plain that the legality of the seizure was not in issue and was not decided, as Mr. Sawyer's counsel conceded in the District Court (R. 388).

POINT IV

The preliminary injunctions were providently issued by the District Court.

While this case involves an order of the District Court granting preliminary injunctions, it is apparent both from the opinion of that Court and from the petition filed here on behalf of Mr. Sawyer that the vital issue of the legality of the seizure is now ripe for final determination. In order to put an end to uncertainty prejudicial not only to the parties but to the public interest, that paramount issue should be finally resolved.

Page 11 of the petition filed on behalf of Mr. Sawyer in No. 745 states:

> "The uncertainty which necessarily adheres in the present status of these cases overshadows all other considerations and requires an immediate resolution in the public interest of the substantive issues which were sweepingly decided below."

Again, on p. 21, the same petition recognizes:

> "As long as the ultimate disposition of these cases is in doubt, the respective rights and obligations of all parties affected will be uncertain and the ability of the United States to take steps necessary to protect the nation against any further cessation or impairment of steel production will be a matter of potential controversy."

In these circumstances, and in view of the irreparable and continuing injury to which plaintiffs are exposed, the District Court, on the motions for preliminary injunctions, decided "the fundamental issue" whether the seizure was authorized by law. (Opinion of Judge Pine, R. 68) Recognizing that the matter had been thoroughly presented on the ultimate merits, the Court asserted:

> "Nothing that could be submitted at such trial on the facts would alter the legal conclusion I have reached." (R. 74)

Accordingly, nothing could be gained by the formality of a final hearing in the District Court on the constitutional issue there decided.

Even where an appellate court has power to review only a final decision of a lower court, it will decide the ultimate merits on an appeal from an order issuing a preliminary injunction where—as in the present case—the lower court "in fact fully adjudicated rights" in question. *Buscaglia* v. *District Court of San Juan,* 145 F. 2d 274, 281 (1st Cir. 1944), *cert. denied,* 323 U. S. 793 (1945). And this Court said in *United States* v. *Baltimore & Ohio Railroad Company,* 225 U. S. 306, 326 (1912):

> " * * * we must not be understood as deciding or in any way implying that the duty would not exist to examine the merits of a preliminary order of the general character of the one before us in a case where it plainly, in our judgment, appeared that the granting of the preliminary order was in effect a decision by the court of the whole controversy on the merits, or where it was demonstrable that grave detriment to the public interest would result from not considering and finally disposing of the controversy without remanding to enable the court below to do so."

See *Coty* v. *Prestonettes, Inc.,* 285 Fed. 501, 516 (2d Cir. 1922); *Jackson Co.* v. *Gardiner Inv. Co.,* 200 Fed. 113, 115, 119 (1st Cir. 1912); cf. *City of Louisville* v. *Louisville Home Telephone Co.,* 279 Fed. 949, 957 (6th Cir. 1922).

The only reason advanced on behalf of Mr. Sawyer in the petition in No. 745 against the propriety of the issuance of the preliminary injunction—except for the argument on the validity of the Executive Order—is that constitutional issues should be avoided until the last possible moment. This argument is singularly inconsistent with the same petition's insistence upon the importance of an immediate disposition of the constitutional issues in this case. *Supra,* p. 86. Moreover the argument ignores the fact that plaintiffs are faced with immediate and continuing irreparable injury. Were Mr. Sawyer permitted to proceed pending a final hearing, no possible decree could restore the *status quo* and make the plaintiffs whole for the impairment of their bargaining position and the loss incident to terms and conditions of employment foisted upon them by Mr. Sawyer.

