

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 744

THE YOUNGSTOWN SHEET AND TUBE COMPANY,
ET AL., PETITIONERS,

vs.

CHARLES SAWYER

No. 745

CHARLES S. SAWYER, SECRETARY OF COMMERCE,
PETITIONER,

vs.

THE YOUNGSTOWN SHEET AND TUBE COMPANY,
ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED MAY 2, 1952

CERTIORARI GRANTED MAY 3, 1952

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**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

Civil No. 1635—'52

No. 11404—13

THE YOUNGSTOWN SHEET AND TUBE COMPANY, A BODY CORPORA-
TE, Youngstown, Ohio; the Youngstown Metal Prod-
ucts Company, a Body Corporate, Youngstown, Ohio,
Plaintiff

v.

CHARLES SAWYER, SECRETARY OF COMMERCE, U. S., THE WEST-
CHESTER, 4000 Cathedral Ave., N.W., Washington, D. C.,
Defendant

COMPLAINT FOR INJUNCTION AND FOR A DECLARATORY JUDG-
MENT—Filed April 14, 1952

Plaintiffs, for their complaint herein, allege:

1. This is an action for a declaratory judgment and for a permanent injunction and other relief, brought pursuant to the provisions of the Act of June 25, 1948, c. 646, 62 Stat. 964, as amended by the Act of May 24, 1949, c. 139, sec. 111, 63 Stat. 105 (28 U. S. C. A. secs. 2201 and 2202). There is now existing between the parties an actual controversy, justiciable in character, in respect of which the plaintiffs need a declaration of their rights by this Court.

2. The plaintiffs herein are The Youngstown Sheet and Tube Company and The Youngstown Metal Products Company.

a. The Youngstown Sheet and Tube Company is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Ohio.

b. The Youngstown Metal Products Company is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Ohio.

3. The defendant, Charles Sawyer, is Secretary of Commerce of the United States of America and is a resident of the District of Columbia.

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[fol. 2] 4. This action arises out of the threatened seizure of various steel-producing properties and facilities of plaintiffs by defendant, acting in pursuance of Executive Order No. , issued by the President of the United States and purporting to authorize such seizure. Said Executive Order is violative of the Constitution of the United States and is unauthorized by any law or statute of the United States presently in force and effect. The amount in controversy exceeds, exclusive of interest and costs, the sum of \$3,000.

5. (a) Plaintiff, the Youngstown Sheet and Tube Company, is engaged in the manufacture and distribution of a diversified line of steel products, coke by-products and pig iron and distribution of oil country goods, such as drilling machinery, ordinarily used in production of oil and gas. Plaintiff owns and operates numerous steel manufacturing and processing plants. Plaintiff's principal manufacturing facilities are its Campbell plant, located at Campbell, Ohio, and Struthers, Ohio; its Brier Hill Works, located at Youngstown, Ohio; its Hubbard Works, located at Hubbard, Ohio; its Indiana Harbor Works, located at East Chicago, Indiana; and its South Chicago Works, located at South Chicago, Illinois. These facilities consist of large tracts of land upon which are located furnaces, manufacturing and processing mills, machinery, and other steel-producing equipment and incidental facilities. In the operation of the aforesaid facilities Plaintiff owns and uses extensive real and personal properties, funds, rights, franchises, and other valuable assets.

(b) Plaintiff, The Youngstown Metal Products Company, owns and operates a plant at Youngstown, Ohio, and is engaged in the business of metal stamping and processing of steel products.

6. Neither of plaintiffs has received from the President of the United States, from the Atomic Energy Commission, or from any Government agency any order for materials [fol. 3] placed pursuant to the provisions of Title I, Section 18 of the Universal Military Training and Service Act of 1951 (62 Stat. 625; 50 U. S. C. A. App. sec. 468).

7. At each of the plants and mills operated by plaintiffs and referred to in paragraph 5 hereof, there are employees

represented for the purposes of collective bargaining by the United Steelworkers of America (hereinafter called the Union).

8. At all relevant times prior to April , 1952, the plaintiffs had enjoyed peaceful possession and the exclusive operation of the properties referred to in par. 5 hereof and had operated the same in all respects consistent with applicable laws of the United States and of the various States of the United States having jurisdiction thereof.

9. On December 31, 1951, the several contracts which had theretofore been in effect between the plaintiffs and the Union covering, among other things, wages and terms and conditions of employment, expired. Prior to that date negotiations between the plaintiffs and the Union looking toward the execution of further such contracts had been commenced.

10. Continued negotiations between the plaintiffs and the Union having been unproductive, the President of the Union issued an ultimatum stating that at 12:01 A. M. on April 9, 1952, all employees represented by the Union and working at the iron and steel producing and manufacturing plants, and other facilities of the plaintiffs would be ordered to, and would, discontinue their work for the plaintiffs and would thereafter engage in an organized strike against the plaintiffs.

11. On April , 1952, the President of the United States promulgated Executive Order No. , a copy of which is annexed hereto as Exhibit A, directing the seizure by the defendant of the properties of the plaintiffs referred to in par. 5 hereof.

[fol. 4] 12. The Congress has provided in the Labor Management Relations Act of 1947 specific and adequate machinery for the adjustment of the proposed strike and has specifically rejected the device of seizure as a means of settling labor disputes.

13. Executive Order No. and the actions of the defendant herein taken or to be taken in pursuance thereof are without authority under any presently existing statute of, or any provision of the Constitution of, the United States and are invalid, unlawful and without effect.

14. The actions of the defendant taken or to be taken in pursuance of said Executive Order have already affected,

and will continue adversely and irreparably to affect, the business of the plaintiffs in that

(a) said seizure, being unlawful, will deprive the plaintiffs of their properties without due process of law and the plaintiffs will have no adequate remedy at law;

(b) said seizure will result in the disruption of normal customer relationships between the plaintiffs and their customers, the great majority of whom have pending orders with the plaintiffs for steel and steel products usable and to be used in the civilian economy of the United States having no relation to any war effort of the United States;

(c) said seizure will give to the defendant access to confidential information and trade secrets in the files of the plaintiffs with regard to the business of the plaintiffs and their many customers in the United States;

[fol. 5] (d) said seizure will deprive the plaintiffs of their rights to bargain collectively with their employees and will constitute an unlawful interference therewith, for which there is no adequate remedy at law; and

(e) said seizure will threaten the plaintiffs and their directors, officers, agents and employees with criminal penalties in relation to any action taken by them to resist said unlawful seizure.

