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As in other areas of the United States program, the most pervasive influence in labor relations in atomic energy has been the federal government. The non-government sector is expanding rapidly in terms of the number of companies launching atomic energy operations, but this expansion is still in the exploratory and research and development stage. During this period of development in the private sector of the industry employers have relatively heavy need for engineering and technical skills and less for manual workers who are more susceptible to union organization. Although some problems for management and labor in the private sector of the program are emerging, particularly in the area of radiation hazard to workers, there has been little collective bargaining experience there. Thus the government-administered portion of the program continues to hold the center of interest for labor-management relations.

In many respects the government sector of the atomic program is characterized by the same basic conditions which were inherited from the Manhattan Engineer District. And the Atomic Energy Commission's labor relations policies, which received their basic formulation early in the existence of the Commission, have served satisfactorily and undergone little basic change. The primary problems of labor-management relations in the program have stemmed from the use of contractors in construction and operations and the consequent need (1) to regulate labor expenditures under cost type contracts, (2) to retain some government control to prevent work stoppages from interrupting continuity of production and research operations, and (3) to retain authority for the AEC to make and administer security rules, thereby excluding such matters from collective bargaining. The existence of these special conditions has distinguished atomic energy labor-management relations from normal processes in other industries, and experience under them may have significance for future law and administrative process.

All these special conditions have resulted from the overbearing sense of urgency which has characterized the program since its beginning. Although some of the stringent conditions imposed during World War II (such as the prohibition of union organization prior to 1946) were removed after the war, much of the emergency nature of the program has been retained to the present time despite many efforts to bring about more normal conditions to fit generally accepted preconceptions about desirable procedures in labor-manage-

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ment relationships. Outsiders who have attempted to adapt these relations to conventional or normal labor-management procedures have come away impressed with the way in which these considerations are subordinated to the larger goals of the program pursuant to the Commission's view of its responsibility for national security. Thus the atomic energy labor management policy represents a compromise between what may be desirable for good labor relations and what is essential in the eyes of the Commission to perform its mission.

Production, research and development, construction of new plants, and maintenance and service functions are all performed under the terms of contracts with the AEC. Production and research and development contractors are mostly large private corporations. All construction is performed by private contractors. AEC operations are often termed GOPO, (government-owned, privately operated), although government-owned, contractor-operated is more accurate terminology since some contractors are units of state and local government, not private employers. The contractors currently employ approximately 113,000, while the AEC has about 6,800 employees.[1]

Employers in the program have been recruited from a wide range of industries. This factor, together with the great variation in the kinds of work they perform, points up the difficulty of trying to treat atomic energy as an "industry." The big contractors have their origins and perform their principal activities in the chemical, electrical equipment, electronic, petroleum, primary metals, aviation and rubber industries, although some of the largest are academic institutions. Operations consist of such diverse functions as ore treatment and refinement, metal fabrication, gaseous diffusion operations, operation of atomic reactors and related chemical processing, fabrication of weapons and all the hardware which goes with them, diverse basic and applied research, design and development of reactors and related equipment for propulsion of ships and airplanes and for production of commercial electric power, manufacture and use of isotopes in industry, medicine, agriculture, as well as performance of a variety of other associated functions. Together these operations are less an industry than a group of diverse activities related to each other by a common means of support, the AEC.

Both the Commission and the Manhattan District before it have proceeded in the belief that the magnitude of individual operations, as well as the novelty and uncertainty of the work to be done, make it unlikely that industrial firms could be induced to undertake these projects under fixed price contracts.[2] Therefore the greatest part of the work performed by contractors is paid for at actual cost. In

1. 24 AEC SEMIANN. REP. 209-10 (1958).
2. 9 AEC SEMIANN. REP. 48-49 (1951).

administering contracts of this kind the government must assure itself a fair return for money spent. This means retaining the right in some form to make a judgment about proposed rates of labor expenditure before approving payment to the contractor. This arises from the AEC's double obligation to avoid substandard labor conditions on its project and to assure itself that the contractor does not waste the taxpayers' money. While the former possibility seems remote, given the existence of unions of employees, the latter would appear to be a real threat under a cost type contract. While there is no incentive to be extravagant, as there would be under a cost-plus-percentage-of-cost contract, there is also no economy motivation resulting from the prospect of an increased money return.

In cases where contractor employees are organized, the exercise of government authority to review the rate of labor expenditures raise the possibility of disapproval of negotiated settlements. Should this happen, union representatives may reasonably raise the question of who are the real employers, the contractors or the government. And the very existence of this government authority under the contract, coupled with its interest in economy, is apt to suggest strongly to unions that the AEC is not a neutral third party in the contractor-union relationship. Thus, the contractor system raises this dilemma for the AEC: How can it discharge its fiscal responsibility in reviewing reimbursable costs while remaining free from any seeming alliance with its contractors in their bargaining? In the absence of such a close relationship, how can a contractor have any confidence that the AEC will approve the terms of a negotiated settlement? Conversely, are there circumstances where a union should have an effective appeal to the AEC in an attempt to gain more than the contractor's final offer?