Consequently even if this Court were to feel it inappropriate finally to determine the constitutional issues at this stage, the preliminary injunction should not be disturbed. An order granting or denying a preliminary injunction will not be reversed in the absence of a clear showing that it was improvidently granted. *United States* v. *Corrick,* 298 U. S. 435, 437-438 (1936); *Alabama* v. *United States,* 279 U. S. 229, 231 (1929); *Meccano, Ltd.* v. *John Wanamaker,* 253 U. S. 136, 141 (1920); *City of Louisville* v. *Louisville Home Telephone Co.,* 279 Fed. 949, 956 (6th Cir. 1922). A preliminary injunction is warranted where there is serious doubt as to the validity of the action sought to be enjoined and a showing that an act is threatened which will destroy the *status quo* and cause

the complainant irreparable injury. *Gibbs* v. *Buck,* 307 U. S. 66, 77-78 (1939); *Ohio Oil Co.* v. *Conway,* 279 U. S. 813, 815 (1929); *Foster Packing Co.* v. *Haydel,* 278 U. S. 1 (1928); *Buscaglia* v. *District Court of San Juan,* 145 F. 2d 274, 281 (1st Cir. 1944), *cert. denied,* 323 U. S. 793 (1945); *Benson Hotel Corp.* v. *Woods,* 168 F. 2d 694, 696 (8th Cir. 1948).

At the very least, if this Court should not uphold the present injunction, a preliminary injunction should be continued in the terms prescribed by this Court in issuing its stay. A final hearing obviously would come on promptly. There can be no disputed issues of fact. Mr. Sawyer has been altogether candid in stating his intentions to act, and the public statement of the President on May 3 with respect to the government's prospective action is even more blunt. A final hearing and decision would be consummated within a few days after any remand by this Court. The considerations leading this Court unanimously to require maintenance of the *status quo* pending this Court's review would be fully applicable to a continuation of that restraint for a short time longer. In these circumstances the *obiter dicta* in *Yakus* v. *United States,* 321 U. S. 414, 440 (1944), even were they otherwise applicable to a case of this kind, would have no relevance; no public inconvenience has resulted from the stay issued by this Court and none could result from a brief continuance thereof.

POINT V

This is not a suit against the President; and the District Court had jurisdiction to grant the requested injunctions.

It was argued below that although the President was not named as a party, the action was in substance against him, since the defendant Sawyer was (in the phrase of his counsel) the "*alter ego* of the President", and that therefore no injunction could issue.

There is no substance to this claim. The only question for decision here is whether Mr. Sawyer is acting unlawfully. If he is, Presidential orders are no defense.

This Court has consistently recognized that officers of the executive branch may be sued when their conduct is unauthorized by any statute, exceeds the scope of constitutional authority, or is pursuant to an unconstitutional enactment. In these instances, the uniform course of judicial decision holds that the United States is not an indispensable party and that the relief sought is not against the Sovereign. *Waite* v. *Macy*, 246 U. S. 606 (1918); *cf. United States* v. *Lee*, 106 U. S. 196 (1882).

Recently, in *Larson* v. *Domestic and Foreign Commerce Corp.*, 337 U. S. 682, 701-702 (1949), this Court reviewed the precedents and announced its adherence to the rule that

> "* * * the action of an officer of the sovereign (be it holding, taking or otherwise legally affecting the plaintiff's property) can be regarded as so 'illegal' as to permit a suit for specific relief against the officer as an individual only if it is not within the officer's statutory powers or, if within those powers, only if the powers, or their exercise in the particular case, are constitutionally void."

Similarly in *Land* v. *Dollar,* 330 U. S. 731, 738 (1947), this Court observed:

> "But public officials may become tort-feasors by exceeding the limits of their authority. And where they unlawfully seize or hold a citizen's realty or chattels, recoverable by appropriate action at law or in equity, he is not relegated to the Court of Claims to recover a money judgment."

The principles which are followed in determining whether a suit will lie against a Federal officer are necessarily those which govern the problem of indispensable parties. Thus, in *Ickes* v. *Fox,* 300 U. S. 82 (1937), this Court had for consideration the question whether the Secretary of the Interior could be enjoined from enforcing an order issued under the Reclamation Act of 1902. This Court asserted that, if the United States was an indispensable party defendant, the suit must fail, regardless of its merits, but held that the United States was not an indispensable party in a suit to enjoin enforcement by a government official of an order which would illegally deprive the plaintiff of vested property rights. This Court granted relief on the "recognized rule" set forth in *Philadelphia Company* v. *Stimson,* 223 U. S. 605, 619 (1912).