WHEREFORE, the plaintiffs pray:

(a) that this Court decree that Executive Order No. is without authority under any law of the United States or under the Constitution of the United States and is, therefore, invalid and void;

(b) that this Court decree that all action taken by the defendant pursuant to said Executive Order is invalid, unlawful and without effect;

(c) that this Court, by reason of the fact that immediate and irreparable injury, loss and damage will result to the plaintiffs by the acts of the defendant before notice can be served and a hearing held thereon, grant a temporary re-

straining order without notice to the defendant, and thereafter, pending final hearing and determination of this action, enter an order granting an interlocutory injunction restraining the defendant, and his successor or successors in office, his assistants, employees, agents and other persons acting under his control and authority, (i) from taking any steps or continuing to take any steps whatsoever to effectuate and carry out the provisions of Executive Order No. promulgated by the President of the United States insofar as said Executive Order is intended to apply to [fol. 6] the plaintiffs herein, their officers, agents and the management of their properties, (ii) from molesting or interfering with or doing any act or thing which would prevent or tend to prevent the plaintiffs, their officers, agents and employees, from operating the plaintiffs' properties for their own account, (iii) from in any respect changing the wages or other terms or conditions of employment in effect at the properties of the plaintiffs at the time of promulgation of said Executive Order and (iv) from interfering in any other way with the plaintiffs' contractual relations with others or with the plaintiffs' rights of ownership of their businesses and properties;

(d) that this Court, upon final hearing and determination of this action, enter a decree permanently enjoining the defendant, and his successor or successors in office, his assistants, employees, agents and other persons acting under his control and authority, (i) from taking any steps whatsoever to effectuate and carry out the provisions of Executive Order No. promulgated by the President of the United States insofar as said Executive Order is intended to apply to the plaintiffs herein, their officers, agents and the managements of their properties, (ii) from molesting or interfering with or doing any act or thing which would prevent or tend to prevent the plaintiffs, their officers, agents and employees, from operating the plaintiffs' properties for their own account, (iii) from in any respect changing the wages or other terms or conditions of employment in effect at the properties of the plaintiffs at the time of promulgation of said Executive Order and (iv) from interfering in any other way with the plaintiffs' rights or ownership of their businesses and properties; and

[fol. 7] (e) that the plaintiffs have such other and further relief as to the Court may seem just and proper.

John C. Gall, 401 Commonwealth Building, Washington, D. C.; John J. Wilson, 815 Fifteenth Street NW., Washington, D. C.; J. E. Bennett, Stambaugh Building, Youngstown, Ohio, Attorneys for Plaintiff.

April 14, 1952.

[File endorsement omitted.]

[fol. 8]

April 8, 1952.

EXECUTIVE ORDER

Directing the Secretary of Commerce to Take Possession of and Operate the Plants and Facilities of Certain Steel Companies

Whereas on December 16, 1950, I proclaimed the existence of a national emergency which requires that the military, naval, air, and civilian defenses of this country be strengthened as speedily as possible to the end that we may be able to repel any and all threats against our national security and to fulfill our responsibilities in the efforts being made throughout the United Nations and otherwise to bring about a lasting peace; and

Whereas American fighting men and fighting men of other nations of the United Nations are now engaged in deadly combat with the forces of aggression in Korea, and forces of the United States are stationed elsewhere overseas for the purpose of participating in the defense of the Atlantic Community against aggression; and

Whereas the weapons and other materials needed by our armed forces and by those joined with us in the defense of the free world are produced to a great extent in this country, and steel is an indispensable component of substantially all of such weapons and materials; and

Whereas steel is likewise indispensable to the carrying out of programs of the Atomic Energy Commission of vital importance to our defense efforts; and

Whereas a continuing and uninterrupted supply of steel

is also indispensable to the maintenance of the economy of the United States, upon which our military strength depends; and

Whereas a controversy has arisen between certain companies in the United States producing and fabricating steel and the elements thereof and certain of their Workers represented by the United Steelworkers of America, CIO, regarding terms and conditions of employment; and

Whereas the controversy has not been settled through the processes of collective bargaining or through the efforts of the Government, including those of the Wage Stabilization Board, to which the controversy was referred on December 22, 1951, pursuant to Executive Order No. 10233, and a strike has been called for 12:01 A. M., April 9, 1952; and

Whereas a work stoppage would immediately jeopardize and imperil our national defense and the defense of those joined with us in resisting aggression, and would add to the continuing danger of our soldiers, sailors, and airmen engaged in combat in the field; and

[fol. 9] Whereas in order to assure the continued availability of steel and steel products during the existing emergency, it is necessary that the United States take possession of and operate the plants, facilities, and other property of the said companies as hereinafter provided:

Now, therefore, by virtue of the authority vested in me by the Constitution and laws of the United States, and as President of the United States and Commander in Chief of the armed forces of the United States, it is hereby ordered as follows:

1. The Secretary of Commerce is hereby authorized and directed to take possession of all or such of the plants, facilities, and other property of the companies named in the list attached hereto, or any part thereof, as he may deem necessary in the interests of national defense; and to operate or to arrange for the operation thereof and to do all things necessary for, or incidental to, such operation.

2. In carrying out this order the Secretary of Commerce may act through or with the aid of such public or private instrumentalities or persons as he may designate; and all

Federal agencies shall cooperate with the Secretary of Commerce to the fullest extent possible in carrying out the purposes of this order.

3. The Secretary of Commerce shall determine and prescribe terms and conditions of employment under which the plants, facilities, and other properties possession of which is taken pursuant to this order shall be operated. The Secretary of Commerce shall recognize the rights of workers to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining, adjustment of grievances, or other mutual aid or protection, provided that such activities do not interfere with the operation of such plants, facilities, and other properties.

4. Except so far as the Secretary of Commerce shall otherwise provide from time to time, the managements of the plants, facilities, and other properties possession of which is taken pursuant to this order shall continue their functions, including the collection and disbursement of funds in the usual and ordinary course of business in the names of their respective companies and by means of any instrumentalities used by such companies.

5. Except so far as the Secretary of Commerce may otherwise direct, existing rights and obligations of such companies shall remain in full force and effect, and there may be made, in due course, payments of dividends on stock and of principal, interest, sinking funds, and all other distributions upon bonds, debentures, and other obligations, and expenditures may be made for other ordinary corporate or business purposes.

6. Whenever in the judgment of the Secretary of Commerce further possession and operation by him of any plant, facility, or other property is no longer necessary or expedient in the interest of national defense, and the Secretary has reason to believe that effective future operation is [fol. 10] assured, he shall return the possession and control thereof at the time possession was taken under this order.

7. The Secretary of Commerce is authorized to prescribe and issue such regulations and orders not inconsistent herewith as he may deem necessary or desirable for carrying out the purposes of this order; and he may delegate and

authorize subdelegation of such of his functions under this order as he may deem desirable.

Harry S. Truman.

The White House, April 8, 1952.

[fol. 11]

List

85 companies

- American Bridge Company, 525 William Penn Place, Pittsburgh, Pennsylvania.
- American Steel & Wire Company of New Jersey, Rockefeller Building, Cleveland, Ohio.
- Columbia Steel Company, Russ Building, San Francisco, California.
- Consolidated Western Steel Corporation, Los Angeles, California.
- Geneva Steel Company, Salt Lake City, Utah.
- Gerrard Steel Strapping Company, 2915 W. 47th Street, Chicago 32, Illinois.
- National Tube Company, 525 William Penn Place, Pittsburgh, Pennsylvania.
- Oil Well Supply Company, 2001 North Lamar Street, Dallas, Texas.
- Tennessee Coal, Iron & Railroad Company, Fairfield, Alabama.
- United States Steel Corporation, 71 Broadway, New York 6, New York.
- United States Steel Products Company, 30 Rockefeller Plaza, New York, New York.
- United States Steel Supply Company, 208 South LaSalle Street, Chicago, Illinois.
- Virginia Bridge Company, Roanoke, Virginia.
- Alan Wood Steel Company and Subsidiaries, Conshohocken, Pennsylvania.
- American Chain and Cable Company, Incorporated, 929 Connecticut Avenue, Bridgeport 2, Connecticut.
- American Chain and Cable Company, Monessen, Pennsylvania.
- Armco Steel Corporation, 703 Curtis Street, Middletown, Ohio.
- Armco Drainage & Metal Products, Inc., 703 Curtis Street, Middletown, Ohio.