The Commission has, therefore, had the problem of how much control to exercise in the collective bargaining relationship. Such control has had to be somewhere between the extremes of a *laissez faire* policy under which a weak contractor might yield to all demands of a union in order to buy labor peace with government funds, and a policy of tight control which would eliminate exercise of contractor judgment and initiative, the *raison d'etre* of the contractor system. In steering between these extremes the AEC has been aided less perhaps by the wisdom of its policies than by the proclivity of its contractor managements, at least when facing a union across the bargaining table, to act as though they were spending their own money. Since most large contracts are let to firms with national reputations, the protection of that reputation is one insurance against a wasteful operation. Also, such contractors have been eager to apply

the same policies and procedures which have contributed to the success of their other operations.

The best available measurement of the workability of the AEC contractor system in the control of labor expenditure is a comparison of earnings levels in atomic energy employment with levels in comparable industries. Since 1952 the AEC has maintained statistical series showing gross and straight time average hourly earnings and average weekly hours of production and related workers employed by its principal operating contractors. These figures are calculated in the same fashion as those gathered by the Bureau of Labor statistics in the United States Department of Labor and are directly comparable. For purposes of comparison all such earnings figures are subject to the reservation that the skill "mix" in different industries varies. However, this does not preclude valid comparisons of the rates of change over time between industries. This kind of comparison shows that gross hourly earnings of atomic energy contractor employees increased a total of 40.4 per cent for the six and one half year period from January, 1952 through June, 1958, or an average of 6.2 per cent per year.[3] This is a rate of increase substantially greater than the average of 4.6 per cent per year in "all manufacturing" industries during the same period, and somewhat greater than the comparable annual increases of 5.4 per cent for workers in the "products of petroleum and coal" industry and the 5.7 per cent figure for the "industrial inorganic chemicals" industry, as calculated from BLS figures.[4] The latter two industrial classifications are the standard comparisons used by the AEC, since they are similar to atomic energy in process and equipment. So far as the money level of earnings is concerned, the atomic energy earnings level has maintained a position between the two comparable industries throughout the six and one half years, although recent atomic energy gross hourly earnings are about level with those reported for "products of petroleum and coal."[5]

Although the earnings rates in atomic energy operations have advanced faster than earnings rates in these comparable industries, it is not possible, without making a more detailed analysis, to attribute

3. The figure for January, 1952 was $1.93; for June, 1958, $2.71.

4. MONTHLY LABOR REV., earnings and hours statistics for the months given.

5. In May, 1958, AEC contractor earnings stood at $2.70 per hour for a work week averaging 41.0 hours as compared with $2.72 for petroleum and coal products with a work week averaging 40.4 hours. Comparison of earnings levels with more precision might be obtained by using straight time figures, since the average work weeks and the amount of overtime premium paid obviously varies between industries. The use of straight time figures, however, involves conversion of gross earnings by means of adjustment factors, which have their own limitations. See Technical Note, *Eliminating Premium Overtime From Hourly Earnings in Manufacturing*, 70 MONTHLY LABOR REV. 537-40 (1950). In any event the average hours worked in the two comparable industries during the period were very close to the atomic energy averages.

this to any particular cause. One might suspect that the primary influence on the rate level has been the increase in employment in the program and the need to attract competent work forces and hold them in isolated locations. During the period from January 1952 to June 1958, atomic energy operations contractor employment has almost doubled while "all manufacturing" employment has decreased about 4 per cent, "products of petroleum and coal" has declined approximately 10 per cent, and "industrial inorganic chemicals" has increased about 25 per cent.

Another appropriate measurement of the relative economy of labor expenditure under AEC cost contracts would be a survey of whether contractors are employing workers in greater numbers than they would if governed by normal competitive market considerations. Since this would involve questions of man-hour productivity, it is an area where AEC security restrictions have inhibited such efforts.[6]

Perhaps of some significance in this connnection is labor turnover. In this area atomic energy program figures compare favorably with figures from the industries used for the earnings comparisons. Both hirings and separations run at rates considerably lower than rates for "all manufacturing" enterprises and generally are between rates shown for inorganic chemicals and for the petroleum industry. Quit rate experience, which provides some indications of the state of worker satisfaction and the need for training expenditures, has averaged slightly less than one quit per 100 employees per month since 1952. This is considerably better than the 1.7 figure for "all manufacturing," and the 1.2 figure for "inorganic chemicals," but not as low as the .6 reported for "products of petroleum and coal."