That the President is not an indispensable party here and that the suit is not directed against him is further demonstrated by *Williams* v. *Fanning,* 332 U. S. 490 (1947). That was a suit to enjoin a local postmaster from carrying out a postal fraud order of the Postmaster General. It was held that the Postmaster General was not an indispensable party. In language peculiarly pertinent to the present situation, this Court stated that equitable relief could be granted against the subordinate without joining his superior in situations where "the decree which is

entered will effectively grant the relief desired by expending itself on the subordinate official who is before the court." (332 U. S. at 494.) See also, *Hynes* v. *Grimes Packing Co.,* 337 U. S. 86, 96-97 (1949); *Lord Mfg. Co.* v. *Stimson,* 73 F. Supp. 984, 987 (D. D. C. 1947).

Therefore, this Court need never reach the question whether the President could be directly enjoined by the judiciary. There is here no attempt to compel Mr. Sawyer to take any affirmative action. Thus *Holzendorf* v. *Hay,* 20 App. D. C. 576 (1902), cited by Mr. Sawyer's counsel to the District Court, is not in point. There the court held that a mandatory injunction would not be granted to compel the Secretary of State to take affirmative action involving the conduct of relations with foreign governments. Here, on the contrary, the plaintiffs seek only the *restraint* of unlawful action which will result in irreparable injury.

The theory implicit in this branch of the argument on behalf of Mr. Sawyer is, however, worthy of more detailed attention. For the argument is apparently advanced that the courts can take no action whatever to thwart a President's will even though the judicial restraint is directed to a subordinate official. Cited to the District Court for this remarkable proposition were the *Holzendorf* case discussed above, and others, among them *Kendall* v. *United States,* 12 Pet. 522 (1838), and *Marbury* v. *Madison,* 1 Cranch 137 (1803). In the *Kendall* case,—in which, by the way, a mandamus was issued against the Postmaster General to compel him to observe an act of Congress—this Court observed on the page cited:

> "The executive power is vested in a President; *and so far as his powers are derived from the Constitution* he is beyond reach of any other department * * * " (12 Pet. at 610.)

> "It was urged at the bar, that the postmaster-general was alone subject to the direction and control of the president, with respect to the execution of the duty imposed upon him by this law; and this right of the president is claimed, as growing out of the obligation imposed upon him by the constitution, to take care that the laws be faithfully executed. This is a doctrine that cannot receive the sanction of this court. It would be vesting in the president a dispensing power, which has no countenance for its support, in any part of the constitution; and is asserting a principle, which, if carried out in its results, to all cases falling within it, would be clothing the president with a power entirely to control the legislation of congress, and paralyze the administration of justice.
>
> "To contend, that the obligation imposed on the president to see the laws faithfully executed, implies a power to forbid their execution, is a novel construction of the constitution and entirely inadmissible. * * * " (12 Pet. at 612-613)

Similarly a quotation from *Marbury* v. *Madison,* relied upon by Mr. Sawyer's counsel, is directed toward the discretion of the President in the exercise of the specific political powers with which he is invested by the Constitution. (1 Cranch at 165-166). It has no bearing on the power of the Federal Courts to restrain an executive officer whose actions are completely beyond the constitutional powers of the Executive.

In *Marbury* v. *Madison,* moreover, this Court observed (1 Cranch at 164-165):

> "Is it to be contended that the heads of departments are not amenable to the laws of their country? Whatever the practice on particular occasions may be, the

> theory of this principle will certainly never be maintained. No act of the legislature confers so extraordinary a privilege, nor can it derive countenance from the doctrines of the common law. After stating that personal injury from the king to a subject is presumed to be impossible, Blackstone (vol. 3, p. 255), says, 'but injuries to the rights of property can scarcely be committed by the crown without the intervention of its officers; for whom the law, in matters of right, entertains no respect or delicacy; but furnishes various methods of detecting the errors and misconduct of those agents, by whom the king has been deceived and induced to do a temporary injustice.'"

Eloquent affirmation of the power of the Federal Courts to restrain unconstitutional action by officers of the executive department was given in *Fleming* v. *Moberly Milk Products Co.,* 160 F. 2d 259 (D. C. Cir. 1947), *cert. dismissed,* 331 U. S. 786 (1947). The suggestion that such restraint is beyond the power of the judiciary was characterized as a doctrine which "would spell executive absolutism, a concept unknown to our law." The Court concluded:

> "If the judiciary has no power in such matter, the only practical restraint would be the self-restraint of the executive branch. Such a result is foreign to our concept of the division of the powers of government." (160 F. 2d at p. 265.)