- [fol. 12] Atlantic Steel Company, P. O. Box 1714, Atlanta, Georgia.
- Babcock and Wilcox Tube Company, Beaver Falls, Pennsylvania.
- Borg-Warner Corporation, 310 S. Michigan Avenue, Chicago 4, Illinois.
- Continental Copper and Steel Industries, Incorporated, Braeburn, Pennsylvania.
- Continental Steel Corporation, West Markland Avenue, Kokomo, Indiana.
- Copperweld Steel Company, Glassport, Pennsylvania.
- Detroit Steel Corporation, 1025 South Oakwood Avenue, Detroit 9, Michigan.
- Eastern Stainless Steel Corporation, Baltimore 3, Maryland.
- Firth Sterling Steel and Carbide Corporation, Demmler Road, McKeesport, Pennsylvania.
- Follansbee Steel Corporation, 3rd and Liberty Avenue, Pittsburgh 22, Pennsylvania.
- Granite City Steel Company, 20th Street and Madison Avenue, Granite City, Illinois.
- Great Lakes Steel Corporation, Tecumseh Road, Ecorse, Detroit 18, Michigan.
- Hanna Furnace Corporation, Ecorse, Detroit 18, Michigan.
- Harrisburg Steel Corporation, 10th and Herr Streets, Harrisburg, Pennsylvania.
- Boiardi Steel Company, Milton, Pennsylvania.
- Heppenstall Company, 4620 Hatfield Street, Pittsburgh, Pennsylvania.
- Inland Steel Company, 38 S. Dearborn Street, Chicago 3, Illinois.
- Joseph T. Ryerson & Son, Incorporated, 2558 W. 16th Street, Chicago 80, Illinois.
- Interlake Iron Corporation, 1900 Union Commerce Building, Cleveland 14, Ohio.
- [fol. 13] Pacific States Steel Corporation, Lathan Square Building, Oakland 12, California.
- Pittsburgh Coke & Chemical Company, 1905 Grant Building, Pittsburgh 19, Pennsylvania.
- H. K. Porter Company, Incorporated, 1932 Oliver Building, Pittsburgh 22, Pennsylvania.

- Buffalo Steel Division, H. K. Porter Company, Incorporated, Fillmore Avenue, Tonawanda, New York.
- Joslyn Manufacturing & Supply Company, 20 N. Wacker Drive, Chicago 6, Illinois.
- Joslyn Pacific Company, 5100 District Boulevard, Los Angeles 11, California.
- Latrobe Electric Steel Company, Latrobe, Pennsylvania.
- E. J. Lavino & Company, 1528 Walnut Street, Philadelphia, Pennsylvania.
- Lukens Steel Company, S. First Avenue, Coatesville, Pennsylvania.
- McLouth Steel Corporation, 300 S. Livernois, Detroit 17, Michigan.
- Newport Steel Corporation, Ninth and Lowell Streets, Newport, Kentucky.
- Northwest Steel Rolling Mills, Incorporated, 4315 9th Street, NW., Seattle, Washington.
- Northwestern Steel & Wire Company, Sterling, Illinois.
- Reeves Steel Manufacturing Company, 137 Iron Avenue, Dover, Ohio.
- John A. Roebling's Sons Company, 640 South Broad Street, Trenton, New Jersey.
- Rotary Electric Steel Company, Box 90, Detroit 20, Michigan.
- Sheffield Steel Corporation, Sheffield Station, Kansas City 3, Missouri.
- Shenango-Penn Mold Company, 812 Oliver Building, Pittsburgh 30, Pennsylvania.
- [fol. 14] Shenango Furnace Company, 812 Oliver Building, Pittsburgh 30, Pennsylvania.
- Stanley Works, 195 Lake Street, New Britain, Connecticut.
- Universal Cyclops Steel Corporation, Station Street, Bridgeville, Pennsylvania.
- Vanadium-Alloys Steel Company, Latrobe, Pennsylvania.
- Vulcan Crucible Steel Company, 1 Main Street, Aliquippa, Pennsylvania.
- Wheeling Steel Corporation, 1134 Market Street, Wheeling, West Virginia.
- Woodward Iron Company, Woodward, Alabama.
- Allegheny Ludlum Steel Corporation, Oliver Building, Pittsburgh 22, Pennsylvania.

- Bethlehem Steel Company, 701 East 3rd Street, Bethelhem, Pennsylvania.
- Bethlehem Pacific Coast Steel Corporation, 20th & Illinois Streets, San Francisco, California.
- Bethlehem Supply Company of California, Los Angeles, California.
- Bethlehem Supply Company, Tulsa, Oklahoma.
- Buffalo Tank Corporation, Lackawanna, New York, Charlotte, North Carolina, Dunellen, New Jersey.
- Dundalk Company, Sparrows Point, Maryland.
- A. M. Byers Company, 717 Liberty Avenue, Pittsburgh 30, Pennsylvania.
- Colorado Fuel Iron Corporation, 575 Madison Avenue, New York 22, New York.
- Claymont Steel Corporation, Claymont, Delaware.
- Crucible Steel Company, Oliver Building, Pittsburgh 22, Pennsylvania.
- Jones & Laughlin Steel Corporation, Third Avenue and Ross Street, Pittsburgh 30, Pennsylvania.
- [fol. 15] J. & L. Steel Barrel Company, 3711 Sepviva Street, Philadelphia 37, Pennsylvania.
- National Supply Company, 1400 Grant Building, Pittsburgh 30, Pennsylvania.
- Pittsburgh Steel Company, 1600 Grant Building, Pittsburgh 19, Pennsylvania.
- Johnston Steel & Wire Company, Incorporated, 53 Wiser Avenue, Worcester 1, Massachusetts.
- Republic Steel Corporation, Republic Building, Cleveland 1, Ohio.
- Truscon Steel Company, 1315 Albert Street, Youngstown, Ohio.
- Rheem Manufacturing Company, Russ Building, San Francisco 4, California.
- Sharon Steel Corporation, S. Irving Avenue, Sharon, Pennsylvania.
- Valley Mould & Iron Corporation, Hubbard, Ohio.
- Youngstown Sheet & Tube Company, 44 Central Square, Youngstown 1, Ohio.
- Emsco Derrick & Equipment Company, 6811 S. Alameda Street, Los Angeles 1, California.

[fol. 16] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

[File endorsement omitted]

MOTION FOR PRELIMINARY INJUNCTION

Come now the plaintiffs, by their undersigned attorneys, and move the Court for a preliminary injunction to restrain and prevent the defendant and those acting for and in his stead from committing and doing, and continuing to commit and do the unlawful and unconstitutional acts against the plaintiffs which are set forth in the Complaint heretofore filed herein.

John C. Gall, Commonwealth Building; John J. Wilson, 815 15th Street, NW.; J. E. Bennett, Stambaugh Building, Youngstown, Ohio, Attorneys for Plaintiffs.

[Certificate of service omitted in printing.]

[fol. 17] IN THE UNITED STATES DISTRICT COURT

MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION—Filed April 23, 1952

[Title omitted]

[File endorsement omitted]

Rule 65, Federal Rules of Civil Procedure.

The Complaint filed herein.

John C. Gall, Commonwealth Building, John J. Wilson, 815 15th Street N. W., J. E. Bennett, Stambaugh Building, Youngstown, Ohio, Attorneys for Plaintiffs.