In the second problem area of the government program, that of maintaining continuity of operations free from work stoppages, the AEC has managed to make use of a variety of emergency devices for a period of almost ten years to preserve a record of operations free from any prolonged, serious strikes. This performance has been aided by many talented outside experts on labor-management relations and mediation techniques, but the greatest contribution has been the government's success in maintaining a sort of halo (sometimes slightly dented and askew, but always intact) around vital operations in the program. All procedures for maintaining continuity have been founded on the urgency prevailing in AEC operations and have depended heavily upon assumption by management and labor in the program of a special sense of responsibility for avoiding harmful disruptions of operations.

6. Some statistics are available which indicate that production has increased in some operations while employment has decreased. See Saks, *Labor Implications of Peaceful Uses of Atomic Energy,* 80 MONTHLY LABOR REV. 925-26 (1957).

The early heritage of labor-management relations in the program was not one which would seem to presage labor peace. From 1942, when operations were begun secretly under the Manhattan Engineer District, until late 1948, there was general suppression of labor organization. An exception to the rule against union recognition had been made at Oak Ridge, where two of the three plants were organized in 1946, and at Los Alamos where maintenance workers' unions were recognized; but the general opening to union recognition by contractors did not occur until after the AEC had taken care of the problem of excluding Communist dominated unions for security reasons from its operations in Schenectady and Chicago (discussed below). After 1948, however, organization of manual employees of AEC contractors proceeded rapidly. At present approximately 30 per cent of all atomic energy operations contractor employees are represented by unions.[7] This is slightly less than the percentage of organized employees in non-agricultural establishments in the nation as a whole—approximately 35 per cent.

There are about 75 different collective bargaining units; 31 are of the production and maintenance type, 16 are units of guards and the remainder bargain as crafts.[8] Various metal trades councils, composed of unions with their origins in the AFL, have been certified as bargaining agent for more employees than any other single bargaining representative, but the International Association of Machinists would appear to represent more employees than any other single union, by virtue of having some large industrial units as well as being a member of each of the metal trades councils. The Oil, Chemical and Atomic Workers of America, with its representation concentrated in the gaseous diffusion plants, represents almost as many employees.

Like the problems raised by cost type contracts the issue of labor-management dispute settlement puts the AEC in a permanent administrative predicament. Given the urgency factor and the consequent need for continuity, contractors have a distinct advantage over unions in collective negotiations when the unions know that a strike will not be tolerated. Because of the need to maintain continuity of operations, a special panel for the settlement of labor disputes has been maintained since 1949. The operations of the panel have caused many interesting questions of dispute settlement policy to be raised, chief of which is whether the existence of the panel makes unions reluctant to settle disputes, since they are able to obtain more by resort to it. Thus, the AEC, with a responsibility for reviewing the level of labor expenditure resulting from collective bargaining and with a responsi-

7. This figure is based on AEC estimates of the numbers in bargaining units in the program. The figure does not include construction workers. Manual employees of construction contractors are nearly all organized.

8. 23 AEC SEMIANN. REP. 312 (1958).

bility for preventing interruptions in continuity of its vital operations, attempts to deal with these problems in acordance with its avowed aims of the "least possible governmental interference with the efficient management expected from the AEC contractors" and "minimum interference with the traditional rights and privileges of American labor."[9]

The incompatability of unencumbered collective bargaining and the government's belief that a strike in an atomic energy plant was "unthinkable" became a public issue in 1948. In the spring of that year in a dispute between the operator of the Oak Ridge National Laboratory, Carbide and Carbon Chemicals Corporation and a council of AFL craft unions, David Lilienthal, then chairman of the AEC, told union leaders that he would operate the laboratory in the face of a strike.[10] This dispute, which occasioned the first use of the national emergency injunction provisions of the Taft-Hartley Act, prompted appointment by the President of a special commission to study the problems of labor-management relations in atomic energy. Its report resulted in creation of a special panel to handle labor disputes in vital AEC operations. This panel (herein referred to as the Davis panel, for William H. Davis, its chairman) and a successor panel (the Ching panel, for Cyrus S. Ching, its chairman) appointed in 1953 have handled critical disputes in the program for more than nine years pursuant to procedures which emphasize voluntary agreement, and that failing, formal but non-binding recommendations to the disputants.[11]

This general review of atomic energy labor-management relations does not permit a detailed analysis of the results achieved by these panels, but a few statistics will allow some generalizations to be made about their work. From July 1948, until August 1958, the records show panel activity in 97 dispute cases, 40 being in construction

9. AEC GENERAL POLICY STATEMENT RELATIVE TO CONTRACTOR PERSONNEL MANAGEMENT AND LABOR RELATIONS (1955.)

10. PRESIDENT'S REPORT, PROCEEDINGS TO THE FORTY-FOURTH ANNUAL CONVENTION OF THE METAL TRADES DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR 17 (1953).

