} = \text{number of employees}$$

$$\text{Store Sales} \times \text{per cent sales to payroll} = \text{total dollar payroll}$$

$$\frac{\text{dollar payroll}}{\text{number of employees}} = \text{average per capita earnings.}$$

For the five smaller size groups, sales per employee were reported in less than 75 per cent of the schedule used, but since the figures selected are "typical" figures based upon mean averages and other considerations, and since the data for the first five groups seem to bear a reasonable relation to the groups in which information from a larger proportion of stores was received, there seems to be no reason why the data are not sufficiently reliable to be introduced as tentative evidence.

TABLE XXI  
 AVERAGE ANNUAL SALARIES AND PERCENTAGE CHANGE FROM PREVIOUS YEAR OF AVERAGE SALARIES  
 OF EMPLOYEES AND TOTAL PAYROLLS FOR GROUPS OF DEPARTMENT STORES OF SPECIFIED SIZES

	1932		1933			1934				Average Salary \$
	Number of Em- ployees	Average Salary \$	Number of Em- ployees	Average Salary	Total Payroll	Average Salary \$	Number of Em- ployees	Average Salary	Total Payroll	
Under 150,000	14 <sup>a</sup>	1,100	-1.4 <sup>a</sup>	-6.0	-10.4	1,034	+10.2 <sup>a</sup>	-10.7	+1.7	923
150,000 to 300,000	35 <sup>a</sup>	1,104	+16.0 <sup>a</sup>	-12.8	+1.3	962	+4.9 <sup>a</sup>	-3.4	+1.3	929
300,000 to 500,000	69 <sup>a</sup>	1,111	-1.2 <sup>a</sup>	-10.8	-11.9	991	+14.1 <sup>a</sup>	-4.0	+9.6	951
500,000 to 750,000	111 <sup>a</sup>	1,095	+9.9 <sup>a</sup>	-19.6	-11.9	878	-4.8 <sup>a</sup>	+9.3	+4.8	960
750,000 to 1 million	178 <sup>a</sup>	995	+4.7 <sup>a</sup>	-10.2	-5.7	893	-4.5 <sup>a</sup>	+2.7	-1.8	918
1 million to 2 million	259	1,012	+9.6 <sup>a</sup>	-8.3	+0.5	928	-14.3	+8.2	-7.2	1,006
2 million to 4 million	457	1,073	+7.4 <sup>a</sup>	-11.4	-4.8	951	0.	0.	+0.3	952
4 million to 10 million	958	1,122	+4.4	-9.5	-5.6	1,015	-3.4	+6.1	+2.5	1,077
10 million to 20 million	2462	1,202				1,116	+2.7	-4.4	-1.8	1,067
20 million +						1,170	+3.4	+2.0	+5.5	1,193

Source: Derived from Harvard University School of Business Administration, Bureau of Business Research, *Operating Results of Department and Specialty Stores in 1934, 1933, and 1932.*

<sup>a</sup> Average sales per employee reported on less than seventy-five per cent of the schedules used.

stores of ten different groups ranging from stores having sales of less than \$150,000 a year to those selling annually twenty million dollars worth of merchandise.<sup>26</sup>

From Table XXI the following inferences may be drawn:

1. Between 1932 and 1933 typical figures for all of the store groups showed a decrease in average wages of between 6.0 and 19.0 per cent with a usual figure of about 10 per cent. The number of employees in six of the store groups increased between 4.4 and 16.0 per cent. This might suggest that a possible explanation of the decline in wage levels was an increase in part time employment. But average salary declined also in the two groups in which the number of employees decreased. Total payrolls decreased in all but two of the groups by between 4.8 and 11.9%.

2. Between 1933 and 1934 average earnings decreased in four instances; in all of these groups the number of employees had increased. Average wages increased in five groups; in all of these groups except the largest, the number of employees decreased. Total payrolls increased in seven of the groups and decreased in three. When we consider that seven of the months of 1933 were free of the incumbrance of Code wages and that sales had increased substantially in all but two of the groups, it is surprising that payrolls diminished in any of the groups and that increases were so small, less than 2.6 per cent in all but three categories. Such expense control would, it would seem, have necessitated a very considerable increase in the productivity of labor. Moreover, it would seem that such economies as took place concerned the rank-and-file worker rather than the upper

<sup>26</sup> 544 department and specialty stores provided usable schedules in 1934. These stores did \$1,363,000,000 dollars worth of business in 1934 or about  $\frac{1}{3}$  of the total done by all stores doing a similar business in the country. (Harvard University, School of Business Administration, Bureau of Business Research, *Operating Results of Department and Specialty Stores in 1934*, by Carl N. Schmalz, page 39.)

TABLE XXII  
EMPLOYMENT AND PAYROLL DATA IN VARIETY STORES  
1933-1935, JULY 1933 = 100

Period	Man Hours	Em- ploy- ment	Pay- rolls	Per Capita		
				Weekly Earnings	Weekly Hours	Hourly Earnings
Indices						
1933						
2nd 6 mos.	107.0	114.5	127.7	111.7	93.9	120.2
1934						
1st 6 mos.	92.0	99.3	113.0	113.5	93.3	122.6
(1st 4 mos.)	(90.9)	(96.5)	(111.2)	(114.3)	(94.7)	(122.1)
2nd 6 mos.	108.8	116.6	127.9	110.0	93.9	119.3
1935						
1st 4 mos.	97.0	99.3	115.4	116.0	99.0	120.9
Per Cent Change						
2nd 6 mos.	+1.7	+1.8	+0.2	-1.5	+0.0	-0.7
1933-1934						
1st 6 mos.	+6.7	+2.9	+3.8	+1.5	+4.5	-1.0
1934-1935						

Source: United States Bureau of Labor Statistics, Unpublished Data.

crust of the executive staff. 1934 seemed to have witnessed a reversal of the depression trend of salary cutting for the managerial group; in fact, as 1934 wore on, there may well have been a tendency for an increasing proportion of the payroll to go to the higher executive.<sup>27</sup>

3. Between 1932 and 1934 average salaries had in all cases substantially decreased. In all but one of the groups for which comparisons can be made,<sup>28</sup> typical store sales had increased between 1932 and 1934. In all but one group total payrolls had decreased during the same period.

<sup>27</sup> An article in the *New York Sunday Times* of February 10, 1933, entitled *Retail Executives Finding New Posts*, explains that "a much stronger call for executives is developing" in the chain store and department store fields. A larger number of executives were being used, the divisional merchandise manager was returning, there was less doubling up in buying; at the same time executives were being paid better salaries.

<sup>28</sup> Since the two largest groups are combined in the 1932 reports comparisons of this kind cannot be made for stores having annual sales of over 10 million dollars.

*Variety Stores*

It is unfortunate that more adequate data are not available concerning wages and payrolls in variety stores since the adaptation to minimum wage regulation of enterprises accustomed to pay low wages is a matter of considerable social importance. The United States Bureau of Labor Statistics obtains information from a number of variety stores which do not seem to include any of the larger chains. These data suggest that average hourly earnings, although twenty per cent higher for the last six months of 1933 than for the month of July, decreased slightly during 1934 and the first four months of 1935. Average weekly wages also seemed to change relatively little except for the increase which accompanied the substantial increase in average hours worked per week in the beginning of 1925. Since too few states collected payroll data in variety stores to provide an adequate internal check,<sup>20</sup> and since the sample reporting to the United States Bureau of Labor Statistics changed radically during 1934, it is doubtful how much reliance can be placed on the figures. In any event the larger chains do not seem to have contributed reports to government bureaus.

Dr. Nystrom estimated that when 1934 is compared with 1933, employment in the larger chains increased about eight per cent and payrolls about twenty-five per cent. Data collected by the Bureau of Business Research at Harvard University showed that between January 1, 1934, "presumably on account of the changes in hours and wages inaugurated under the NRA, twenty variety chains operating approxi-

<sup>20</sup> Data on payrolls and employment in variety stores are collected by the Kansas Commissioner of Labor and Industry and by the Commissioner of Labor Statistics, Baltimore, Maryland. These data show an increase in average wages between the 1st and 2nd half of 1933 of 2.8% in Kansas and 24.3% in Maryland. Between the 1st half of 1933 and the 1st half of 1935 the average wages had increased 16.2% in Kansas and 55.0% in Maryland.

mately 2,300 stores increased the total number of full time employees per store by over fifteen per cent . . . and the total number of part time employees . . . by almost ten per cent."<sup>80</sup>

Between the first of July 1933 and the first week in January 1934 the average full time wage of the rank-and-file worker in the large chains of variety stores increased from \$11.84 to slightly less than \$14.00, or about eighteen per cent.<sup>81</sup> A comparison made by the Bureau of Business Research of Harvard for 1932 and 1933 of operating statistics of twenty-three identical variety chains indicates that the total wage and salary bill increased by \$8,445,000, while sales increased by \$21,189,000.<sup>82</sup> This resulted in a change in the ratio of sales to payrolls from 14.1 per cent for 1932 to 14.9 per cent for 1933.<sup>83</sup>

A large variety store organization which was considered by the editor of *Retailing* to be fairly representative of the effect of the NRA in the large chains showed a ratio of sales to payrolls of 14.0 per cent for the first quarter of 1933 in which 18.1 per cent of the year's business was transacted, 12.6 per cent payroll cost in the third quarter when 23.0 per cent of the annual sales were made, and 11.0 per cent in the last quarter during which period about 33.7 per cent of the sales of the year had been completed.<sup>84</sup> In the second and third quarters the volume of sales was roughly the same and payrolls had increased 2.2 per cent of sales. This increase might have been in part the result of operating under the PRA.

<sup>80</sup> Harvard University, Graduate School of Business Administration, Bureau of Business Research, *Bulletin No. 95*, December 1934, *Expenses and Profits of Variety Chains in 1933*, by Malcolm P. McNair, p. 5.

<sup>81</sup> Data obtained by Limited Price Variety Association. I am indebted to Dr. Nystrom for this information.

<sup>82</sup> Profits increased \$20,385,000.

<sup>83</sup> Harvard University, *op. cit.*, p. 15.

<sup>84</sup> *Retailing*, April 2, 1934, p. 7.

Annual reports of S. S. Kresge state that the salary expenses of the company was \$2,421,373 greater in 1934 than in 1933. The increase in sales over the same period, however, largely absorbed the increase in salaries so that the ratio of salaries to sales was 15.5 per cent in 1934 and 15.0 per cent in 1933. W. T. Grant reports for 1934 an increase in sales payroll of 52.8 per cent over 1932 while sales for the two years had increased by 16.4 per cent. It may be that the increased selling cost was partly counteracted by a decrease in some other salary expense; if there had been no counter-acting tendency the ratio of sales to payrolls would probably have increased by between three and four per cent.<sup>85</sup>

The comparative success with which variety stores adjusted their operation to the specifications of the Code is interesting in its implications concerning the usefulness and feasibility of minimum wage regulations. Certainly the legal control of minimum wages and maximum hours of work should have benefited employees in direct proportion to the extent of their former "exploitation". On this basis the variety store employee was well qualified for maximum benefit from legal definition of fair wages. Accordingly, it is encouraging to find that not only did the widely heralded destruction fail to envelope the variety store upon the effective date of the Code, but that in a number of companies the pay for holding stock had improved considerably more than the pay for selling goods.

<sup>85</sup> In individual stores an increase of over three per cent on sales frequently occurred, e. g., 1. A variety store employing fourteen part time and fourteen full time workers had a weekly wage bill, exclusive of the management, for a week in February of \$402 in 1934 and \$300 in 1933, constituting 13.1 per cent and 9.67 per cent of the sales which were about \$3000 on both dates. The fact that business did not increase in this store may well be why the increase in percentage selling cost was so high. Another store reports an increase of seventeen per cent in payrolls with a fourteen per cent increase in total employees.

*Other than General Merchandise Groups*

We have noted that the increase in payrolls which occurred simultaneously with the PRA program was larger for general merchandise stores than it was for other than general merchandise stores. The difference in the type of problem faced by these two divisions of the trade is further revealed through an examination of the data for furniture and shoe stores collected by the United States Bureau of Labor Statistics:

TABLE XXIII  
EMPLOYMENT AND PAYROLL DATA FOR FURNITURE STORES  
1933-1935, JULY, 1933 = 100

Period	Total Man Hours	Em- ploy- ment	Pay- rolls	Per Capita		
				Weekly Earnings Indices	Weekly Hours	Hourly Earnings
1933 2nd 6 mos.	99.0	107.8	111.5	103.1	91.9	111.0
1934 1st 6 mos. (1st 4 mos.)	98.1 (96.5)	106.7 (105.2)	114.5 (111.2)	107.0 (105.3)	92.2 (91.9)	115.2 (114.3)
2nd 6 mos.	103.7	111.2	122.0	109.3	93.6	113.9
1935 1st 4 mos.	105.4	110.5	121.3	109.5	95.8	110.8
Per Cent Change						
2nd 6 mos. 1933 to 1934	+4.8	+3.2	+9.4	+6.0	+1.9	+2.6
1st 4 mos. 1934 to 1935	+9.2	+5.0	+9.0	+4.0	+4.2	-3.1

TABLE XXIV  
EMPLOYMENT AND PAYROLL DATA FOR SHOE STORES  
1933-1935, JULY, 1933 = 100

Period	Total Man Hours	Em- ploy- ment	Pay- rolls	Per Capita		
				Weekly Earnings Indices	Weekly Hours	Hourly Earnings
1933 2nd 6 mos.	104.3	112.3	113.4	101.0	93.0	109.1
1934 1st 6 mos. (1st 4 mos.)	109.3 (106.0)	117.7 (112.5)	119.5 (117.6)	101.9 (104.7)	93.1 (94.4)	110.2 (111.7)
2nd 6 mos.	110.9	116.9	118.9	101.8	94.6	108.1



1935						
1st 4 mos.	112.3	121.2	120.7	100.5	93.1	108.8
			Per Cent Change			
2nd 6 mos.						
1933 to 1934	+6.3	+4.1	+4.9	+0.8	+1.7	-0.9
1st 4 mos.						
1934 to 1935	+5.9	+7.7	+2.6	-4.0	-1.4	-2.6

Source: U. S. Bureau of Labor Statistics, Unpublished Data.

An examination of these tables suggests the following tentative conclusion:

1. For the most part both the initial and eventual increase in payrolls under the Retail Code were less than for department, dry-goods and variety stores.

2. The increase in the average weekly wages of employees did not seem to occur abruptly when the Code or PRA went into effect but gradually as a function of the improved business both in the spring of 1933 and during the next two years.<sup>86</sup>

3. There seems to have been a decrease in hourly earnings between the first four months of 1934 and 1935. This is particularly surprising in furniture stores where commission payments which are used extensively<sup>87</sup> should have improved with reviving trade and where there might well have been considerable under-reporting of hours worked per week.<sup>88</sup>

<sup>86</sup> These conclusions are generally supported by such information as is available for furniture, house furnishing and apparel stores in three states.

<sup>87</sup> About 95 per cent of the salespeople in furniture stores are paid on a commission basis. (Estimate of the Managing Director of the New York Retail Furniture Association.)

<sup>88</sup> Furniture stores may have largely evaded the shortening of the hours of salesmen. It will be recalled that there was a long controversy in the early part of 1934 concerning the classification of furniture salesmen as professionals. When an adverse ruling was finally made on this point, salesmen were ostensibly put on a forty-eight hour week. However, there seems to have been much after-hour work that the proprietor "did not know about". Customer contacts were made on the floor and followed up at the customer's home after the work in the store

In furniture stores an increase in the number of hours worked per week prevented the weekly wage from declining, in shoe stores, since the work week also declined slightly, the weekly wage declined 4 per cent during a full year of NRA.

The National Retail Hardware Association collects annual operating data which are published in the *Hardware Retailer*. The reports differentiate between salaries for owners, clerks, and office employees; they do not include payroll for delivery or shopmen.

TABLE XXV  
WAGES IN HARDWARE STORES, 1932-1934

	Per Cent Change		Average Salary	
	1932-33	1933-34	1932	1934
Salary per Owner .....	-13.3	2.7	\$1,951	\$1,737
Salary per Clerk .....	-15.1	0.2	1,130	962
Salary per Office Employee	-11.7	0.7	829	737

Source: *Hardware Retailer*, July 1935, 1934, and 1933.

TABLE XXVI  
SALARY PER CLERK IN HARDWARE STORES OF SPECIFIED ANNUAL  
SALES VOLUME, 1933 AND 1934

Sales Volume	Less than \$25,000	\$25,000 to \$40,000	\$40,000 to \$60,000	\$60,000 to \$100,000	\$100,000 and over
1933 .....	\$349	\$286	\$1,065	\$1,179	\$1,312
1934 .....	\$815	\$1,008	\$1,033	\$1,124	\$1,256

Source: *Hardware Retailer*, July 1934, page 65 and July 1935, page 67.

There was, apparently, little tendency for average salaries of clerks or office employees to increase from 1933 to 1934.

was over. Since salesmen were paid on a commission basis it is altogether likely that the proprietor and the salesmen were of like mind in their unwillingness to cut the work week to forty-eight hours. Unless the commission rate had been raised—an adjustment which would have been analogous to the maintenance of a uniform weekly salary for a reduced number of hours of work—the income of salesmen would have been reduced. In America, income is more necessary than leisure.

In fact, when the group is broken down into different sales volumes we find that the average salary per clerk declined in four of the five groups.<sup>29</sup>

We have now studied the available data on the basis of which it might be possible to determine whether the minimum wage regulation under the Retail Code was accompanied by a reduction in the wages of the better paid workers. If we are interested in isolating the effect of minimum wage legislation, then the course of actual weekly wages during the life of NRA ought to be viewed in the light of the supposition that wages would have ordinarily increased after almost two years of improved sales. Keeping this in mind, we may review the evidence that bears on the question of changes in the earnings of retail employees in the higher than minimum wage groups:

1. For the trade as a whole average weekly per capita wages increased about 3% during the two years of NRA, but most of this increase seemed to have occurred before 1934 was well under way. During the period when average wages remained stationary, that is during most of 1934 and 1935, per capita man hours reported by a smaller number of firms increased, thus suggesting that hourly wage rates might have decreased.

2. Indices for five different kinds of stores have been examined. Four out of the five indicate a reduced hourly rate of pay when the 1st four months of 1935 is compared with the same period of the previous year; three of the five series showed a similar decrease in hourly rates when the second half of 1934 was compared with the same period of 1933.

<sup>29</sup> The data can be compared in 21 different stores and city size groups. 10 of these groups show increases and 11 decreases in average wages of clerks between 1933 and 1934. The same relation exists between increases and decreases in the salaries of office employees.

3. Operating data furnished to Harvard University by a group of department stores indicated that average salaries in 1933 were well below those of 1932, that total payrolls were also considerably less in 1933 than in 1932. In 1934 total payrolls were for the most part either less or only slightly above those of 1933. The increase in payrolls was typically accompanied by considerably larger percentage increase in sales. Operating data furnished to the National Hardware Association indicated that average salaries had remained approximately the same, perhaps declined slightly, between 1933 and 1934. This would suggest that, if wages had been increased in the second half of 1933 because of Code or PRA provisions, they had been decreased sufficiently during 1934 to hold the averages for the two years approximately the same.

In view of the upward pressure on per capita wage structure that must have been exerted by improved earnings of commission salesmen, by increased need for executives, and by a probable lengthening in the average work day, these data, indicating as they do maintained or decreased average wages, would seem to me to confirm the many reports of wage reduction that were current during the winter of 1934.

#### SECTION III: SUMMARY

The National Industrial Recovery Act purported to increase the purchasing power of the masses, set a floor to wages, and spread employment through the limitation of hours of work. These general purposes were expressed in the Act, embodied in the Retail Code, and filtered through the self-interest censor of half a million retailers. What was the specific pattern which emerged for the retail trade? We have been studying numbers. We are interested in people. What is the story that the figures tell?

The retailer was subjected to a series of increased costs, the most important of which were increases in payrolls—an item which is typically at least half of his total costs and which is the most adjustable large item in his list of expenses. For years the ratio of sales to general selling expenses has shown great stability. The ratio figures have come to be a barometer to which the retailer refers constantly in order to foretell the color of the final column of the annual operating statement. He thinks in terms of a range of tolerance in these percentages. At all times there is a constant downward pulling at expense ratios; when they seem to be rising dangerously, the downward tug grows more determined. In the summer of 1933, the retailer was told to increase payrolls on behalf of the public weal. It is obvious that no sane business man living in the United States in this generation would fail to attempt to minimize increased expenditure. The difference between one man and another would lie entirely in the means which he was willing and able to use to achieve this economy.

The worker stood to benefit from the Code in so far as, other things remaining equal, wages below the minimums were raised and hours shortened. The job of the store executive was to see that other things did not remain equal.

The most effective way in which the cost of the labor provisions of the Code could be controlled was through "proper" framing of the provisions. The fact that the Administration was trying to operate the recovery program on a voluntary basis gave to the employer, particularly in the absence of effective labor organization, the upper hand in Code drafting. It would seem that large differentials in minimum wages for different size cities was a direct reflection of the fact that employers in small cities claimed that they were less able to afford increases in cost, not that the

worker, on the basis of the ability to pay, living costs, or any other type of argument, should have received a minimum which varied by almost 100 per cent, depending on the size and the location of the city in which he worked.

When once the Code had become law, the simplest way in which the resultant cost could be controlled was through violating its provisions. This was a technique which would prove economical for only certain kinds of stores. For the most part, a large store or chain of stores located in a city in which there was active Code enforcement could hardly afford the adverse publicity which might occur if it was found to be a flagrant violator of the Code. This was therefore a device which was best suited to the needs of the small store which depended on local trade, which had a relatively small number of employees who would for fear of losing their jobs be unlikely to report violations, and in which the absence of any kind of records made the proof of violations extremely difficult.

The number of complaints reported to Code authorities, the geographical distribution of Code authorities, and the problems of gaining compliance after a violation was apprehended, testify to the fact that the problem of restricting hours of work to the Code limits was hardly scratched by NRA machinery. Further evidence on this score is provided by the extreme divergence between theoretical and actual reemployment and by what can only be under-statement in total man hours reported to the Bureau of Labor Statistics. We noted that in several of the series for specified types of stores the average man hours reported for the last half of 1933 were actually less than for one of the dull-est months in the year—July. Similarly hard to take seriously are the reports for the total trade, which indicates that man hours were about ten per cent less in 1934 than in

1932.<sup>40</sup> If there are probable differences between scheduled time and the actual hours worked by employees in firms voluntarily reporting payroll data to the United States Government, how much more divergence between theory and practice may there have been for some of the firms which did not choose to make reports?

Available data do not indicate whether a substantial portion of retailers paid less than Code minimums for a full day's work. It seems probable that there was comparatively little violation of the minimum wage provisions unless it took the form of paying part time wages and permitting unremunerated overtime work—popular ethics was relatively more ripe for the acceptance of prohibitions against "sweating"; the level of wages as set by the Code was not too excessive; the majority of people are loath to falsify payroll records.

For those stores that hesitated to violate clear Code requirement, there was the further expedient of insisting that the Code provisions were not clear and obtaining interpretations favorable to store requirements. The classic example of this method was the interpretation of the clause which prohibited the reduction of wages above the minimum; the action of the Code authority attached the prohibition to the employee rather than to the job. The interpretations of the status of commission payments, drawing accounts and the like facilitated reduction in weekly earnings. Ambiguities in the definition of "professional" and "executive" permitted temporary evasion of hour limitation.

A fourth group of methods whereby the shock of the impact of NRA on retailers could be absorbed was through store management.

<sup>40</sup> *Monthly Labor Review*, Bowden, *loc. cit.* Total average man hours for the retail trade were 100 in 1932, 95.0 in 1933 and 94.6 in 1934.

In relation to the hour provisions there was much that could be done:

1. Through skilled personnel work the efficiency of employees could be increased. The "speed up" was applicable to retailing as well as to manufacturing.<sup>41</sup>

2. Employees could be taught to wait on two people at once; time studies of clerical occupations could be made; training and selection could be improved; the growing time-clock consciousness of store managers soon revealed that the careful tailoring of the staff to the exact work load could reduce the number of employees required during a substantial portion of the day. It would also seem that retailers have grown slightly less fearful of keeping the public waiting than they had been before the NRA forced economies in selling time.

3. In the small store the proprietor himself or his managers, who were not limited to a fixed number of hours per week, could, if necessary, take over the work left undone because of the shortened day of other employees.

In cushioning the impact of wage regulations store management could do little in regard to minimum rates except employ juniors or apprentices until limited by the ratio to total staff permitted by the Code,<sup>42</sup> but the wages of employees who had formerly received more than the minimum could be reduced: 1. An employee could be discharged and subsequently rehired for the same job or a different job at a lower rate. 2. An employee could be "demoted" to a lower paid job. 3. Work could be arranged to require fewer relatively skilled workers; 4. The employment manager could simply be told to lower hiring rates, since the labor turnover

<sup>41</sup> Cf. *infra*, pp. 486-487.

<sup>42</sup> For a store having twenty workers one out of five or a fraction thereof could be a junior or apprentice. The ratio changed to one out of ten for over twenty employees. (Retail Code, art. vi, sec. 2.)



in large general merchandise stores is so high that wages can be reduced by doing nothing more than replacing employees at lower salaries without unduly stimulating their separation from the store.<sup>43</sup> If salespeople were paid on a commission basis, wages would automatically be reduced in proportion to reduction in working time.

The net result of all these methods of deflecting and minimizing and evading the cost of the hour provision of the Code was that a hypothetical increase in full-time employment of about twenty per cent was converted into an actual increase over employment in July 1933 of about five per cent for the country as a whole. When to the new employees hired because of the shortened work week are added the new employees hired because of the improved trade, an increase of 12.4 per cent in the group of stores reporting to the U. S. Bureau of Labor Statistics is recorded for the last half of 1933 compared with the first half of the year.<sup>44</sup> It is astonishing to find that when retailers had had an opportunity to study the problem of operating under the Code they were able to limit further reemployment during the following year and a half to another 1.2 per cent in spite of the substantial increase in business during that period.<sup>45</sup>

Thus we find that during the fall of 1933 retailers were forced to augment their staffs in order to comply with Code

<sup>43</sup> For data on separation rates see *supra*, p. 287.

<sup>44</sup> When the BLS index for total retail trade is converted to the base of July 1933 = 100, the average for the first six months of 1933 is 100.9; for the 2nd six months of 1933, 113.4; for the 1st six months of 1935, 114.6.

<sup>45</sup> Dr. Kenneth Dameron, in connection with an analysis of the operation of eleven small stores and five large ones, notes the considerable gain of employment in October and says: "However, as stores began to study the problem of adjustment no further gain is noted and several concerns reported marked decreases in employment parallel with increases in sales." He concludes that "The retail store has outwitted the recovery in terms of the Retail Code. Little if any reemployment has been affected . . ." (*Harvard Business Review*, Spring 1935, p. 270.)

provisions and seasonal increases in business. Where this was done, and a large number of stores doubtless disregarded Code hour limitation entirely, payrolls looked dangerously high in terms of the usual percentage figures. Accordingly every effort was made to reduce payroll costs. Retailers grew increasingly time-clock conscious and were able to effectuate significant economies. In effect, then, the Retail Code served to *anticipate* the reemployment that might have been expected to follow a substantial improvement in business rather than to create a large number of jobs which would not have otherwise been available by the spring of 1935.

It is not possible to give quantitative expression to the aggregate effect of measures taken by retailers to ease the impact of NRA on retail wage structure. Certain conclusions, however, may be drawn from the foregoing discussion:

1. The wage differentials for cities of different sizes set a low minimum wage for a very large proportion of the retailers of the country.

2. The minimum wage provisions applied largely to certain types of stores, e. g., the general merchandise group and stores of all kinds relying essentially on price appeal to sell merchandise.

3. The initial cost of increasing wages to conform with required minimums seems to have been partially offset by reductions in the payment for jobs which had previously carried a somewhat higher salary. Thus some of the higher as well as the lower salaries, were eliminated—the intermediate wages drifted downwards. In individual stores the scale swung up or down depending on whether there had been a large number of low-paid workers in the store prior to the Code and whether there had been a change in the proportion of part time employment. By the spring of 1935 per capita weekly wages were about three per cent higher

than those reported for the retail trade in the spring of 1933.<sup>46</sup>

In the meantime the cost of living had risen about fourteen per cent.<sup>47</sup>

<sup>46</sup> Comparisons between increases in the Retail Trade and in Manufacturing Industries have been prepared by Witt Bowden of the United States Bureau of Labor Statistics. (*Monthly Labor Review, loc. cit.*, pp. 544-545.)