And in *United States* v. *Lee,* 106 U. S. 196, 220 (1882), this Court declared:

> "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it."

Nor has the judiciary in the past felt itself powerless to declare the illegality of Presidential orders. In *Little* v. *Barreme,* 2 Cranch 170, 179 (*supra,* p. 44) this Court observed of an unlawful seizure order issued by the President to a naval officer

> " * * * the instructions cannot change the nature of the transaction, nor legalize an act which, without those instructions, would have been a clear trespass."

This Court further held that since the President's order was illegal, it furnished no protection to any naval officer who acted under it, and that Captain Little was therefore personally liable for damages. The case is noteworthy as a decision rendered by a great Federalist Chief Justice (speaking for a unanimous Court) declaring invalid a wartime order issued by the very Federalist President who had appointed him to the bench. It is cited in Cooley, *Principles of Constitutional Law* 114 (1896 Ed.) for the proposition that:

> "As commander, while war prevails the President has all the powers recognized by the laws and usages of war, but at all times he must be governed by law, and his orders which the law does not warrant will be no protection to officers acting under them."

And in *Gilchrist* v. *Collector,* 10 Fed. Cas. 355 (*supra,* p. 45) the court, in the face of arguments substantially identical with those presented here, and over the strong protests of the Attorney General, entered a mandamus to compel a subordinate official to disregard an unlawful order of the President.

The doctrine that obedience to the unlawful orders of a superior is no defense lies at the heart of Anglo-American

constitutional principles. As laid down by Professor Dicey (Law of the [British] Constitution, 1920 ed., p. 33):

> "Indeed every action against a constable or collector of revenue enforces the greatest of all such principles, namely, that obedience to administrative orders is no defense to an action or prosecution for acts done in excess of legal authority".

Counsel for Mr. Sawyer now seek to overturn this basic principle, and in so doing to destroy the rule of law. The assertion that because this Court *may not* be able to enjoin the President in person, it therefore *cannot* enjoin any subordinate official of the Executive Branch, no matter how unlawfully he may act, is indeed startling.

Counsel for Mr. Sawyer cite, as substantially their sole authority on this branch of the argument, *Mississippi* v. *Johnson*, 4 Wall. 475 (1866). That decision held only that the President of the United States could not be restrained by injunction from carrying into effect an Act of Congress (the Reconstruction Act) alleged to be unconstitutional, and that a bill for that purpose in which the President was named as a defendant could not be filed.

This was described in the opinion (4 Wall. at 498) as "the single point which requires consideration." At the same page, the Court was careful to avoid laying down any absolute rule of Presidential immunity from suit. After commenting on its lack of power to restrain the enactment of an unconstitutional law, the Court observed:

> " * * * and yet how can the right to judicial interposition to prevent such an enactment, when the purpose is evident and the execution of that purpose certain, be distinguished, in principle, from the right to such interposition against the execution of such a law by the President?" (4 Wall. at 500.)

Analysis of this keystone decision in opposing counsel's argument demonstrates the fallacy of their conclusion. The plaintiffs no more attempt here, in seeking to enjoin the action of a Government official, to restrain the President directly in the performance of his duties, than does one who attacks the constitutionality of a statute seek to impede the functioning of Congress.*

Neither *Mississippi* v. *Johnson* nor any other case in this Court has ever held, or can be twisted into meaning, that this Court cannot perform its historic duty of holding subordinate officials of the Government to account for their unlawful or unconstitutional acts.

CONCLUSION

Whether the position be baldly stated as in the District Court—or an effort made superficially to present it in less extreme form—the conclusion remains inescapable that counsel for Mr. Sawyer rely on a doctrine of Executive immunity from constitutional limitations and judicial restraints. They seek to justify a seizure, clearly without any vestige of support in the Constitution, on the ground that because an emergency has been declared by the Executive any action thereunder is sacrosanct. This doctrine is presented in its most extreme form in the present case where the "emergency" has been created by the device of ignoring the detailed statutory machinery specifically designed by the Congress for use in precisely the situation here presented. If the present Executive can seize properties and appropriate funds to force an increase in wages, a clear precedent will be established by which some future Executive can by similar arbitrary action force a decrease in wages or compel workers to labor for whatever hours

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* See the analysis of *Mississippi* v. *Johnson,* by Brewer, *J.,* in *Chicago & N. W. Ry Co* v. *Dey,* 35 Fed. 866, 872 (C. C. S. D. Iowa 1888).

and under whatever conditions he may choose to impose. It is not the rights of these plaintiffs alone which are at stake here. Our system of government has no place for any such concept of arbitrary power which, if once established, must be fatal to our liberties.