11. AEC, REPORT OF THE PRESIDENT'S COMMISSION ON LABOR RELATIONS IN THE ATOMIC ENERGY INSTALLATIONS (1949). Several detailed studies of the development and operation of the panels are available. See REPORT OF THE SECRETARY OF LABOR'S ADVISORY COMMITTEE ON LABOR MANAGEMENT RELATIONS IN ATOMIC ENERGY INSTALLATIONS (1957); Mann, *The Emergency Is Normal—Atomic Energy,* EMERGENCY DISPUTES AND NATIONAL POLICY 166-99 (1955); Straus, *The Development of a Policy for Industrial Peace in Atomic Energy,* WASH. NAT'L PLANNING ASS'N (1950); as well as the reports of the panels, which contain detailed discussions of their activities. The semiannual reports of the Davis panel are reproduced as appendices to the seventh through the thirteenth semiannual reports of the Commission, while the three annual reports of the Ching panel which are available are reproduced in the annual reports of the Federal Mediation and Conciliation Service, volumes seven through nine.

and 57 involving operations. In 53 of these 97 the panels issued recommendations to the parties. During this same period it is estimated that approximately 500 contract negotiations have taken place involving AEC production, research and development, maintenance and service contractors, and unions representing their employees. Recommendations issued in disputes involving these non-construction operations totalled 38 during the nine year period, or about 8 per cent of the total number of negotiations. Although these figures appear to undermine the argument that the existence of the panel results in union reliance upon it, their significance, as a measurement of the restraint of the panels in influencing settlements, dims somewhat in light of the fact that the panel has intervened at almost each contract renewal in some of the collective bargaining relationships. In fact, 26 of the 38 recommendations in non-construction operations involve two employers (but who have a total of 11 bargaining units). Aside from the sometimes stormy collective bargaining relations between these two contractors and their several unions, labor organizations and management in the program are not depending upon the panel to settle a substantial number of disputes.

Intervention of the panel in construction disputes has represented a special problem. During the period of the Davis panel there was always some question whether the unions and contractors were covered by the special procedures. Consequently the panel sometimes was unable to act effectively to prevent strikes in construction, although its intervention was usually successful in obtaining a resumption of work during a dispute. The Ching panel was handicapped during its early years, for reasons discussed below, by its inability to intercede in a dispute before a strike occurred. In many construction disputes unions are apt to stop work during negotiations since the work might otherwise be completed while negotations proceed. The 40 interventions in construction disputes in nine years and the 15 issuances of recommendations represent only a very small proportion of total negotations covering atomic energy construction work. Although panel proceedings have helped to minimize lost time from strikes in many construction disputes, the impact of the panels in this area of the program has been much smaller than in other operations.

There have been differences in the manner of operation of the panels over the years. In March of 1953 the President accepted the resignations of the Davis panel members who had served under the Democratic administration. Subsequently the Ching panel was appointed, which was administratively responsible to the Federal Mediation and Conciliation Service. This panel originally could assume jurisdiction only in cases certified to it by the AEC as to criticality

and after the Director of the Federal Mediation and Conciliation Service had given his opinion that "the normal processes of collective bargaining and mediation and conciliation" had been fully utilized.[12] The tendency of the latter requirement was to force the FMCS to hold a dispute longer than it might otherwise have done and thereby to restrict the freedom of the panel. The Davis panel had had greater flexibility in respect to both the timing of its entrance into disputes and the means of handling them. It could enter disputes at the request of either party or of the AEC, after consultation with the FMCS, and frequently was able to capitalize on its own prestige to mediate settlement of disputes. For its first three years the more restrictive requirement that disputes be referred by the FMCS left little opportunity for successful mediation by the Ching panel. Consequently almost all its intervention resulted in formal recommendations.

These restrictive conditions governing panel interventions had been imposed by the FMCS when the panel was reconstituted in 1953, because its officials believed that the existence of an autonomous panel resulted in avoidance by disputants of normal, voluntary mediation procedures in their efforts to get to the panel. They remained in effect during the first three years of existence of the Ching panel. Thereafter a change in procedures, made possible by a presidential memorandum of May 4, 1956, resulted in unleashing the panel. Its new procedures, issued January 10, 1957, provide that the panel makes its own decisions on when "the normal processes of collective bargaining and mediation and conciliation have been fully utilized without constructive results."[13] Like another more famous unleashing, it has not resulted in any spectacular increase in activity. Indeed there appear to have been fewer panel interventions since that time than before.