	Per-Cent Change 1932-1934		Per Cent Change June 1932 to June 1934		Per Cent Change January 1933 to January 1935	
	Annual Average Manufac.	Retail.	Manufac.	Retail.	Manufac.	Retail.
Payrolls	+34.3	-3.6	+37.3	+17.7	+62.3	+9.7
Per Capita Weekly Earnings	+9.4	-9.7	+13.4	+4.2	+24.2	-2.1
Average Hourly Earnings	+16.0	+4.0	+31.1	+19.7	+27.6	+13.5

<sup>47</sup> National Industrial Conference Board Index. This index is thought to underestimate changes in the cost of living by the authors of the *National Industrial Recovery Administration*, Brookings Institution.

## CHAPTER III

### THE EMPLOYER AND HIS CUSTOMERS

THE NRA aimed to benefit the retailer as well as the consumer and labor. In order to determine whether this object was achieved it would be desirable to be able to judge the effect of the Retail Code on profits. But since the influences of the Code often cannot be distinguished from those of the general economic setting in which retailers sold and consumers bought, the discussion becomes of necessity a description of profits and related aspects of retailing during the life of the NRA.

Gross margin minus total operating costs equals operating profits. The latter are, accordingly, crucially influenced by both changes in operating costs and changes in maintained mark-up or gross margin. But operating costs, profits and margins are typically calculated as a percentage of sales. The ratio of margin to sales expresses a largely arbitrary mathematical relationship. But changes in operating costs are functionally related to changes in sales volume. An increase in dollar sales, other things remaining equal, would typically reduce the ratio of costs to sales. This occurs because all retail establishments have fixed expenditures which do not vary with dollar volume; moreover they also have a large number of semi-fixed costs (accounting departments, portions of the supervisory staff, etc.) which do not increase as fast as sales.<sup>1</sup> But the functional relation between costs

<sup>1</sup> The numerical relation can be illustrated by a hypothetical example: A department store selling one million dollars worth of goods at a gross margin of thirty-seven per cent, and having a total operating expense

and sales is also influenced by changes in the number of transactions required to conduct a given dollar volume of business; direct costs are more closely related to the number of transactions which require separate handling by the staff than they are to the number of dollars which is spent on these purchases. In order, therefore, to understand the changes in cost margins and profit ratios which occurred contemporaneously with NRA it is necessary to outline the changes in sales and in the number of transactions handled by retail stores.

#### SECTION I: THE SETTING: SALES AND TRANSACTIONS

##### *Sales*

The first fact to be noted is that retail sales increased. The improvement was marked in April 1935 and continued with minor interruptions for the next two years.

Sales began to rise in the spring of 1933. The reversal of the long downward trend is indicated in the seasonally adjusted indices by a cessation of the decline when the first half of 1933 is compared with the last half of 1932. In all of the groups a comparison of the last half of 1933 with the same period of the previous year shows marked improvement in dollar sales. When the first half of 1933 is compared with the same period two years later we find that

of thirty-five per cent makes a two per cent operating profit or \$20,000. For every \$100 of goods sold direct costs are \$10. Fixed costs are \$15 and semi-fixed costs are \$10.

If we assume that sales increase twenty per cent, that direct costs increase proportionately, that fixed costs do not increase at all and that semifixed costs increase half as fast as sales, then the three elements of expense would be \$12, \$15 and \$11 respectively. If the \$120 worth of goods had been purchased so as to allow the same gross margin of thirty-seven per cent of the dollar margin would be \$44.50. Expenses total \$38 leaving an operating profit of \$6.40 or 5.3 per cent of net sales or a total dollar profit of \$63,600 (5.3 per cent of \$1,200,000), an increase in dollar profits of about 219 per cent.

TABLE XXVII

SIX MONTHS AVERAGES OF SALES INDEXES FOR SPECIFIED TYPES OF STORES AND PER CENT CHANGE FROM THE SAME PERIOD OF THE PREVIOUS YEAR; 1932 TO 1935

Type of Store	Index of Sales								Per Cent Change from Same Six Months of Previous Year				
	1932		1933		1934		1935	1932-1933		1933-1934		1934-1935	
	J-Je.	Jy-D.	J-Je.	Jy-D.	J-Je.	Jy-D.	J-Je.	J-Je.	Jy-N.	J-Je.	Jy-D.	J-Je.	
Combined Indexes *	86.3	80.7	80.0	87.0	90.8	93.3	94.7	-7.3	+7.8	+13.5	+7.2	+4.3	
Apparel Chains †	87.2	77.5	76.0	85.3	95.8	97.7	99.8	-12.8	+10.1	+26.1	+14.5	+4.2	
Grocery Chains ‡	84.0	78.8	76.0	80.3	82.0	85.7	88.3	-9.5	+2.7	+7.9	+6.7	+7.7	
General Merchandise §	95.6	104.4	85.2	116.3	104.2	128.9	114.5	-10.9	+11.4	+22.3	+10.8	+10.2	

Source: *Survey of Current Business*.

\* Eighteen companies: five grocery, six variety, three apparel, two drug and two shoe chains, average same month, 1929-31 = 100.

† Three apparel chains, average of same month, 1929-31 = 100.

‡ Five grocery chains, average of same month, 1929-31 = 100.

§ Note that these data are not seasonally adjusted as are the other three series. The index is a simple average of the following data:

Sales of eight variety chains (unadjusted for seasonal variation). *Survey of Current Business*. Base changed to average 1932 = 100.

Sales of department stores (unadjusted), Federal Reserve Board. Base changed to average 1932 = 100.

Sales of two mail order firms. *Survey of Current Business*. Index number, average 1932 = 100 calculated from dollar figures.

the combined chain store index had increased 18.4 per cent,<sup>3</sup> the apparel chains 31.3 per cent and grocery chains by 16.2 per cent, whereas the sales of general merchandise as indicated by the sales of department stores, mail order companies and variety chains had increased 34.4 per cent between the first half of 1933 and the first half of 1935. Annual data for hardware stores show a twenty-two per cent increase from 1933 to 1934;<sup>4</sup> for furniture stores an increase of 34.6 per cent is reported.<sup>4</sup>

The differential between types of retail establishments is further indicated by an estimate of the sales of various kinds of stores made by Mr. Nelson A. Miller, of the Bureau of Foreign and Domestic Commerce. Total retail trade was believed to have increased 14 per cent between 1933 and 1934. This meant that the public had spent about three and a half billion dollars more for purchases in 1934 than in 1933. The percentage increase for various types of stores, as is indicated in the following table, varied between 25 per cent for mail order catalog business to 7 per cent for the food group.

<sup>3</sup> The importance of grocery stores in the combined group has tended to moderate the sales improvement registered.

<sup>4</sup> For 818 hardware dealers that make monthly reports to the National Retail Hardware Association in 1933 sales figures had also exceeded 1932 sales for the past half of the year. (*Hardware Retailer*, February 1935, p. 60, "Recovery Progressed in 1934" by Paul J. Stokes, manager of National Retail Hardware Association Research.

<sup>4</sup> Annual Study of Retail Furniture Industry made by Arthur Fertig & Co., 1441 Broadway, New York City. The increase in the first six months of 1934 over the corresponding period of 1933 was 53 per cent. It is interesting to note that installment sales increased much faster than cash sales, the figures for 1934 compared to 1933 being 35.7 per cent and 14 per cent respectively. I am reminded of a small boy of my acquaintance who was discussing the desirability of purchasing an aeroplane with an adult friend of his who claimed that though she would love to own a plane she did not have the money with which to purchase it. He was troubled. Presently his face brightened. "I know what you could do—you could charge it!"

TABLE XXVIII

ESTIMATED TOTAL NET SALES OF RETAILERS BY KINDS OF BUSINESS, 1930-1934<sup>a</sup>

Kind of Business	Estimated Sales 1934 in thousand of dollars	Per Cent of 1929 Sales					Percentage Change 1933 over 1933 Estimated
		1930 Est.	1931 Est.	1932 Est.	1933 Act.	1934 Est.	
Total .....	\$28,548	87	72	52	51	58	+14
Food .....	7,269	95	83	67	63	67	+7
Restaurants and Eating Places .....	1,687	97	91	77	67	79	+18
Country Gen'l. Store, Farmers' Supply ..	1,842	77	55	33	42	50	+18
Dept'l., Dry Goods & other Gen'l. Mdse. .	3,352	92	82	63	59	66	+12
Mail Order							
Catalogue only ....	275	78	58	45	49	62	+25
Variety Stores .....	742	92	87	73	75	82	+9
Apparel Group .....	2,269	92	82	55	45	54	+18
Automotive Group ...	5,391	81	62	40	46	56	+22
Furniture and Household Group ..	1,132	80	59	32	35	41	+18
Lumber, Bldg. and Hardware Group ..	1,544	81	52	36	35	40	+15
Tobacco Stores .....	209	86	77	55	46	51	+10
Drug Stores .....	1,173	92	85	70	63	69	+10
Jewelry Stores .....	201	71	56	35	33	38	+15
Second Hand Stores .	115	93	84	76	71	78	+10
Other Retail Stores ..	1,347	85	70	45	43	49	+14

Source: *Domestic Commerce*, February 20, 1935.<sup>a</sup> 1933 figures are based on data taken from the 1933 *Census of American Business*. The years 1930, 1931, 1932, 1934 are estimated based on trends of currently published statistics.

The increase in sales in the country as a whole indicates that people had more money to spend and were willing to spend it on retail purchases. The increase in personal income was, of course, directly related to the fiscal policy of the government as well as to improved economic conditions. But since government payments and business improvement was not uniform throughout the country, increased spending was also not uniformly distributed; differentials reflected local conditions such as the initiation of an important con-



struction job, the injection of government funds in the form of AAA payments, relief projects <sup>5</sup> as well as improvements in local businesses.

The increase in sales in farming districts was particularly noticeable; in rural sections revival typically occurred earlier and was more marked than in the industrial cities of the East.

An index of sales of general merchandise in rural areas prepared by the Bureau of Foreign and Domestic Commerce may be compared with the combined sales of department stores and variety stores throughout the country

TABLE XXIX  
PERCENTAGE CHANGE IN SALES FROM THE SAME PERIOD OF THE  
PREVIOUS YEAR FOR RURAL STORES AND FOR VARIETY AND  
DEPARTMENT STORES THROUGHOUT THE COUNTRY

	1932 to 1933		1933 to 1934		1934 to 1935
	Jan.-Je.	Jy.-Dec.	Jan.-Je.	Jy.-Dec.	Jan.-Je.
Rural *	-11.2	+29.1	+31.6	+14.3	+22.6
Variety and Department †	-10.7	+8.7	+16.2	+6.8	+4.2

\* *Domestic Commerce*, Bureau of Foreign and Domestic Commerce. Index numbers constructed from data reported by three mail order firms and from identical units of chain stores in places of less than 30,000 inhabitants. Unadjusted figures, 1929-31 = 100.

† *Survey of Current Business*, Index for eight variety chains and for department stores. Unadjusted figures, base year changed. 1932 = 100. These indices make no allowance for the number of stores in the reporting chains; they would, therefore, tend to show larger percentage increases in sales than the rural index which reports for identical establishments only.

<sup>5</sup> There seemed to be some indication that relief expenditures were not reflected in department store sales as readily as were AAA funds. A study made by H. E. Hansen reported in the *Annalist*, April, 1935, suggested that the reason for this is that "Relief payments represented total income to many persons, while AAA payments supplemented cash farm income." The five Federal Reserve Districts showing the highest increase in sales from 1933 to 1934 were with one exception the districts receiving the largest dollar grants from the AAA.

Between the first six months of 1933 and the first six months of 1935 the farm index shows an increase of 61.4 per cent whereas the index of department and variety stores increased 21.0 per cent.<sup>6</sup> Whether or not the two series are strictly comparable, it is clear that a marked difference in sales experience is indicated.<sup>7</sup> Department stores in each of the twelve Federal Reserve Districts reflect the difference between city and rural sales as well as the variation in different parts of the country. The percentage change in the sales for the first six months of 1933 compared to the same period in 1935 ranges from an increase of 7.7 per cent for the New York District to 35.1 per cent for Atlanta.<sup>8</sup>

In general it seems clear that though farm districts made the most emphatic recovery, the increase in sales was essentially nation-wide; and though certain kinds of stores showed more marked improvement than others, all types of retailers had sales increases under the New Deal.

#### *The Number of Transactions*

The dollar value of the average transaction is influenced by: (1) Proportion of the store's sales transacted in any one department; (2) general retail price level; (3) the quality of goods purchased in any one department, (4) the

<sup>6</sup> The index of department stores alone increased 21.4 per cent between the first six months of 1935 and the same period two years earlier.

<sup>7</sup> The National Retail Hardware Association reports that the twenty-two per cent increase in the sales of hardware dealers from 1933 to 1934 meant better sales in every state, but the increases were particularly large in the Carolinas, Florida, Idaho, Louisiana, Michigan, Oregon, Tennessee, Texas, Virginia and Washington. (*Hardware Retailer*, February 1935, p. 60.) The Annual Study of the Retail Furniture Industry made by Arthur Fertig and Company indicated that the most startling increases in furniture sales were in the South and Southwest.

<sup>8</sup> For each of the twelve districts the corresponding figures are: Dallas + 33.5, Chicago + 30.8, Cleveland + 28.7, Richmond + 26.8, Kansas City + 25.0, St. Louis + 21.0, San Francisco + 19.0, Minneapolis + 15.3, Philadelphia + 13.7, Boston + 8.4, and New York + 7.7.

number of items purchased at the same time, that is, on the same sales check. The physical volume of goods is a hazy concept having no clearly established meaning, when no actual common denominator such as pounds or quarts is applicable. Its most intelligible meaning in connection with store sales seems to be the number of items sold. This would involve all of the variables listed above except the fourth.

An index of changes in dollar volume of sales deflated for change in price is sometimes used as an indication of changes in the physical volume of goods sold. Since the price changes were so marked during 1933, deflating the index of general merchandise sales for changes in price causes a considerable divergence between the index of dollar volume and the hypothetical expression of changes in the physical volume of goods sold.

TABLE XXX  
PERCENTAGE CHANGE IN SIX MONTHS AVERAGES OF SALES OF GENERAL  
MERCHANDISE STORES FROM THE SAME PERIOD OF THE PREVIOUS  
YEAR, IN CURRENT DOLLARS AND IN THE AVERAGE  
DOLLAR OF 1932

	1932-1933		1933-1934		1934-1935
	Jan.-Je.	Jy.-Dec.	Jan.-Je.	Jy.-Dec.	Jan.-Je.
Sales Current Dollars *	-10.9	+11.4	+22.3	+10.8	+10.2
Sales 1932 Dollars †	+1.1	-0.9	-3.5	+4.6	+13.5

\* Combined index for Department, Variety Store and Mail Order Sales, 1932 = 100.

† Combined index divided by price index, multiplied by 100. Fairchild Retail Price Index used with base period changed to average 1932 = 100.

But a deflated sales index is of doubtful value as a measure of changes in the work load carried by a retail store. In the first place, different price indices vary considerably in the changes which they reflect and it is almost impossible to

say which is the more adequate measure of change in physical volume of goods sold. In the second place, the actual number of articles sold, other things remaining equal, does not actually vary in accordance with change in price of identical items. This lack of correspondence is the result of the relatively limited number of dollars which the consumer is able or willing to spend at a given time. There is a tendency for customers to counteract rising prices by purchasing a poorer grade article which will answer the same general purpose. Measures of changes in the number of transactions reflect this shift.

The Controllers Forum of the NRDGA obtains figures on the changes in department store sales and transactions by Federal Reserve Districts. Although the figures for transactions and dollar sales are not supplied by identical stores they are probably an approximate indication of the kind of shift that took place. If dollar sales in current dollars are reduced to sales in dollars of January, 1931, by using the Fairchild Price Index, the following comparisons can be made:

TABLE XXXI  
PER CENT CHANGES IN TRANSACTIONS, PRICES, PHYSICAL VOLUME  
AND DOLLAR VOLUME, 1932 TO 1934

	1931-32	1932-33	1933-34
Sales, Current Dollars * .....	-22.6	-3.4	+14.0
Prices † .....	-16.7	-0.8	+15.8
Sales, Jan. 1931 Dollars ‡ ....	-7.1	-2.5	-0.6
Transactions § .....	-4.2	+5	+10.0

Source: NRDGA.

\* Controller's Congress, United States, figures.

† Fairchild Price Index, January 1931=100.

‡ Sales deflated for price change.

§ Controller Congress, United States, figures (supplied by fewer firms than provide sales data).

Harvard studies speak further of this shift.<sup>9</sup> Between 1933 and 1934 the Fairchild Price Index increased about 16 per cent. For stores having sales between two and four million dollars, sales increased 16.9 per cent from 1933 to 1934, but since average transactions increased from \$1.62 to \$1.79 or 10.5 per cent, the typical number of transactions increased only 5.8 per cent. For stores having sales between four and ten millions between 1933 and 1934, sales increased 13 per cent, the average gross transactions value increased 7.3 per cent, the number of transactions accordingly increased only 4.6 per cent.

The Boston Federal Reserve Bank collects monthly data on changes in sales and in the number of transactions for department stores in Boston and in the rest of New England.

These comparisons would seem to indicate clearly the fallacy in attempting to use sales indices deflated for change in price as a measure of short term change in operating costs of department stores. The change in the number of employees seems to correspond fairly closely to the percentage change in the number of transactions outside of Boston; there is also a marked correspondence between change in the number of employees and change in the dollar volume of retail sales outside of Boston. In Boston department stores the changes in the number of employees seem to be more closely related to change in the dollar volume of sales than to percentage changes in the number of transactions. In no case does there seem to be any marked correspondence between change in "physical volume" (dollar sales adjusted for change in price) and the number of employees required to service the store.<sup>10</sup>

<sup>9</sup> Harvard University Bureau of Business Research Bulletins 96-92, *Operating Results of Department and Specialty Stores (1933 and 1934 monographs)* by Carl N. Schmalz.

<sup>10</sup> In New York City, information supplied to the writer by certain New York City department stores indicated that the value of the average trans-

TABLE XXXII

THE PERCENTAGE CHANGE FROM THE PREVIOUS YEAR IN SPECIFIED DATA FOR  
DEPARTMENT STORES IN BOSTON AND IN THE REST OF NEW ENGLAND.  
SIX MONTH AVERAGES OF MONTHLY DATA

Month	Boston				
	Dollar Sales	Physical Volume *	Number of Transactions	Number of Sales Employees	Total Employees
1933					
an.-Je. ....	-20.4	-9.6	-6.1	-5.6	-9.2
y.-Dec. ....	+2.0	-8.5	-5.9	+1.9	+2.6
1934					
an.-Je. ....	+10.0	-13.0	+3.0	+11.7	+11.1
y.-Dec. ....	-0.6	-7.2	+2.5	-1.0	+1.0
	Outside of Boston				
1933					
an.-Je. ....	-14.8	-3.5	-0.6	-4.5	-5.4
y.-Dec. ....	+7.9	-2.9	+6.4	+8.5	+7.3
1934					
an.-Je. ....	+17.1	+7.5	+10.6	+15.7	+14.7
y.-Dec. ....	-0.4	-6.9	+2.2	+1.0	+4.2

Source: Derived from data collected by the Federal Reserve Bank of Boston, Industrial Statistics Division, Retail Trade Summary, New England Department Stores, Monthly Issues.

\* Sales adjusted for change in retail price level, Fairchild Index.

We may conclude that changes in operating ratios, margins and profits attributable to NRA and the Retail Code must be viewed against the background of increased sales. The nation wide improvement in business would have caused a decrease in the ratio of operating expenses to sales; moreover the presumption in favor of better profits was aug-

action bore a varied relation to the increase in the average dollar volume of sales. From January, 1933 to January, 1934 the Fairchild price index rose 22.6 per cent. During the same interval one store reported an increase in the size of average transaction of six per cent with an increase in sales of ten per cent; another store reported increases of fifteen per cent in sales and fifteen per cent for transactions; still another reported an increase of about eight per cent in the size of the average transaction and a very large increase in sales (due in part to addition of a new department), still another reported an increase of ten per cent in the value of the average transaction and a sales volume that failed to increase over the previous January.

mented by the rise in prices which caused the dollar value of the average transaction to increase. But the extent to which the increase in the price of identical items was reflected in the increase in price of articles actually purchased was moderated by a tendency on the part of the consumer to purchase a poorer grade article the price of which was intermediate between the price which she had formerly paid and the price of an identical article in the winter of 1934.

## SECTION II: PROFITS

Retail operating costs were of course affected by the wage and hour provisions of the Code. We would expect this influence to have in part counteracted the gains which would have otherwise occurred in profit margins. Concerning this influence we need to know how great a burden the wage increases proved to be in the face of the increased sales; and whether the increased payrolls were defrayed by the retailer through diminishing the additional profits which would otherwise have resulted from added volume, or whether they were shifted by the retailer to the consumer by pricing goods so as to allow a larger percentage gross margin.

It is clear that retailers' percentage profits increased in 1933 and in 1934. Information collected by the various agencies for various types of stores has been tabulated below.

TABLE XXXIII

PROFITS AS A PERCENT OF SALES FOR SPECIFIED TYPES OF STORES, 1929-34

Type of Store	Per Cent Profits					
	1929	1930	1931	1932	1933	1934
Department * .....	4.3	2.6	1.0	-2.4	1.8	2.6
Specialty * .....	4.7	2.0	0.1	-3.1	2.1	2.3
Variety † .....	8.64		5.61	5.13	8.09	
Hardware ‡ .....	-1.09	-1.78	-6.58	-12.66	-5.55	-1.8
Men's Appl. Volume below 1 mil. § .....	3.56	-0.66	-3.73	-4.3	3.14	3.2
Men's Appl. Volume above 1 mil. § .....	3.81	-0.15	-1.23	-4.81	1.96	5.2

\* Harvard University, Bureau of Business Research, Bulletin No. 96, *Operating Results of Department and Specialty Stores in 1934* by Carl N.

[Footnotes Continued]

Schmalz. Figures are for "Net Gain". The improvement indicated for the entire group was duplicated in each size classification.

† Harvard University, Bureau of Business Research, Bulletins 95 and 93, *Expenses and Profits of Variety Chains*. 1932-1933 Monographs.

‡ *Hardware Retailer*, July issues. Earnings above interest on investment as per cent of sales.

§ Men's Apparel stores reporting operating data to the National Association of Retail Clothiers and Furnishers. Figures are for gross profit minus total operating expenses including interest paid.

The improvement in average figures seems to be the result of general improvement:

TABLE XXXIV  
PERCENTAGE OF FIRMS HAVING PROFITS IN SPECIFIED YEARS

Type of Store	Annual Sales Volume	Percentage of Total Number of Stores Reporting Net Gain				
		1930	1931	1932	1933	1934
Department * ....	Under \$500,000	61.0	22.0	7.3	57.1	73.8
Department * ....	\$500,000 to 2 mil.	65.0	40.0	25.0	77.5	79.5
Department * ....	\$2 mil. and over	86.6	70.1	32.4	70.6	85.1
Specialty * .....	\$2 mil. and over	92.9	57.1	28.6	57.1	64.3
Hardware † .....	all		37.0	17.0	43.0	64.0

\* Harvard University Bureau of Business Research, *Operating Results of Department and Specialty Stores in 1934*, pp. 10 to 13.

† 1083 firms reporting to National Retail Hardware Association, *Hardware Retailer*, July, 1934, p. 65. Firms which "made money" e.g., showed operating profits not counting interest on investment.

Annual reports of individual corporations elaborate the story of general improvement. Of fifty-two firms for which data have been examined all except two department stores had higher dollar profits in 1933 than in 1932. Thirty-seven of these companies had higher dollar profits and thirty-two higher per cent profits in 1934 than in 1933.<sup>21</sup>

<sup>21</sup> (See Fairchild's, *Financial Manual for 1934*, published May, 1935.) For these thirty-seven and thirty-two stores respectively the comparison may be carried further by relating the profits of 1934 to those of other years. Dollar profits were higher in 1934 than in any year since 1928 in seven companies, since 1929 in nine companies, since 1930 in fifteen com-



These data would seem to indicate that by and large retailers' profits improved during the years when the NRA was in force. On the basis of far smaller total sales volume, retailers were for the most part making higher percentage profits than they had been for any year since 1929 or 1930. Moreover a large proportion of retailers were operating in black figures.

## SECTION III: OPERATING EXPENSES

During 1931 and 1932 the expenses of retailers had been drastically reduced. The reduction took place at the point of the bayonet. Unit sales had been reduced, margins were declining, sales were declining. If percentage expenses could not be adjusted there would presently be another store for rent.

The situation is eloquently described in the Harvard figures on department store operation. From 1931 through 1933 data were obtained on expenses per transaction.

TABLE XXXV  
EXPENSES OF DEPARTMENT STORES PER UNIT TRANSACTION AND  
PERCENTAGE CHANGE FROM PREVIOUS YEAR

Unit: Cents per transaction or percentage change from previous year.

	1931		1932		1933	
	cents		cents	%	cents	%
Average Gross Sales .	232.3		190.2	-18.1	188.0	-1.2
Gross Margin .....	69.3		56.9	-17.9	61.4	+7.9
Total Payroll .....	37.1		31.7	-14.5	30.8	-2.8

Source: Harvard University, Bureau of Business Research, *Operating Results Data for Department and Specialty Stores*, 1933, p. 1.

The following Table summarizes the operating expenses expressed as a percentage of sales for various types of stores for which information is available.

panies, since 1931 in six. Percentage profits were higher in 1934 than in any year since 1928 in four companies, since 1929 in thirteen companies, since 1930 in nine companies and since 1931 in six.

TABLE XXXVI  
OPERATING EXPENSES AND PAYROLL DATA AS PERCENT OF SALES BY  
TYPE OF STORE, 1930-1934

Type of Store	Annual Sales	Total Operating Expenses					Total Payrolls				
		1930	1931	1932	1933	1934	1930	1931	1932	1933	1934
Department *	Less than \$500,000	32.3	35.9	39.6	36.2	32.6	17.6	19.5	20.5	19.0	17.6
Department *	\$500,000 to 2 mil.	32.5	34.7	38.4	35.6	34.0	17.3	18.1	19.4	18.1	17.9
Department *	\$2 mil. or more	34.2	36.2	39.8	38.2	36.5	17.5	18.1	19.0	18.3	18.0
Specialty *	\$2 mil. or more	34.0	36.3	40.0	38.0	37.1	16.7	17.4	18.4	17.4	17.9
Variety †	all	<sup>a</sup> 29.5	31.5	32.7			<sup>b</sup> 13.1	14.0	14.9		
Clothing ‡	under \$100,000	31.9	34.7	35.5	32.2	30.6	16.8	17.7	20.2	16.1	14.2
Clothing ‡	over \$100,000	35.0	34.9	37.5	35.2	31.7	16.6	15.6	17.0	13.9	13.9
Hardware §	all	26.7	30.7	35.2	31.4	27.3	14.7	16.6	18.7	16.2	14.4

<sup>a</sup> No data for 1930; 1929 figure was 27.0.

<sup>b</sup> No data for 1930; 1929 figure was 13.0.

Source:

\* Harvard University, Bureau of Business Research, Bulletin No. 96, *Operating Results of Departments and Specialty Stores in 1934*, pp. 10-13.

† Harvard University, Bureau of Business Research, Bulletins 89, 93, 94 and 95, *Expenses and Profits of Variety Chains (1931-33 monographs)* by Malcolm P. McNair.

‡ *National Clothier*, March issues 1934-1935. Salaries item does not include busheling.

§ *Hardware Retailer*, July issues, 1930-1934. Expenses do not include interest. Total payrolls do not include salaries of delivery men and shopmen.

These data indicate that increased cost of payrolls and supplies attributable to NRA was counteracted by economies of operation, so that for all the groups of stores for which information is available, except variety stores,<sup>12</sup> percentage

<sup>12</sup> In connection with the discussion of the differentials in cities of different sizes, it is interesting to note that though there seems to be no marked difference in the percentage increase in payroll expenses between 1932 and 1933, for stores having low or high average price ranges, there seems to be considerable difference between stores in cities above 10,000 inhabitants and those in smaller towns. For the former group the ratio of sales to salary was 17.79 in 1932 and 18.00 in 1933; for the latter group the corresponding figures were 12.01 and 13.12; thus the change in

TABLE XXXVII  
MONTHLY SALARIES AND SALES DATA FOR REPORTING DEPARTMENT STORES,  
1933 and 1934

Month	1933		1934		% Sales Incras over 19; Same Mo
	Percentage Salaries to Sales	Percentage Monthly to Annual Sales	Percentage Salaries to Sales	Percentage Monthly to Annual Sales	
January	11.1	6.1	11.1	5.2	27.6
February	10.3	5.4	10.9	4.9	29.6
March	9.6	6.8	9.4	7.6	52.6
April	7.2	4.6	8.7	7.0	4.6
May	7.1	10.7	8.1	9.9	16.4
June	7.8	7.9	9.0	10.1	5.2
July	9.3	6.6	10.8	6.7	0.7
August	10.4	7.5	10.3	7.7	3.0
September	8.6	8.8	10.2	7.4	7.4
October	8.3	9.3	8.2	8.5	8.5
November	8.4	9.2	7.7	8.5	8.5
December	5.9	17.1	6.1	16.5	16.5

Source: (a) Michigan Business Studies, No. 2, *Performance of Department Stores 1933*, fifteen to twenty-five stores reported; and Bureau of Business Research, University of Michigan, *Department Store Performance, 1934*, seven to stores cooperated. The marked decrease in the number of stores cooperating 1934 makes a comparison between the two years of doubtful validity. (Because of the small sample the monograph was not published in 1934.)

of payroll to sales as well as the ratio of total operating expenses to sales decreased between 1932 and 1933 and between 1933 and 1934.