The judgments of the District Court in each of these cases should be affirmed.

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APPENDIX A

Relevant Provisions of the Constitution.

ARTICLE I.

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 8. [Clause 1.] The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; * * *

[Clause 11.] To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

[Clause 12.] To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

[Clause 13.] To provide and maintain a Navy;

[Clause 14.] To make Rules for the Government and Regulation of the land and naval Forces;

[Clause 15.] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

[Clause 16.] To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

[Clause 18.] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

ARTICLE II.

Section 1. The executive Power shall be vested in a President of the United States of America. * * *.

Section 2. [Clause 1.] The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

AMENDMENT 4.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches

and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT 5.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 9.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT 10.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Applicable Provisions of The Labor Management Relations Act of 1947, 61 Stat. 136 *et seq.*, 29 U. S. C. Supp. IV, §§158(a)(5), 158(b)(3), 158(d), 176-180.

Sec. 8. (a) It shall be an unfair labor practice for an employer—

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a) of this title.

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a) of this title;

* * * * *

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: * * *

Sec. 206. Whenever in the opinion of the President of the United States, a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public.

Sec. 207. (a) A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute.

(b) Members of a board of inquiry shall receive compensation at the rate of $50 for each day actually spent by them in the work of the board, together with necessary travel and subsistence expenses.

(c) For the purpose of any hearing or inquiry conducted by any board appointed under this title, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1941, as

amended (U. S. C. 19, title 15, secs. 49 and 50, as amended), are made applicable to the powers and duties of such board.

Sec. 208. (a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate.

(b) In any case, the provisions of the Act of March 23 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", shall not be applicable.

(c) The order or orders of the court shall be subject to review by the appropriate United States court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 29, secs. 346 and 347).

Sec. 209. (a) Whenever a district court has issued an order under section 208 of this title enjoining acts or practices which imperil or threaten to imperil the national

health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service created by this chapter. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

(b) Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

Sec. 210. Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

The Defense Production Act, as Amended, 64 Stat. 798, 65 Stat. 132, 50 U. S. C. A., Appendix, §§2081, 2121-2123.

Sec. 201. (a) Whenever the President determines (1) that the use of any equipment, supplies, or component parts thereof, or materials or facilities necessary for the manufacture, servicing, or operation of such equipment, supplies or component parts, is needed for the national defense, (2) that such need is immediate and impending and such as will not admit of delay or resort to any other source of supply, and (3) that all other means of obtaining the use of such property for the defense of the United States upon fair and reasonable terms have been exhausted, he is authorized to requisition such property or the use thereof for the defense of the United States upon the payment of just compensation for such property or the use thereof to be determined as hereinafter provided. The President shall promptly determine the amount of the compensation to be paid for any property or the use thereof requisitioned pursuant to this title but each such determination shall be made as of the time it is requisitioned in accordance with the provision for just compensation in the fifth amendment to the Constitution of the United States. If the person entitled to receive the amount so determined by the President as just compensation is unwilling to accept the same as full and complete compensation for such property or the use thereof, he shall be paid promptly 75 per centum of such amount and shall be entitled to recover from the United States, in an action brought in the Court of Claims or, without regard to whether the amount involved exceeds $10,000, in any district court of the United States, within three years after the date of the President's award, an additional amount which, when added to the amount

so paid to him, shall be just compensation. No real property (other than equipment and facilities, and buildings and other structures, to be demolished and used as scrap or secondhand materials) shall be acquired under this subsection.