Although contractors have sometimes attacked the panel as a dispute settlement device, the greatest overt opposition has come from the unions. During its early years the panel depended heavily upon pledges from contractors and unions to maintain the *status quo* in any dispute in which it intervened. Following the acceptance of the resignations of the members of the Davis panel all the major unions in the program withdrew their no-strike pledges. In one case since that time a union refused panel intervention; in another a union refused to accept its recommendations. Only one contractor has rejected recommendations of the panel. In that case, which occurred in the

12. White House, Press Release Announcing Establishment of Atomic Energy Labor-Management Relations Panel, March 24, 1953.

13. Purpose and Procedures of the Atomic Energy Labor-Management Relations Panel, Washington, Jan. 10, 1957. A copy of the May 4, 1956 Presidential memorandum is attached to this document.

early days of the Davis panel, the AEC later forced acceptance.[14] Thus, despite some setbacks and handicaps, the panel's effectiveness has been high.

One measurement of the adequacy of dispute settlement efforts in the program is the record of time lost from work stoppages. The table noted[15] contains the available statistics showing the percentage of idle time to scheduled time resulting from work stoppages in the program from 1947 through 1958. The lower lines present comparable figures, as compiled by the Bureau of Labor Statistics, for all industries, for manufacturing industries, and for the construction industry.

Percentage of idle time as a result of strikes among non-construction operations contractors has been small as compared with figures for all industries, except in 1957. The AEC operations contractor experience looks even more favorable when compared with manufacturing industries. Percentage of time lost in AEC construction, however, has been larger than for the United States construction industry.

The success of the Commission's efforts to maintain continuity has depended largely upon its ability to perpetuate the feeling of program urgency as the years go by. Some of the feeling of self sacrifice in the interests of national security was lost in 1953 when the President accepted resignations of the members of the original panel and the unions thereupon withdrew their no-strike pledges. Although some

14. Davis, *Labor-Management Relations in Atomic Energy Affairs*, LECTURES ON ATOMIC ENERGY INDUSTRIAL AND LEGAL PROBLEMS 10 (Ann Arbor, Univ. of Mich. 1952).

15. WORK STOPPAGE EXPERIENCE OF AEC CONTRACTORS COMPARED WITH INDUSTRY EXPERIENCE REPORTED BY BLS.

Per Cent of Estimated Working Time Lost
By Years: 1947 through 1958

	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958
AEC Operations Contractors	0	.16	.04	.01	*	*	.10	.08	.09	.19	.38	.09#
AEC Constructions Contractors	**	**	**	**	**	1.68	2.35	2.02	.89	2.69	.80	.23#
Total AEC Operations	**	**	**	**	**	1.00	1.24	.97	.26	.52	.43	.11#
BLS Manufacturing Industries	.43	.46	.73	.66	.43	1.03	.36	.33	.45	.63	.22	**
BLS Construction Industry	.66	.29	.53	.44	.18	1.03	1.22	.71	.28	.35	.51	**
BLS All Industries	.41	.37	.59	.44	.23	.57	.27	.21	.26	.29	.14	.13##

* Less than .01
\# First six months
First six months, preliminary figure
** Not available

of the unions and managements in the program have appeared to prefer to let their disputes follow a normal course without use of atomic energy dispute settlement procedures, the continued belief in the need for continuity by the AEC has resulted in three national emergency proceedings under Taft-Hartley during the past five years. This represents more than half the total proceedings initiated by the Eisenhower administration under this section of the law. The feeling of continued urgency and criticality felt by the AEC was underlined in 1957 when it rejected the recommendations in a special report by an advisory committee selected by the Secretary of Labor to review labor-management relations in atomic energy installations.[16] The report had declared that "the sense of urgency for production of atomic weapons which was controlling during the crash program period and the fears of the physical consequences of an interference with normal operations in atomic energy installations have diminished" and that therefore movement in the direction of normal collective bargaining procedures could be instituted. This contention was abruptly denied by the AEC and special procedures have been continued unchanged.

Two other problems of a less urgent nature but related to collective bargaining have some interest in an examination of labor relations in the program. Both involve relations between the AEC and other government agencies with responsibilities for administering labor laws. One involves the Davis-Bacon Act,[17] the other the National Labor Relations Act, as amended. The situations encountered in the former area may be viewed as the counterpart of those disputes in private industry between management and industrial unions over the issue of contracting with outsiders for the performance of repair and minor construction work in the plant. Industrial unions contend that such work should be performed by the employer's regular force. Building trades unions, as representatives of employees of construction contractors, advocate performance by contract. In private industry, the decision as to how to do the work is made by the employer in accordance with his judgment of the ability of his regular employees to perform, the size and complexity of the job, relative cost, and other matters, or pursuant to some criteria set up by agreement with the union in the plant. Under an AEC contract, however, such a decision may be dictated by the requirements of the Davis-Bacon Act, as interpreted by the Department of Labor. This act requires that on government contracts for construction, alteration or repair of public

16. REPORT OF THE SECRETARY OF LABOR'S ADVISORY COMMITTEE ON LABOR MANAGEMENT RELATIONS IN ATOMIC ENERGY INSTALLATIONS (1957).