The monthly expense data collected by the University of Michigan show the timing of the impact of NRA expenses on the ratio of sales to payrolls in a group of department stores. Table XXXVII gives the proportion of the year's business which was transacted in each month of the year as well as the ratio of selling and buying salaries to sales.

payroll cost for a given volume of sales was, in the case of the small town stores, 1.2 per cent, whereas in the larger towns and cities, it was 9.2 per cent. See also *supra*, page 345, footnote 36.

When the selling costs for June and August of 1933 are compared, the latter month appears to have a ratio which is 2.6 points higher than the June figures. Since the proportion of the year's business, and therefore the dollar sales, seems to be about the same for the two months it would seem that the difference in salary cost could be in part attributed to the provisions of the retail schedule of the President's Re-employment Agreement. The difference in the volume of business transacted makes comparison between other months impossible. In July, 1934 there was a negligible increase in sales between 1933 and 1934, but the ratio of salaries to sales was 1.5 points higher for 1934, a difference which might be attributed to the wage and hour requirements of the Code.

Quarterly data submitted to Retailing by a large variety store organization show increase in the ration of sales to payrolls in the third quarter of the year, and although the proportion of the year's business which was done in the third quarter was somewhat smaller than in the second quarter, it seems likely that the major portion of the difference in the payroll percentages was due to the additional costs of NRA wages:

	% of Sales for the Quarter to Sales for the Year	% Payrolls to Sales
1st Quarter .....	18.1	14.0
2nd " .....	25.2	10.4
3rd " .....	23.0	12.6
4th " .....	33.7	11.0
Year .....		11.8

Source: *Retailing*, Executive Edition, April 2, 1934, p. 7.

In general it would seem that in department stores increased payroll costs caused by NRA might have resulted in an increase of the ratio of payrolls to sales of between one

and three points.<sup>18</sup> But the increase in sales experienced by most stores permitted economies which more than offset their added costs. In variety stores the larger increase in payrolls and smaller increase in sales resulted in a higher percentage salary cost. In most specialty stores the cost of Code wages and hours tended to be less than in the general merchandise groups whereas they benefited as much if not more from general improvement in business; accordingly operating expenses stated as per cent of sales were markedly reduced. Typically, then, the increased expenses were absorbed by increase in sales so that both retailer and employees could have benefited from NRA without requiring the consumer to pay a higher price for the service of retailing—that is, without increasing initial mark-up.

#### SECTION IV: GROSS MARGIN

But in the summer of 1933, retailers did not know what their annual sales volume would be. They did know however that they had seen enough red figures from the comptroller's office to last for a long, long time. The surest way of changing red to black was by obtaining a higher mark-up and keeping it. The refrain of rising prices was being chanted by a community chorus—retailers joined in.

#### *Evidence of Increased Margins*

The following table shows gross margins for various types of stores.

<sup>18</sup> At a round table discussion of the Sales Promotion Division of NRDGA in January, 1934 one of the conferees suggested that a mark-on of one and a half to two per cent takes care of all expenses of NRA including a one percent sales tax. It was argued that in some sections it could not be done for that and required an additional mark-on of 2.3 per cent.

TABLE XXXVIII  
GROSS MARGIN OF SELECTED TYPES OF STORES, 1930-1934

Type of Store	Annual Sales	Gross Margin				
		1930	1931	1932	1933	1934
Department * ....	Less than \$500,000	29.4	28.4	27.2	31.6	31.4
Department * ....	\$500,000 to 2 mil.	31.1	30.8	30.7	34.0	33.3
Department * ....	\$2 mil. or more	33.7	33.3	33.2	36.1	35.9
Specialty * .....	\$2 mil. or more	34.6	34.6	34.9	36.7	36.1
Variety † .....	All		32.1	33.7	37.4	
Clothing ‡ .....	Below \$100,000	31.2	31.0	31.9	36.3	33.8
Clothing ‡ .....	Over \$100,000	34.8	33.6	33.5	37.5	36.9
Hardware § .....	All	26.6	26.1	25.6	28.6	27.6

Source:

\* Harvard University, Bureau of Business Research, Bulletin No. 96, *Operating Results of Department and Specialty Stores in 1934*, pp. 10-13.

† Harvard University, Bureau of Business Research, Bulletins No. 95, 93, 89, *Expenses and Profits of Variety Chains*, 1931, 1932, 1933.

‡ *National Clothier*, March 1934 and March 1935.

§ *Hardware Retailer*, July issues 1930-1934.

In department and specialty stores, where mark-downs are typically a large element in determining gross margins, it is interesting to see to what extent the improved margin was due to decreased mark-down. Figures showing typical experience of a group of department stores reporting to the Controller's Congress of the NRDGA tabulate results for six different groups of stores. Analogous information telling a similar story has been reported to the Harvard Bureau of Business Research for department stores in different size groups. These data summarized in Tables XXXVIII and XXXIX indicate the following facts:

1. Gross margins for 1933 and 1934 were higher in all types of stores for which information can be obtained than for any other year on record.

TABLE XXXIX  
SELECTED OPERATING DATA FOR DEPARTMENT AND SPECIALTY STORES, 1930-1934

Annual Sales \$	Cumulative Per Cent Mark On					Mark Down Per Cent to Sales					Gross Margin			
	1930	1931	1932	1933	1934	1930	1931	1932	1933	1934	1930	1931	1932	1934
500,000 to 1 million	37.6	38.1	37.5	38.1	37.6	9.1	10.7	11.4	6.9	6.8	31.8	32.5	31.0	34.1
1-2 million	34.9	37.6	37.6	38.9	38.3	8.3	9.8	10.5	7.3	6.9	31.7	31.5	31.4	35.1
2-5 million	37.0	37.4	37.8	38.6	38.5	7.6	8.8	9.3	7.9	7.6	33.7	33.2	33.1	35.1
5-10 million	36.0	36.6	37.5	39.1	38.4	7.8	8.4	9.8	7.6	7.4	33.6	33.5	32.8	36.1
10 million +	38.2	38.1	38.1	39.7	38.8	8.4	9.0	10.1	7.7	7.7	34.2	33.3	32.8	36.1
Specialty Stores	38.8	38.9	38.9	40.0	40.1	9.7	10.9	11.7	9.9	9.5	34.5	35.3	34.9	37.1

Source: N.R.D.G.A. Controller's Congress, *Departmental Merchandising and Operating of Department and Specialty Stores*, 1930 to 1934 volumes.

2. In department stores, the increase in gross margin was caused by two factors: Initial mark-up was for the most part higher in 1933 and 1934 than it had been for any year for which data are available; mark-downs decreased drastically during 1933 and 1934 from the level at which they had stood during 1932 and 1931, and were somewhat less than they had been in 1930.

The increase in initial mark-up meant that retailers as a group were contributing towards the rise in prices. Though the actual amount of their contribution was small, events and discussion rotating around the question of mark-up provide interesting commentary on pricing mechanism. The actual way in which this shift occurred is therefore sufficiently interesting to warrant a moment's digression.

#### *Moving Prices*

Monthly data are available for two groups of department stores, one in the East and one in the Central States. The 1933 and 1934 figures picture the general chronology of the shift.

TABLE XL  
INITIAL MARK-UP AND MARK-DOWN IN TWO GROUPS OF DEPARTMENT STORES

	Initial Mark-Up						Mark-Down <sup>a</sup>					
	Univ. of Michigan *			Armstrong †			Univ. of Michigan *			Armstrong †		
	1932	1933 <sup>a</sup>	1934 <sup>a</sup>	1932 <sup>b</sup>	1933 <sup>b</sup>	1934 <sup>b</sup>	1932	1933	1934	1932	1933	1934
January .....	38.0	38.2	35.4	36.0	39.2	17.0	14.9	15.7	7.7	11.6	8.1	
February .....	38.1	38.5	36.5	39.3	40.7	9.0	8.1	5.4	7.0	8.5	8.5	
March .....	37.6	38.4	36.8	39.6	40.2	6.8	4.8	3.8	6.5	6.7	5.5	
April .....	37.6	38.3	36.8	39.7	39.9	6.7	3.9	4.7	5.8	6.0	5.6	
May .....	38.1	38.1	36.4	39.3	39.9	9.4	5.3	6.6	5.7	6.2	5.5	
June .....	38.1	37.9	37.2	40.0	39.5	11.5	5.2	6.0	7.9	6.0	5.8	
July .....	38.7	37.7	35.8	42.2	38.7	19.2	9.1	13.0	11.2	7.9	8.1	
August .....	39.5	37.9	38.6	43.2	40.0	15.4	6.5	7.2	12.1	8.2	8.8	
September ....	39.6	38.0	38.5	43.2	40.1	7.0	2.7	4.7	11.8	7.4	8.3	
October .....	39.8	38.0	38.3	42.1	39.6	5.7	3.3	5.3	11.2	6.8	7.8	
November .....	39.7	38.9	38.7	40.7	39.8	6.0	5.3	5.6	10.8	6.7	7.4	
December .....	39.5	39.0	37.7	39.5	38.9	8.6	6.5	6.5	10.5	6.8	7.1	
Annual Average 11 Months ..	38.0	39.5	39.0	37.5 <sup>c</sup>	40.8 <sup>c</sup>	39.8 <sup>c</sup>	11.4	7.4				

Source: (\*) Bureau of Business Research, School of Business Administration, University of Michigan, Ann Arbor; *Department Store Performances, 1934*; also, Michigan Business Studies, Nos. 2 and 6. The 1934 figures are for a much smaller sample than are the 1933 and 1932 data. Between 7 and 10 stores were cooperating in 1934 having annual sales volumes of between \$400,000 and \$1,750,000.

(†) H. F. Armstrong & Co., Pittsburgh, Pa.; "Stores of Varying Sizes in Pennsylvania, West Virginia, Ohio, and Western New York" published in monthly issues of *Dry Goods Economist*.

(\*) Year to date, mark-up as per cent of original marked price; (b) Non-cumulative monthly figures; (c) Fiscal year ending January; (d) Non-cumulative monthly data.



These figures are the mirrored image of action dictated by business judgment dealing with a complicated changing situation. Essentially two things occurred: mark-downs decreased; initial mark-up increased.

At the beginning of 1933 percentage mark-downs were less than for the corresponding months of 1932; the improvement continued throughout the year. The cause of the lower mark-downs was compound: a good part of the losses on merchandise stock had been taken by the end of 1932;<sup>14</sup> as prices rose, retailers may have occasionally marked up the merchandise on their shelves to conform with the new prices thus tending to reduce mark-down percentages; emphasis on price was lessening therefore sales and bargains were probably not featured as much during 1933 as they had been during the worst years of the depression.

For both series of monthly data presented in Table XL the first definite increase in 1933 in the average monthly mark-up occurred in July.<sup>15</sup> Although there had been considerable earlier experimentation, by July retailers generally were growing courageous.<sup>16</sup> Wholesale prices had increased

<sup>14</sup>Dr. Gault of the University of Michigan believes that some of the merchandise losses taken in 1932 might have been charged against 1933 inventory.

<sup>15</sup>There was a definite increase in mark-up in May in the stores reporting to the University of Michigan. The increase in July was even more marked. Moreover, it seems likely that initial mark-up was somewhat higher during the last part of 1932 than when prices were falling more rapidly in the winter and spring.

<sup>16</sup>There had been various attempts to sound out popular sentiment several months before the rise in margins became apparent. At a meeting of the Merchandise Managers of the NRDGA on March 15th a prominent merchant reported that "a small increase in selling prices, amounting to about two per cent on mark-up, had had no bad effect and greatly improved the department's profit showing." *NRDGA Bulletin*, April, 1933, p. 39.)

in May.<sup>17</sup> In addition to the lag between the purchase and the sale of goods which operated in their favor, purchasing power was increasing and public psychology inclining towards spending.<sup>18</sup> These factors, it was hoped, would permit an increase in prices.

But pricing was a subject concerning which retailers wished to buttress their own judgment by comparison with that of their competitors; at the same time, the validity of their own decisions would depend upon the actions of their competitors. Accordingly during the spring and summer of 1933 talk about price, mark-up and the like buzzed in executive offices; it was the subject of discussion at group meetings; questionnaires concerning price policy were hustled through the mails.

A forum conducted under the auspices of *Retailing* in June of 1933 brought out some interesting facts concerning the prospected price policies of several large department stores. The issue to be discussed involved the question of forward buying as well as the level at which goods ought to be priced. In general, conferees seemed to concur on three ideas: (1) increase in prices ought to be effected cautiously by removing the lowest price lines and adding ones at the top; (2) a small amount of forward buying might be advisable; (3) goods ought not to be priced at replacement costs nor in line with the old costs but somewhere between the two. "I think

<sup>17</sup> In 1933 the wholesale price index for finished products (1926=100) and the Fairchild Retail Price indices (Jan. 1931=100) were respectively:

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.
Wholesale	66.7	65.7	65.7	65.7	67.2	69.0	72.2	73.4	74.8	75.4	75.2	74.0
Retail ..	71.8	71.1	69.9	69.7	69.4	70.4	72.3	76.1	82.5	86.0	87.1	88.0

<sup>18</sup> The Index of Consumer Income prepared by the International Statistical Bureau shows a marked increase in April and July:

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.
1932 ....	73.8	74.9	72.1	70.4	68.3	63.3	65.7	62.3	63.6	62.1	62.8	61.4
1933 ....	58.1	58.1	63.0	56.7	68.0	71.3	81.9	83.3	85.0	81.2	80.3	76.6

we will have to average the new prices with the old and make a fair profit, which would naturally mean a higher mark-up than we have been getting so that we can operate in the black instead of in the red, but I don't think we can jack our prices up to conform to new costs when we have a stock of merchandise bought at lower prices. I don't think that we could do it for two reasons. We would meet too much consumer resistance in the first place and in the second place competition would not permit it. The prices must be raised gradually." In the words of another of the conferees, "I should be very careful and not mark the goods too high lest I kill the goose. I should be very careful in averaging and endeavoring to get that additional margin where my judgment and courage and the increased costs, if you please, permit and justify."<sup>19</sup>

At the meeting of the Recovery Forum of the NRDGA reported in the August issue of the *Bulletin*, The question "At what price lines will the consumer continue to buy" was discussed at the Piece Goods, Linens and Domestic Conference. "Old-price lines, it was thought, will be abandoned so that new ones may be set up in keeping with rising costs. Stores are more than ever aware of the need for profits if they are to exist, and the mere fact that a tax of 4.4184 cents a pound will be added to cotton will probably mean that retailers will base their selling prices on the value of the merchandise itself rather than on its invoice price. Instead of seeing how low they can price their goods in other words, stores will tend to see how much they can get for it."<sup>20</sup>

A few months later the *Dry Goods Economist* quotes from an analysis of current pricing practice: "Replacement pricing is wished, but held impractical for the time being. A

<sup>19</sup> *Retailing*, Executive Edition, June 19, 1933.

<sup>20</sup> NRDGA *Bulletin*, August, 1933, p. 59.

steady rise rather than an abrupt jump is advocated, with a better than normal mark-up on goods bought right. Put all that the traffic will bear on lines in which style element is of greatest importance, or where items have a newness of design that makes them seem worth the new prices." Answers to a questionnaire sent out by the *Dry Goods Economist* to merchants in different parts of the country are summarized by the editor. He emphasises the sentiment in favor of maintaining price lines with possibly a cautious elimination of the lowest lines: "Staple lines will be the last to be effected as to price, but the first as to lowered quality."<sup>21</sup> *The Boot and Shoe Recorder* summarizes a questionnaire sent to shoe retailers in which it is stated that the most usual answer seems to indicate the intention to raise prices to maintain quality with exceptions in the case of early purchases. The price increase was estimated at between ten and twenty per cent above the fall of a year ago.<sup>22</sup>

By September, initial mark-up seemed to have reached its high for the year.<sup>23</sup> There was discussion of buyers' strikes. By this time the retail index of prices had risen 18.9 per cent above its low for the year in May. The wholesale index for finished products had, by September, risen about 13.7 per cent from the low of April. However, although the wholesale index was the same in September as it was three months later, the retail index rose 6.7 per cent more between September and December of 1933.<sup>24</sup>

<sup>21</sup> *Dry Goods Economist*, August, 1933, p. 24.

<sup>22</sup> In this connection it is confusing to note that the Fraichild price index for shoes shows an increase of less than one per cent from September, 1932 to September, 1933. (*The Boot and Shoe Recorder*, Sept. 9, 1933, pp. 14, 43.

<sup>23</sup> See table *supra*, page 431.

<sup>24</sup> The comparability of the two indices is subject to question. The United States Bureau of Labor Statistics combined wholesale index (including finished goods and farm products) increased 19.1 per cent from

The Editor of *Retailing* complains in the September issue that the stoppage of the increase in retail sales is serious and that merchants are probably partially to blame because of their failure to educate the public to price increases.<sup>25</sup>

The *Federal Reserve Bulletin* of October, 1933 notes a similar lagging of retail sales, which is in part attributed to consumer resistance to higher prices and in part to warm weather and heavy August trade.<sup>26</sup>

On October 9th the Administration launched the Buy Now Campaign which was a failure. Apparently something was happening to consumer purchasing. The disease was "consumer resistance". The symptoms were unwillingness on the part of consumers to make purchases at the price at which goods were offered and/or the purchase of a cheaper grade of goods to replace articles whose price had moved out of range. The malady was aggravated in the case of staples which were purchased frequently; a soothing effect seemed to result from style merchandise or articles appealing to a luxury trade.

We noted in the first section of this chapter that the number of transactions increased less rapidly than the dollar sales, in other words the value of the average transactions increased, but it did not increase as fast as prices. More-

the low in February to the high in October. The Bureau of Labor Statistics wholesale index for finished products increased 14.7 per cent from the low in February-April to the high in October. The National Industrial Conference Board index for changes in the cost of living increased 9.1 per cent from the low in April to the high for the year in October. There seems to be no doubt, however, that the cost of living index does not accurately reflect changes in the price of goods sold in retail stores in a period of rapidly changing prices; it is not meant to (see Brookings Institution, *op. cit.*, Appendix C, p. 906). At the same time, failing a basis of comparison, it is not possible to say whether the Fairchild index exaggerates or minimizes the changes in retail prices exclusive of food.

<sup>25</sup> *Retailing*, October 2, 1933.

<sup>26</sup> *Federal Reserve Bulletin*, October, 1933, pp. 593-4.

TABLE XLI  
AVERAGE SALES CHECKS IN SPECIFIED DEPARTMENTS FOR JANUARY, 1933 AND 1934  
AND FOR THE FALL SEASON OF 1933 AND 1932

	January				Fall Season			
	Average Sales Check *			Price †	Average Sales Check *			Price †
	1933	1934	% Change	% Change	1932	1933	% Change	% Change
men's Hosiery .....	\$1.68	\$1.84	+9.5	+25.3	\$1.91	\$1.96	+2.6	+19.6
Dresses .....	18.42	23.62	+28.2	+17.7 <sup>b</sup>	20.73	27.11	+30.8	+21.9 <sup>b</sup>
Womens Dresses .....	23.00	26.00	+13.0		25.00	35.00	+40.0	
men's Hosiery and Underwear	2.09	2.30	10.0	+29.5	2.67	2.84	+6.4	+19.9 <sup>a</sup>
Corsets and Braces .....	3.53	3.99	+13.0	+16.4	4.15	4.66	+12.3	+13.0 <sup>c</sup>

Source: (\*) A New York Department Store.

(†) Fairchild price index for corresponding departments.

a) Average increase for Fairchild men's hosiery and underwear indices.

b) No comparable price index available. The Fairchild index which prices house dresses, aprons, furs, shoes, underwear, corsets, and brassieres, showed an increase from January, 1932 to January, 1933 of 17.7 per cent and for the two fall seasons the increase was 21.9 per cent. Houses dresses and aprons increased 32.8 per cent from January, 1933 to January, 1934 and 19.6 per cent for the Fall Season of 1933 over the previous year.

c) Index for shirts and neckware.

over, since a large portion of the increase in the value of the average transaction in 1934 must be attributed to the purchase of the type of merchandise having a higher unit value—semi-durable goods as opposed to non-durable minimum utilities—a comparison of the per cent of change in average transactions with the per cent of change in price would probably underestimate the tendency for consumers to refuse to follow the upward trend of prices for the same quality of the same article. Average sales checks in different departments of a New York store, when compared with the price changes in identical items of the same kind as recorded by the Fairchild price indices, afford a more adequate type of comparison could it be made for a more representative and larger sample. These comparisons (See Table XLI) are particularly interesting in their indication of the difference between the

price resistance in departments carrying style merchandise and those carrying articles purchased repetitively.<sup>27</sup>

The cure for the "consumer resistance" disease would, it was hoped, be consumer education. The consumer was to be sold confidence: she was also to be sold the need for higher prices. The NRDGA ran a contest in December. Customer questions objecting to price increases were distributed to the salespeople of participating stores. The prize was to be given to the answer best calculated to refute the objection. *Question:* The customer: "Why, I always paid 50 cents for these. You don't mean the price has gone up to 65 cents? What's the meaning of it?" *Prize-winning answer:* "Yes, the price has gone up slightly, but if you will notice the merchandise is still low in price and a good buy at our present price. The price of raw materials have gone up since the NRA and of course we have had to increase our retail prices in proportion. You know, the NRA is a pretty wonderful thing because we must realize that the few cents difference we pay for merchandise amounts to millions of dollars throughout the country. It comes back to us in some way or another." *Another Question:* "NRA! That's all I hear! Why don't you people wait until folks are back to work before you start raising prices!" *Prize-winning answer:* "There always has to be a starting point, Madam. If prices aren't raised, how can employers add new

<sup>27</sup>The price changes in individual lines might have been more or less than the changes in average transaction for a department, since the latter change included both the change in price of an identical item and the shift to a different grade, as well as a change in the number of items purchased at the same time, e. g., one store reported that dresses which had previously sold for \$15.75 were raised to \$16.95 without any corresponding reduction in sales; similarly the \$17.75 grade was raised to \$18.95. In another store coats that would have sold at \$59.50 during the previous season were marked at \$69.50; dresses that a year ago had been \$13.75 were marked at \$16.95; whereas hose which had been \$.65 were selling at \$.75 in the early fall of 1933. (*Retailing*, September 25, 1933.)

help to their staff? In order to pay more, they must charge more."<sup>28</sup>

The patter of a salesperson, newspaper publicity and the like could not increase consumer income, but it might at least induce the public to spend what income it had (or, in the case of installment purchasing, expected to have). It might lessen resentment which could otherwise cause postponement of purchasing or the substitution of cheaper quality articles for those which had formerly been purchased to answer about the same purpose.

The lull in buying which had frightened retailers in October vanished in an excellent holiday season. But early months of 1934 brought renewed whispers of customer resistance to higher prices. The January convention of the NRDGA hinted a changing policy. At round table discussions could be heard remarks such as "in spite of what would seem to be a tendency toward rising prices, we cannot make the mistake of increasing prices beyond which customers are willing to pay;" the "sad lesson" learned by many last fall ought not to be repeated. Price lines for the coming season can't be raised. If manufacturers ask higher prices, it will be necessary to "take it out of the merchandise."<sup>29</sup> These statements did not mean however, that additional mark-up of somewhere between one and one-half and three per cent which represented the estimated cost of NRA and sales taxes ought not to be added to merchandise cost. It simply meant that the "quality movement" ought not to be pushed too far.

By the beginning of March the editor of *Retailing* wonders whether a buyer's strike is about to begin or is actually under way.<sup>30</sup> But once again the improved holiday business seemed to renew hope and courage.

<sup>28</sup> NRDGA *Bulletin*, December, 1933.

<sup>29</sup> Round table discussion of sales promotion recovery problems in major merchandising divisions. January, 1934, NRDGA Convention.

<sup>30</sup> *Retailing*, Executive Edition, March 12, 1934.



In May the retail price index declined for the first time in eleven months. There was a growing realization on the part of retailers that a new attitude was called for. "The experience of the last few months has shown above all that there is a definite price resistance to the upper levels of prices." "It appears that the great problem of the fall season will be to concentrate on the middle ranges and to give as much quality and style as is possible."<sup>21</sup> Or again, a month later, the editor of *Retailing* says that opinion has definitely crystallized on one point: "The regular mark-up must not be increased, for to do so would curtail rather than increase distribution."<sup>22</sup> At a spring meeting of the merchandise managers division of NRDGA, the group was "unanimous in their opinion that mark-up had been advanced and increased to a point where they are no longer a matter of judgment and that they have retarded the progress of our business rather than stimulated it."<sup>23</sup>

Whether or not all of this discussion can be taken at face value, one thing is clear; the mark-up for the last half of 1934 was slightly more conservative than it had been during the previous year when the increase in prices had permitted a certain amount of replacement pricing, and profit-thirstiness had tended to minimize discretion.

#### SECTION V: SUMMARY

From the foregoing discussion of retail sales, profits, margins and expenses, certain conclusions emerge:

1. The impact of the Retail Code on retailers' balance sheets must be viewed in the light of a general revival of

<sup>21</sup> *Ibid.*, June 4, 1934.

<sup>22</sup> *Ibid.*, July 2, 1934.

<sup>23</sup> NRDGA *Bulletin*, August, 1934, p. 23. Address before Controllers Congress on June 5th by Albert Post, merchandise manager of Mandel Bros., Chicago, "Mark-up Problems as the Merchandise Manager Sees Them."

retail trade. Sales increased, prices rose, the average transactions increased (less than prices) and the number of transactions increased (less than dollar sales.) Improvement was general, affecting all parts of the country and all types of stores.

2. Improved business would normally mean that the ratio of expenses to sales would decrease. 1933 and 1934 were no exceptions to the general rule. Moreover, for most stores, the additional expenses caused by the Retail Code were less than the economies effected through improved sales. Exceptions to the general rule occurred in stores in which sales failed to increase or in establishments in which a large proportion of the employees had formerly received sub-minimum wages. In general, however, the ratio of total expenses to sales decreased; in fact, the ratio of payrolls to sales typically decreased when 1933 and 1934 are compared with the situation in 1932. Costs reverted to the ratios of 1931 and 1930.

3. But in the summer of 1933, retailers could not foretell the future. They could not be sure that their added costs would be absorbed by the increase in business. Accordingly, they attempted to add these burdens to the price which they charged the public for performing the function of retailing. Their efforts were reasonably successful, though the objectives were moderated in the light of experience.

4. The net result of these several factors was a greatly enhanced profit for a considerably larger proportion of the total number of firms.

Thus we find that the burden which retailers carried in supporting the costs of the Retail Code in terms of direct assessments or payroll increases or higher costs of supplies was paid through the economies of accelerating trade. Added costs lessened the increase in profits rather than augmented deficits for the trade as a whole. If the business

revival can be attributed in part to the New Deal, then it may be said that for the retailer the NRA operated approximately as planned: It gave a dividend to employee and employer alike.

This dividend however was in part contributed by the consumer who paid not only a greatly increased price for goods of the same quality but specifically a slightly higher salary for the service of retailing.

## CHAPTER IV

### GROUP RELATIONSHIPS

IN order to complete the picture of the change in retailing which occurred during the life of NRA it is necessary to pick up the story of retailer cooperation where we left it at the end of Part I.

The NRA both implicitly and explicitly encouraged industrial self-government. Did the NRA and the Retail Code alter the methods or objectives of retailer cooperation which had developed in the course of the twentieth century?

#### SECTION I: UNFAIR COMPETITION

As we have noted in Part II, the Retail Code projected the fair practice movement so as to increase the degree of accuracy required of advertising copy.<sup>1</sup> It permitted criticism of an advertisement not only for what it said but also for what it did not say. It did not go as far as the Better Business Bureau standards which had existed for some time; on the other hand, it expressed a requirement as opposed to an ideal.<sup>2</sup> Moreover, under the Code, illegality was based

<sup>1</sup> In the words of Dr. Nystrom this prohibition "goes further than the most ardent reformer could have hoped for a year ago." (*Retailing*, October 30, 1933.) See also *supra*, pp. 186 and 204.