[fol. 18] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

[File endorsement omitted]

AFFIDAVIT IN SUPPORT OF APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION—Filed April 24, 1952

DISTRICT OF COLUMBIA, SS :

Herman J. Spoerer, being first duly sworn, on oath deposes and states that he is the Director of Industrial Relations of the plaintiffs in the above entitled civil action, and makes this affidavit to supplement and bring up to date the complaint and the affidavit of Walter E. Watson heretofore filed herein, the contents of which he hereby reaffirms; that affiant makes this affidavit to support the application of plaintiffs for a temporary restraining order and/or preliminary injunction against the defendant; that the defendant, having seized and now holding the steel plants and properties of the plaintiffs against their will, has in effect threatened, declared, announced and asserted that in the immediate future he will order and direct an increase in the wages of the employees of plaintiffs' business; that unless the defendant is restrained and enjoined immediately, he will put such increased wages into effect and will compel plaintiffs' business to pay the same out of plaintiff's funds; that such wage increases involved in the foregoing will cost the plaintiffs annually large sums of money believed to be in the millions of dollars and payment thereof by the plaintiffs [fol. 19] under the coercion and force of the defendant will dissipate a substantial portion of the assets of the plaintiffs and cannot properly be absorbed under the present circumstances, nor can the cost thereof be justified according to sound business methods and considerations, and it will be impossible to recover from their employees said sums so paid; that plaintiffs and this affiant believe that such funds so disbursed and dissipated could not be recovered from the defendant himself because the sum is so great that he lacks sufficient wealth with which to pay a judgment therefor; that, prior to January 1, 1952, negotiations in the nature of collective bargaining began and thereafter continued be-

tween plaintiffs and other members of the steel industry, on the one hand and the United Steelworkers of America (CIO), representing employees of plaintiffs and other steel companies, on the other, regarding wages, hours and working conditions of said employees beginning January 1, 1952; that these negotiations related to the demands of the Union for increased wages and certain so-called "fringe" benefits, including, for example, holiday pay and increased vacation-pay and shift premium, and for a union shop and for a number of other items, such, for example, as management rights, incentives, local working conditions, Saturday and Sunday premium pay, seniority and duration of contract; that the parties have been unable to reach an agreement regarding the foregoing; that the increase in wages about to be ordered by the defendant would satisfy a portion of the aforesaid demand of the said Union but will impair and destroy the lawful, proper and effective bargaining position of the plaintiffs with said Union, in that the plaintiffs' employees will have secured an increase in wages without at the same time abandoning or modifying any of their demands, and without disturbing or impairing the Union's bargaining position for greater increases, for a union shop, and for the other items aforesaid; that the damage which [fol. 20] plaintiffs are about to suffer and sustain in this connection is not capable of being compensated for in money and is otherwise irreparable; that, in addition to the foregoing, and based upon previous conduct of the Government in relation to the coal industry, affiant believes that defendant will require plaintiffs, as a condition for the return of their seized properties, to adopt, accept and subscribe to such wage increases, and affiant adds that, whether or not such condition is imposed, it will be impossible as a practical matter to return to the wages which existed prior to such increases; and that by reason of the foregoing, immediate and irreparable injury, loss and damage will result to the plaintiffs for which they have no adequate remedy except by temporary restraining order immediately issued.

Herman J. Spoerer.

Subscribed and sworn to before me this 23d day of
April, 1952. Hugh R. Tankersley, Notary Public,
D. C. My commission expires April 14, 1957.
(Seal.)

[fol. 21] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

[File endorsement omitted]

AFFIDAVIT IN SUPPORT OF PLAINTIFFS' APPLICATION FOR A
RESTRAINING ORDER AND FOR A PRELIMINARY INJUNCTION—
Filed April 24, 1952

DISTRICT OF COLUMBIA, SS:

Walter E. Watson, being duly sworn, deposes and states:

1. I am the first vice-president of the plaintiff, The Youngstown Sheet and Tube Company, and president of the plaintiff, The Youngstown Metal Products Company.

2. This affidavit is made in support of the application of the plaintiffs for an interlocutory injunction restraining and enjoining the defendant from the continued seizure by him of the properties of the plaintiffs, as hereinafter described, and the application of the plaintiffs for a temporary restraining order pending decision upon the aforesaid application.

3. (a) Plaintiff, The Youngstown Sheet and Tube Company, is engaged in the manufacture and distribution of a diversified line of steel products, coke by-products and pig iron and distribution of oil country goods, such as drilling machinery, ordinarily used in production of oil and gas. Plaintiff owns and operates numerous steel manufacturing and processing plants. Plaintiff's principal manufacturing facilities are at its Campbell plant, located at Campbell, [fol. 22] Ohio, and Struthers, Ohio; its Brier Hill Works, located at Youngstown, Ohio; its Hubbard Works, located at Hubbard, Ohio; its Indiana Harbor Works, located at East Chicago, Indiana; and its South Chicago Works, located at South Chicago, Illinois. These facilities consist of large tracts of land upon which are located furnaces, manufacturing and processing mills, machinery, and other steel producing equipment and incidental facilities. In the operation of the aforesaid facilities Plaintiff owns and uses extensive real and personal properties, funds, rights, franchises and other valuable assets.

(b) Plaintiff, The Youngstown Metal Products Company, owns and operates a plant at Youngstown, Ohio, and is engaged in the business of metal stamping and processing of steel products.

4. All of said steel manufacturing and processing plants and facilities and other properties of the plaintiffs have been seized by the defendant, and plaintiffs thereby have been deprived of the possession, control and use of said properties to the irreparable injury, loss and damage of the plaintiffs and each of them.

5. Neither the President of the United States nor any person acting under his authority has placed with the plaintiffs or with either of them, under the provisions of Section 18 of the Selective Service Act of 1948, as amended (62 Stat. 625, 50 U. S. C. A. App. 648), any order for any articles or materials for the use of the Armed Forces of the United States or for the use of the Atomic Energy Commission.

6. Said seizure is a coercive effort by the defendant to compel the plaintiffs to accept the recommendations of the Wage Stabilization Board in a labor dispute which began in November, 1951, between the plaintiffs and the United Steel Workers of America representing the production and maintenance employees of the plaintiffs for the purpose of collective bargaining; and should said effort fail affiant believes, based upon a similar situation in the past in the coal industry, that said defendant will saddle the plaintiffs with labor contracts to be made by the defendant with said [fol. 23] union in order to put into effect the recommendations of the said Board, which recommendations will not only greatly increase plaintiffs' costs of operation, but will seriously interfere with rights of management of the business, and will coerce employees not now members of the union to become such. Neither plaintiffs nor the respective businesses of plaintiffs can afford to accept such recommendations as to wage increases unless authority to make a compensating increase in the price of steel shall be granted to the plaintiffs by the Office of Price Stabilization. Thus, plaintiffs are threatened with irreparable injury.

7. If said recommendations shall be put into effect, irreparable injury will result and continue to result even after

plaintiffs' property shall have been returned to them. It would be impossible for the plaintiffs then to recede from the increased wage rates and other benefits and to cancel such union shop provisions. Such injury will be directly attributable to the action of the defendant against which plaintiffs will not have any adequate legal recourse.

8. The seizure of the properties of the plaintiffs has caused and will continue to cause the plaintiffs irreparable injury in many other respects, of which the following are examples:

(a) The steel industry is a highly competitive business and the plaintiffs have many trade secrets and methods of doing business which are confidential and which the plaintiffs would not under any circumstances be willing to have revealed to their competitors. The agent of the defendant in control of the properties of the plaintiffs have access to such secrets and methods and there is grave danger that they may be revealed to the competitors of the plaintiffs and to others who do not have any right to information regarding them.

(b) The plaintiffs over the years have built up substantial relationships with their customers and during the current national defense effort have done their best to maintain such relationships in a way consistent with the requirements of the national defense effort. During the period of seizure by the defendant, the business of the plaintiffs [fol. 24] will be subject to the control of defendant and his agents who do not have any particular reason for protecting such relationships and there is grave danger that such relationships will be impaired to the irreparable detriment of the plaintiffs.