17. 46 Stat. 1494 (1931), as amended, 49 Stat. 1011 (1935), 54 Stat. 339 (1940), 55 Stat. 53 (1941), 40 U.S.C. § 267 (a) (1952).

buildings, or public works, mechanics and laborers must be paid at rates prevailing in the area of the work.

All AEC construction performed by contractors is done at the predetermined area rates called for by that act. These are building trades rates. However, in any production operation there are functions which would ordinarily be classified as maintenance, or in any event construction of a very minor nature, which often are covered. A finding that such work comes under the act is disadvantageous to the production contractor in several respects. In the first place, it means that if he intends to use his own employees to perform the work, he must pay them the building trades scale for the area. This rate is usually substantially higher than maintenance rates because of the difference in supplemental compensation such as pensions, insurance, paid vacations, holidays and sick leave, as well as the difference between regularity of the two types of work. Most employers consider it to be unwise or impracticable to pay different rates to the same craft and it would be unfair to reduce the scale of benefits for an employee during the period he was receiving the construction rate. This means that if work is decided to be subject of the Davis-Bacon Act, it must be contracted out. It then becomes necessary to prepare plans and specifications, invitations to bid and formal contracts. This may involve what most observers would call wasteful efforts and also substantial delays in the performance of the work. In July 1957, the Commission, in commenting on the problems in distinguishing between maintenance and construction, complained that the Secretary of Labor's rate decisions in such cases amounted to making jurisdictional awards.[18]

In some situations compliance with the National Labor Relations Act, as amended, has presented problems for the AEC. One such case involved the Savannah River Project of the Commission, where during the height of construction a subcommittee of the House Committee on Education and Labor held a week long hearing. Its report, issued in 1952[19] found that a preferential hiring system was in operation on the project. Du Pont, the contractor, made the valid defense that there is no violation of law in this situation absent a finding by the NLRB. The incident was embarrassing to the AEC nevertheless, since it demonstrated an incompatability between its policy of maximum delegation of authority to its contractors and the observance of the intent of the law which ought to be expected of a government agency.

A related question has arisen under the terms of a cost type con-

18. 22 AEC SEMIANN. REP. 148 (1957).
19. Special Subcomm. on Labor Relations to the Comm. on Education and Labor, *Employment Practices at Savannah River Project*, 82d Cong., 2d Sess. (1952).

tract when the NLRB found that an AEC construction employer was operating under the terms of a closed shop contract which was discriminatory by its terms.[20] Since AEC cost contracts ordinarily provide that the agency will pay the costs of protection against legal suits, and since the contractor in question did not admit a violation of the act, the question was at what point ought the AEC to stop providing funds for defense. After the NLRB made the adverse ruling? In such a case should the AEC have paid the contractor the costs of making an employee whole for wages lost as a result of discriminatory discharge for union activity? Should the government subsidize the cost of an appeal to the circuit court? In this case the AEC paid the contractor for its defense until the NLRB make a finding of violation, then notified him that it would not reimburse an appeal to the courts.

The needs of security and loyalty have also imposed some troublesome requirements in labor-management relations in the government program. Some of these consist only of irritating delays occasioned by the need for investigation and reports on the character, associations and loyalty of participants in the program. Other security requirements have involved disestablishment of a bargaining agent for employees of an atomic energy contractor where questions concerning loyalty of union leaders were unresolved, thereby raising issues involving the abridgment by an administrative agency of the full freedom or organization otherwise guaranteed by the provisions of the national labor policy.

Since early in its administration the AEC has maintained that "neither the security rules nor their administration are matters for collective bargaining between management and labor."[21] Secrecy requirements had, of course, contributed heavily to the postponement of all organized activities among contractor employees during early Manhattan Engineer District days and in areas outside Oak Ridge and Los Alamos until late 1948. Even after unions had been allowed to organize, security regulations were carried over into negotiated agreements in the form of special security clauses written for the parties by government officials. These clauses, many of which are continued in current labor agreements, recognize government authority in matters involving classified information and agree that the government may require termination of employees for security reasons. Quite generally agreements between unions and atomic energy contractors exempt security matters from grievance procedures.