<sup>2</sup> The fair play standards recommended to advertisers in New York City by the Better Business Bureau of New York City, stated that the prerequisites of "fair" advertising were "that all statements and accompanying illustrations, be accurate and truthful in fact and in the impression they create"; "That all statements, in fact and effect—be fair to all competitors" (The Better Business Bureau of New York City:

on objective fact rather than on subjective "intent". The other sections of the Code on advertising and selling methods added little that was new to the established trade ethics. The word "inaccurately" in the prohibition against underselling claims made the clause less inclusive than that of the antecedent Better Business Bureau codes.

The Code also introduced a new prohibition: the sale of goods below cost. It will be recalled that the advertising of goods below cost had for some time been actionable if the merchandise was not freely offered for sale, that is, when the element of bait entered; also the element of deception in the implication of the loss leader was recognized and resented;<sup>3</sup> moreover resentment against profitless selling of any kind was growing when NRA was enacted. But in Part I, although we recognized a transitional quality, we classified the efforts to eliminate loss leaders, not as an unfair practice, but as an attempt at price control which was part of the market contest between the retailer and his customer. The Code brought sales below cost clearly into the category of an unfair method of competition, which was subject to group sanctions. By so doing, it accelerated the processes shaping trade ethics. Interesting commentary on the nature

*The Fair Trade Practice Provisions of the National Retail Code, Appendix A.)* The Fair Practice Code promulgated on February 1, 1932 by the National Association of Better Business Bureaus, stated that advertising was unfair which had (a) "the capacity or tendency to undermine public confidence in advertising announcements or other selling representations generally". (b) The effect of injuring unfairly the sales or the goodwill of a competitive product or service". (*Ibid.*, Appendix B.)

<sup>3</sup> In the Better Business Bureau code of 1932, paragraph six states "The use of, participation in, publishing or broadcasting of statements referring to cut prices on trade-marked merchandise or other goods in such a manner as to lead the public to believe that all other merchandise sold by the advertiser is similarly low priced when such is not the fact, is an unfair and uneconomic practice". This was about as close to hitting at less than cost selling as could be engineered at the time. But it was a statement of principal which was almost impossible to act upon.

of this process is provided by the fact that the cessation of the Code returned loss leaders to their former status.

The major potential contribution of the Retail Code to the fair practice movement was certainly the promise of more effective enforcement. Theoretically fair practice gained the status of Federal Law and was backed by national apparatus for law enforcement. Although the use of the courts in implementing prohibitions against unfair practice was not new, the range of legal jurisdiction was so greatly widened under NRA that the difference could be considered one of kind rather than degree. Moreover, under NRA the removal of the Blue Eagle was an alternative to court procedure.

But in actual practice, the difference in the legal status of trade law was less important than might have been imagined. Very few cases of violations of the Retail Code actually came to court, and a relatively small number of blue eagles were removed.<sup>4</sup> The law was more important as a threat than as a penalty, just as the mere possibility of bringing suit under a State statute was a useful weapon in the hands of a good Better Business Bureau manager. The possibility of court action under NRA was a similar cudgel, but a better one. The accompanying publicity could be disastrous whether the decision was for the defendant or the plaintiff. Thus the chief value of the Code, as administered, in improving the technique of enforcing trade standards was that it provided a new tool which could be used by enforcement

<sup>4</sup> The first order under the trade practice provision of the Retail Code occurred in July, 1934 in Evansville, where a firm was convicted of promulgating exaggerated comparative price claims. (The earlier cases had been sent to the Federal Trade Commission for further investigation.) The National Recovery Administration indicated that the Blue Eagle would not have been removed had the store been willing to publish a correction. (NRCA Office Book and NRA Release 6509.)

agencies rather than by the courts.<sup>5</sup> It improved the "act" that could be put on for the benefit of an offender. Opinions differed as to the value of this new tool.

A questionnaire that was sent by the writer to all of the Better Business Bureaus of the country in the spring of 1935 was answered by thirty-three bureaus. Twenty-six of the thirty-two useable answers stated that business practice had improved since the Code. In six cases, it was said that a relapse seemed to be in progress. All except two of the twenty-six bureaus,—these two found no room for improvement—believed that stores evidenced a more cooperative spirit than formerly.<sup>6</sup> Five out of the six bureaus that noted no improvement were situated in New York State and New England, the sections of the country in which the volume of trade had improved least. This would seem to suggest, at any rate, that some of the improvement might have been caused by a relaxing of the "cut-throat" variety of competition which frequently accompanies improved activity, rather than to the usefulness of the new cudgels. Twenty-four of the bureaus reported that underselling claims had been made by large stores in the district. Of these, sixteen said that statement and practice had been corrected, six that the correction had been technical only, and two that no correction had been made. Apparently additions of such words as "knowingly" undersold, or "endeavor" to sell for less, were frequently thought to make such statements conform to Code requirements.

But even if the Code was useful at the start, it is possible that its effectiveness would have waned with age. There was a growing feeling in the summer of 1934 that the in-

<sup>5</sup> It may well be that delay in bringing cases to court did much to counteract the salutary affect of national law.

<sup>6</sup> The opinions concerning the utility of the Code did not seem to be crucially influenced by whether or not the bureau was the enforcement agency for the district.

ability to obtain prompt action in the courts or through NRA was undermining Code enforcement.<sup>7</sup> In the words of the managers of one of the Better Business Bureaus. "A new broom sweeps clean".

In general, however, it would seem that the Code provided an implement useful, at least for a while, in enforcing fair business standards in areas in which attempts had been made to enforce such standards prior to 1933.

But in those areas in which little mechanics of enforcement had existed prior to NRA, code authorities brought regulation for the first time. There were 740 code authorities, one in every city in the country having a population of over twenty-five thousand. Though many of these offices might have functioned feebly at best, it meant that there were agencies to whom complaints could be made in several hundred cities, rather than in the fifty-three in which Better Business Bureaus were located.<sup>8</sup> Thus the Code also contributed toward the enforcement of business ethics by broadening the geographical area in which attempts to uphold standards were made.

In regard to the usefulness of the loss-leader provision, the questionnaire sent to the Bureaus also provide information. Of the thirty-two Better Business Bureaus from whom usable answers were received, twenty-two said that the loss-

<sup>7</sup> (Survey of the Better Business Bureau Movement pertaining to bureau activities in connection with the administration of the NRA codes. Summary of questionnaires for Better Business Bureau prepared by Homer Frye of the Columbus Better Business Bureau.) Several bureau managers also seemed to feel that the interest of groups of merchants in small towns had waned; that they did not have the ability to do the administrative work or that they found the job of judging competitors distasteful.

<sup>8</sup> Trade Associations, Retail Merchant Bureaus and Chambers of Commerce were located in a much larger number of cities and had sometimes done a certain amount of work in enforcing business standards.



leader had been a problem in large stores in their district. The use of loss leaders in automobile accessory shops and in certain types of drug stores was practically universal. Seventeen of the twenty-two bureau managers believed that the number of stores featuring leaders had declined during the life of the Code, fourteen felt that the number of leaders had also declined. Although there is much difference of opinion,<sup>9</sup> it would seem that the Code by no means did away with the use of leaders. Dr. Dameron, after studying the policies of three large middle Western and eleven smaller department stores, concluded that "the stop-loss provision of the General Retail Code has had no noticeable effect on the merchandising activities of the large department stores."<sup>10</sup> This was not true, however, in the departments covered by the Drug and Book Codes.

For the small specialty shop, whose entire stock consisted of the type of goods used for loss leaders by department stores, the pre-Code situation was extremely grave. The provisions of the Retail Code did not relieve its distress. In fact, representatives of the Book Sellers Association claimed that price cutting had become more general since the Code, and that the situation was more acute than ever.<sup>11</sup> They obtained a special code which set prices at publisher's list prices.

<sup>9</sup> Mr. E. B. Weiss writes in the *Dry Goods Economist*, March, 1934: "I have carefully examined the price cards of stores in various cities throughout the country. I have spoken to scores of buyers in the New York markets. Everywhere I find the same situation—rampant price cutting on a scale that has diminished only slightly from its peak—and that decrease is due to the poor, absurd law of supply and demand, not to the retail code."

<sup>10</sup> *Harvard Business Review*, April, 1935, p. 236. "The Retail Department Store and the NRA" by Kenneth Dameron.

<sup>11</sup> The gravity of the situation is illustrated by a list of prices for certain books on November 29, 1933. The book sellers presented this evidence in support of their petition for an exception to the Retail Code.

In order to evade the provisions of the Drug Code, department stores increased their use of private brands; in some cases, manufacturers of a well known brand put out an identical product without the brand name; the lowering of manufacturer's list prices also facilitated circumvention of the provision.<sup>12</sup> Nevertheless, when the wholesale dozen lot clause of the drug schedule became effective, the sales in the drug department of one large department store fell twenty per cent, (for toothpastes and soaps, twenty-five per cent). However, the profits in the department rose.<sup>13</sup> Nor did the Code prevent these stores from selling drugs far below their marked retail price.<sup>14</sup>

	Store I	Store II	Store III	Store IV	Store V	Store VI	Store VII
<i>Crowded Hours</i> ..	2.85	1.64	1.64	3.00	3.00	2.34	Out
<i>Marie Antoinette</i> ..	3.85	2.14	2.31	3.50	3.50	2.46	3.19
<i>House of Exile</i> ..	2.80	1.89	1.78	3.00	3.00	2.64	2.69
<i>Anthony Adverse</i> .	2.65	1.77	1.77	3.00	3.00	1.77	1.77
<i>Vanessa</i> .....	2.10	1.32	1.32	2.50	2.50	1.69	1.94
<i>Little Man What Now?</i> .....	2.10	1.44	1.44		2.00	1.94	
<i>King Edward VII</i>	2.80	2.68	2.48	3.00	3.00	2.64	2.69
<i>Autobiography of Alice B. Toklas</i> .	3.25	2.14	2.14	3.50	3.50	2.94	3.19

<sup>12</sup> *Harvard Business Review*, Dameron, *loc. cit.*, p. 266.

<sup>13</sup> *Ibid.*

<sup>14</sup> Dr. Dameron quotes a list of prices at which articles were sold before and after the code.

Size \$	Item	Cost *	Retail Price	
			Before Code	Since Code
1.00	Nujol .....	.57	.59	.67
1.10	Hopper Restorative Cream .....	.61	.67	.74
.75	Vicks Vapo-Rub .....	.44 $\frac{3}{4}$	.49	.50
1.10	Lady Esther Face Powder .....	.63	.67	.74
.50	Hinds Cream .....	.29	.33	.37

There seems to be a certain amount of evidence which suggests that one of the major results of the loss-leader provision in markets notorious for active price wars was the spreading of the use of leaders to include a larger number of items and a larger number of stores, at the same time that the reduction on individual items was less. The more general use was, in so far as it existed, a result of the diminished expense attached to using leaders. A store, knowing that the price could not go below ten per cent above the cost of the lowest-cost store, was more willing to engage in a price war with the aggressive price cutters. It may be that this would have been a temporary stage, which might have passed, had the Code been enforced and granted a new span of life. If meeting prices was less expensive for the competitor, cutting prices was also slightly less useful for the initiating store. The position of the smaller store which had traditionally been caught in the battles of its larger rivals was probably somewhat improved. Although they paid more for merchandise than did the larger stores, a price pegged at ten per cent above the cost to "big retailers" was seldom below the net cost to the small stores.<sup>18</sup>

1.00	Ponds Cream .....	.60	.63	.73
.30	Dr. Lyon's Tooth Powder .....	.20 $\frac{1}{4}$	.23	.25
.50	Iodent .....	.28	.31	.35
.60	Rem .....	.34	.39	.40
.65	Barbasol .....	.37	.39	.50
1.00	Lysol .....	.67	.69	.75
.50	Pebecco .....	.30	.31	.35
.50	Jergen's Lotion .....	.27	.29	.36
.60	Neet .....	.30 $\frac{1}{3}$	.39	.40
.60	Mum .....	.37	.39	.40
.75	Fitch Shampoo .....	.37	.43	.44

Source: *Harvard Business Review*, April 1935, p. 266, "The Retail Department Store and the N. R. A.", by Kenneth Dameron.

\* The cost of these items were the same before and after the code.

<sup>18</sup> Exceptions probably occurred in some of the items sold by the large mail order houses.

*Summary*

The verdict on competitive methods under the Retail Code seems to be vaguely favorable. "Most retailers are of the opinion that trade practices have improved."<sup>16</sup> We have noted that Better Business Bureau managers seem to have arrived at a similar judgment. The loss-leader provision prevented the deeper price cuts, but it may also have spread the use of leaders as such.

But the improvement in competitive methods cannot be entirely attributed to the Code. Price concessions are a method of attracting business. When business is improving, there is slightly less pressure on a merchant to feature cut prices in order to attract enough trade to keep going until "times get better". When and if business improves, his mind turns profitwards. Other types of unfair methods of competition also bloom in hard times and fade when trade weather turns fair.<sup>17</sup>

However useful the Code may or may not have been in controlling business practice, there seems to have been considerable conflict in the winter of 1935, concerning whether certain of the provisions, and in fact the Code itself, ought to be perpetuated.

A ballot mailed by Retailing to fifteen thousand merchants was returned by 1,473. About fifty-three per cent of the ballots were in favor of continuing the NRA for another two years. Of those in favor, the majority—88.8 per cent—

<sup>16</sup> *Journal of Business*, University of Chicago, April, 1935. "Retailing under the NRA," by Kenneth Dameron. In the article in the *Harvard Business Review* quoted above, Dr. Dameron observes (p. 266) that most retailers were of the opinion that the advertising of their competitors had improved whereas there has been little change in their own because great care had always been exercised.

<sup>17</sup> It will be recalled that the calibre of competition improved during the prosperous twenties and relapsed during the depression.

wanted the loss limitation provisions to be kept. Of those who did not want a continuation of NRA, 47.6 per cent were in favor of the loss limitation provision.<sup>18</sup> The small merchant had cried vociferously for the stop-loss provision in the summer and fall of 1933. A year and a half later he still wanted it.<sup>19</sup> There seems to be considerable doubt whether some of the larger stores also still held the same opinion in the winter of 1935 that they had during the period of Code drafting.<sup>20</sup>

Voluntary machinery was being taken out of the garage, greased and renovated.

There was, it was thought, a growing consumer demand for standards which the trade made an effort to meet. Starting in Cleveland and Cincinnati as the result of con-

<sup>18</sup> Further details of the answers to questionnaires are summarized in the following table:

	% in favor of Retail Code or Pro-NRA	% in favor of loss limitation		% want- ing "inaccur- ately" deleted from under- selling clause		% want- ing unde- selling cla- eliminat	
		Pro- NRA	Anti- NRA	Pro- NRA	Anti- NRA	Pro- NRA	Anti- NRA
		Department Store ..	52.8	88.4	44.4	48.8	56.6
Men's Clothing Store .....	58.3	91.9	49.1	43.4	67.1	19.6	1.5
Women's Specialty .	46.9	86.9	51.9	45.0	50.8	17.7	1.5
Furniture .....	49.5	85.2	45.7	42.1	67.7	19.9	1.5
Total .....	52.9	88.8	47.6	44.9	60.8	18.0	1.5

Source: *Retailing*, April 15, 1935.

<sup>19</sup> The Pennsylvania Retailers Association in January voted eighty-nine per cent in favor of retaining the loss-limitation provision of the code. (*Retailing*, January 28, 1935.)

<sup>20</sup> *Retailing* points out that it is not known how much power the National Code Authority will have on code revision: "it is of more than passing importance, however, that William Hager of the store of the same name of Lancaster, who had vigorously fought for the loss-limitation provision, was not re-elected to the Authority." (*Retailing*, January 28, 1935.)

sumer pressure, a movement to label sheets was spreading in spite of the objections of many store buyers.<sup>21</sup> The NRDGA requested the United States Bureau of Standards to supply commercial standards for color fastness, slippage, cleanability, washability, fraying, pressing, seaming and shrinkage.<sup>22</sup>

At a luncheon meeting of more than two hundred retail, industrial and newspaper executives on March 21, 1935, the Better Business Bureaus, Inc., presented a new Fair Practice Code for advertising and selling.<sup>23</sup> This code recommended to all retailers and advertising media that "no statement or representation shall be used in advertising which has the *capacity* or tendency to mislead or deceive the consumer. This shall include generalizations and *implications*. No attempt was made in this code to take over the function of the loss-limitation provision. The clause on this subject was, if anything, weaker than the one which had been used in the standards of 1932."<sup>24</sup> The most interesting feature of the code was that it threw the burden of proof on the advertiser: "An advertiser shall be willing to fully substantiate the accuracy and fairness of any statement which he submits for publication." Its proponents "urged newspapers to bring their powerful influence to the cause of the fair practice code, to turn down advertising which violates it

<sup>21</sup> *Retailing*, March 11, 1935, p. 1.

<sup>22</sup> *Ibid.* Buyers raised the objection that "even though count, yarn strength and finish are given, the consumer may not be able to get a better sheet than if she merely relied on the store's word."

<sup>23</sup> *New York Times*, March 22, 1935, p. 41.

<sup>24</sup> The 1935 standard was: "No statement or representation shall be used in advertising referring to cut prices on trade-marked merchandise or other goods in such a manner as to lead the public to believe that all of the merchandise sold by the advertiser is similarly low-priced, when such is not a fact." The 1932 code banner "the use of, participation in or broadcasting of statements referring to cut prices... etc." *New York Times*, March 22, 1935.

and to cooperate with the business bureaus." <sup>25</sup> It is interesting to find that after a year and a half's experience with government enforcement of trade standards, retailers are inclined to use the most powerful weapon which they possess—pressure on advertising media—to enforce their own standards in their own way.<sup>26</sup>

#### SECTION II: RETAILER—CONSUMER

The Retail Code had little direct effect on the relations between the retailer and his customer. The Code dealt with only one of the practices which were considered uneconomic and, prior to 1933, the subject of group action—the sale of goods below cost. How much the consumer suffered through the elimination of the loss-leader is difficult to say. We have seen that although the depth of the cut in prices was reduced, there seems to be some indication that price reductions were still substantial and that there was a tendency for the use of the leader to spread to a larger number of items. In so far as critics of the practice are correct in assuming that the cost of the reduction in a leader item is added to the price of the rest of the store's merchandise, the financial loss suffered by the consumer through the loss-

<sup>25</sup> *New York Times*, March 22, 1935—Statement by Mr. Keller, Chairman of the Fair Practice Committee of the National Association of Better Business Bureaus.

<sup>26</sup> At the Boston Conference on Distribution in the fall of 1935, Major Benjamin Namm argued from historical analogy that government regulation followed the failure of self-regulation. He suggested a three-point program: (1) The agreement on uniform fair practice standards by advertisers and advertising media, which standards should be embodied in every advertising contract. (2) The location of burden of proof with the advertiser and the demand by the advertising medium that inaccuracy be followed by a published correction. (3) The stimulation of reader confidence by the advertising media frequently printing their fair practice rules and publicizing the truth in advertising campaigns. (*Boston Conference on Distribution*, 1935, p. 58, address by Benjamin H. Namm, "Unfair Practices in Advertising and Selling.")

limitation provision must have been nil. In any event, there seems to be no reason to attribute the increased mark-on obtained by retailers to Article VIII of the Code.

The other attempts to eliminate uneconomic services continued in the direction which they had been progressing before the Roosevelt Administration took office. There were proposed alteration schedules,<sup>27</sup> agreements on uniform credit terms,<sup>28</sup> and the eternal attempt to limit returns.<sup>29</sup> In fact there was a certain amount of discussion in the spring of 1934 about revising Article IX, section I of the Code to include a ten-day limitation on the return privilege.<sup>30</sup>

But in spite of the fact that the Code, as such, had little direct influence on the relation between the consumer and the retail store, there were several developments of importance which occurred contemporaneously with the Code and some which were the direct results of NRA.

In the former group belong the increased retail mark-up and the concomitant attempts at "consumer education." These developments have been sketched in the previous chapter. Although there was nothing new in the fact that retailers conferred on price policy, the amount of such dis-

<sup>27</sup> *Retailing*, May 21, 1934. Proposed alteration schedule of the Retail Merchants Association of Portland, Oregon.

<sup>28</sup> *Retailing*, May 13, 1935. Department stores of New York City and Brooklyn agreed "after fourteen years" on uniform credit terms on electrical appliances.

<sup>29</sup> In Columbus, Ohio, as a result of a study made by the Retail Merchants Association, member stores agreed not to call for merchandise that could be returned in person, and not to make C. O. D. deliveries for under one dollar. (*Retailing*, May 14, 1934.) In Kansas City, the co-operation of merchants reduced the returns by fifteen per cent between the last seven months of 1934, compared to the last seven months of 1933. (*Retailing*, February 11, 1935, p. 13.)

<sup>30</sup> *Retailing*, April 9, 1934. The chief question concerning the inclusion of this provision in the Code was said to be "whether stores, even with government backing, can legislate the consumer into changing his or her habits."



cussion was probably greater than it had been in the past, with the possible exception of the war and immediate post-war years.

Then too, consumer organization was spurred. The acceleration took the form of progress in previously existing movements and the creation of new government agencies, dedicated to the defense of the consumer. The consumer-operated store is, of course, the direct answer to retail profiteering or inefficiency. This movement, though backward in the United States, has recently developed. The membership of local cooperatives had doubled during 1934, but only a small part of the membership took the form of retail stores.<sup>81</sup> In the spring of 1934 there were 6,600 cooperative societies having 1,800,000 members; five hundred of these owned retailed stores, and nine hundred other groups were interested in restaurants, bakeries, and the distribution of milk, gasoline, etc.<sup>82</sup> The following year brought accelerated progress.

<sup>81</sup> Two of the most successful groups of cooperative stores made excellent gains during 1933 and 1934. One hundred and one cooperative stores in Minnesota, Wisconsin and northern Michigan selling groceries, dry-goods, etc., did \$1,780,000 business in 1934, an increase of 31.4 per cent over 1933. (Chain stores in the same area were said to have increased their business by seven per cent during the same period.) The retail cooperatives owned and operated a cooperative wholesale organization. (*New York Times*, April 7, 1935.) These stores are said to operate with a mark-on of 13.9 per cent in 1933, and about one per cent less in 1934, whereas comparable chains operate with a mark-on of 19.8.

The Cloquet Co-operative Society in Minnesota operates four stores selling meat, drygoods, oil, gasoline and coal. They sold \$344,897 worth of merchandise in 1934, an increase of forty-eight per cent over 1933. It is interesting to note the way in which the economies in operation during 1934 were passed on to customers through a lower mark-on.

	1933	1934
Gross mark-up .....	16.20	14.49
Total expenses .....	11.94	10.20
Income to members .....	4.35	4.41
Stock turn .....	12.29	16.67

<sup>82</sup> *New York Times*, May 31, 1935. These figures are thought to be

A group known as the Co-operative Distributors which started in April, 1933,<sup>83</sup> had grown to a membership in September, 1935 of 1,700 individuals. The central organization undertakes merchandise testing and the development of quality standards. The group believes that consumers, at the present time, ought not to be saddled with the responsibility of operating a store; what is required is group action by consumers for the purpose of collective bargaining; their combined strength should be used to obtain price concessions from retailers or wholesalers, and to obtain merchandise of known and approved quality.<sup>84</sup> Accordingly, Co-operative Distributors encourage the formation of local groups (fifty-four of them have been formed in sixteen states). On the basis of competitive bidding, these groups contract with local stores to obtain specified merchandise at discounts, which range from twenty-five per cent on oil and coal to five or ten per cent on groceries.<sup>85</sup>

Consumer organization was an integral portion of several of the New Deal measures. In his first message to Congress, President Roosevelt said, "we would encourage the slowly growing impulse among consumers to enter the industrial market place equipped with sufficient organization to insist on fair prices and honest sales." Three government agencies were established to safeguard the interests of the

more representative of 1933 than of 1934. The fiscal year of the reporting organizations usually ends in the spring. Therefore, a larger proportion of the data covers 1933 than 1934.

<sup>83</sup> The plan was formulated in January, 1933.

<sup>84</sup> The basic formula of C. D. is "Organization and Research-Consumer Control." (Co-operative Distributors, *Collective Bargaining of Consumers*, p. 17.)

<sup>85</sup> A club member obtains a slip with each purchase. The discounts are paid by the store to the club treasury. The members receive their discounts upon presentation of their purchase slips. Club contracts require that wages and working conditions be maintained. Books of the club are audited periodically.

consumer. The Consumers' Counsel of the AAA watched over consumer interest in the AAA codes and published the bi-weekly *Consumers' Guide* as one of its ventures in consumer education.<sup>86</sup> The Consumers' Advisory Board of the NRA had parallel functions for NRA codes, and the Consumers' Division of the National Emergency Council was supposed to coordinate the other two agencies and organize consumers' county councils.

The Consumers' Advisory Board of NRA was forced to develop a program in the middle of the hubbub of code drafting. The interests of the buyer of industrial products, it was determined, must be protected as well as those of the ultimate consumer. The consumer interest is "the interest of the community at large in consuming a larger volume of goods and services rather than the interest of any particular group in that regard."<sup>87</sup>

At the January, 1935, NRA hearing on employment policy, the matured position of the Consumers' Advisory Board was presented by the Executive Director, Thomas Blaisdell, Jr.<sup>88</sup> The interests of the consumer were sub-

<sup>86</sup> The *Consumers' Guide* was published in cooperation with the Bureau of Agricultural Economics, the Bureau of Home Economics and the Bureau of Labor Statistics. It is a bi-weekly bulletin intended to aid the consumer in understanding changes in prices and costs of food and farm commodities, and in making wise and economical purchases.

<sup>87</sup> *Annals of the American Academy*, March, 1934, p. 88—article by Dexter M. Keezer, Executive Director of the Consumer's Advisory Board. The position was further elaborated: "The board aims, in general, toward the establishment of a plane of competition in which the purchaser will, through suitable standards and grades, have an opportunity to know what he is buying, to obtain it at a reasonable competitive price, or, denied that opportunity, to be protected by a public regulatory body." (*Ibid.*, p. 93.)

<sup>88</sup> NRA Consumers' Advisory Board, *Consumers' Interest in Employment Policy*, statement at the public hearings on Employment Provisions in the codes Jan. 30, 1935—First revision May 1, 1935. The report of the board made specific recommendations for code revision:

stantially the same as those of labor—earnings must rise and prices must stay down. The objection that higher wages mean higher costs and higher prices could be met. "The crux of the matter lies in the relationship between wages and costs. . . ." "If management and labor will unite to eliminate waste, improve processes, standardize products, cut overhead, turn out increasing quantities of goods and sell them at prices which people can pay, costs will fall as wages rise, and decent wage scales will be no bar to decent living."

The Consumers' Advisory Board initiated inquiries into specific price situations, in addition to the large task of approving or disapproving, on behalf of the consumer interest, Codes of Fair Competition and the details of their administration. In conjunction with the Consumer's Counsel of the AAA the Consumers' Advisory Board worked for the adoption of standards. They encouraged and perhaps focussed a demand for grade labeling and quality standards in which the American Home Economics As-

1. Maximum work week provisions should be maintained and coordinated for large groups of industries. It did not favor a uniform maximum week for all businesses.
2. Flexibility in hour provisions should be obtained through overtime provisions rather than through the device of averaging hours during specified periods of time.
3. Minimum wage provisions *ought* to set wages at a decent living standard.
4. The time period for which minimum was set ought to be longer if wages were to have any meaning as guarantee of living standards.
5. Geographical and population differentials were opposed in principle, but it was thought that expediency would require a gradual rather than abrupt attempt to reach uniform rates for the country as a whole.
6. It was thought that wage schedules for other than minimum workers . . . ought to be arranged through union organization rather than through code provisions.
7. Higher payrolls must be met through higher efficiency and reduced unit costs.

sociation, the General Federation of Women's Clubs and other organizations representing the consumers were interested. In much of the contest over labels and standards retailers determined to throw their weight on the side of the consumer and appear as champions of the consumer interest.<sup>39</sup>

The Consumers' Division of the National Emergency Council, in addition to its advisory and coordinating functions, undertook the setting up of local consumers' councils in as many as possible of the 3908 counties of the country. According to original plans the movement was to start with two hundred of these local groups, each composed of seven members.<sup>40</sup> The purpose of the councils was to disseminate and to collect information and to provide organization whereby the interests of the consumer could be made articulate and effective as a national and civil political and economic force.<sup>41</sup> There seems to have been considerable difficulty in

<sup>39</sup> Grocery and food chains approved of the A. B. C. grade plan for canned goods suggested by government agencies. This type of grading was protested by the canners on several grounds. It was thought, among other things, that grades cannot be defined with sufficient accuracy and that nationally advertised brands would suffer if consumers acquired the habit of buying grades. (*New York Times*, Nov. 11, 1934, article by Malcolm Ross, "Labels on Tin Cans Provoke a Dispute.")

<sup>40</sup> The seven members were to be:

1. The county agent or an appointee of the agent.
2. A club woman.
3. The Home demonstration agent or a dietitian, teacher of home economics, etc.
4. A "dirt" farmer.
5. A housewife of moderate or little means.
6. A manual laborer.
7. An individual active in a consumer cooperative, credit union, etc.