(c) The operation of the business of the plaintiffs is highly technical and requires the constant attendance of persons who are thoroughly experienced therein. During the period of defendant's control, the operation of the business will be subject to the orders of defendant and his agents, many of whom, doubtless, will not have any experience whatsoever in the operation of steel plants and related facilities. There is grave danger that the seized plants and

other facilities of the plaintiffs will be irreparably harmed by the orders of defendant and his agents.

Walter E. Watson.

Subscribed and sworn to before me this 8th day of April, 1952. Mary Whiston, Notary Public, D. C. My Commission expires Aug. 31, 1953. (Seal.)

[fol. 25] IN UNITED STATES DISTRICT COURT

[Title omitted]

DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION—Filed April 25, 1952

Defendant opposes the granting of a preliminary injunction on the following grounds, viz:

1. The breakdown of collective bargaining negotiations in the steel industry, resulting in the action of the steel companies in cooling off their furnaces in anticipation of suspension of manufacture and the action of the union in calling a strike to begin at 12:01 a. m. on April 9, 1952, created an immediately impending national emergency because interruption of steel manufacture for even a brief period would seriously endanger the well-being and safety of the United States in a critical situation.

2. The President of the United States of America has inherent power in such a situation to take possession of the steel companies in the manner and to the extent which he did by his Executive Order of April 8, 1952. This power is supported by the Constitution, by historical precedent, and by court decisions.

3. The courts are without power to negate executive action of the President of the United States of America by enjoining it and by enforcing their injunctions by imprisonment or other process against the President.

April 23, 1952. Copy Received. John C. Gall, Attorney for Plaintiffs.

[fol. 26] 4. The granting of a preliminary injunction is never a matter of right. The courts, even as between pri-

vate parties, will not interfere in advance of a full hearing on the merits except upon a showing that the damage to flow from a refusal of a temporary injunction is irreparable and outweighs the harm which would result from a denial of the temporary injunction. When, as in the present case, the interest of the public is involved, the courts are particularly hesitant to interfere.

5. Since the management of the steel companies is left in control under the arrangements which existed as of the time of taking, and since the right of the companies to recover all damages resulting from the taking has been recognized by Supreme Court decisions, there is no showing that the companies' legal remedy is inadequate or that their injury is irreparable, and hence the companies have not met the conventional conditions precedent to the granting of the kind of order they request.

This opposition is based on the affidavits of Robert A. Lovett, Secretary of Defense; Gordon Dean, Chairman of the United States Atomic Energy Commission; Manly Fleischmann, Administrator of the Defense Production Administration; Henry H. Fowler, Administrator of the National Production Authority; Oscar L. Chapman, Secretary of the Interior; Jess Larson, Administrator of General Services; Homer C. King, Acting Administrator of the Defense Transportation Administration; Charles Sawyer, Secretary of Commerce; Harry Weiss, Executive Director of the Wage Stabilization Board; and Nathan P. Fein-[fol. 27] singer, Chairman of the Wage Stabilization Board filed herewith, and on the defendant's memorandum of points and authorities filed herewith, all of which are by reference made a part hereof.

A. Holmes Baldrige, per M. C. T., Assistant Attorney General. Marvin C. Taylor, J. Gregory Bruce, per M. C. T., Attorneys, Department of Justice.

[fol. 28] [Executive Order omitted. Printed side page, 8 ante.]

[fol. 38]

Telegram

President, — — — Steel Company

The President of the United States by virtue of the authority vested in him by the Constitution and laws of the United States and as Commander in Chief of the armed forces of the United States has directed me, as Secretary of Commerce, by an Executive Order dated April 8, 1952, to take possession of all properties of your company which I deem necessary in the interests of national defense. I deem it necessary in such interests to take possession of, and hereby do take possession effective twelve o'clock midnight, Eastern Standard Time, April 8, 1952, of all properties of your company exclusive of railroads whose employees are subject to the Railway Labor Act and any and all coal and metal mines. You are being called upon as a loyal and patriotic citizen to serve as and are appointed Operating Manager for the United States of the properties of your company, possession of which is hereby taken, to continue operation of them for the United States. Please make acknowledgment of this call to serve by return wire in substantially the following form:

“I acknowledge receipt of appointment as Operating Manager on behalf of the United States of properties of my company.”

You are authorized and directed to continue operations for the United States. All officers and employees are directed forthwith to perform their usual functions and duties in connection with plant and office operation, and sale and distribution of products. Fly the flag of the United States and post notice of taking possession by the United States [fol. 39] at all premises affected. In respect of all production and distribution, proceed in accordance with previously prevailing practices. Set up books in order to keep separate the period of Government operation. Advise all employees of the program. Be governed by applicable state and federal laws and orders, regulations and directives which have been or may be issued thereunder. In respect of any properties which you feel are not, or will not be, involved in controversies referred to in the Executive Order

of the President, you may submit a recommendation that operation of such properties on behalf of the Government be terminated. Further instructions will follow.

Am mailing immediately copies of Executive Order of the President, my Order No. 1 under that Order, and notice of taking possession.

If you are not acting as chief executive officer of the company, consider this telegram as directed to the officer who is so acting.

Charles Sawyer, Secretary of Commerce.

[fol. 40] UNITED STATES DEPARTMENT OF COMMERCE

April 8, 1952.

Order No. 1

By virtue of the authority vested in me by the President of the United States under an Executive Order dated April 8, 1952, "Directing the Secretary of Commerce to take possession of and operate the plants and facilities of certain steel companies," I deem it necessary in the interests of national defense that possession be taken of the plants, facilities, and other properties of the companies named in the list specified in Appendix A attached hereto. I therefore take possession effective at twelve o'clock midnight, Eastern Standard Time, April 8, 1952, of such plants, facilities and other properties for operation by the United States in order to assure the continued availability of steel and steel products during the existing national emergency proclaimed on December 16, 1950. The term "plants, facilities and other properties" as used herein shall include but not be limited to any and all real and personal property, franchises, rights, funds and other assets used or useful in connection with the operation of such plants, facilities and other properties and in the distribution and sale of the products thereof, but shall exclude in every instance railroads whose employees are subject to the Railway Labor Act and any and all coal and metal mines.

The president of each company named in the list specified in Appendix A attached hereto (or the chief executive officer of such company) is hereby designated Operating Man-

ager for the United States for such company until further notice, and is authorized and directed, subject to such supervision as I may prescribe, in accordance with such regulations and orders as are promulgated by me or pursuant to authority delegated by me, to operate the plants, facilities and other properties of such company and to do all things necessary and appropriate for the operation thereof and for the distribution and sale of the products thereof.

[fol. 41] The managements, officers and employees, of the plants, facilities and other properties, possession of which is taken pursuant to said Executive Order, are serving the Government of the United States and shall continue their functions, including the collection and disbursements of funds in the usual and ordinary course of business, in the names of their respective companies and by means of any instrumentalities used by such companies.

Existing rights and obligations of such companies shall remain in full force and effect, and there may be made in due course payments of dividends on stock, and of principal, interest, sinking funds, and all other distributions, upon bonds, debentures, and other obligations, and expenditures may be made for other ordinary corporate or business purposes.

No person shall interfere with the operation of the plants, facilities and other properties by the United States Government or the sale or distribution of the products thereof in accordance with this order.