(b) Whenever the President deems it necessary in the interest of national defense, he may acquire by purchase, donation, or other means of transfer, or may cause proceedings to be instituted in any court having jurisdiction of such proceedings to acquire by condemnation, any real property, including facilities, temporary use thereof, or other interest therein, together with any personal property located thereon or used therewith, that he deems necessary for the national defense, such proceedings to be in accordance with the Act of August 1, 1888 (25 Stat. 357), as amended, or any other applicable Federal statute. Before condemnation proceedings are instituted pursuant to this section, an effort shall be made to acquire the property involved by negotiation unless, because of reasonable doubt as to the identity of the owner or owners, because of the large number of persons with whom it would be necessary to negotiate, or for other reasons, the effort to acquire by negotiation would involve, in the judgment of the President, such delay in acquiring the property as to be contrary to the interest of national defense. In any condemnation proceeding instituted pursuant to this section, the court shall not order the party in possession to surrender possession in advance of final judgment unless a declaration of taking has been filed, and a deposit of the amount estimated to be just compensation has been made, under the first section of the Act of February 26, 1931 (46 Stat. 1421), [40 U. S. C. §258a], providing for such declarations. Unless title is in dispute, the court, upon application, shall promptly pay to the owner at least 75 per centum of the amount

so deposited, but such payment shall be made without prejudice to any party to the proceeding. Property acquired under this section may be occupied, used and improved for the purposes of this section prior to the approval of title by the Attorney General as required by section 355 of the Revised Statutes, as amended [33 U. S. C. §733; 34 U. S. C. §520; 40 U. S. C. §255; 50 U. S. C. A., Appendix, §175].

(c) Whenever the President determines that any real property acquired under the title and retained is no longer needed for the defense of the United States, he shall, if the original owner desires the property and pays the fair value thereof, return such property to the owner. In the event the President and the original owner do not agree as to the fair value of the property, the fair value shall be determined by three appraisers, one of whom shall be chosen by the President, one by the original owner, and the third by the first two appraisers; the expenses of such determination shall be paid in equal shares by the Government and the original owner.

(d) Whenever the need for the national defense of any personal property acquired under this title shall terminate, the President may dispose of such property on such terms and conditions as he shall deem appropriate, but to the extent feasible and practicable he shall give the former owner of any property so disposed of an opportunity to reacquire it (1) at its then fair value as determined by the President or (2) if it is to be disposed of (otherwise than at a public sale of which he is given reasonable notice) at less than such value, at the highest price any other person is willing to pay therefor: Provided, That this opportunity to reacquire need not be given in the case of fungibles or items having a fair value of less than $1,000.

TITLE V.—SETTLEMENT OF LABOR DISPUTES.

Sec. 501. It is the intent of Congress, in order to provide for effective price and wage stabilization pursuant to title IV of this Act and to maintain uninterrupted production, that there be effective procedures for the settlement of labor disputes affecting national defense.

Sec. 502. The national policy shall be to place primary reliance upon the parties to any labor dispute to make every effort through negotiation and collective bargaining and the full use of mediation and conciliation facilities to effect a settlement in the national interest. To this end the President is authorized (1) to initiate voluntary conferences between management, labor, and such persons as the President may designate to represent government and the public, and (2) subject to the provisions of section 503 to take such action as may be agreed upon in any such conference and appropriate to carry out the provisions of this title. The President may designate such persons or agencies as he may deem appropriate to carry out the provisions of this title.

Sec. 503. In any such conference, due regard shall be given to terms and conditions of employment established by prevailing collective bargaining practice which will be fair to labor and management alike, and will be consistent with stabilization policies established under this Act. No action inconsistent with the provisions of the Fair Labor Standards Act of 1938, as amended [29 U. S. C. §201 et seq.], other Federal labor standards statutes, the Labor Management Relations Act, 1947 [29 U. S. C. §141 et seq.], or with other applicable laws shall be taken under this title.

The Universal Military Training and Service Act. 62 Stat. 625 *et seq.*, 50 U. S. C. A. Appendix, Section 468.