(Paul H. Douglass, *The Role of the Consumer in the New Deal*, March, 1934.)

<sup>41</sup> Dr. Douglass outlines five specific functions:

1. Receiving and if possible adjusting price complaints.
2. Disseminating information of interest to consumers.

finding the necessary ability and incentive for the establishment of these councils since it was barely possible to found the two hundred originally contemplated.

In August, 1935, the President appointed Walton Hale Hamilton to head the Consumers' Division of NRA, which was to combine the functions of the Consumers' Advisory Board of NRA, the Consumers' Division of the NEC and the Cabinet Committee on Price Policy.<sup>43</sup> The functions of this committee were described by Dr. Hamilton as seeking "ways and means for the consuming public to get more for its money". More specifically, action would proceed in six directions:

1. The investigation of prices and price structures.
2. Education to encourage the use of standards and grade labeling.
3. The study of consumer cooperatives here and abroad and the dissemination of information on the subject.
4. The further organization of county councils.
5. The recognition of the interests of the consumer on matters pertaining to production price and trade practices.
6. The review of legislation from the consumer's viewpoint.<sup>44</sup>

If it were possible to develop the implications of an organization of this kind, one would logically anticipate a United States Department of Consumption with a Secretary in the Cabinet.

3. Providing an agency through which consumers may become articulate in National questions.
4. Aiding in the development of economical distribution of goods.
5. Aiding in the development of sound civic projects for the better care of the unemployed and for increasing and improving the civic amenities of community life. (*Ibid.*)

<sup>43</sup> *New York Times*, August 18, 1935.

<sup>44</sup> *New York Times*, September 9, 1935.

But even if the seeds nurtured under NRA were to develop into permanent consumer representation, the extent to which the basic relationship between the retailer and his customers could be changed seems to be rigidly delimited.

On specific localities, specific types of distribution, and specific retailers, consumer organization might well exert important pressure. If consumers knew and agreed on what they wanted, some store would be sure to provide it. If consumers were to respond by purchasing there, it would force imitation by competitors. It would seem likely, for example, that a general demand for labeled products, standard grades, or the like, would be met by retailers in the same way that the demand for a low price self-service type of distribution was met. Thus, if the retail craft remained attuned and responsive to consumed demands, it seems likely that national consumer organization would mould the forms of retailing rather than detract from the total volume of trade.

Moreover, it is probable that consumer organization on a national basis would aid large retailers in their battle with manufacturers. As champion of the consumer interest, the retailer provides himself with an electorate. This would re-enforce the retailer side of the struggle for advantage in the market contest which is expressed in the old controversy over slogans—is the retailer the “selling agent for the manufacturer” or the “buying agent for the consumer?”

The retail craft as a whole could be seriously injured only if consumer organization spread throughout the villages, towns and cities and took the form of consumer-operated stores or effective consumer bargaining.<sup>44</sup> Certainly a

<sup>44</sup> It would seem that merely withholding purchases—a deliberate “buyers strike”—operates within too narrow margins to be a serious threat. If people have money to spend, it seems unlikely that they can be induced to go without essential wants because they disapprove of retailers on principle. An enforced “buyers strike” caused by a deficiency of purchasing power is, of course, a different matter.

movement of this kind is long overdue in America. The speed with which it will come will doubtless be crucially affected by the extent to which retailers are able to make their customers feel well and inexpensively served. It would seem, therefore, that the newly organized government bureau, or any other type of consumer organization, could constitute an obstacle to retailer prosperity only in so far as it is able to encourage consumer cooperative stores or consumer unions,<sup>48</sup> either directly by making information and technique available to interested groups, or indirectly by giving publicity to retailer profiteering.

For the direct approach there is doubtless a wide range of influence; there seems, however, to be severe limitations circumscribing the indirect method—the use of publicity in exposing high retail mark-up. Cost to the consumer is compounded out of so many different mark-ups that it is typically unfair to strike at any one point and impossible to strike at all points. The difficulty was exemplified under NRA. Article VII, Section 1, of the Retail Code said: “No retailer shall increase the price of any merchandise sold after the effective date of this code over the price existing June 1, 1933, by more than is made necessary by the amount of increases in production, operating, replacement and/or invoice cost of merchandise . . . and in setting such price increases, retailers shall give full weight to probable increases in sales volume”. A hearing was scheduled in Washington shortly before Christmas for an investigation of price increases. Retailers objected strenuously on the grounds that the holiday business might be injured. The hearing was postponed until January. If any evidence of unwarranted mark-up

<sup>48</sup> The United States Bureau of Labor Statistics published in July, 1934, a monograph—Bulletin 598, entitled *Organization and Management of Consumers' Cooperative Associations and Clubs*. The publication of this bulletin by the Department of Labor was criticized in retail circles.



was developed, little was ever heard of it. If, with the Code provision and the increases in mark-up of the fall of 1933, a government bureau established expressly for the protection of the consumer felt unable to take steps, it would seem that a situation warranting interference would be unlikely to occur in the future.

### SECTION III: RETAILER—RESOURCES

The National Industrial Recovery Act stayed the application of the Anti-Trust acts to provisions in approved codes. Accordingly manufacturers were able to operate under restrictive agreements, providing they were approved by the President.<sup>46</sup> During the past decade retailers had been able to force their resources to make price concessions. Pressure took the form of demands for lower prices and demands for higher discounts and more advantageous trade terms.<sup>47</sup> The NIRA presented to manufacturers a golden opportunity.

The policy of permitting production controls, price controls and regulation of fair trade practices between an industry and its customers was well imbedded in NRA policy by the time that the early codes had been approved.<sup>48</sup> The

<sup>46</sup> For a comparative study of the legal status and mechanics of price-fixing in Germany, France and the United States, see *Tulane Law Review*, April, 1935, vol. ix, p. 325 *et seq.*, John Wolff, "Business Monopolies: Three European Systems in their Bearing on American Law."

<sup>47</sup> In 1931 Mr. Webber outlined four methods of ameliorating the problems that beset retail stores. Increased cash discounts were one of the four. He explained that efforts to increase cash discount were not intended to decrease manufacturer profits, but were "rather an attempt to adjust our own affairs to a greater profit in the way which seems most feasible and possible, because of the fact that the entire buying fraternity of the country is educated to a more or less fixed percentage of purchase mark-up in each department. Any attempt to change this standard is of almost impossible proportions." The cash discount represents "most, if not all, of the stores profits..." (*NRA Bulletin*, July, 1931, pp. 412-13.)

<sup>48</sup> The fact that some of these codes involved the conversion of natural resources doubtless permitted clauses to be approved which might other-

resultant difficulties were, in part, foreseen by retailers when the president of the NRDGA Mr. Lew Hahn, successfully urged at the Senate hearings on the National Industrial Recovery Act,<sup>69</sup> an amendment which circumscribed the President's approval of a code: "where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes".<sup>69</sup>

The anticipated difficulties were not long in materializing. In the June issue of the NRDGA *Bulletin*, a conference called for July 18th to 20th was announced, which, in addition to providing an opportunity to discuss the Retail Code<sup>71</sup> would, it was hoped, provide a forum "where members may discuss jointly the startling changes in business procedure resulting from the establishment of codes of business prac-

wise have seemed unduly restrictive. Having once been approved for a group of important codes, it was more difficult to refuse similar provisions to the later codes. Cotton (manufacture), steel, oil, wool, paper and lumber were early codes—"principles worked out in these codes formed the basis of most of the lesser codes worked out later." (*Boston Conference on Distribution*, 1934, p. 37, address by Irving C. Fox, Washington Representative of NRDGA.)

<sup>69</sup> The editorial comment in the NRDGA *Bulletin*, cites the inclusion of this clause as "one of the most important and far-reaching achievements that your association will ever accomplish in safeguarding the interests and welfare of all retail distribution of this country." (*Bulletin*, June, 1933, p. 7.)

<sup>70</sup> 73rd Congress Hearing, Senate Finance Committee, S. 1712, May 26, 1933, p. 139.

<sup>71</sup> In support of the proposed amendment, Gerald Grosner, representing the National Association of Retail Clothiers and Furnishers, said: "We, as retailers, want the government to grant power to manufacturers that will permit them to fix trade practices affecting themselves. Trade practices concerning both manufacturers and retailers, or retailers alone, should include recognition of retailers through our associations. *Ibid.*, p. 391.

tice by various industries." <sup>52</sup> Again, in July, the NRDGA *Bulletin* remarks that "already certain manufacturing groups in preparing their codes, are attempting to modify and change well established trade practices". <sup>53</sup> One of the conclusions of the July conference was that retailers should resist any change in customary terms; otherwise, by the time the codes were heard, lower discount rates would be an "established trade practice." <sup>54</sup>

"Steering committees" were appointed "for the purpose of cooperating with any manufacturing groups by lending advice and counsel in the formulation of those provisions of their code which effect distribution." "It is our hope," writes the Editor, "that these codes will be submitted to your association prior to their presentation at Washington. However, if they are not, we shall be afforded an opportunity of presenting our case when such codes are being considered by the Administrator."

By September, about fifteen advisory committees had been appointed by the NRDGA; the New York and Washington staff of the Association had been enlarged. A procedure had developed: close contact with NRA was kept in order to learn of the dates of hearings on manufacturing codes; copies of the codes were obtained as soon as possible and referred to the appropriate committee for analysis; a brief was prepared on any code thought to affect adversely the retailer interest; whenever possible, a meeting was arranged prior to the hearing, at which a committee of retailers could discuss the objectionable clauses with a committee of manufacturers; where no agreement could be reached, formal protests were prepared and presented at the code hearing. Meetings had been held, or briefs or protests filed, relative to twenty-six

<sup>52</sup> NRDGA *Bulletin*, June, 1933, p. 12.

<sup>53</sup> *Ibid.*, July, 1933, p. 8.

<sup>54</sup> NRDGA *Bulletin*, July, 1933, p. 8.

codes by September of 1933.<sup>55</sup> This activity was undertaken without any attempt to publicize the association's activity.<sup>56</sup> It was found that one of the chief difficulties encountered was obtaining copies of proposed codes sufficiently in advance of the hearings to prepare briefs.

It was soon discovered that a sturdier attitude was necessary. A Retailers' Protective Committee was appointed by the NRDGA which consisted of one hundred representative retailers. These men pledged to hold themselves in readiness to attend, when necessary, public hearings on manufacturer's codes.<sup>57</sup> An executive committee was appointed to determine policy.

Towards the end of October a brief was submitted to Mr. Whiteside, which outlined the retailer position. It opposed ten types of provisions involving explicit and implicit price controls and changes in established trade relations.<sup>58</sup> It urged the elimination from manufacturer's codes of: 1, Retail price fixing; 2, Provisions regulating quantity discounts and volume discounts; 3, Provisions regulating cash discounts; 4, The discriminatory classification of retailers; 5, Changes in present shipping arrangements; 6, Restrictions on demonstrators or allowances for demonstrators; 7, Restrictions on advertising allowances; 8, Prohibition of consignment selling; 9, Prohibition of retailers obtaining merchandise on the cut, make and trim basis; 10. Restrictions on justifiable returns.

<sup>55</sup> *Ibid.*, September, 1933, pp. 6 and 7.

<sup>56</sup> "Until only a few weeks ago, the association was definitely advised and counselled by retail representatives affiliated with the National Recovery Administration, not to resort to any publicity regarding the association activities in relation to manufacturer's codes." (*NRDGA Bulletin*, October, 1933, p. 23, Statement by Mr. Plant.)

<sup>57</sup> *NRDGA Bulletin*, October, 1933, p. 8. At that time over 150 manufacturing codes were being analyzed.

<sup>58</sup> *NRDGA Bulletin*, November, 1933. Brief submitted to Deputy Administrator Whiteside, October 24, 1935.

Retailer concern in manufacturers' codes was not inspired by the desire to interfere in somebody else's affairs. When 474 codes were approved, the NRDGA listed 218 codes and code supplements affecting retailing; 154 manufacturing and eleven wholesale codes concerned products of interest to merchandise buyers; thirty-seven affected supplies; sixteen the service trades; five the store service and seven codes affected advertising.<sup>69</sup> In the spring of 1935, Dr. Dameron finds: "It is conservatively estimated that store managers may need some knowledge of one hundred codes; advertising managers of fifty codes; comptrollers, buyers and merchandise managers of over two hundred codes."<sup>70</sup> Were a hardware retailer to have purchased directly from the manufacturer, he would have dealt with firms operating under 187 different codes.<sup>71</sup> Eighty-nine of these codes, Dr. R. S. Alexander estimates, clearly control sales of manufacturers to retailers; ten do not; eighty-eight may or may not, depending on the interpretation.<sup>72</sup>

In February, an analysis of provisions in manufacturers' codes affecting retailers<sup>73</sup> indicated that the most usual type of provision dealing with price was the determination of cost by means of uniform cost accounting systems. This was found in fifty-one codes. Open price posting or listing of prices, discounts, and terms of sale was required in forty-eight codes. The prohibition of sales below individual, aver-

<sup>69</sup> NRDGA Mimeographed material.

<sup>70</sup> *Journal of Business*, University of Chicago, Dameron, *loc. cit.*, p. 194.

<sup>71</sup> *Harvard Business Review*, Spring, 1935, p. 280. Dr. R. S. Alexander states that general jobbers in the hardware trade handle products the manufacture of which is controlled by approximately 187 codes.

<sup>72</sup> *Ibid.*

<sup>73</sup> "Petition for Relief from Certain Arbitrary and Uneconomical Provisions imposed by a number of manufacturers' codes upon Retail Trade, to National Recovery Administration from Limited Price Variety Stores' Association, Inc.," February 27, 1935.

aged or listed cost occurred in about forty-five codes. Measures intended to limit production occurred in eighteen codes. The arbitrary and unnecessary changes in contractual relations between manufacturer and retailer occurred all too frequently. Changes in cash discounts headed the list with an occurrence in forty-eight codes;<sup>64</sup> changes in customary time and quantity discounts appeared in twenty-one codes.<sup>65</sup> In eighteen codes advertising, dealer's help and other allowances for special promotion were eliminated.<sup>66</sup> Contract limitations and price guarantees, burdensome shipping provisions, unfair restrictions on justifiable returns,<sup>67</sup> and limitation of consignment selling, each occurred in about fourteen codes. In eleven cases existing contracts between manufacturers and dealers were subject to price revision by the manufacturers, but not by dealers. Clauses providing Code Authorities with the right to investigate books and records in all matters affecting codes, those requiring retailers to bear the cost of the administration of manufacturers' codes through label requirements, and provisions requiring uniform order blanks or sales contracts were found objectionable in nine, eight and seven codes respectively.<sup>68</sup>

<sup>64</sup> Terms and discounts averaged about eight per cent. They were reduced by codes to two or three per cent. Statement by I. C. Fox quoted in minutes of NRCA Meeting, February 14, 1934.

<sup>65</sup> In June it was stated that fifty-two codes do not allow anticipation. (NRDGA *Bulletin*, June, 1934, p. 34.)

<sup>66</sup> Advertising allowances were eliminated in thirty codes by November. (NRDGA *Bulletin*, November, 1934, p. 30.)

<sup>67</sup> In May, 1934 it was stated that thirty-one codes needed revision of return provisions although a far larger number of codes regulated returns. (NRDGA *Bulletin*, May, 1934, p. 36.)

<sup>68</sup> An analysis of the first two hundred approved codes indicates the number which contained provisions of specified kinds:

Unfair Practice	Number of times it appears
Selling below cost .....	146
Price cutting below published list .....	100

The NRDGA reports that by the fifteenth of May, 1934, 217 codes of interest to retailers had been approved. In regard to 140 of these codes, protests had been filed by retailers. The following summary was prepared:<sup>69</sup>

	All Codes	Of interest to Retailers	Codes protested
Hearings held .....	1314	511	—
Codes submitted .....	787*	452	326
Codes approved .....	747†	217	140
Codes pending .....	313	235	186

\* 642 basic and 145 supplemental codes.

† 427 basic and 37 supplemental codes.

In addition to the formal protests and less formal conferences through which retailers attempted to prevent the inclusion of undesirable provisions in manufacturers' codes, other types of pressures could be used after a code had been approved.

The chairman of the Retailers' Protective Committee reported to NRDGA towards the end of March, 1934 that "since your last meeting, considerable time has been devoted to conferences with Code Authorities in New York in an

Failure to report prices .....	103
Failure to enforce price maintenance .....	10
Failure to maintain price differentials .....	5
Unearned discounts, rebates or bonuses .....	139
Deviation from terms of credit and/or sale .....	28
Consignment sales and/or shipment .....	72
Cancellation of orders .....	18
Accept exchange of merchandise .....	6
Manufacturers forbidden to use material supplied by retailers	2
Accept return of merchandise .....	32
Transportation allowances .....	58
Advertising allowances, accept .....	32
To use other than uniform order or contract .....	19

Source: Lincoln Filene: *Unfair Trade Practices*, Harper Brothers, 1934, p. 133.

<sup>69</sup> NRDGA *Bulletin*, June, 1934, p. 31.

effort to have certain of their restrictive provisions modified or administered in a reasonable manner." He suggested that a more frequent and effective use of the NRDGA Merchandising Committee might be exceedingly helpful.<sup>70</sup> Difficulties resulting from the restrictions of returns could be met, in part, by training buyers to select more carefully and to observe the technical details of code requirements; stores could also "follow this up by checking the resources which continue to be fair and do not use the excuse of codes to change the quality of their service or merchandise."<sup>71</sup>

The code authority for the Ladies Handbag industry complained of the organized opposition on the part of prominent retail stores and large buying offices who combined to force manufacturers to sell for less than the price ranges which they had established and refused to buy from those manufacturers who declined to meet their prices.<sup>72</sup> From another source came complaints that a large retail corporation deducted from the billed prices of merchandise a sum equivalent to the difference between the code discount and that which it had last received. Illustrations need not be multiplied.

#### *The Line-up*

The reader may have noticed that the line-up of retailers and manufacturers on the question of restrictive measures in codes was accurately reminiscent of the pre-code retailer-resource conflicts. However, the improved technique for controlling terms of trade and prices afforded through NRA codes gave to the issue a new importance and to the struggle a new bitterness.

<sup>70</sup> NRDGA *Bulletin*, April, 1934, p. 18, article by Walter N. Rothchild.

<sup>71</sup> NRDGA *Bulletin*, August, 1934, p. 17 article by Mr. David H. Biddle, of the NRDGA Code Department.

<sup>72</sup> Discounts in this industry were set by the code at 3/10 (3% if paid in ten days). This was presumably their "established" level although during recent years the usual discount had risen to 8/10.



The majority opinion in the Retail Code Authority was that of the large retailer. It was the position urged tirelessly by the National Retail Dry Goods Association, urged also by the Limited Price Variety Stores Association and by the National Council of Shoe Retailers. At several NRA hearings this same attitude regarding price rigidities was presented officially by the National Retail Code Authority.<sup>73</sup> The large retailer, and some small retailers—the line was not cleanly drawn—was opposed to any interference with his freedom to negotiate a purchase from one of his resources. Clauses in manufacturer codes which changed customary terms of sale, reduced quantity discounts or fixed prices, lessened the bargaining advantage which he possessed as a result of the largeness of his orders and the desirability of his trade. Moreover, since price rigidities tended to increase the price of finished goods, the retailer found his interest coinciding with that of the consumer—higher price merchandise was harder to sell to the customer who typically has a limited dollar income. A strange ally in the retailers camp were certain progressive manufacturers. In October of 1934, the *New York Times* correspondent explains: "The resentment which has been voiced to NRA officials against restrictive code provisions, has come from progressive manufacturers who have discovered technical advances while their codes have been in operation."<sup>74</sup>

On the wholesalers' and manufacturers' end of the tug-ropes we find a large proportion of smaller retailers. This position is illustrated by a declaration of the National Retail Hardware Association, passed by action of its board of governors on January 8, 1935. It outlined a merchandis-

<sup>73</sup> At the hearing which occurred in the spring of 1934, Irving Fox, who was the Washington representative of the NRDGA, presented the opinion of the National Retail Code Authority.

<sup>74</sup> *The New York Times*, October 23, 1934, p. 8.

ing policy calculated to prevent the "extension of preferential prices to certain mass distributors by some producers . . ." The plan urged that hardware dealers meet low prices and bring pressure on their wholesalers to sell to them at a price which would permit such price meeting. "Retailers may properly question the claims to their patronage by wholesalers who cannot, or will not, meet the requirements of their distributive function." Moreover, "retailers should assist wholesalers in bringing properly to the attention of a manufacturer, each case in which such manufacturer's products are being offered in competition at unfair prices, and jointly with wholesalers, insist by lawful means upon being placed in position to meet competition." "Whenever a manufacturer fails to make it possible, for retailers to meet their competition on the products of such manufacturer . . . then in every lawful way, retailers should individually consider and decide upon the advisability of excluding from stock the merchandise upon which the price inequality persists."<sup>78</sup> It is significant that Mr. Peterson, representative of the National Retail Hardware Association, resigned his presidency of the National Retail Code Authority when, without a canvass of association membership, the NRCA declaring itself a truly representative body, submitted to the Senate Finance Committee a declaration in favor of the continuation of the Retail Code.<sup>79</sup>

#### *The Outcome*

The aggregate effect of the market contests preceding the purchase of each article of merchandise carried on retailer shelves seemed to weigh in favor of the retailer in his argument with the National Recovery Administration. The larger buyers grew increasingly successful in purchasing in

<sup>78</sup> *Hardware Retailer*, February, 1935, p. 54.

<sup>79</sup> *Retailing*, April 22, 1935.

violation of the Code governing the resource from whom the purchase was made. Although many stores hesitated at first to insist on code violation from a virgin concern that was believed to be observing the code in the rest of its dealings, when once it was known that a company had slipped with one retailer from the path of righteousness, the rest of its customers would be certain to feel entitled to similar favors.

In an article in the *New York Times* of June 9, 1935, Mr. Charles E. Egan explains that "purchasing executives look for a few sharp price breaks, due chiefly to the fact that few, if any, large industrial buyers actually paid official "code" quotations in the closing months of the Recovery Act's operation." This breakdown had occurred "months before."<sup>77</sup> In his study of department store experience under the Code, Dr. Dameron reports that "one of the outstanding observations gained in this survey, was the prevalence of bootleg merchandise. Manufacturers are violating their own codes with certain retailers and enforcing them with others. This makes compliance discriminatory."<sup>78</sup>

But success came to the retailer not only through sniping but also through frontal attack. In due time the bombardment began to nick the battlements. (There may well have also been rumors of mutiny from within the forts.)

NRA Release Number 988, dated September 30, 1933, states that "as a result of complaints by retailers that manufacturers of specialized products in which competition is limited, have boosted prices out of all proportion to increased costs under their codes, public hearings are to be ordered at once. . . ."

<sup>77</sup> The *New York Times*, June 8, 1935. Mr. Egan quotes one purchasing executive for a large corporation as having estimated that less than six of the one hundred or more products which he bought for his company had been sold at code levels during the previous six months.

<sup>78</sup> *Harvard Business Review*, Dameron, *loc. cit.*, p. 269.

In February Divisional Administrator Whiteside submitted a report which showed a shift to a position somewhat more sympathetic to retailer contentions.<sup>79</sup> In March of 1934, General Johnson suspended the open price provisions in pending codes for sixty days, and ordered an inquiry into the methods of price cutting. The report of this committee, which was made up largely of retailers, urged that prices be filed with the NRA as well as with the trade associations, and that reports of uniform prices or price increases be made to the administrator and promptly investigated.<sup>80</sup> On June 7th, a revised price-posting plan was announced by the Administration. This plan would, it was thought, prevent price fixing by agreement.<sup>81</sup> On June 8th the President issued an order barring price-fixing clauses in codes. On June 29th an order was issued permitting the bidders for government contracts to underbid the established price by as much

<sup>79</sup> The following proposals were made in the report:

1. "The temporary deletion of 'waiting period' from open price provision of most codes which have them.
2. The restoration of such discounts within limits.
3. A careful check on price increase resulting not from code provisions but from the 'intimacies' established through code relationships.
4. Reconsideration of customer classification (wholesale, retail, etc.).
5. Review of prohibitions limiting distribution of seconds and inferior goods.
6. Re-examination of code provisions defining cost and prohibiting below cost selling."

(NRDGA *Bulletin*, February, 1934, p. 11.)

<sup>80</sup> *Retailing*, April 2, 1934. The committee's report was signed by David Ovens of Charlotte, N. C., President of the NRDGA. *Retailing* reports in the April 9th issue: "It now develops that some of the bigger retailers regard the signing of this report by Mr. Ovens as a catastrophe."

<sup>81</sup> Prices were to be posted with an outside agency, not with the trade association. They were to be individual prices, checked for suspicious agreement. They were to become effective simultaneously and maintained until notice of change was issued.

as fifteen per cent.<sup>82</sup> Further changes in administration policy prohibited discount differentials by arbitrary classification of customers; determined that the definition of cost for use in cost formulas should be market or cost, whichever is lower; determined to hold a public hearing on the differentials in the wholesale code.<sup>83</sup>

By October, 1934, Administration policy had definitely turned against production controls such as restriction of machine hours, restrictions on new plant construction and prohibition of sales below cost. It was determined that no further step in this direction would be taken although it was not clear what would be done about provisions in existing codes. "Turning from emphasis on over production, which was felt to have been much exaggerated, coloring as it did the whole treatment of the industrial problem in the first fifteen months of NRA the board of NIRB was now said to be attacking matters along the line of attracting the consumer by low prices to buy goods."<sup>84</sup>

On December 17, 1934, a series of public hearings on price fixing provisions of codes was announced. The burden of proof that price fixing or production controls were necessary was to be placed on the industry wishing to keep them. The policy of the boards frowned upon permanent price fixing while it recognized that "emergency price fixing in certain cases may be necessary in order to end destructive price cutting." The natural resource industries were in a class by themselves. "According to information gathered by NIRB *minimum price provision in the codes have not accomplished the desired purpose and have proved neither workable nor enforceable.*"<sup>85</sup>

<sup>82</sup> Henry A. Wallace, *The New Deal in Action*, Harper & Brothers, New York, 1934, p. 170.

<sup>83</sup> NRDGA *Bulletin*, August, 1934, p. 26, article by David H. Biddle.

<sup>84</sup> *The New York Times*, October 23, 1934.

<sup>85</sup> *The New York Times*, December 18, 1934 (italics mine), p. 22.

In addition to influencing the general outline of administration policy, retailers made progress in altering clauses of individual codes. Reporting in March on the work of the Retailers' Protective Committee, Mr. Walter Rothschild said that the work of the committee was becoming increasingly effective. He reported that code provisions have been modified or changed in accordance with the committee's recommendations in over fifty per cent of the cases.<sup>86</sup> Three months later, a summary of the activities of the work of retailers on NRA codes indicated that thirty-five codes had been protested during the past two months. Out of the 105 objections registered, sixty-five cases were won—an average of sixty-four per cent successful negotiation.<sup>87</sup>

The fact that retailers were making their criticism heard was doubtless in part the result of a change in sentiment, both in the country as a whole and in Administration circles. Administration Order No. 66 required divisional and deputy administrators of NRA whenever possible, to insert into codes provisions for the appointment of conference committees to consult on the trade relations between different industries.<sup>88</sup> In September of 1934, sixty-five codes had provisions for committees of this kind.<sup>89</sup>

Conferences between retailers and manufacturers before codes were submitted became more frequent. This type of conference had ironed out the difficulties in the Dress Code, the signing of which was celebrated by a dinner given by the Retailers' Protective Committee to the Dress Code Authority. The Divisional Administrator, Sol Rosenblatt, tele-

<sup>86</sup> NRDGA *Bulletin*, April, 1934, p. 18.

<sup>87</sup> *Ibid.*

<sup>88</sup> *Boston Conference of Distribution*, 1934, p. 17—Edwin R. Dibrell—*The Retailer and the New Era*. Mr. Filene was influential in getting the order issued.

<sup>89</sup> NRDGA *Bulletin*, September, 1934, p. 70.

graphed the assembly that in the future he intended to have all of the codes in his division approved by retailers as well as manufacturers.<sup>90</sup> In the October, 1934 issue of the NRDGA Bulletin, twelve codes were listed in which conferences between retailer and manufacturer had taken place prior to the Code hearings—"Many conferences have resulted in almost complete agreement."<sup>91</sup>

#### *Summary*

Prior to the Code the market contest between the retailer and his resources had taken place with economic conditions on the retailer's side. Under the New Deal, the buyer's market changed temporarily to a seller's market. Moreover, codes made trade or industrial organization a party to the buyer-seller contest; Code clauses which fixed prices, favorable discounts and terms of sale removed these questions from the bargaining arena. No matter how anxious a manufacturer was to accommodate a good customer, he "unfortunately" wasn't allowed to do it.