The Operating Manager for the United States shall forthwith fly the flag of the United States upon all premises, and post in a conspicuous place upon the plants, facilities and other properties a notice of taking of possession by the United States.

Possession and operation of any plant, facility, or other property may be terminated by the Secretary of Commerce at such time as he may find that such possession and operation are no longer required in the interests of national defense.

Charles Sawyer, Secretary of Commerce.

- Mr. F. K. McDanel, President, American Bridge Company, 525 Wm. Penn Place, Pittsburgh, Pa.
- Mr. H. B. Jordan, President, American Steel & Wire Co. of N. J., Rockefeller Building, Cleveland 13, Ohio.
- Mr. Alden G. Roach, President, Columbia Steel Company, Russ Building, San Francisco 6, Calif.
- Mr. Joseph H. Carter, President, Pittsburgh Steel Company, 1600 Grant Building, Pittsburgh 19, Pa.
- Mr. C. M. White, President, Republic Steel Corporation, Republic Building, Cleveland 1, Ohio.
- Mr. Richard S. Rheem, President, Rheem Manufacturing Company, 570 Lexington Avenue, New York 22, New York.
- Mr. Henry A. Roemer, Jr., President, Sharon Steel Corporation, Sharon, Pa.
- Mr. Wm. Haig Ramage, President, Valley Mould & Iron Corporation, Hubbard, Ohio.
- Mr. J. Lester Mauthe, President, Youngstown Sheet & Tube Company, Stambaugh Building, Youngstown 1, Ohio.
- Mr. C. L. Austin, President, Jones & Laughlin Steel Corporation, Third Avenue and Ross Street, Pittsburgh 30, Pa.
- Mr. A. E. Walker, President, National Supply Company, 1400 Grant Building, Pittsburgh 30, Pa.
- Mr. A. F. Franz, President, Colorado Fuel & Iron Corporation, 575 Madison Avenue, New York 22, New York.
- Mr. W. H. Colvin, Jr., President, Crucible Steel Company, 405 Lexington Avenue, New York 17, New York.
- Mr. Arthur B. Homer, President, Bethlehem Steel Company, 701 East 3rd Street, Bethlehem, Pa.
- Mr. Alden G. Roach, President, Consolidated Western Steel Corporation, P. O. Box 2105, Terminal Annex, Los Angeles 54, California.
- Mr. Walther Mathesius, President, Geneva Steel Company, P. O. Box 269, Salt Lake City 8, Utah.
- Mr. Henry G. Walter, President, Gerrard Steel Strapping Company, 2915 West 47th Street, Chicago 32, Illinois.
- Mr. J. E. Goble, President, National Tube Co., Frick Building, Pittsburgh 19, Pa.

- Mr. F. F. Murray, President, Oil Well Supply Company, 2001 North Lamar Street, Dallas, Texas.
- Mr. A. V. Wiebel, President, Tennessee Coal, Iron & Railroad Company, Brown-Marx Building, Birmingham, Alabama.
- Mr. Benjamin F. Fairless, President, United States Steel Company, 525 Wm. Penn Place, Pittsburgh, Pa.
- Mr. John Hanerwaas, President, United States Steel Products Co., 30 Rockefeller Plaza, New York, New York.
- [fol. 43] Mr. L. B. Worthington, President, United States Steel Supply Co., 208 South LaSalle Street, Chicago, Illinois.
- Mr. F. K. McDanel, President, Virginia Bridge Company, Roanoke, Virginia.
- Mr. J. T. Whiting, President, Alan Wood Steel Company and Subsidiaries, Conshohocken, Pa.
- Mr. Cyrus N. Johns, President, American Chain and Cable Company, 929 Connecticut Avenue, Bridgeport 2, Conn.
- Mr. Weber W. Sebald, President, Armco Steel Corporation, 703 Curtis Street, Middletown, Ohio.
- Mr. R. S. Lynch, President, Atlantic Steel Company, P. O. Box 1714, Atlanta, Georgia.
- Mr. Luke E. Sawyer, President, Babcock and Wilcox Tube Company, Beaver Falls, Pa.
- Mr. Roy C. Ingersoll, President, Borg-Warner Corp., 301 South Michigan Avenue, Chicago 4, Illinois.
- Mr. Ernest G. Jarvis, President, Continental Copper and Steel Industries, Inc., 345 Madison Avenue, New York 17, New York.
- Mr. D. B. McLouth, President, McLouth Steel Corp., 300 S. Livernois, Detroit 17, Michigan.
- Mr. Ralph K. Clifford, President, Continental Steel Corporation, 1109 South Main Street, Kokomo, Indiana.
- Mr. F. R. S. Kaplan, President, Copperweld Steel Company, 39 Teilfeld Street, Glassport, Pa.
- Mr. John M. Curley, President, Eastern Stainless Steel Corp., 122 Rolling Mill Avenue, Baltimore 3, Md.
- Mr. K. D. Mann, President, Firth Sterling Steel and Carbide Corp., 3115 Forbes Street, Pittsburgh 13, Pa.
- Mr. Marcus A. Follansbee, President, Follansbee Steel Corp., 3rd and Liberty Ave., Pittsburgh 22, Pa.
- Mr. John N. Marshall, President, Granite City Steel Com-

- pany, Hamilton & Randolph Streets, Granite City, Illinois.
- Mr. George R. Fink, President, Great Lakes Steel Corp., Tecumseh Road at Fink, Ecorse, Detroit 18, Michigan.
- Mr. M. J. Zivian, President, Detroit Steel Corp., 1025 South Oakwood Ave., Detroit, Michigan.
- Mr. J. C. Cairns, President, Stanley Works, 195 Lake Street, New Britain, Conn.
- [fol. 44] Mr. George R. Fink, President, Hanna Furnace Corporation, Walbridge Building, Buffalo, New York.
- Mr. Hector Boiardi, President, Boiardi Steel Company, 400 Lower Market Street, Milton, Pa.
- Mr. Robert B. Heppenstall, President, Heppenstall Company, 4624 Hatfield Street, Pittsburgh, Pa.
- Mr. Clarence B. Randall, President, Inland Steel Company, 38 S. Dearborn Street, Chicago 3, Illinois.
- Mr. C. L. Hardy, President, Joseph T. Ryerson & Son, Inc., Box 8000-A, Chicago 80, Illinois.
- Mr. E. L. Clair, President, Interlake Iron Corporation, 1910 Union Commerce Building, Cleveland 14, Ohio.
- Mr. Bentley S. Handwork, President, Joslyn Manufacturing & Supply Company, 20 N. Wacker Drive, Chicago, Illinois.
- Mr. M. L. Joslyn, President, Joslyn Pacific Company, 5100 District Blvd., Los Angeles 11, Calif.
- Mr. W. W. Saxman, Jr., President, Latrobe Electric Steel Company, 1944 Haller Street, Latrobe, Pa.
- Mr. E. M. Lavino, President, E. J. Lavino & Company, 1528 Walnut Street, Philadelphia, Pa.
- Mr. Charles Lukens Huston, Jr., President, Lukens Steel Company, 1949 Gillen Street, Coatesville, Pa.
- Mr. Frank S. Gibson, Jr., President Newport Steel Corp., 1501 Beard Avenue, Detroit, Mich.
- Mr. H. L. Goetz, President, Northwest Steel Rolling Mills, Inc., 4315 9th N.W., Seattle, Washington.
- Mr. Paul W. Dillon, President, Northwestern Steel & Wire Company, 1927 Griswold Street, Sterling, Ill.
- Mr. Jos. Eastwood, Jr., President, Pacific States Steel Corporation, Nathan Square Building, Oakland 12, California.
- Mr. J. H. Hillman, Jr., Chairman of Board, Pittsburgh