Sec. 18. (a) Whenever the President after consultation with and receiving advice from the National Security Resources Board determines that it is in the interest of the national security for the Government to obtain prompt delivery of any articles or materials the procurement of which has been authorized by the Congress exclusively for the use of the armed forces of the United States, or for the use of the Atomic Energy Commission, he is authorized, through the head of any Government agency, to place with any person operating a plant, mine, or other facility capable of producing such articles or materials an order for such quantity of such articles or materials as the President deems appropriate. Any person with whom an order is placed pursuant to the provisions of this section shall be advised that such order is placed pursuant to the provisions of this section. Under any such program of national procurement, the President shall recognize the valid claim of American small business to participate in such contracts, in such manufactures, and in such distribution of materials, and small business shall be granted a fair share of the orders placed, exclusively for the use of the armed forces or for other Federal agencies now or hereafter designated in this section. For the purpose of this section, a business enterprise shall be determined to be "small business" if (1) its position in the trade or industry of which it is a part is not dominant, (2) the number of its employees does not exceed 500, and (3) it is independently owned and operated.

(b) It shall be the duty of any person with whom an order is placed pursuant to the provisions of subsection (a), (1) to give such order such precedence with respect to all other orders (Government or private) theretofore

or thereafter placed with such person as the President may prescribe, and (2) to fill such order within the period of time prescribed by the President or as soon thereafter as possible.

(c) In case any person with whom an order is placed pursuant to the provisions of subsection (a) refuses or fails—

(1) to give such order such precedence with respect to all other orders (Government or private) theretofore or thereafter placed with such person as the President may have prescribed;

(2) to fill such order within the period of time prescribed by the President or as soon thereafter as possible as determined by the President;

(3) to produce the kind or quality of articles or materials ordered; or

(4) to furnish the quantity, kind, and quality of articles or materials ordered at such price as shall be negotiated between such person and the Government agency concerned; or in the event of failure to negotiate a price, to furnish the quantity, kind, and quality of articles or materials ordered at such price as he may subsequently be determined to be entitled to receive under subsection (d) the President is authorized to take immediate possession of any plant, mine, or other facility of such person and to operate it, through any Government agency, for the production of such articles or material as may be required by the Government.

(d) Fair and just compensation shall be paid by the United States (1) for any articles or materials furnished pursuant to an order placed under subsection (a), or (2) as rental for any plant, mine, or other facility of which possession is taken under sub-section (c).

(e) Nothing contained in this section shall be deemed to render inapplicable to any plant, mine, or facility of which possession is taken pursuant to subsection (c) any State or Federal laws concerning the health, safety, security, or employment standards of employees.

(f) Any person, or any officer of any person as defined in this section, who willfully fails or refuses to carry out any duty imposed upon him by subsection (b) of this section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than three years, or by a fine of not more than $50,000, or by both such imprisonment and fine.

(g) (1) As used in this section—

(A) The term "person" means any individual, firm, company, association, corporation, or other form of business organization.

(B) The term "Government agency" means any department, agency, independent establishment, or corporation in the Executive branch of the United States Government.

(2) For the purposes of this section, a plant, mine, or other facility shall be deemed capable of producing any articles or materials if it is then producing or furnishing such articles or materials or if the President after consultation with and receiving advice from the National Security Resources Board determines that it can be readily converted to the production or furnishing of such articles or materials.

(h) (1) The President is empowered, through the Secretary of Defense, to require all producers of steel in the United States to make available, to individuals, firms,

associations, companies, corporations, or organized manufacturing industries having orders for steel products or steel materials required by the armed forces, such percentages of the steel production of such producers, in equal proportion deemed necessary for the expeditious execution of orders for such products or materials. Compliance with such requirement shall be obligatory on all such producers of steel and such requirement shall take precedence over all orders and contracts theretofore placed with such producers. If any such producer of steel or the responsible head or heads thereof refuses to comply with such requirement, the President, through the Secretary of Defense, is authorized to take immediate possession of the plant or plants of such producer and, through the appropriate branch, bureau, or department of the armed forces, to insure compliance with such requirement. Any such producer of steel or the responsible head or heads thereof refusing to comply with such requirement shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment for not more than three years and a fine not exceeding $50,000.

(2) The President shall report to the Congress on the final day of each six-month period following the date of enactment of this Act the percentage figure, or if such information is not available, the approximate percentage figure, of the total steel production in the United States required to be made available during such period for the execution of orders for steel products and steel materials required by the armed forces, if such percentage figure is in excess of 10 per centum.