Thus the battles which had traditionally been fought by individual retailers with individual manufacturers (little influenced by the occasional trade relations conference) became, under NRA, in part a contest which retailers as a group must wage against various kinds of manufacture also organized in their trade associations.

But the retailer cohorts were late. They were not whipped into effective action until after the looting was well under way. This meant that they had at the same time to fight oppressive clauses in new codes and achieve the "reasonable" administration of codes with which they came in contact. Moreover, at first, this had to be effected in a rising market.

<sup>90</sup> NRDGA *Bulletin*, May, 1934, p. 25.

<sup>91</sup> NRDGA *Bulletin*, October, 1934, p. 26, statement by David Biddle.

For retailers, the situation improved during 1934. Better organization helped; also the fact that manufacturers tended to overplay their hand, thus making the Administration apprehensive of excessive price increases, tended to change Administration policy. In the meantime, in the course of the day to day dicker between individual buyers and sellers, the resource was frequently induced to violate his code.

But although much of their temporary advantage had been lost by manufacturers, the hands of the clock had not simply been set back to April, 1933. In the first place, agitation for price maintenance bills had been renewed. The California "Junior Capper-Kelley Bill," passed in 1931 in a form in which it permitted a contract between a manufacturer, wholesaler, or retailer to resell at specified prices, was amended in 1933. The two amendments made it unlawful for anyone to sell a product or for anyone to sell to an individual who sold a product for less than the price set in any lawful contract between the manufacturer and a customer. By June, 1935, similar measures had been passed by eight states,<sup>83</sup> were pending in two,<sup>84</sup> and had been rejected by fourteen.<sup>85</sup> In the contest over these measures, it is important to note that the small retailer, particularly in the drug line, was typically on the side of the manufacturers interested in price maintenance.<sup>86</sup>

In the second place, attempts to maintain voluntary trade committees in certain industries in which codes had been found especially helpful followed the demise of NRA. Although cooperation of this kind meant embarking upon

<sup>83</sup> Iowa, Maryland, New Jersey, New York, Oregon, Pennsylvania, Washington, Wisconsin.

<sup>84</sup> Alabama and Illinois.

<sup>85</sup> See article in *Printer's Ink*, June 27, 1935, p. 7.

<sup>86</sup> *Retailing*, June 24, 1935.



troubled waters, a certain amount of technique for a better intertrade understanding was doubtless developed, at the same time that conflicts of interest were clarified.<sup>96</sup>

In the third place, retailers became acutely conscious of the need for solid intercraft organization. The American Retail Federation grew in substantial part out of this need.<sup>97</sup>

#### SECTION IV: EMPLOYER—EMPLOYEE

The NIRA and the Retail Code granted to the employee two kinds of rights: (1) The right to stipulated minimum wages and maximum hours. (2) The right to organize for collective bargaining.

The Retail Clerks Protective Association, the American Federation of Labor union in the retail field, attempted to take advantage of the new rights. The *Retail Clerk's International Advocate* carried feature articles stating that it was now up to retail employees; the NRA was not enough though it guaranteed minimum wages, union organization was necessary to see that better than minimum wages were secured, that manager's time was limited and that NRA codes were enforced.

At the October, 1933 Convention of the American Federation of Labor, a resolution was adopted recommending to

<sup>96</sup> The attempts to organize the National Food and Grocery Conference Committee, if successful, would provide an interesting example of co-operation of retailers, wholesalers and manufacturers. The efforts of the National Coat and Suit Recovery Board, which, backed by union and manufacturers, attempted to enforce standards in the industry, is interesting in this connection. Retailers were reported to approve of the labelling provisions. (Over 1,500,000 labels had been sold in the first five weeks of operation.) They were somewhat more doubtful of several of the trade practice provisions which included discounts, bans on group buying, etc. (*New York Times*, August 25, 1935.) A later news article suggests that the board encountered difficulties with the recalcitrant ten per cent. (*New York Times*, November 3, 1935.)

<sup>97</sup> See *infra*, p. 490 ff.

all members that they patronize stores displaying the union card. The resolution further instructed all union organizers to assist in the organization of the employees of retail stores.

The results of the concerted effort to unionize retail employees may be read between the lines of the following table:

TABLE XLII  
RECEIPTS FROM THE PER CAPITA TAX AND THE INITIATION AND  
REINSTATEMENT FEES ACCORDING TO ANNUAL AUDITS  
FOR THE FISCAL YEAR, MAY 1ST TO APRIL 30TH

	Per Capita Tax			Number of Dues Paying Members *	
	1932-33	1933-34	1934-35	1933-34	1934-35
May .....		\$1,461	\$3,601	4,174	10,289
June .....		1,456	3,625	4,160	10,357
July .....		1,464	3,418	4,183	9,716
August .....		1,557	3,583	4,449	10,237
September .....		1,883	3,623	5,380	10,351
October .....		2,106	3,814	6,017	10,897
November .....		2,369	3,848	6,769	10,994
December .....		2,655	3,921	7,586	11,202
January .....		2,450	4,103	7,000	11,723
February .....		2,825	4,100	8,071	11,714
March .....		2,977	4,269	8,506	12,197
April .....		3,046	4,265	8,703	12,186
Year .....	\$19,126	\$26,251	\$46,170		

Source: *Retail Clerks International Advocate*, May and June issues.

\* Calculated from the per capita tax data since the monthly tax is 35 cents a person from each member of a local union.

Thus in May, 1933, there were about 4,174 dues-paying members. In April, 1935, there were 12,186—almost three times as many as two years earlier, but nevertheless only slightly over 12,000 of the three and one-half million employees of retail stores.<sup>88</sup> Moreover, the rate of increase, as well the absolute number of men and women signed up, had slackened when the fiscal year of May, 1934 to April, 1935 is compared with the previous six months.

<sup>88</sup> 164 new locals were chartered in the 1933-34 fiscal year.

Retail stores had always been notoriously difficult to organize in the United States. Although NRA bolstered the union morale, it did not eliminate the problems. The white collar worker seems to be less class-conscious than the factory worker. The skilled employee in a retail store hopes that someday he may open a store himself, the unskilled female worker may hope eventually to confine her visits to stores to the aisle side of the counter. The NRA seemed to give the movement a temporary respectability. The government backed it.<sup>99</sup>

When it came to a test of whether a local union could obtain for its members the benefits of which it boasted, the weapons used were similar to those which had always been available. The employer, in an easy labor market, could replace employees at will. The unions could, by the use of a picket line, attempt to keep customers out of a store. This meant that union power derived from the effectiveness of union picketing. In relatively small stores, whose clientele was labor conscious, a picket line was extremely effective.<sup>100</sup>

Valuable assistance on the labor side of the battle could be rendered by the cooperation of workers in the delivery or engineering departments of a store, since total operation could most easily be clogged at its narrowest point.<sup>101</sup> An

<sup>99</sup> Conversation with union officials gives one the impression that the feature of government backing had been found useful. An organizer could say that the union undertook to enforce the codes, as well as to gain for its members additional advantages.

<sup>100</sup> Union Square in New York City is one of the districts in which the picket line has been powerful enough to make several strikes reasonably successful—some of which were in stores having several hundred employees.

<sup>101</sup> "In the strike now in progress at May's Department Store, Brooklyn, similar tactics are used. Truck drivers of two locals are cooperating with the sales people's union. It is no secret that executives of the big stores are disturbed by this development. More than this. They know

article in *Retailing* refers to the effectiveness with which the cooperation of the truck drivers brought about the threatened closing of the Atlantic and Pacific stores in Detroit.

The possible implication of an organization such as the League of Women Shoppers in increasing the efficiency of the picket line is an interesting question. Organizations of this kind are active in Akron, Milwaukee, California and New York. The membership of these groups comes from women in all walks of life, but "its principal movers," *Retailing* explains, "are writers, artists, actresses, social service workers and suffragettes."<sup>102</sup> When, after investigation, the League of Women Shoppers determine that a strike is justified, they aid the workers in picketing the store. Customers are told the facts and encouraged to exert pressure on the management. They seem to have aroused a certain amount of apprehensive discussion in retail circles.

In large stores in central shopping districts progress was extremely slow. The most dramatic attempt to organize a large department store occurred in Milwaukee. The Boston store strike started on November 30, 1934. It was called by a Local of the Retail Clerks International Protective Association which had been organized that summer. The clerks were joined by members of the Teamsters' and Chauffeurs', Stablenens' and Helpers' Union, and by the Building Service Employees' Union. The Boston store had a total staff of about fifteen hundred men and women. Whether 380 or 600 clerks were on strike depends on whether the figures of the employers or employees are accepted. Stories of the

that one of their weak spots is in the engineering and operating ends of the store. A strike here could, and would cripple any store."

"If unions are to strike this year, it will be this month or next. In the meantime, every store will be well advised to take every possible precaution for the welfare and contentment of its staff." (*Retailing*, November 4, 1935, p. 1.)

<sup>102</sup> *Retailing*, June 24, 1935.

strike differ so much that without direct knowledge it seems useless to discuss its progress. Certain facts of importance, however, seem clear: the store was picketed throughout its Christmas season; business fell off, according to figures reported in *Women's Wear*, by thirty or thirty-five per cent; the strike, in spite of the attempted conciliation of representatives of the Regional Labor Board and the United States Department of Labor, lasted for six weeks. The final settlement could hardly be called a labor victory. This is the more significant since Milwaukee is generally considered a politically liberal city, and both union and retailer were playing for high stakes.

It is not possible to tell to what extent the difficulties encountered in unionizing the trade were caused by retailer defense. Certainly retailers believed that unionization constituted a grave menace, which required sharp watching and quick action.

The early retailer reactions to Section 7a may have been slightly hysterical. *Retailing* reports in the July, 1933 issue that in Chicago, "practically every big store is planning to sponsor employee groups which will have the right of collective bargaining that is guaranteed by the NIRA. It is frankly stated that the purpose is to prevent unions from gaining a foothold in the retail trades." But apparently these steps never matured. A survey of 440 stores, conducted by the NRDGA in the spring of 1935, disclosed twelve company unions, four or five of which were not store-wide, but were confined to departments such as delivery.<sup>103</sup> Several of these associations were organized about the time that the NRA went into effect. The small number of company unions was explained, in part, by the fact that the

<sup>103</sup> Delivery employees in retail stores have been better organized than sales clerks.

mutual aid societies had frequently conferred with the management on working conditons.<sup>104</sup>

Store managers have attempted to improve the temper of their staffs by methods other than the company union. Most of these techniques were not new with NRA. Different types of wage incentives were used, evening classes for employees were held, a "better" type employee might be hired,<sup>105</sup> benefit funds, loan societies, recreational work and group insurance<sup>106</sup> are other methods of linking an employee's interest to the store. One rather novel method of obtaining a contented personnel, introduced by a progressive store president, consisted in making a very careful personnel analysis of all the employees of the store. Earnings, calibre of work, size of family, financial commitments and the like, were carefully studied. If it was found that the employee's obligations were such that he could not meet them adequately with the salary he earned, he was discharged.

Association activity spread information on current techniques and occurrences in employee relations. The NRDGA founded an Employee Relations Bureau "to serve as a clearing house for information on methods which member department, drygoods and specialty stores can use to promote better relations between store management and employees."<sup>107</sup> The National Council of Shoe Retailers, Inc., lists among its achievements: "Supplied valuable confidential information to members on labor disputes and unionization in retail stores—with accurate, reliable statements on precise

<sup>104</sup> Survey by NRDGA store managers division, under the supervision of Mr. Plant. Reported in *The New York Times*, June 30, 1935.

<sup>105</sup> The "hostess type" was reported in demand by the executive of a state employment office.

<sup>106</sup> *Retailing*, November 5, 1934, p. 3.

<sup>107</sup> Statement by Channing Sweitzer, quoted in *The New York Times*, April 5, 1935.

rights and duties of employees and employers under Section 7a of the Recovery Act." "Now engaged in ascertaining and disseminating information to members as will make for a stimulation of proper human relationships, a better understanding and a more intelligent cooperation between employer and employee in the shoe retailing industry."<sup>108</sup>

The most ambitious program involving employee relations developed by retailers was the NRDGA recommendation concerning unemployment insurance. But the advocacy of social insurance by retailers was not essentially a method of solving their own labor problems in their own business, though a certain amount of improved feeling might result as byproduct. It would seem that, primarily, insurance was thought of as a socially desirable measure, as a method of spreading purchasing power, and as an alternative to more expensive systems for caring for the unemployed.

Much of the cooperative activity of retailers was directed not towards preventing or forestalling unionization but towards increasing productivity per man hour. Obviously, the increased hourly wage rates required by the Code would focus attention on this problem. Employees were trained to wait on two people at once; time studies of service operation increased productivity; group bonus and commission plans were introduced; in fact in each operation of a well run store the speed-up was in process.<sup>109</sup> The reaction of

<sup>108</sup> *The Record*, National Council of Shoe Retailers, Inc. (August 1, 1933 to January 1, 1935).

<sup>109</sup> In an article in *Retailing*, Mr. Joseph Norman discusses various types of economies that have been found feasible. He mentions a New Jersey store that had been able to increase the hourly production per man in the packing division by twenty-five per cent. A Chicago store tells of an increase in individual productivity in some cases as high as fifty per cent, which meant that in spite of a reduction of sixteen and two-thirds per cent in hours worked and increased responsibilities, less than a four per cent increase in personnel was required. These economies

employees to an increase in their work was typically one of resentment.

But it would seem that the Retail Code increased the tenseness in employees' attitude toward employers in another way. The NRA made promises; it guaranteed rights. As we have seen, these promises were often not kept. Men and women seem to be so constituted that they measure adequacy in terms of the relation between their achievement and their expectations. The NRA aroused expectations which had not existed before; it raised hopes of improvement. Puncturing inflated hopes does not restore conditions to their former status. Resentment is left which may resolve in resignation, bitterness or fight.

#### SECTION V: RETAILER—GOVERNMENT

In a capitalist economy more government in business is almost bound to mean more business in government. Retailers, finding that the conduct of their business was constantly being influenced for better or for worse by things that were going on in Washington and in State capitals, naturally turned their attention towards attempting to control those happenings in such a way as to be benefited rather than injured by them. In the words of the editor of *Chain Store Age*: "So many crack-pot legislative proposals have been introduced this year and so many are still pending in Washington and the various State Legislatures, that a business man has found himself rapidly becoming an experienced lobbyist. Whereas in years gone by he did not even know the name of the legislative representative from his own district, today he is apt to have a speaking acquaintance with

were achieved by improved equipment, combing the force, and a quota system set at the greatest production achieved by any individual. "By tactful psychology we spurred employees into greater efforts by making comparisons and taking advantage of the inherent desire of most humans to keep up with their neighbors." (*Retailing*, July 16, 1934.)



the entire roster. He finds himself spending more time in the state capital than he does in his own office, actually being forced to neglect his own business in order to protect it."<sup>110</sup>

Under the pressure of rising civil expenses the sales tax proved to be a convenient method of raising revenue. From March, 1934 to July, 1935, twenty-three states had enacted at least one sales tax measure.<sup>111</sup> In July, 1935, there were sales taxes in force in exactly half of the states of the union.<sup>112</sup>

Retailers also had interests to protect in the method used to relieve the unemployed. In an address in Boston Mr. Hopkins said that the cheapest way to handle relief would be through "production for use—taking an empty factory and putting the unemployed to work without wages, and bartering the stuff all around." The central purchase of goods to be distributed on a wholesale basis was suggested to Mr. Hopkins by several industrialists, "but when anything like this is promised, every retailer in the United States hits the roof. We get thousands of telegrams and hundreds of delegations call on us."<sup>113</sup>

But the position of retailers in questions of national and state legislation was not entirely negative. Beginning in

<sup>110</sup> *Chain Store Age*, May 1, 1935, p. 101. Godfrey M. Lebar, "Retailing Finds Its Voice."

<sup>111</sup> Carl Shoup, *Sales Tax in American States*, Columbia University Press, 1934, and *Chain Store Age*, July, 1935.

<sup>112</sup> *Chain Store Age*, July, 1935.

<sup>113</sup> Quoted from the *News Letter*, National Council of Shoe Retailers, Inc. *Letter No. 52*, January 7, 1935. Similar objections to governmental usurpation of the field of legitimate trade were voiced by an editorial in the *NRDGA Bulletin*. The government competed with private business when it engaged in the production of dresses, shoes, etc., to be distributed to the unemployed, as was the case in Ohio. In the South, fifty or sixty million dollars' worth of food had been canned; in the North, bedding and furniture were being produced and distributed to the unemployed. (*NRDGA Bulletin*, October, 1934.)

July, 1935, the question of social security had been given careful consideration by the councils of the NRDGA. In September, 1935, an unemployment insurance ballot was issued by *Retailing*, by means of which it was determined that about fifty-four per cent of the retailers who voted favored unemployment insurance, although slightly over a half of those in favor believed that the time had not yet come when such a system ought to be installed.<sup>114</sup>

During the fall, steps were taken to sound out opinion and prepare the way for further action.<sup>115</sup> Late in December a committee from the National Retail Dry Goods Association retired into the hills and returned with a definite program for social security. The program was unanimously adopted on January 15th, at a luncheon meeting at the annual convention of the association. Dr. Paul H. Douglass, in a much quoted passage, called the program "the most statesmanlike document of its kind ever submitted by a business group." In addition to unemployment insurance the program advocated provision for sickness, mothers' and widows' pensions, and State-administered relief and welfare work. Insurance, it was stated ought to be administered through a

<sup>114</sup> *Retailing*, September 10, 1934, p. 3.

<sup>115</sup> The Retail Merchants Committee, of which Mr. Samuel Reyburn was chairman, published and circulated widely two preliminary monographs on insurance. The study derived from the "recognition that while the social aspects of unemployment legislation had dominated the public mind, the economic phases, equally important, were being neglected." Interest and policy were developed at meetings of merchants in 187 cities, which were held simultaneously. These forums were addressed by speakers on a national radio hook-up. They also held programs of their own. The meetings were not expected to come to any definite conclusions concerning any specific measure which had been or would be proposed. They were to discuss general theory and appoint three delegates to a state convention. At the state meeting more concrete plans for state policy might be developed; also a delegate to a national convention might be appointed. (*New York Herald Tribune*, January 6, 1935, p. 16.)

Federal law permitting a certain amount of flexibility to individual states. The administration was to be undertaken by a non-political commission responsible only to the governor. Unemployment reserves, which ought to be contributed by employer, employee and state, were to be held by the Federal government. It was hoped that a differential premium rate could eventually be established which would encourage the stabilization of unemployment.<sup>116</sup>

The need for organization in order to urge effectively the point of view of the retailer in these and similar matters, was at first met by the appointment of a Retail Emergency Committee on National Affairs. The committee was appointed by the Board of Directors of NRDGA. "It will be the function of this committee to weigh carefully important proposals affecting the economic welfare of the American people in general, and of our craft in particular, and to preserve and promote the best interests of both."<sup>117</sup>

In October, 1934, special committees were appointed to work on specific problems such as the future program for NRA, government competition with private business, Federal taxation and the balancing of the Federal budget, unemployment insurance, old-age pensions and national housing administration and relief problems confronting the government.<sup>118</sup> But the NRDGA could not speak authoritatively for the retail trade as a whole. There was, accordingly, a constant pressure to organize on an intertrade, national basis.

On April 16, 1935, the formation of the American Retail Federation was announced. It was to serve as the unified voice for the entire field of distribution on national legis-

<sup>116</sup> Mimeographed copy of plan.

<sup>117</sup> NRDGA *Bulletin*, March, 1933, p. 8.

<sup>118</sup> NRDGA *Bulletin*, October, 1934, p. 6.

lation and economic problems. The plans for the federation had been developed during a six month period at a series of conferences. The purpose of the new body was explained by Mr. Louis Kirstein:

Cooperation with governmental and other agencies participating in movements for the promotion of the general prosperity and well-being of the people of the United States, upon which sound distribution depends.

Coordination of all branches of retail distribution so that there may be developed and effectuated a program of national policies to improve retail distribution and consumer purchasing power.

Representation of those national associations that have become members of the American Retail Federation in national public relations compatible with the program of policies laid down by the board of trustees.

Stimulation of greater appreciation on the part of retailers of the services given them by national retail associations and encouragement of the establishment of representative, well-organized and coordinated State councils.

Mr. Kirstein added that a vital part of the work would consist in furnishing accurate and reliable statistics to government and other agencies on various phases of retail distribution, figures that he declared "are now totally lacking."<sup>119</sup>

The association planned to operate on an annual budget of \$250,000. The major expense items would concern the collection of and dissemination of information.<sup>120</sup>

Membership in the association was to be of two types: (1) Any national retail association which was a member of the National Retail Code Authority and any other national association which was approved by the trustees; (2) Any individual firm or corporation approved by the trustees engaged in retail distribution, paying dues based on sales (mini-

<sup>119</sup> Quoted from article in *The New York Times*, April 17, 1935, p. 1.

<sup>120</sup> *Retailing*, June 10, 1935.

num of twenty-five dollars).<sup>121</sup> One trustee was to be named by each national association. (Only active merchants, not trade association executives, were to be eligible for membership on the Board of Trustees.) The subscribing members were to elect six trustees.<sup>122</sup>

But the new association seemed to have been born into a bed of thistles. Mr. Sheets, the veteran director of the National Retail Hardware Association, said that the Hardware Association "has no intention of being associated" with the Federation, which he feared would bring about "such a cleavage between large and small merchants as to completely break down the unification work which had been progressing for the last twelve years."<sup>123</sup> The National Association of Retail Grocers declared that it was "not concerned in joining any group which is headed by executives of four chain store groups. . . ."<sup>124</sup> The National Retail Druggist Association also expressed mistrust of the Federation.<sup>125</sup>

On April 24th, Mr. John J. Cochran of Missouri charged that the Federation was a super-lobby having a "war chest" of \$750,000.<sup>126</sup> In consequence, an investigation was undertaken which temporarily blocked the progress of the American Retail Federation.

Whether the conflicting interests of the large and small retailer on questions of price maintenance will serve to split

<sup>121</sup> *The New York Times*, April 21, 1935.

<sup>122</sup> *Retailing*, April 22, 1935. In the event that there should be more than ten association members, subscribed members could appoint an additional trustee for each two trustees over ten appointed by the association.

<sup>123</sup> *Herald Tribune*, April 21, 1935.

<sup>124</sup> *The New York Times*, April 24, 1935, p. 9. Statement by Mr. D. A. Affleck, president. Mr. Affleck said that no invitation from the Federation had been tendered to the association of which he was president.

<sup>125</sup> *Herald Tribune*, April 21, 1935.

<sup>126</sup> *Retailing*, April 29, 1935, p. 11.

the "united front" on questions such as taxation, in which the interests of the large and small stores are more harmonious, remains to be seen.

## SECTION VI: SUMMARY

The foregoing analysis of the group relations between the retailer and his opponents in the market contest seems, in connection with each controversy, to repeat a central theme.

During the two years of NRA, groups had to take the offensive in order to effect defense. This meant that conflicts as well as identity of interest became clarified, as each individual was virtually forced to take sides on questions being actively contested. Inaction on the part of groups or individuals did not mean no action—it meant that the group in question would be acted upon by other groups typically to the disadvantage of the former.<sup>127</sup>

Issues became sharpened. Teams were chosen. Fighting machines were developed along dynamic lines—group organization was stimulated.

But implicit in the fact of multitudinous conflict (even though each conflict was resolved through compromise) was the tendency towards a gradual strengthening of the more able fighters favored by circumstances.

<sup>127</sup> It was, of course, possible that on individual issues the battle of one group of individuals was adequately fought by another whose interests in this particular issue were identical.

**PART V**  
**CONCLUSION**

## CHAPTER I

### THE RETAIL CODE

THE unavoidable conclusion which grows out of the analysis which we have just completed is that the operation of the Retail Code, in the setting in which it was placed, did not substantially further the public interest. Although certain definite gains were made, the price which was paid for them was too high. Benefit to retailer, labor and consumer accrued approximately in proportion to the extent of their power to demand concessions. The power of the various interests was the result of a complicated set of factors of which organization was a very important one. Since retailers were relatively well organized, they emerged with a relatively large plum; since retail employees were organized relatively scantily, they emerged with a very small plum; whereas the consumer, having practically no organization, was probably cooked in the pie.<sup>1</sup>

In the course of the analysis some of the shortcomings of the Retail Code as a social instrument have become visible. The Code was so framed that, given the objectives of NRA, its clauses caused the retailer relatively little hardship and a modicum of gain. The content of the phrase "fair practice", as interpreted in Section VII represented the advanced guard of the "trade ethics" that had developed in the course of the twentieth century. The labor provisions were the outcome of a tug-of-war; in the absence of effective labor organization, retailers were able to tug to excellent effect by

<sup>1</sup> Retailers were only in small part responsible for the plight of the consumer.



using the device of population differentials. The problem of securing compliance turned out to be far more difficult than originally contemplated; violation, particularly of the maximum hour provisions, was widespread; the complaint system did not provide adequate machinery for locating violations; when misdemeanors were reported, facts were often difficult to discover; the unsureness and mildness of penalties imposed by NRA or the courts frequently made it good business policy to take a chance on being caught. The necessity of making clauses vague rather than specific meant that interpretation played a crucial role in spite of the fact that the machinery of interpretation of labor clauses was perhaps the most blatantly inadequate part of the whole process: to have as judges a group of men who, in terms of their own interest, were all advocates for one side, is unfair to both judge and plaintiff; yet subject to certain modifying influences, this was virtually the actual state of affairs. Moreover, after all specific difficulties are enumerated, there remained three large stumbling blocks: the personnel problem involved in developing rapidly a huge staff of men requiring a rare combination of abilities; the inadequacy of the mechanical relation between NRA and Code authorities; the objective complexity in the job which was being performed.

The aggregate result of the inadequacy of the Code clauses, the difficulty in the way of effective enforcement, the feasibility of evading Code restrictions, and the opportunity for store managers to develop economies which neutralized Code provisions meant that the total increase in employment due to the Code, as opposed to improved business, was probably not over five per cent. Probably the major changes in the state of the retail employee was an internal shift whereby the poorest paid worker was helped, providing he could keep or obtain a job, and the better paid worker suffered a reduction in weekly wages. There also seemed to

have been a certain amount of sharing of work and weekly payrolls. Cost of living, however, increased so considerably that pay checks could buy less in the spring of 1935 than they could have bought prior to NRA.

The retailer, on the other hand, was able to increase mark-up at the same time that the increase in business caused the ratio of payrolls to sales typically to decrease. Accordingly, profits improved considerably. Methods of competition, though doubtless improved at first, probably relapsed after the new brush began to show signs of wear. The loss limitation provision, when it was enforced, was useful for those retailers who, though they did not initiate, were forced to participate in loss leader price wars.

But perhaps the most socially significant outcome of NRA was not directly caused by any Code clause but was the result of the kind of process that was involved in the National Industrial Recovery Act and its administration: the constant necessity for defensive and offensive group action, in regard to the infinite number of special problems which arose, consolidated group line-ups, emphasizing consistency as well as divergence of interest, and strengthening the more powerful factions.

This, in broad outline, was the meaning in terms of the success or failure of NRA of the reactions of about three hundred and sixty thousand retailers to the new restrictions and new sanctions imposed by the NIRA and the Retail Code. It represents the way in which these men, equipped with an ideology inherited from pre-code days, solved the new problems with which they were faced. The compound of their individual decisions produced an aggregate behaviour which in the retail field in large part defeated the purposes of NRA. In other words, retailers acted in a way which made the problem of control unmanageable. This would seem to indicate that the implicit and explicit assump-

tions about human behavior upon which the Recovery Act was based were unrealistic, at least in their application to the retail trade.

The essence of the difficulty lay in the fact that the successful operation of NRA presupposed more altruistic behaviour or at least a more "enlightened" conception of self-interest than retailers seemed able to sustain. We shall turn now to the positive aspect of this question—to the kind of assumption about conduct which would have been realistic in the light of the story which has been told in this book. But since generalizations about human nature are likely to provide a common denominator for analysis of all industries although they are based more specifically on experience in the retail field, it will be useful to formulate these generalizations in connection with a discussion of the broader aspects of the control problem. This is probably a highly unwise undertaking. Generalizations about human nature grow out of concrete actions; retailers acted one way; other business men may well have acted differently. Surely the retail trade is a business significantly different from a large number of industries. Nevertheless, if the basis of generalizations are stated, it may be possible to read selectively. Where experience indicates that the pattern does not fit some industry with which the reader is familiar, specific conclusions may be changed or eliminated. At least, an analysis of the kind which follows ought to indicate the questions that must be answered if we are to attain insight into the problems and limitation which legislation of the NIRA variety might expect to encounter in the future.