- Coke & Chemical Co., 1970 Grant Building, Pittsburgh 19, Pa.
- Mr. T. M. Evans, President, H. K. Porter Company, Inc., 1932 Oliver Bldg., Pittsburgh 22, Pa.
- Mr. A. J. Krantz, President, Reeves Steel Mfg. Co., 137 Iron Avenue, Dover, Ohio.
- Mr. Charles R. Tyson, President, John A. Roebling's Sons Company, 640 South Broad Street, Trenton, New Jersey.
- Mr. Nathaniel D. Devlin, President, Rotary Electric Steel Company, Box 90, Detroit 20, Michigan.
- Mr. Ralph L. Gray, President, Sheffield Steel Corporation, Sheffield Station, Kansas City 3, Missouri.
- Mr. Wm. P. Snyder III, President, Shenango Penn Mold Company, 812 Oliver Building, Pittsburgh, Pa.
- [fol. 45] Mr. E. H. Taylor, President, Taylor Forge & Pipe Works, P. O. Box 485, Chicago 90, Illinois.
- Mr. Edward L. Stockdale, President, Universal Cyclops Steel Corporation, Bridgeville, Pa.
- Mr. R. C. McKenna, President, Vanadium Alloys Steel Company, Latrobe, Pa.
- Mr. Stephen B. Minton, President, Vulcan Crucible Steel Company, 1 Main Street, Aliquippa, Pa.
- Mr. John L. Neudoerfer, President, Wheeling Steel Corporation, 1134 Market Street, Wheeling, W. Va.
- Mr. B. C. Colcord, President, Woodward Iron Company, Woodward, Alabama.
- Mr. E. J. Hanley, President, Allegheny Ludlum Steel Corporation, Oliver Building, Pittsburgh 22, Pa.
- Mr. L. F. Rains, President, A. M. Byers Company, 717 Liberty Avenue, Pittsburgh 30, Pa.

[fol. 46] AFFIDAVIT

COUNTY OF ARLINGTON,
Commonwealth of Virginia:

Robert A. Lovett, being duly sworn, deposes and says that he is the Secretary of Defense of the United States and is the principal assistant to the President in all matters relating to the Department of Defense, and under the direction of the President, he has direction, authority, and control over the Department of Defense, including the De-

partments of the Army, Navy, and Air Force, and the Munitions Board.

Pursuant to these statutory duties and in the exercise thereof, he has information relating to the problems of procurement, production, distribution, research, and development concerning the logistics requirements of the armed forces of the United States in weapons, arms, munitions, equipment, materials, and all other necessary supplies for the armed forces of the United States.

There exists a state of national emergency declared by the President on 16 December 1950. Communist aggression is forcing the free world to fight a limited war on the battlefield and an unlimited war of preparation and production.

United Nations armed forces, largely American, are today fighting a war with communist armies and air forces in Korea. The French are fighting communist forces in Indo-China. There is a constant threat of further communist military aggression in other areas. The men actually fighting communist forces have been armed for the most part by American industry, and they are relying on American industry to supply the weapons and munitions they need in daily combat.

[fol. 47] To meet this threat of further aggression, we have deployed military forces in Europe and elsewhere. Friendly nations have joined us and have assigned their own military units to hold the line alone and with our forces. The Russians are warned in the only language they understand that the free world stands united in its determination to remain free. These men on the line which may become the firing line at any time, have been armed by western industry, largely American, and they are relying on our industry to supply an essential part of the weapons and munitions they must have to defend themselves and all of us.

We and other nations are training large numbers of men to increase the forces already combat worthy and to replace those who have served their turn and done their duty. In our case this involves building the core of our nation's defense—a well trained home force fully equipped with modern weapons and equipment. The weapons and

equipment for this great training effort have come and must come largely from American industry.

The steel industry of the United States provides the basic commodity required in the manufacture of substantially all weapons, arms, munitions, and equipment produced in the United States. An adequate and continuing supply of steel is essential to every phase of our defense effort.

The cessation of production of steel for any prolonged period of time would be catastrophic.

It would add to the hazards of our own soldiers, sailors, and airmen and of other fighting men in combat with the enemy. It could result in tragedy and disaster.

It would prevent us from adequately arming the military forces now facing the enemy on uneasy fronts.

[fol. 48] It would seriously delay us in adequately training and arming their replacements and reinforcements, and in building the core of our nation's defense, our home force.

For economic and financial reasons our armament program has been "stretched out" approximately a year longer than our military men desired from a purely military point of view. A cessation of steel production at this time would add materially to the risk the stretch-out already entails, thereby increasing the "calculated risk" we are taking to an unjustifiable point.

We are now using, for production of military end items (guns, tanks, planes, ships, ammunition and other military supplies and equipment), the following percentages of our total national steel production:

Carbon Steel.....	13.5 percent
Alloy Steel.....	36.6 percent
Stainless Steel.....	32.4 percent
Super alloy Steel.....	84.0 percent

In addition to such direct military requirements, those activities directly and indispensably supporting our military effort, such as the atomic energy, petroleum, power, and transportation programs and the program for broadening our industrial base and increasing our war potential, require many millions of tons of steel.

Considerations of national security make it impossible to state publicly the breakdown of use of various types of steel in manufacture of different military weapons and equipment. A few examples which can be given will show [fol. 49] the crisis which a steel shut-down would produce. For instance 35 percent of national production of one form of steel is going into ammunition for the use of our armed forces and 80 percent of such ammunition is going to Korea.

Since World War II the armed forces have made great progress in increasing the fire power of combat units; the fire power of an infantry division is 50 percent greater today than it was in World War II. We have substituted, insofar as possible, such fire power for manpower.

Our combat techniques are designed to employ the industrial strength of the United States by the increased use of ammunition and other matériel so as to preserve and protect to the maximum extent possible the lives of our men.

We have authorized an increase in consumption rates per gun to the extent of 60 percent over World War II in certain all-important weapons, and we have equipped our troops with more artillery and with newly developed recoilless artillery weapons so that a few infantrymen now carry the heavy fire power formerly carried by a complete artillery unit.

Such techniques and objectives require a greatly increased use of steel.

Although Korean truce talks are in progress and the battle lines are relatively stable, our troops are still firing a very substantial volume of artillery ammunition. There has been a tremendous decrease in the number of our casualties in Korea. We are holding the line with ammunition and not with the lives of our troops.

[fol. 50] Moreover, a sudden and large-scale resumption of combat in Korea may occur at any time; in such case the demand for ammunition as well as many other types of munitions could vastly increase.

Another specific example of a critical shortage is in stainless steel. Fifteen percent of all stainless steel produced in the United States is used in the manufacture of airplane engines, including jets. No jet engine can be manufactured without substantial quantities of high-alloy steels.

Therefore, any curtailment in the production of steel even for a short period of time will have serious effects on the programs of the Department of Defense which are essential to national security. A work stoppage in the steel industry will result immediately in serious curtailment of production of essential weapons and munitions of all kinds; if permitted to continue, it would weaken the defense effort in all critical areas and would imperil the safety of our fighting men and that of the Nation.

(Signed) Robert A. Lovett, Secretary of Defense.

Subscribed and sworn to before me this 14th day of April 1952. (Signed) Ralph N. Stohl, Notary Public. My commission expires January 19 1956.