The Commission's most significant security action in the area of

20. *In re* F. H. McGraw and Albert G. Henry, 99 N.L.R.B. 695 (1951).
21. AEC, GENERAL POLICY STATEMENT RELATIVE TO CONTRACTOR PERSONNEL MANAGEMENT AND LABOR RELATIONS (June, 1955).

labor-management relations was its expulsion of the United Electrical, Radio and Machine Workers of America from the program in 1948. One of the chief reasons for delay in opening the program to union organization had been the doubts of AEC officials concerning the loyalty of some union leaders who, although not employees subject to security clearance, exercised the authority of union office over employees in the program. These doubts were centered on the leaders of the UE, then representing General Electric employees, including those in atomic energy operations, in Schenectady, and the United Public Workers, which had requested recognition as representative of employees at Argonne National Laboratory near Chicago. Late in 1948 the AEC directed General Electric to withdraw and withhold recognition if the UE as representative of any workers at AEC owned or leased installations in the Schenectady area, or any clasified work performed by the AEC. The University of Chicago was also directed to refrain from recognizing the UPW at Argonne National Laboratory.[22]

These actions were based on two stated reasons: (1) The officers of neither union had signed the non-Communist affidavits required by the Taft-Hartley Act; and (2) information was available concerning alleged Communist affiliation or association of certain officers of the unions. In view of their administrative, negotiating, or disciplinary authority over the employees of General Electric and Argonne, the AEC stated that there was a question whether their continued association with the program was consistent with the security of the nation and the policy of AEC.[23] The UE later filed a bill of complaint against the AEC and General Electric in a federal district court asking for an injunction against the Commission action and for damages. This action was later dismissed. The Commission order to the University of Chicago did not result in any legal protest by the union. In that case the union was not recognized and could not qualify for an NLRB election because its officers had not filed non-Communist affidavits.

It is important to recall that the AEC took this action a year before the CIO expelled the Communist-dominated unions and while they were still flourishing organizations. Questions were raised at the time in some quarters concerning whether the UE had received due process of law, whether there was not danger of application of similar proceedings by other administrative agencies to unions because their leaders were too militant, and about the implications of

22. 5 AEC SEMIANN. REP. 191-205 (1949).

23. AEC, REPLY TO SUBCOMM. QUESTIONNAIRE, 82D CONG., 2D SESS., REPORT OF THE SUBCOMM. ON LABOR AND LABOR-MANAGEMENT RELATIONS OF THE COMM. ON LABOR AND PUBLIC WELFARE, COMMUNIST DOMINATION OF CERTAIN UNIONS (1952).

this as an administrative action apparently unsupported by any specific provision of law.[24] Although the Atomic Energy Act of 1946 contained numerous references to protection of the security of the program which were pertinent to the exercise of authority undertaken,[25] the action was not based on any of these provisions but on the total or implied authority in the act. Opinion was also expressed that this action was an unwarranted application of the guilt by association doctrine.[26] Ten years later the best answer to these expressions of concern are that the action has not been repeated. At the time, the AEC answered these criticisms in these ways: (1) The action involved very limited application in that it affected only unions representing employees at government-owned plants or on classified atomic energy work in a private plant; (2) the union leaders were given an opportunity to meet with the Commission to explore their objections to the order—this invitation was not accepted; (3) the courts failed to sustain the union's legal objections; and (4) the public and the employees affected were given ample authoritive information about the action and the reasons for it.

The action did unilaterally deprive some General Electric employees of union representation. In 1950, following the expulsion of the UE by the CIO, its newly formed affiliate, International Union of Electrical, Radio and Machine Workers, was certified to represent the same employees following an election in which the UE was beaten by a ratio of approximately ten to one. It was in this election proceeding that the NLRB included, at the request of the AEC, a proviso which has appeared in orders of the Board since that time applying to employees in atomic energy operations. This proviso states that any certifications resulting from the election "will be conditioned upon compliance, by the certified unions, with the security requirements of the Atomic Energy Commission, a matter exclusively within the jurisdiction of that Commission."[27]

Since the UE case the AEC has issued regulations covering its security policy in the area of the labor-management relations.[28] In addition to issues involving loyalty of union representatives, the policy makes provision for security clearance of many non-employee participants in the program, such as union representatives, NLRB attorneys, field examiners and trial examiners, counsel to the parties, federal mediators, and arbitrators who may need access to classified information in the course of their work. These procedures

24. See an editorial in 167 THE NATION 385-86 (1948). Also comment in 119 NEW REPUBLIC 6, 7 (1948).
25. Atomic Energy Act of 1946, 60 Stat. 755 (1946), 41 U.S.C. § 1801 (1952).
26. Newman, *The Atomic Energy Industry: An Experiment in Hybridization*, 60 YALE L.J. 1385 (1951).
27. General Electric Co., 89 N.L.R.B. 789 (1950).
28. 16 Fed. Reg. 9679 (1951).

have served to remove most of the barriers to normal labor-management relations which would otherwise be imposed by security regulations. Although there were some justified criticisms in the earlier days of the program that security had been used as a "shield of immunity"[29] for contractors to evade their responsibility to bargain with unions, the inhibitions to normal relationships imposed by security have steadily decreased until now there is very little restraint other than that imposed by national policy.