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## CHAPTER II

### THE CENTRAL REGULATION OF INDUSTRY AND TRADE

THE NIRA in general aimed to spread work, increase the purchasing power of the masses, and improve intra- and inter-industrial relationships by reducing unfair competition and achieving a modicum of economic planning.<sup>1</sup> We may assume that in broad terms these objectives, with perhaps more emphasis on reconstruction and less on recovery, would be carried over in further attempts to achieve a similar type of industrial regulation and the following discussion applies only to the type of law which, like NIRA attempts a wide and detailed control over a large number of businesses of the country. But although objectives might be similar to those of NRA the method used to promote the public interest would doubtless be quite different in any new legislation. The haste with which NRA was conceived, together with the stupendous difficulties involved, have meant that everyone, even a most enthusiastic supporter, is acutely conscious of shortcomings in its techniques.<sup>2</sup>

In NRA the problem of regulation was approached from two angles: Industry was granted a warrant to govern itself with government backing and censorship. Interwoven with industrial self-government and growing out of the idea of central censorship was the insistence of the government on

<sup>1</sup> Cf. Brookings Institution, *op. cit.*, pp. 5-7; Franklin D. Roosevelt, *On Our Way*, p. 195; Schuyler C. Wallace, *The New Deal in Action*, Harper Brothers, New York, 1934, pp. 118 and 235.

<sup>2</sup> The Administration regarded the codes somewhat in the nature of a contract and hesitated to change them until they expired. At that time extensive revision was anticipated.

the determination and maintenance of acceptable minimum labor standards. Final authority for protecting and furthering the public interest rested with the government.

#### SECTION I: THE CONTROL PROBLEM

We may assume that if legislation were contemplated in the future, it would theoretically be possible to determine what specific measures would serve the public interest, providing adequate thought and study were given to each set of problems. This leaves a residual question of crucial importance: By what means can the necessary control actually be effected in a democracy? It seems reasonable to assume that control techniques would be required, since, if they were not, there would be no need for a law. The problem splits into two halves: (1) How is it possible to impose or to obtain the voluntary acceptance of desirable statutory restrictions? (2) What tools are available with which to enforce such regulation? Out of a discussion of these questions ought to grow insight into the range of possible achievement and the price at which desired control must be purchased. But before discussing compliance techniques we must note two aspects of the general control problem.

In the first place, the mechanics of competition intensifies the problem of obtaining compliance. Business competition has in the past been extolled for its ability to force efficiency on competitors, for its ability to coerce a majority by means of an efficient minority. But the mechanism whereby this coercion is achieved operates only in terms of results—it is wholly unable to detect means. Survival value may be gained quite as well through unfair trade practices, sweating labor, stealing patents, or bribing customers, as through increasing productivity of labor and improving products. One of the axioms of central control is that, though efficiency is desirable, certain methods of achieving it are unethical, tend

eventually to limit competition and are therefore anti-social. But the competitive process, which in proportion to its keenness forces selection of the fit, will, if unimplemented by control devices, make this selection without regard for whether survival is based on "chiseling" or efficiency. It will make it faster in a highly competitive situation than in one which is less competitive.

In the second place, unfair methods of competition are more contagious in regard to practices which affect most directly the criteria for survival in a competitive market. Breaking through an established price structure heads the list of contagious diseases.<sup>3</sup> A few price cutters, when economic conditions favor falling prices, seem to be able substantially to disorganize a market for which a price structure has been set up.

Labor standards can also be easily depressed by the actions of a few firms. Wages are both a price and a cost. When we think of labor as a cost, the contagious nature of wage cutting becomes evident.<sup>4</sup> As long as low wage rates are confined to high cost firms the problem does not become severe, but the minute efficient firms start to cut wages and achieve economies which can be reflected in price, competitors are compelled to follow the leader.<sup>5</sup>

The undermining of standards of honesty and fair play works more slowly. The fact that some firms believe it to be to their advantage to make inaccurate and misleading

<sup>3</sup> Fixed terms of sale, discounts, allowances and the like would fall in the same category.

<sup>4</sup> As a price, wages are subject to the influence of demand and supply. Consequently an oversupplied market tends to lower wages because men and women are willing to work for less and a large number of firms are not willing to pay more. But here the depressed price is an aggregate result more than the effect of financially necessary imitation.

<sup>5</sup> New invention operates in much the same way and can force other firms either to install similar machinery or cut wages.

statements in their advertising copy does not necessarily mean that the same thing is true for other firms. In fact, as was pointed out in Part I of this book, it is more often to the advantage of the largest and most influential firms to build up institutional prestige in terms of relatively reliable advertising regardless of what their competitors do.<sup>6</sup> However, it is further to the advantage of these firms to have the believability of advertising copy enhanced by a reduction in misleading statements.<sup>7</sup> Predatory and dishonest business practice is probably controlled by a different set of influences. But, on the whole, it would seem that these types of practices together with the degradation of advertising standards are less contagious than wage cutting and price cutting.

In general, then, in order to prevent "chisellers" from undermining an established price structure almost one hundred per cent control is necessary; in order to uphold wage rate standards it is necessary to prevent wage cutting by low cost firms; in order to uphold advertising standards a much less stringent degree of conformity is required.<sup>8</sup> This leads us to the question of what tools are available with which to achieve the necessary amount of control.

<sup>6</sup> It may well be that the public distinguishes between the reliability of different kinds of advertising. The good nature with which it accepts cigarette advertising might not be paralleled in its attitude toward department store copy and the latter may be regarded differently from the advertising of radio stores or automobile accessory shops.

<sup>7</sup> It should be noted that for firms which feature exaggerated claims a tendency towards increasing inaccuracy exists. If competitor A advertises the best values in the city, competitor B must advertise the best values in the state.

<sup>8</sup> The qualitative aspect of "chisellers" ought not to be neglected. One large and really skillfully handled firm can doubtless do more to undermine control than any number of less purposeful and less adroit groups of individuals.

## SECTION II: CONTROL TECHNIQUES

A man may act in a given way because he wants to or because he is made to. He may want to act in a way which furthers the common interest because he is willing to be altruistic and sacrifice his own best interest to further that of the larger group; because he accepts religiously, certain standards of what should and what should not be done which serve to reconcile his own interests with that of society;\* because he feels himself a part of a group and therefore substitutes their interest for his own; because his own selfish interest, in the time span in which he views it, is identical with that of the entire group. Failing the spontaneous wish to act in accordance with the common good, a man may be forced to do so. His susceptibility to pressures of various sorts provides an avenue of approach. External circumstances can, perhaps, be directly or secretly manipulated to exert pressures to which he is sensitive. These may vary from the moral force exerted by the mere existence of a law, to the outright elimination of the offender.

*Spontaneous Harmony*

The simplest method whereby the action of an individual can be made to conform with the needs of a larger group

\* Many of these concepts may be ambiguous when thought of abstractly, but, in terms of economic behavior they have meaning, e. g., it is sometimes contended that altruism is non-existent—a man only acts unselfishly because it would make him unhappy if he did not—therefore it is selfish to be unselfish. Although this seems to me to be a quibble and a misconception of the function of words, it is clear that the argument would not hold if interest is focused on a single aspect of human behavior—the economic. A man's business judgment might well tell him that it is to his financial interest to put on new employees at a lower salary than he had done in the past; but he may feel that to do so would work against the purposes of the NIRA in which purposes he believed; accordingly, he might refrain from reducing his hiring rate. Whatever his personal satisfaction might be in making this sacrifice, on an economic plane his behavior is altruistic.



is by the altruistic behavior of the individual. But altruism is a rare phenomenon.<sup>10</sup> This is in a sense a tribute to the power of social training. The American business man has been taught since infancy to understand completely that if he doesn't look out for himself no one is likely to do it for him: he is taught it in the streets; he is taught it at school; he is taught it in the factory or the office. He borrows from the interpreters of Darwin an ethics which reconciles his morals with his life—the fittest survive. He highjacks from Adam Smith an economic theory which reconciles his business practice with his social philosophy—*laissez-faire* is the surest way of achieving the greatest common good. To deny that the large majority of American business men are primarily looking out for their own interests is to categorically question the value of any social education. In general, it seems conservative to say that though the occasional altruistic act may be graciously accepted by the social planner in the spirit in which he would receive an unexpected extra return on an asset which had been written off, it would be most rash to build a system which in any sense relied on the supposition that individuals will make sacrifices for the public weal.<sup>11</sup>

The urgent and somewhat religious belief that it is "right" to pay high wages or to charge low prices would serve to reconcile the actions of the individual with those of the

<sup>10</sup> During the spring and summer of 1933 it is probable that several retailers in close contact with affairs in Washington may have had the feeling of giving up things of importance for the benefit of the country. But when the perfume of brotherly love evaporated with the passing of the early days of code drafting, totally altruistic feeling and gestures seemed likewise to disappear.

<sup>11</sup> The general use of the corporate form introduces an interesting ethical point: does the president of a corporation who is responsible to directors who are responsible to stock holders have any right to pay wages which are any higher than is necessary for maximum efficiency?

group. Although such beliefs may have been devoutly held in isolated cases, it seems unlikely that they could have been held for long. Failing a large endowment, a business man holding such ideas would have been forced out of business unless he had attained some mysterious efficiency.<sup>28</sup> In instances where "being good" is not very expensive, conduct conforming to moral standards is more likely to appear. But apparently it occurs only within groups or in regard to members of groups having a minimum of internal unity.

This leads us to the consideration of the third reason for which an individual may want to act in accordance with the public interest—the identification of self-interest and group interest. This is a question which ought to be discussed in connection with a specific situation: Did the individual retailer feel that his interests were identical with those of any group to which he belonged? Were his decisions based on the thought "will this be good for us?" In general it would seem that group affiliation was determined not by a sense

<sup>28</sup> It is interesting to speculate on how differently the capitalist system would operate if men were generally inspired by some compelling religious sentiment which applied to the problems of day by day living. It may well be, however, that one of the reasons why any general religiousness is so difficult to achieve is that the competitive necessity to be grasping and cruel puts too great a strain on the phenomenon of the logic tight compartment. It is possible to be tough for two-thirds of the day and sentimental for the other third, but it is hardly possible to ignore most moral values until the sun goes down and listen to the dictates of God or conscience in the evening. The large proportion of professional or leisure class people enrolled in a movement such as Buchmanism is an interesting case in point.

It is also conceivable that a healthy competitive society is in a sense a substitute for religion. Men do not need to achieve the necessary self-justification through religion—through being a meek atom of an important whole; they can promote the capital "I" and tread the path from news-boy to President. When this and similar though humbler roads become impassible, there is a tendency to retreat from the personal necessity to compete. An organized religion once again becomes essential to mental health if not to sanity.

of internal oneness but by the presence of a common enemy. The most intense local competitors acted with complete unity in relation to the invasion of their territory by a chain store. Retailers as a whole acted as a compact group when the question of taxes on retail sales was introduced. Essentially, therefore, there seems to be no one answer to the question of whether any genuine group identity existed; the affiliation varied in accordance with the particular issues. But the very existence of this constant realignment meant that no actual solidarity existed. The individual remained a discreet unit voluntarily selecting allies for specific battles. However one small glimmer of the beginnings of group feeling seems to have appeared. Some trade association members had begun to share a sufficient number of joint interests and battles to have developed the start of an internal herd feeling. Some of the more moral attitudes towards "honest" advertising and "fair play" operated within analogous groups. Doubtless only certain of the members of even the more compact associations were tainted with a group ideology. Moreover, even the best members were like half-trained dogs that come when called provided nothing too interesting is occurring somewhere else. But whether or not this herd feeling existed to an extent that warrants mention, one thing is clear—there was no foundation for any feeling of solidarity with the public as a whole on the basis of which the individual retailer could feel that the public interest was identical with his own as a member of that group. The thought that if everyone paid decent wages purchasing power would be increased and business would improve was an intellectual idea, unsupported by an appropriate feeling tone (except perhaps during some of the more quixotic moments of the summer of 1933). Accordingly, it seems almost inevitable that what occurred in regard to retail mark-up, for example, would be almost bound to be repeated

time and time again. There simply was no emotional basis for the willingness to take a chance that trade would continue to improve and accordingly make profits possible without additional mark-up. The "common sense" thought, that it was best to make sure of a profit while it was possible to do so, was bound to prevail.

The fourth proposition—that the interests of the retailer was actually identical with those of the group as a whole—would seem to me in the last analysis to be true; the technology of mass production, emphasizing as it does the problem of obtaining widely dispersed distribution, tends to make the interests of each industry practically identical with the public interest in its economic aspect; but there is disagreement on this point and it is not possible or necessary to develop it here. Two things prevented the thought, were it held, from shaping the action of individual business men: (1) It took a considerable length of time for socially inspired action to react to the benefit of their initiator; (2) It was necessary to be certain that all of one's competitors, to say nothing of the other individuals engaged in production or distribution, were making the same temporary sacrifice for the public weal.

If this analysis is sound, we are forced to conclude that there was little possibility of a spontaneous movement on the part, certainly of all retailers, and probably of most other business men to institute changes in their procedure in order to promote the public interest.<sup>18</sup> In other words, behavior

<sup>18</sup> It may seem that this point has been unnecessarily belaboured—that it is obvious. But the contrary opinion seems to have been held by many proponents of the New Deal. President Roosevelt speaks of "A New Public Conscience". (*On Our Way*, 261.) Secretary Wallace in a book which is full of moving poetry describes the cooperation for abundant living and then says: "This cooperation to which I refer depends for its strength on a revival of a deep recognition on the part of the individual that the world is in very truth one world, that human

in relation to NRA was typically predicted on self-interest; it was based on a judgment as to the direction of business advantage. Moreover the conception of self-interest was narrow; it was not extended in either the time or space dimension—business men were more concerned with advantage in two months than in two or ten years; there was little extension of the idea of 'self' to include other members of the trade and none to include all business men. There seems to be no immediate hope of changing fundamentally any of the situations described. Such change, were it to occur, would take generations to effect. Accordingly, for some time to come, the writing and enforcement of regulation analogous to NIRA would have to depend primarily on the exertion of pressures of one kind or another.

#### *Pressures*

The type of pressures which can be exerted range from an honest individual's desire to fulfill a promise to the elimination of an offending firm. Although there are many other influences which support a promise, the spoken word may be a most rigid contract. If certain people, for example, agree to pay wages of a given minimum for a specified length of time, it seems likely that they will do so. The difficulty of exacting the promise, particularly if no time limit is involved, is, of course, a different matter. Moreover, whether or not any personal contract is made, the mere existence of a law often exerts pressure in the direction of obedience. The amount of the pressure depends in part on whether the law is generally considered reasonable. This

nature is such that all men can look on each other as brothers, that the potentialities of nature and science are so far-reaching as to remove many of the ancient limitations" . . . and then again—" I know that the social machines set up by this new American administration will break down unless they are inspired by men who in their hearts catch a larger vision than the hard-driving profit motive of the past."

means that popular ideology must be prepared for it and it must seem useful and fair.<sup>14</sup>

Public opinion was perhaps the most potent enforcement tool in the retail trade. Through it compulsion could be exerted at several different levels. In the first place, since almost any man likes to be admired and respected, the mere fact that people would disapprove if Mr. Jones, a member of the code authority, kept his staff over hours, was likely to exert pressure on Mr. Jones either not to be on the code authority or not to make his staff work illegal hours. But, especially in retailing, the pressure of public opinion can take a far more substantial and convincing form. It can prevent people from entering a store to purchase. A retailer typically devotes much thought to devising ways of building institutional prestige. Accordingly he was interested in what people thought of his store, conscious of techniques for achieving desired ends, and particularly conscious of the effect of newspaper publicity.

Pressure can also be exerted on a firm by its competitors, customers or employees. The trade association or Better Business Bureau machinery can work in conjunction with

<sup>14</sup> It is interesting to note that the minimum wage provisions of the Retail Code seemed to be much more acceptable, in terms of current thinking, than were the hour provisions. Retailers could often remember the days when they had worked from seven in the morning until ten or eleven at night. To such individuals a forty or forty-eight hour week seemed effete. Some individuals and/or business groups resented all of the labor standards embodied in the codes. A statement by Mr. V. G. Iden, secretary of the American Institute of Steel Construction, is an interesting case in point. "We had been told that the NRA would legalize self-government in industry. It was used instead to foist new labor restraints upon industry." "It should be the purpose of government not to protect the weak against the strong, but to protect the useful and productive against the harmful and destructive." "Surely it is clear that laws must be reasonable or else reasonable men will disobey them with a clear conscience. That is why compliance under the NRA broke down so soon." (*The New York Times*, November 31, 1936; italics mine.)

an effort towards central planning just as well, if not better, than it can work alone. Pressure by competitors can take the form of reporting illegal conduct,<sup>15</sup> of threats of expulsion from the association, or merely of unorganized disapproval which may or may not exert a certain moral pressure on the offender. The disapproval of customers can be an important influence, whether those customers are the general public or business men. The Blue Eagle provided a technique for focusing customer attitudes and was useful in proportion to the strength of customer belief in NRA.<sup>16</sup> In industries in which labor is well organized, a union can be a most important enforcement agency. In industries where unionization is more rare, the fear of giving unions a hold can also exert a salutary effect. In so far as central planning aims to control labor conditions, a well-run union can probably be the most important single ally of the State in enforcing standards.

This list of pressures might in part operate without any purposeful manipulation. In part popular reactions might be subject to manipulation through the techniques employed by public relations experts in conditioning reactions to Maxwell House Coffee or automobile accidents. It is important to note, however, that the effectiveness of these aides to law and order depend essentially on the sentiment of the general public and of the groups to which regulations would apply. It is conceivable that in the face of adverse opinion the

<sup>15</sup> It is interesting to note that although retailers were often willing to report violations of trade practice provisions, they seldom reported violations of the labor provisions. Apparently the solidarity of employers as opposed to employees was stronger than the desire to compete on an equal basis. It was "tattle-taling" to report labor violations—"snitching".

<sup>16</sup> Customer opinion can lead to breaking codes as it did when retailers, as customers of manufacturers, insisted on the latter violating clauses in their own codes which retailers considered unfair.

pressure exerted by competitors, customers, etc., would be *opposed* to compliance.

But the State can enforce a law directly by the use of conventional enforcement machinery. The fact that an inspector may walk into an establishment without warning may, if a proprietor has been conditioned to brass buttons and blue uniforms at an early age, have in itself a salutary effect. For the rest, the effectiveness increases as the offence is difficult to conceal, the inspector unbribable, the inspection thorough and frequent, the punishment certain and severe.<sup>17</sup> The problem of making the offense difficult to conceal is essentially one of law drafting and technique of administration. In retail stores, for example, hour violations could hardly be apprehended without an impossibly cumbersome inspection machinery, unless the employer was required to post the time during which each employee was scheduled to be in the store. In America, the unbribable inspector cannot be taken for granted; he is a difficult phenomenon to achieve; for a total staff of inspectors, he is doubtless an impossible phenomenon to achieve.<sup>18</sup> The thorough and frequent inspection takes time; accordingly it takes men and money. The sure punishment may be more important than the severe punishment, particularly for the first or second offenses. It would seem that the anomalous status of NRA, resulting from the absence of a clear court trial, did much to prevent

<sup>17</sup> The technique of achieving compliance solely through complaint procedure seems to have been pretty thoroughly discredited. Not only was the method inefficient and inequitable, but it encouraged a long list of the more anti-social characteristics of both the complainant and the respondent.

<sup>18</sup> The problem is how to minimize not how to eliminate bribery. In New York State a system of rotating inspectors was arranged in order to prevent an individual from repeatedly coming into contact with the same firms. Nevertheless there were constant reports coming into the New York Retail Code Authority (no attempt was made to verify these reports) of employees or competitors having seen Department of Labor inspectors accepting money.



effective enforcement. Although bluff worked hard and well for NRA, it would seem that for any more permanent arrangement the courts would have to be clearly willing to back a regulatory law with fast and final decisions, even if obtaining speed necessitated the establishment of special trade and labor courts.<sup>19</sup> But in addition to being certain, the punishment ought to be at least more expensive than initial compliance. In other words, a business man might logically be willing to take a chance on being caught for paying less than a minimum wage if the fine which he would be forced to pay were he apprehended would be no greater than the amount which he already owed his employees. Conceivably the severity of the punishment might approach the extinction of the firm. Thus an establishment that finally refused to comply might be put out of business either directly through licensing, or indirectly through imprisonment of the proprietors or through a prohibitive fine. Further pressures can be directly exerted by the State through the placement of national, state and city government contracts only with firms that comply with certain standards.

We have noted that, except in regard to these direct methods of enforcement, available tools depend largely on a favorable public opinion. Moreover even forthright government compliance machinery depends on public sentiment: certainly the willingness of inspectors to accept bribes and to make cursory examinations is influenced by the popular respect for the law which presumably is being enforced.

The enumeration of available enforcement tools leaves one severely doubtful whether it is possible to attain a sufficient degree of control to enforce a large number of price schedules. It further indicates that the enforcement of labor

<sup>19</sup> Speed is not only necessary for efficiency but also for justice in regard to labor cases. Typically the employer is in a far better position to wait than is the employee; accordingly delay is a decision for the former.

provisions could probably only be achieved at the price of an expensive inspection machinery and undesirable reactions on groups within the labor ranks.<sup>30</sup> In regard to many trade practice provisions one is inclined to wonder whether industry desperately requires governmental aid.

#### *Enforcement Agencies*

The problem of effective pressures does not stop with the enumeration of tools at the disposal of enforcement agencies. The adequacy of the administrative agency itself cannot be taken for granted. State minimum wage and maximum hour legislation has presented elaborate and often bitter illustration of political and other problems involved in efficient enforcement of even a relatively simple kind of industrial regulation. The administration of regulations as complicated and detailed as those contained in NRA codes involved far more serious problems. NRA was built on the dual conception of industrial self-regulation and governmental check on the actions of industry on behalf of the public interest. In the concluding chapter of Part III we developed the theses that the Retail Code Authority (and it is thought that the retailers did as good if not a better job than did the majority of others) could not be relied upon

<sup>30</sup> E. g., It would seem that the enforcement of minimum wages and maximum hour legislation in the retail trade would probably involve the following costs: A probable reduction in the earnings of workers above the minimum; a certain amount of sharing of work and accompanying sharing of weekly payrolls; the semi-permanent unemployment of low efficiency workers; considerable difficulty for young workers to obtain experience; an increase in the proportion of the work in small stores done by proprietors and their families; rigidity in store operation caused by the necessity to post the specific hours when each employee would be in the store on each day of the week; failure of a number of marginal firms; a costly staff of inspectors. It might well be that even at this price, particularly in the face of an unsympathetic public opinion, it would not be possible adequately to control minimum wages and maximum hours in a trade having as small a unit size as does retailing.

properly to protect the public interest particularly in the matter of interpretations.<sup>21</sup> We noted also that the adequate protection of the public by the government was difficult if not impossible to achieve: the function of watch dog had to be undertaken by a large number of individuals free to devote the major portion of their time to the job of code administration; at the same time, efficient guardianship required detailed knowledge of the conditions of industry or trade, unusual judgment, skill in negotiation, and brisk independence. Biology teaches that individuals of exceptional capacity are rare; specific combinations of exceptional qualifications are, of course, rarer still. These difficulties seem to be a function of the complicacy of the regulations, the breadth of the economic area to which they applied, and of the government-industry dualism of the administrative structure. As long as these characteristics were present in any control legislation of the future, it is improbable that the difficulties could be obviated or even significantly lessened, however improved the forms and techniques of control might be.

### SECTION III: SUBMISSION TO RESTRICTIVE MEASURES

If we continue to limit the discussion to 20th century capitalist society in the United States, the question of how to engineer the enactment of socially useful regulation which deals with labor standards and competitive practices in a large number of industries is almost as difficult a problem as how to enforce such legislation after it has become a law.

<sup>21</sup> Though the enforcement of clear Code requirements were relatively well handled by the retail code authorities under NRA there is no reason to assume that the same mechanism would provide a similar result in the future. It has been pointed out that public sentiment was a crucial factor in influencing code authority members as well as individual retailers. The fact that compliance seemed to be waning during the last lap of NRA might augur serious difficulty in duplicating the earlier excellence.

A few industries might well have Federal legislation imposed upon them by the elected representatives of the people; legislation of this kind might conceivably occur in certain of the "sick" industries or in connection with individual industries especially affected with the public interest, or concerning which the populace was indignant. It seems most improbable, however, that distasteful legislation could be *imposed upon* a large proportion of the nation's business; any widespread regulation would certainly require at least the half-hearted consent of the group to which it applied. But on what basis would the necessary consent of the governed group be likely to rest?

It would seem that either one or both of two alternatives are possible if we eliminate, as we find we must, the likelihood of altruistic submission to restrictions in the public interest: either the group must be induced to accept legislation because it seems less bad than some other law which is believed to constitute the alternative; or regulation may be accepted because it contains enough of what is wanted for the industry to be willing to accept the more undesirable portions along with the good.<sup>23</sup>

The specific bait which can be offered has a limited range:<sup>24</sup> (1) If industry believed that it faced a national minimum wage law or some other type of labor legislation, it might be willing to accept regulation which permitted the employers a certain amount of administrative control. But the story traced in this book would caution against this particular inducement, especially in regard to interpretation procedure and administration in areas in which expectations are not clearly established. (2) Permission to uphold a price

<sup>23</sup> The acceptance of NRA was, of course, a combination of both of these elements.

<sup>24</sup> It should be noted that these inducements need only to appeal to the controlling individuals and factions in an industry unless regulation required an industry poll showing unanimous approval.

structure, limit production or ration markets might induce an industry willingly to accept less desirable types of regulation. But here again, in the opinion of many people, regulation might be dearly bought unless the price and production restrictions did not tend to raise prices or restrict price elasticities. (3) Enforcement of trade ethics by national law was an inducement to accept other types of regulation. Whether that in itself could ever be an adequate inducement seems highly problematical. (4) Minimum wage and maximum hour legislation might be desired by firms which for humane or other reasons would like to pay decent wages but could not afford to do so unless their competitors were required to maintain similar standards.

The method whereby these various baits might be selected could vary. The story told in this book seems to indicate clearly that one method—that employed by NRA—is unsound. Judging from the experience of retailers, it would seem that the process of bargaining and arriving at voluntary agreements which were essentially the result of a tug-of-war between interested parties is inequitable to the factions that are not organized enough to be represented, to the factions which are not sufficiently organized to exert effective pressure, and to the factions whose cause is not urged with as much skill as that of another group. A fight determines who is stronger—not who is right.

It is clear, however, that whether codes were wrangled over in the market place or were drafted on the basis of a centrally conceived and carefully thought out theory, the element of bargaining could not be eliminated. The *quid pro quo* would be exacted as long as we maintained any semblance of democratic government. True, if policy were deliberate the terms of the bargain could be conscious and therefore perhaps better.<sup>24</sup> However, it is difficult to pic-

<sup>24</sup> Control over certain practices could at one and the same time be considered in the public interest and highly desirable by the industry.

ture a set of regulations adequately protecting the public interest, which would be voluntarily accepted by an industry, except in cases where business conditions were so bad that some sort of government regulation was a virtual necessity.<sup>25</sup>

Wishful thinking inclines us to exaggerate human potency. Actually, our ability to manipulate circumstance is strictly limited—a fact hardly surprising when we consider that in order to achieve substantial influence over economic phenomena it is necessary to penetrate into millions of minds and there within each skull to generate an impulse compatible with the general purpose. Nevertheless, the persistent negative nature of our conclusions seems, if not unduly pessimistic, at least surely discouraging; so, at any rate, it has been to the writer. Yet it would seem that negative conclusions, when facts point relentlessly toward them, ought to be frankly faced. A “no” based not on fear but on conviction is positive answer.

The foregoing discussion has indicated that legislation of the NRA variety deals largely with a category of economic phenomena which either cannot be controlled at all or controlled only at an excessive price. Obviously this conclusion does not apply to all remedial legislation. Social insurance, minimum wage laws, regulation of a few of the “sick industries” and many other types of palliatives may, after hard-headed realistic scrutiny, appear to be clearly worth the price which they involve.

The discussion here has been confined to detailed control of competitive practices in the bulk of American industry. Our findings suggest that the field within which this type of

<sup>25</sup> It is possible that regulatory laws may have their best chance of being drafted in a form which would further the public interest in the “sick industries”. The public interest in conservation of natural resources might serve to make socially useful legislation acceptable to some of the natural resource industries.

law can successfully operate is narrow, and even within this field, the cost of obtaining acceptance of regulation and the cost of enforcing rules which have been laid down is indeed high. But there is a further cost which might be involved. There seems to be a clear tendency for the centralized control of industry to leak into the hands of industry. This seems to occur in part because the constant contest between groups encourages powerful industrial association, and in part because of the nature of the processes to be controlled and its necessary implication in terms of an administrative problem. At all events there is involved a constant danger that the government may lose its monopoly of governmental functions.<sup>46</sup> The checks and balances of democratic government may be seriously upset if control gravitates, as it is likely to do, into the hands of the people who are presumably being controlled. For those who wish to preserve the equilibrium of democracy, it may be well to economize government in business in order similarly to minimize the necessary counterpart—business in government.

<sup>46</sup> Frank H. Knight, *The Ethics of Competition*, Harper Bros., 1935, p. 343. Dr. Knight explains in one of his illuminating footnotes "The first and overwhelmingly most important task of government is the two-fold one, (a) of fixing the 'sphere of government', i. e., of deciding upon a general division between the sphere of activity which is to be jointly planned and executed and that which is to be left to individual planning, and (b) of maintaining its own monopoly of governmental functions by preventing any individual or group in society, other than the duly constituted authorities, acting in their legally defined sphere, from exercising any 'control'."

## APPENDIX

### NATIONAL RECOVERY ADMINISTRATION

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#### CODE OF FAIR COMPETITION

#### FOR THE RETAIL TRADE

AS APPROVED ON OCTOBER 21, 1933

BY

PRESIDENT ROOSEVELT

#### CODE OF FAIR COMPETITION FOR THE RETAIL TRADE

To effectuate the policies of Title I of the National Industrial Recovery Act the following provisions are established as a Code of Fair Competition for the Retail Trade.

##### ARTICLE I. APPLICATION OF CODE

SECTION 1. *Application of Code.*—The provisions of this Code, except such provisions as are included in Schedule A annexed hereto and in such other schedules as may subsequently be approved and annexed hereto, and except as hereinafter specifically provided, shall apply to all retailers and/or retail establishments engaged in the retail trade as defined in Article II hereinafter. The provisions of Schedule A and such other schedules as may subsequently be annexed hereto shall apply only to those retailers and/or retail establishments as are specifically included within the provisions of such schedules.

SECTION 2. *Request for separate Code.*—Any division of the retail trade which has not participated in the formation or establishment of this Code may make application to the Admin-



istrator to operate under a separate Code of Fair Competition. The Administrator shall determine whether such division of the retail trade shall operate under this Code or under a separate Code, and may, if justice requires, stay the application of this Code to such division pending his decision or pending the approval by the President of the United States of a Code of Fair Competition for such division.

## ARTICLE II. DEFINITIONS

SECTION 1. *Retail trade.*—The term "retail trade" as used herein shall mean all selling of merchandise to the consumer and not for purposes of resale in any form, in the continental United States excluding the Panama Canal Zone. It is provided, however, that the term shall not include the selling at retail of milk and its products, tobacco and its products, and foods and food-stuffs, or the dispensing of drugs, medicines, and medical supplies by a physician, dentist, surgeon or veterinarian in the legitimate practices of his profession; and it is further provided that the term shall not include any division of retail selling (except the selling of drugs and allied products) which is now or may hereafter be governed by a separate Code of Fair Competition approved by the President of the United States.

SECTION 2. *Retailer.*—The term "retailer" as used herein shall mean any individual or organization engaged wholly or partially in the retail trade.

SECTION 3. *Establishment.*—The term "establishment" as used herein shall mean any store or department of a store, shop, stand, or other place where a retailer carries on business, other than those places where the principal business is the selling at retail of products not included within the definition of retail trade. The term is also used herein to refer to the retailer who carries on business in such establishments.

SECTION 4. *Employee.*—The term "employee" as used herein shall mean any person employed by any retailer but shall not include persons employed principally in the selling at retail of products not included within the definition of retail trade.

SECTION 5. *Definitions of personnel.*—(a) Executive: The term "executive" as used herein shall mean an employee responsible for the management of a business or a recognized subdivision thereof.

(b) Professional person: The term "Professional person" as used herein shall mean lawyers, doctors, nurses, research technicians, advertising specialists, and other persons engaged in occupations requiring a special discipline and special attainments.

(c) Outside salesman: The term "outside salesman" as used herein shall mean a salesman who is engaged not less than sixty (60) percent of his working hours outside the establishment, or any branch thereof, by which he is employed.

(d) Outside collector: The term "outside collector" as used herein shall mean a collector of accounts who is engaged not less than sixty (60) percent of his working hours outside the establishment, or any branch thereof, by which he is employed.

(e) Watchmen and guards: The terms "watchmen" and "guards" as used herein shall mean employees engaged primarily in watching and safeguarding the premises and property of a retail establishment.

(f) Store detective: The term "store detective" as used herein shall mean an employee engaged exclusively in detective work.

(g) Maintenance employee: The term "maintenance employee" as used herein shall mean an employee essential to the upkeep and / or preservation of the premises and property of a retail establishment.

(h) Outside service employee: The term "outside service employee" as used herein shall mean an employee engaged primarily in delivering, installing, or servicing merchandise outside the establishment, and shall include stable and garage employees.

(i) Junior employee: The term "junior employee" as used herein shall mean an employee under eighteen (18) years of age.

(j) Apprentice employee: The term "apprentice employee" as used herein shall mean an employee with less than six (6) months' experience in the retail trade.

(k) Part-time employee: The term "part-time employee" as used herein shall mean an employee who works for less than the maximum work week.

SECTION 6. *South*.—The term "South" as used herein shall mean Virginia, West Virginia, Maryland, North Carolina, South Carolina, Georgia, Florida, Kentucky, Tennessee, Alabama, Mississippi, Arkansas, Louisiana, Oklahoma, New Mexico, Texas, and the District of Columbia.

SECTION 7. *Population*.—Population shall be determined by reference to the Fifteenth Census of the United States (U. S. Department of Commerce, Bureau of Census, 1930).

#### ARTICLE III. EFFECTIVE DATE

The effective date of this Code shall be the second Monday after its approval by the President of the United States.

#### ARTICLE IV. GENERAL LABOR PROVISIONS

SECTION 1. *Collective bargaining*.—(a) Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(b) No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing.

(c) Employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

SECTION 2. *Child labor*.—On and after the effective date of this Code, no person under the age of sixteen (16) years shall be employed, except that persons fourteen (14) and fifteen (15) years of age may be employed either—

(a) for a period not to exceed three (3) hours per day on six (6) days per week, or

- (b) for one day per week, such day not to exceed eight (8) hours.

In either case, all such hours of work shall be between 7 A. M. and 7 P. M. and shall not conflict with the employees' hours of day school. It is provided, however, that no person under the age of sixteen (16) years shall be employed in delivering merchandise from motor vehicles.

It is further provided that where a State law prescribes a higher minimum age no person below the age specified by such State law shall be employed within such State.

#### ARTICLE V. STORE HOURS AND HOURS OF LABOR

SECTION I. *Basic store and working hours.*—On and after the effective date of this Code establishments in the retail trade shall elect to operate upon one of the following schedules of store hours and hours of labor:

*Group A.*—Any establishment may elect to remain open for business less than fifty-six (56) hours but not less than fifty-two (52) hours per week, unless its store hours were less than fifty-two (52) hours prior to June 1, 1933, in which case such establishment shall not reduce its store hours; no employee of these establishments shall work more than forty (40) hours per week, nor more than eight (8) hours per day, nor more than six (6) days per week.

*Group B.*—Any establishment may elect to remain open for business fifty-six (56) hours or more per week but less than sixty-three (63) hours per week; no employee of such establishment shall work more than forty-four (44) hours per week, nor more than nine (9) hours per day, nor more than six (6) days per week.

*Group C.*—Any establishment may elect to remain open for business sixty-three (63) hours or more per week; no employee of such establishment shall work more than forty-eight (48) hours per week, nor more than ten (10) hours per day, nor more than six (6) days per week.

No employee shall work for two or more establishments a greater number of hours, in the aggregate, than he would be permitted to work for that one of such establishments which operates upon the lowest schedule of working hours.

No employee not included in the foregoing paragraphs, and not specifically excepted hereinafter, shall work more than forty (40) hours per week, nor more than eight (8) hours per day, nor more than six (6) days per week.

SECTION 2. *Schedule of hours to be posted.*—On or within one week after the effective date of this Code every retail establishment shall designate under which of the Groups set forth in the preceding Section it elects to operate and shall post and maintain in a conspicuous place in the establishment a copy of such election showing its store hours and employee working hours.

SECTION 3. *Changes in store hours and employee working hours.*—

(a) No establishment may change from the Group in which it has elected to operate except upon December 31 of every year.

(b) Any establishment, however, may at any time increase its store hours, provided it maintains the basic employee work week of the Group in which it originally elected to operate.

(c) Any establishment may, for a period not to exceed three (3) months during the Summer, temporarily reduce its store hours, but the weekly wages of its employees shall not on that account be reduced.

SECTION 4. *Exceptions to maximum periods of labor.*—

(a) *Professional persons, outside salesmen, outside collectors, watchmen, guards, and store detectives.*—The maximum periods of labor prescribed in Section 1 of this Article shall not apply to professional persons employed and working at their profession, or to outside salesmen, outside collectors, watchmen, guards, and store detectives.

(b) *Maintenance and outside service employees.*—The maximum periods of labor prescribed in Section 1 of this Article shall not apply to maintenance and outside service employees; but such employees shall not work more than six (6) hours per

week above the maximum hours per week otherwise prescribed by Section 1 unless they are paid at the rate of time and one-third for all hours over such additional six (6) hours per week.

(c) *Executives.*—Subject to the conditions set forth in Section 5 of this Article, executives receiving \$35.00 or more per week in cities of over 500,000 population, or receiving \$30.00 or more per week in cities of 100,000 to 500,000 population, or receiving \$27.50 or more per week in cities of 25,000 to 100,000 population, or receiving \$25.00 or more per week in cities, towns, villages, and other places under 25,000 population, may work in excess of the maximum periods of labor prescribed in Section 1 of this Article. In the South executives paid not less than ten (10) per cent below the wages just specified may work in excess of such maximum periods.

(d) *Peak periods.*—At Christmas, inventory, and other peak times, for a period not to exceed two (2) weeks in the first six (6) months of the calendar year and not to exceed three (3) weeks in the second six (6) months, an employee whose basic work week is forty (40) hours may work not more than forty-eight (48) hours per week and nine (9) hours per day; an employee whose basic work week is forty-four (44) hours may work not more than fifty-two (52) hours per week and nine and one-half (9½) hours per day; an employee whose basic work week is forty-eight (48) hours may work not more than fifty-six (56) hours per week and ten (10) hours per day. All such work may be without the payment of overtime.

SECTION 5. *Limitation upon number of persons working unrestricted hours.*—Notwithstanding the provisions of the foregoing sections of this Article, and regardless of the number of persons otherwise permitted to work unrestricted hours, the total number of workers in any establishment (whether such workers are executives, proprietors, partners, persons not receiving monetary wages, or others) who shall be permitted to work unrestricted hours shall not exceed the following ratio: In establishments comprised of twenty (20) workers or less the total number of workers who may work unrestricted hours (not in-

cluding those workers specified in Section 4 (a) of this Article) shall not exceed one worker for every five (5) workers or fraction thereof; in establishments comprised of more than twenty (20) workers the total number of workers who may work unrestricted hours (not including those workers specified in Section 4 (a) of this Article) shall not exceed one worker for every five (5) workers for the first twenty (20) workers, and shall not exceed one worker for every eight (8) workers above twenty (20).

SECTION 6. *Hours of work to be consecutive.*—The hours worked by any employee during each day shall be consecutive, provided that an interval not longer than one hour may be allowed for each regular meal period, and such interval not counted as part of the employee's working time. Any rest period which may be given employees shall not be deducted from such employee's working time.

SECTION 7. *Extra working hour on one day a week.*—On one day each week employees may work one extra hour, but such work is to be included within the maximum hours permitted each week.

SECTION 8. *Conflict with State laws.*—When any State law prescribes for any class of employees shorter hours of labor than those prescribed in this Article, no employee included within such class shall be employed within such State for a greater number of hours than such State law allows.

#### ARTICLE VI. WAGES

SECTION 1. *Basic schedules of wages.*—On and after the effective date of this Code, the minimum weekly rates of wages which shall be paid for a work week as specified in Article V—whether such wages are calculated upon an hourly, weekly, monthly, commission, or any other basis—shall, except as hereinafter provided, be as follows:

(a) *Within cities of over 500,000 population*, no employee shall be paid less than at the rate of \$14.00 per week for a forty (40) hour work week, or less than at the rate of \$14.50 per

week for a forty-four (44) hour work week, or less than at the rate of \$15.00 per week for a forty-eight (48) hour work week.

(b) *Within cities of from 100,000 to 500,000 population*, no employee shall be paid less than at the rate of \$13.00 per week for a forty (40) hour work week, or less than at the rate of \$13.50 per week for a forty-four (44) hour work week, or less than at the rate of \$14.00 per week for a forty-eight (48) hour work week.

(c) *Within cities of from 25,000 to 100,000 population*, no employee shall be paid less than at the rate of \$12.00 per week for a forty (40) hour work week, or less than at the rate of \$12.50 per week for a forty-four (44) hour work week, or less than at the rate of \$13.00 per week for a forty-eight (48) hour work week.

(d) *Within cities, towns, villages of from 2,500 to 25,000 population*, the wages of all classes of employees shall be increased from the rates existing on June 1, 1933, by not less than twenty (20) percent, provided that this shall not require an increase in wages to more than the rate of \$11.00 per week and provided further that no employee shall be paid less than at the rate of \$10.00 per week.

(e) *Within towns, villages, and other places with less than 2,500 population*, the wages of all classes of employees shall be increased from the rates existing on June 1, 1933, by not less than twenty (20) percent, provided that this shall not require an increase in wages to more than the rate of \$10.00 per week.

The minimum wages paid to professional persons, outside salesmen, outside collectors, watchmen, guards, store detectives, and maintenance and outside service employees shall be upon the basis of the basic employee work week upon which the establishment by which they are employed has elected to operate.

The minimum wages of any employee not included in the foregoing paragraphs and not specifically excepted hereinafter shall be upon the basis of a forty (40) hour work week.

SECTION 2. *Juniors and apprentices.*—Junior and apprentice employees may be paid at the rate of \$1.00 less per week than the minimum wage otherwise applicable; it is provided, how-



ever, that no employee shall be classified both as a junior and as an apprentice employee, and it is further provided that the number of employees classified as junior and as apprentice employees, combined, shall not exceed a ratio of one such employee to every five employees or fraction thereof up to twenty (20), and one such employee to every ten (10) employees above twenty (20).

SECTION 3. *Southern wage differential.*—In the South, within cities of over 25,000 population, the minimum wages prescribed in the foregoing sections may be at the rate of \$1.00 less per week; within cities, towns, and villages of from 2,500 to 25,000 population the wages of all classes of employees shall be increased from the rates existing on June 1, 1933, by not less than twenty (20) percent, provided that this shall not require an increase in wages to more than the rate of \$10.00 per week, and provided further than no employee shall be paid less than at the rate of \$9.00 per week except as provided in Section 2 of this Article; within cities, towns, villages, and other places under 2,500 population the wages of all classes of employees shall be increased from the rates existing on June 1, 1933, by not less than twenty (20) percent, provided that this shall not require an increase in wages to more than the rate of \$9.00 per week.

SECTION 4. *Part-time employees.*—Part-time employees shall be paid not less than at an hourly rate proportionate to the rates prescribed in the foregoing sections of this Article.

SECTION 5. *Weekly wages above minimum not to be reduced.*—The weekly wages of all classes of employees receiving more than the minimum wages prescribed in this Article shall not be reduced from the rates existing upon July 15, 1933, notwithstanding any reduction in the number of working hours of such employees.

SECTION 6. *Conflict with State laws.*—When any State law prescribes for any class of employees of either sex a higher minimum wage than that prescribed in this Article, no employee of such class of either sex employed within that State shall be paid less than such State law requires.

ARTICLE VII. LIMITATIONS UPON PRICE INCREASES;  
PRIOR CONTRACTS

SECTION 1. *Limitation upon price increases.*—No retailer shall increase the price of any merchandise sold after the effective date of this Code over the price existing June 1, 1933, by more than is made necessary by the amount of increases in production, operating, replacement, and / or invoice costs of merchandise, and / or by taxes or other costs resulting from action taken pursuant to the National Industrial Recovery Act and / or the Agricultural Adjustment Act since June 1, 1933, and in setting such price increases retailers shall give full weight to probable increases in sales volume. It is provided, however, that if any price on June 1, 1933, was a distress price, an equitable adjustment may be made.

SECTION 2. *Adjustment of prior contracts.*—Where costs of executing contracts entered into before June 16, 1933, by any retailer for the purchase of goods at fixed prices for delivery during the duration of this Code are increased by the application of the provisions of the National Industrial Recovery Act and / or the Agricultural Adjustment Act, it is deemed equitable and promotive of the purposes of the Act that appropriate adjustments of such contracts to reflect such increased costs, actually incurred be arrived at by mutual agreement or arbitral proceedings or otherwise, and the National Retail Trade Council provided for in Article I hereinafter is constituted an agency to assist in effecting such adjustments.

ARTICLE VIII. LOSS LIMITATION PROVISION

SECTION 1. *Loss limitation provision.*—In order to prevent unfair competition against local merchants, the use of the so-called "loss leader" is hereby declared to be an unfair trade practice. These "loss leaders" are articles often sold below cost to the merchant for the purpose of attracting trade. This practice results, of course, either in efforts by the merchant to make up the loss by charging more than a reasonable profit for other articles, or else in driving the small merchant with little

capital out of legitimate business. It works back against the producer of raw materials on farms and in industry and against the labor so employed.

1. This declaration against the use of "loss leaders" by the storekeeper does not prohibit him from selling an article without any profit to himself. But the selling price of articles to the consumer should include an allowance for actual wages of store labor, to be fixed and published from time to time by the Trade Authority hereinafter established.

2. Such an allowance for labor need not be included in the selling price of any article of food, or be applied by storekeepers doing business only in communities of less than 2,500 population (according to the 1930 Census) which are not part of a larger trade area.

*Provided, however,* That any retailer may sell any article of merchandise at a price as low as the price set by any competitor in his trade area on merchandise which is identical or essentially the same, if such competitor's price is set in conformity with the foregoing provision. A retailer who thus reduces a price to meet a competitor's price as above defined shall not be deemed to have violated the provisions of this section if such retailer immediately notifies the nearest representative retail trade organization of such action and all facts pertinent thereto.

SECTION 2. *Exceptions.*—(a) Notwithstanding the provisions of the preceding Section, any retailer may sell at less than the prices specified above, merchandise sold as bona fide clearance, if advertised, marked, and sold as such; highly perishable merchandise, which must be promptly sold in order to forestall loss; imperfect or actually damaged merchandise, or bona fide discontinued lines of merchandise, if advertised, marked, and sold as such; merchandise sold upon the complete final liquidation of any business; merchandise sold in quantity on contract to public carriers, departments of government, hospitals, schools and colleges, clubs, hotels, and other institutions, not for resale and not for redistribution to individuals; merchandise sold or donated for charitable purposes or to unemployment

relief agencies; and drugs or drug sundries sold to physicians, nurses, dentists, veterinarians, or hospitals.

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

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

#### ARTICLE IX. TRADE PRACTICES

All retailers shall comply with the following trade practices:

SECTION 1. *Advertising and selling methods.*—(a) No retailer shall use advertising, whether printed, radio, or display or of any other nature, which is inaccurate in any material particular or misrepresents merchandise (including its use, trade-mark, grade, quality, quantity, size, origin, material, content, preparation, or curative or therapeutic effect) or credit terms, values, policies, or services; and no retailer shall use advertising and / or selling methods which tend to deceive or mislead the customer.

(b) No retailer shall use advertising which refers inaccurately in any material particular to any competitor or his merchandise, prices, values, credit terms, policies, or services.

(c) No retailer shall use advertising which inaccurately lays claim to a policy or continuing practice of generally under-selling competitors.

(d) No retailer shall secretly give anything of value to the employee or agent of a customer for the purpose of influencing a sale, or in furtherance of a sale render a bill or statement of account to the employee, agent, or customer which is inaccurate in any material particular.

(e) No retailer shall place obstacles in the way of the purchase of a product which a consumer orders by brand name by urging upon the consumer a substitute product in a manner which disparages the product ordered.

SECTION 2. *N.R.A. label.*—No retailer shall purchase, sell, or exchange any merchandise manufactured under a Code of Fair Competition which requires such merchandise to bear an N.R.A. label, unless said merchandise bears such label. Any retailer rightfully possessing the insignia of the N.R.A. who has in stock or purchases similar merchandise which has been manufactured before the effective date of the Code of Fair Competition requiring such merchandise to bear an N.R.A. label may attach thereto the N.R.A. insignia.

SECTION 3. *Prison-made goods.*—Pending the formulation of a compact or code between the several States of the United States to insure the manufacture and sale of prison-made goods on a fair competitive basis with goods not so produced, the following provisions of this Section will be stayed for ninety (90) days, or further at the discretion of the Administrator:

(a) Where any penal, reformatory, or correctional institution, either by subscribing to the code or compact hereinbefore referred to, or by a binding agreement of any other nature, satisfies the Administrator that merchandise produced in such institution or by the inmates thereof will not be sold except upon a fair competitive basis with similar merchandise not so produced, the provisions of paragraph (b) hereof shall not apply to any merchandise produced in such manner in the institutions covered by such agreement.

(b) Except as provided in the foregoing paragraph, no retailer shall knowingly buy or contract to buy any merchandise produced in whole or in part in a penal, reformatory, or correctional institution. After May 31, 1934, no retailer shall knowingly sell or offer for sale such merchandise. Nothing in this Section, however, shall affect contracts, which the retailer does not have the option to cancel, made with respect to such merchandise before the approval of this Code by the President of the United States.

(c) Nothing in this Section shall be construed to supersede or interfere with the operation of the Act of Congress approved January 19, 1929, being Public No. 669 of the 70th Congress and entitled "An Act to Divest Goods, Wares, and Merchandise

Manufactured, Produced or Mined by Convicts or Prisoners of their Interstate Character in Certain Cases", which Act is known as the Hawes-Cooper Act, or the provisions of any State legislation enacted under, or effective upon, the effective date of the said Hawes-Cooper Act, the said effective date being January 19, 1934.

SECTION 4. *Company scrip*.—The following provisions of this Section shall not become effective until March 1, 1934. Pending such effective date the Administrator shall appoint a Committee of not more than three persons to investigate the economic and social implications of these provisions. Said Committee may make recommendations, based upon its investigations, and such recommendations shall, upon approval by the President of the United States, become effective in the place of these provisions:

(a) No retailer shall accept as payment for merchandise any non-negotiable scrip, company checks, or other evidence of wage payment issued by any individual or private profit organization in payment of wages or as an advance upon unearned wages. A negotiable instrument issued by any individual or private profit organization in payment of wages shall be accepted only if it is payable in cash within one month of the date of issue. This paragraph shall not apply in cases where the cash funds of any individual or organization are rendered temporarily unavailable due to the closing by state or federal order of the bank in which such funds are deposited.

(b) No retailer shall extend credit in the form of goods, money, or services to any person other than its own employees engaged exclusively in the retail trade, upon any employer's guarantee of part or all of said person's future wages, or pursuant to a wage-deduction arrangement entered into with said employer, unless an identical guarantee or wage-deduction arrangement is available to all retailers.

#### ARTICLE X. ADMINISTRATION

The following provisions for the administration of this Code shall not apply to the retail drug trade, which shall be governed by the provisions of Section 5 of Schedule A annexed hereto.

SECTION 1. *Retail Trade Authority.*—The Retail Trade Authority shall consist of the Administrator or his Deputy, and three members appointed by the President of the United States, who shall advise and assist the Administrator or his Deputy. Members of the Retail Trade Authority shall be members, without vote, of the National Retail Trade Council provided for hereinafter.

SECTION 2. *National Retail Trade Council.*—(a) *Composition.*—The National Retail Trade Council shall consist of at least one, but not more than three, representatives from each major division of the retail trade presenting this Code or hereafter subscribing to it, as the Administrator shall designate.

Such representatives shall be elected, in accordance with a fair method approved by the Administrator, by the national trade associations representing the above divisions of the retail trade. Where more than one national trade association each represents a portion of a single division of the retail trade, the Administrator shall, for the purpose of establishing the membership of the National Retail Trade Council in the first instance, determine whether such associations are truly representative and what shall be the number and proportionate vote of such associations upon the Council; after the initial establishment of the Council such decisions shall be made by the Council subject to an appeal to the Administrator. Regardless of the number of its representatives, each division of the retail trade shall have one vote in all action taken by the National Retail Trade Council.

(b) *General powers.*—The National Retail Trade Council shall, in addition to the specific powers herein conferred, have all general powers necessary to assist the Administrator or his Deputy in the administration and enforcement of this Code.

(c) *Reports and investigations.*—The National Retail Trade Council shall, subject to the approval or upon the request of the Administrator, require from all retailers such reports as are necessary to effectuate the purposes of this Code, and may, upon its own initiative or upon complaint of any person affected, make investigation as to the functioning and observance of any

provisions of the Code and report the results of such investigation to the Administrator.

(d) *Recommendations.*—The National Retail Trade Council may from time to time present to the Administrator recommendations (including interpretations) based on conditions in the trade, which will tend to effectuate the operation of the provisions of this Code and the Policy of the National Industrial Recovery Act. Such recommendations shall, upon approval by the Administrator, become operative as part of this Code.

(e) *Local committees.*—The National Retail Trade Council shall, subject to the approval of the Administrator, supervise the setting up, within local trading areas, of local committees for the purpose of assisting in the administration and enforcement of this Code within such local areas.

(f) *Expenses.*—The expenses of the National Retail Trade Council shall be equitably assessed and collected by the Council, subject to the approval of the Administrator.

SECTION 3. *Regional Advisory Committee.*—The National Retail Trade Council shall, subject to the approval of the Administrator, appoint annually a Regional Advisory Committee consisting of one member appointed from and representing each major geographical section of the country as established by Federal Reserve Districts. It shall be the function of the Regional Advisory Committee to serve in an advisory capacity to the Administrator and to the National Retail Trade Council on matters pertaining to the administration of this Code in the respective districts. The Committee shall meet subject to the call of the Administrator, the National Retail Trade Council, or the Committee's chairman.

SECTION 4. *National Retail Trade Economics Board.*—The National Retail Trade Economics Board shall consist of five (5) members appointed by the President of the United States or by the Administrator. Such Board shall observe and study the economic effects and results of the various provisions of this Code and shall report from time to time to the Administrator.



SECTION 5. *Interpretations.*—The Administrator may from time to time, after consultation with the National Retail Trade Council, issue such administrative interpretations of the various provisions of this Code as are necessary to effectuate its purposes, and such interpretations shall become operative as a part of this Code, unless the Administrator shall otherwise specify.

SECTION 6. *Exceptions in cases of unusual or under hardship.*—Where the operation of the provisions of this Code impose an unusual or undue hardship upon any retailer or group of retailers, such retailer or group of retailers may make application for relief to the Administrator or to his duly authorized agent, and the Administrator or his agent may, after such public notice and hearing as he may deem necessary, grant such exception to or modification of the provisions of this Code as may be required to effectuate the purpose of the National Industrial Recovery Act.

#### ARTICLE XI. GENERAL

SECTION 1. *Membership in associations.*—Membership in the national retail associations represented upon the National Retail Trade Council, or in any affiliated associations, shall be open to all retailers of that portion of the retail trade which said associations respectively represent and said associations shall impose no inequitable restrictions upon admission to membership therein.

SECTION 2. *Information to be furnished Government agencies.*—In addition to information required to be submitted to the National Retail Trade Council, there shall be furnished to Government agencies such statistical information as the Administrator may deem necessary for the purposes recited in Section 3 (a) of the National Industrial Recovery Act.

SECTION 3. *Prohibition again monopolies.*—The provisions of this Code shall not be interpreted or applied to promote monopolies or monopolistic practices or to eliminate or oppress small enterprises or to discriminate against them.

SECTION 4. *Prohibition against use of subterfuge.*—No retailer shall use any subterfuge to frustrate the spirit and in-

tent of this Code, which is, among other things, to increase employment by universal covenant, to remove obstructions to commerce, to shorten hours of work, and to raise wages to a living basis.

SECTION 5. *Right of President to cancel or modify.*—This Code and all the provisions thereof are expressly made subject to the right of the President, in accordance with the provisions of Section 10 (b) of Title I of the National Industrial Recovery Act, from time to time to cancel or modify any order, approval, license, rule, or regulation, issued under Title I of said Act.

SECTION 6. *Modifications and supplementary provisions.*—Such of the provisions of this Code as are not required to be included herein by the National Industrial Recovery Act may, with the approval of the President, be modified or eliminated as changes in conditions or experience may indicate. It is contemplated that from time to time supplementary provisions to this Code or additional Codes will be submitted for the approval of the President to prevent unfair competitive practices and to effectuate the other purposes and policies of Title I of the National Industrial Recovery Act.

SECTION 7. *Expiration.*—This Code shall continue in effect until June 16, 1935, or the earliest date prior thereto on which the President shall by proclamation, or the Congress shall by joint resolution, declare that the emergency recognized by Section 1 of the National Industrial Recovery Act has ended.

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