SUMMARY

In summing up the results of some twelve years of labor-management experience in the government portion of the atomic energy program under the AEC it appears that labor-management relations under the cost type contract have been reasonably satisfactory from the standpoint of the government and the taxpayers as well as from the viewpoint of contractors and their organized employees. Collective bargaining, subject to the kinds of controls exercised by the AEC, has not resulted in extravagant working conditions because of cost-plus conditions and the increases negotiated through the years, as well as the present level of rates, are not unreasonable when compared to other industries. It appears that earnings of AEC operations contractors are advancing more rapidly than earnings in comparable industries. But wage differentials are the basic instrument for allocating labor in our economic system. The present state of atomic energy calls for expanding employment which in turn requires higher rates to attract new employees.

The strike record in the operations program has been excellent, and while time lost as a result of construction stoppages has been greater than overall statistics for that industry, there has been no precedent for the magnitude of some of the construction undertaken by AEC contractors.

Not everyone concerned is satisfied with the dispute settlement procedures in the program. But it is a healthy sign that criticism has come from both sides of the bargaining table. Contractor criticism has stressed the themes that (1) making recommendations in labor disputes is contrary to the national labor policy in the Taft-Hartley Act, (2) the procedure encourages disputes, since the unions hope to get more from the panel than they could without its intervention, and (3) that unions make extravagant demands in anticipation that panel recommendations will split the difference. This in turn is said to make contractors reluctant to make good faith counter-proposals since these would only sweeten the final panel-imposed settlement.

29. 1949 PROCEEDINGS OF THE ELEVENTH CONSTITUTIONAL CONVENTION OF THE CONGRESS OF INDUSTRIAL ORGANIZATIONS 447.

Criticism on the union side has concentrated on the consequences of their not being able to strike. In the eyes of some unions this inability to maintain a strong bargaining position, coupled with inadequate panel recommendations, yields frustration.

The leaders among management and union critics have two diametrically opposed solutions of their own, although these are not often expressed. Management critics of the panel device would prefer no special dispute settlement machinery, which in effect would allow strikes in any cases which would not justify use of the national emergency provisions of the Taft-Hartley Act. The union critics would appear to prefer some form of compulsory arbitration. The former solution is unrealistic so long as the AEC maintains its policy of avoiding interruptions of operations. The opposite solution, compulsory arbitration, would be a step backward in hoped for progress toward normal relationships in the program.

In the security area the experience demonstrates that procedures can be worked out which will not inhibit union organization despite elaborate security precautions, and conversely that there is no contradiction between national security requirements and freedom of collective bargaining. Despite the possibility that security may be used by contractors to avoid collective bargaining obligations, the large scale organization of workers in the program indicates that this has not generally occurred.

What are the labor-management problems now present in the private sector of the industry and what problems can be anticipated in the future? It seems very unlikely that any substantial labor-management experience in the government program will be applicable to the developing private nuclear program. The single most important element in the government program has been the policy of emphasizing continuity of operations free from strikes. There is no reason why this should be extended into the private application of atomic energy. Nor will the special problems engendered by cost type contracts have any applicability. And as more and more declassification of information relating to civilian uses takes place, the security restrictions imposed by government regulation will assume less importance.

Some other labor-management issues, which have been relatively unimportant in the government program, are emerging, however. These issues generally relate to the problem of radiation hazard. The unknown nature of this danger to workers in the industry has caused several unions to undertake exploratory programs and to hire staff experts to devote time to this problem. Although atomic energy contractors have had an excellent record in protection of employees from radiation accidents, the unions are concerned lest competitive pres-

sures among private employers cause them to cut corners in their safety programs. Unions are also impressed with the fact that exposure limits have been revised downward in the past year after the AEC had said for many years that previous limits contained a large safety factor. The nature of the hazard has implications for workmen's compensation, which is an important issue to unions, and for hazard payments. Although the government program has had little experience with hazard pay because of the effectiveness of its radiation protection programs, this can be expected to be a larger issue in collective bargaining in the private sector of the program.

CONCLUSIONS

The future course of labor-management relations appears to be dominated by two important influences, at least in the immediate future. One is the lag in private investment in nuclear power. While the results of this for the program are inconclusive at present because of disagreement between the Joint Committee on Atomic Energy and the Administration on how best to promote nuclear power development, the trend in Congress appears to be toward providing stimulation to peaceful applications of nuclear energy by launching additional government programs. It could be expected that such programs would be carried on under the same kinds of contracts used in the existing government program. This would mean a continuation of some kind of government control of labor expenditure and intervention in collective bargaining.

The other important influence is the enduring urgency of the weapons program and consequently of the production of fissionable materials. This tends to perpetuate the need for special dispute settlement techniques and special security programs, thus putting off the "return to normalcy," however desirable that may be from the standpoint of good labor-management relations.