[fol. 51] CITY OF WASHINGTON,
District of Columbia, ss:

AFFIDAVIT

The undersigned, being first duly sworn, deposes and says:

1. He is Chairman of the United States Atomic Energy Commission.
2. The Atomic Energy Commission is currently engaged in a construction program involving a major expansion of its facilities authorized by the President and the Congress for the production of fissionable and other materials for atomic weapons.
3. This expansion program includes the construction of major facilities at Savannah River, South Carolina; Paducah, Kentucky; Fernald, Ohio, and other places.
4. The scope of this program and the target dates for completion of its integral parts are governed by production goals for atomic weapons established by the President to fulfill the requirements of the Armed Forces in the interest of the national security.
5. Our facilities construction program must be completed on schedule in order to meet the established weapon-production goals.

6. Completion of construction of these production facilities on schedule will be difficult in any event because:

a. The unique and unorthodox nature of most of these facilities presents complex design and procurement problems not usually found in more conventional types of plants.

b. Time already lost through schedule slippages attributable to delivery delays must be recovered.

7. The requirements of AEC's construction projects include virtually all types and kinds of steel including special forms of structural steel for buildings and substantial quantities of stainless steel for process equipment. These requirements include steel for structures and specially fabricated equipment and also for such items of specialized and standard manufacture as pumps, valves, compressors, heat exchangers, piping, heavy electrical equipment, tanks, and the like.

8. Inventories of steel and other critical products at the AEC construction projects are generally abnormally low for projects of such magnitude. Consequently, any cessation of deliveries of steel to the sites of AEC construction projects or to the manufacturers of equipment for such projects is likely to result in delays in the completion of these projects. A protracted cessation of deliveries of steel would certainly result in delays in the completion of these construction projects which could not be made up.

9. The critical effect of this situation on the production schedules of the AEC is evidenced by the fact that the National Production Authority, in addition to regular priority assistance on all AEC orders, is issuing daily special directives to insure delivery of various steel orders on accelerated and abnormal schedules in order to prevent delay to AEC projects. There are literally dozens of such directed orders currently outstanding which will delay the most urgent portions of the Commission's program of construction if steel is not furnished as required.

10. The ultimate effect of delayed completion of production facilities will inevitably be reflected in AEC's inability to step up the production of weapons to the rate required to meet the goals established by the President.

11. The undersigned further deposes that the foregoing statements are true to the best of his knowledge and belief.
(S.) Gordon Dean.

Subscribed and sworn to in my presence this 9th day of April 1952. (S.) John L. Cook, Notary Public.
My commission expires December 31, 1952.

[fol. 53] CITY OF WASHINGTON,
District of Columbia, ss:

Manly Fleischmann, being duly sworn, deposes and says:

1. I am Administrator of the Defense Production Administration, an agency of the Government of the United States established by order of the President on January 3, 1951 (Executive Order 10200).

2. As Defense Production Administrator I am charged by the President to "perform the central programming functions incident to the determination of the production programs required to meet defense needs" and to "make determinations as to the provision of adequate facilities for defense production."

3. The central programming function for defense production requires the measurement of the total supply of materials, including steel, against the total requirements for those materials of both defense and civilian production.

4. The total supply of steel normally available to the United States is substantially less than the estimated requirements for defense and civilian production.

5. The disparity between supply and requirements has required the limitation of use of steel by action taken under the Defense Production Act of 1950, as amended, in order to assure the accomplishment of military production, defense-supporting production and essential civilian production.

6. A shutdown of steel production in the United States would immediately interfere with military production which is currently requiring better than 20% of our entire steel output.

3-744-745

7. A shutdown of steel production in the United States would immediately impair essential civilian production and the maintenance of the industrial economy of the United States.

[fol. 54] 8. There are no alternative sources of supply adequate to the maintenance of military or essential civilian production in the event of stoppage of current steel production in the United States.

9. The continued production and fabrication of steel and the elements thereof is necessary to the national defense.

(S.) Manly Fleischmann.

Sworn to before me this 9th day of April, 1952. (S.)
Gertrude O. Higdon, Notary Public, D. C., General
Accounting Office, 441 G St. N. W. (Seal.)

[fol. 55] CITY OF WASHINGTON,
District of Columbia, ss:

AFFIDAVIT

Henry H. Fowler, being duly sworn, deposes and says:

1. I am the Administrator of the National Production Authority, an agency of the Government of the United States, established by order of the Secretary of Commerce on September 11, 1950, under the authority of Executive Orders Nos. 10161 and 10200 and delegations of the Defense Production Administrator pursuant thereto.

2. As Administrator of the National Production Authority, I am charged with the performance of all priorities and allocations functions under Title I of the Defense Production Act of 1950, as amended, which have been conferred upon the Secretary of Commerce by the Executive Orders and delegations stated in paragraph 1 hereof.

3. The priorities and allocations functions conferred upon me pertain to all materials and facilities not otherwise conferred upon other agencies of the Government of the United States by the Executive Orders and delegations stated in paragraph 1 hereof.

4. In the performance of these functions, it is my responsibility to be currently informed of the productive capacity of the iron and steel industry and related industries, and of

the iron and steel requirements of those industries for which the National Production Authority acts as claimant agency.

5. Products of the iron and steel industry are indispensable in the manufacture of military weapons and equipment, and in the production of many items required for defense-supporting programs, including construction programs of the Department of Defense and the Atomic Energy Commission, the construction and expansion of power plants and of steel and aluminum facilities, and the production of railroad equipment, ships, machine tools, and the like. In the month of February 1952, the total tonnage of iron and steel products shipped by the iron and steel industry for all uses was approximately 6,400,000 tons, of which it is estimated that 936,000 tons were shipped for direct Department of Defense and Atomic Energy Commission uses. Although complete figures for later months are not presently available to the National Production Authority, information which is available indicate some increases in these tonnages. In addition to the steel shipments made for the use of the Department of Defense and the Atomic Energy Commission, substantial quantities of steel are required for the defense-supporting programs, such as those mentioned above.

6. The statements contained in this paragraph 6 are made upon information and belief based on my continuous and almost daily personal contact as Administrator of the National Production Authority with the heads of the various material and product divisions of the Authority. In my capacity as Administrator, I receive frequent reports from the heads of said divisions relating to available material supplies, including iron and steel, and the material requirements of the military and defense-supporting programs, and, in addition, I am in frequent consultation with the heads of other Government defense agencies, particularly the Defense Production Administration, with respect to the problem of producing and distributing critical materials, including iron and steel, in sufficient quantities to meet the requirements for military and defense-supporting purposes on schedule.

(a) I estimate that the total tonnages of iron and steel products which would otherwise be available for all pur-

poses, including defense and defense-supporting programs, would be reduced by approximately 90 percent, in the event that the threatened strike or work stoppage mentioned in the Executive Order of the President, dated April 8, 1952, has taken place. Information is not presently available to indicate the particular shapes and forms of steel products and the particular steel alloys the production of which would not be interrupted by said work stoppage. The statements as to the dispositive effects of the stoppage as set forth below are subject to the qualification that they would be alleviated to the extent that the productive capacity of the operating iron and steel mills could be used to meet the requirements of a particular program.

(b) Complete information is not available to me with respect to inventories of materials and components in the hands of manufacturers of products required for the military and defense-supporting programs. A considerable number of these manufacturers do not have available in inventory balanced supplies of the shapes and forms of steel necessary for continuation of their production schedules over a substantial period of time. Consequently, although many of them would be able to operate for a period of time following said work stoppage, deliveries of end products and components would quickly diminish in volume and gradually come to a halt. This situation would be more acute in the case of companies with lower, or greater imbalance in, inventories.

(c) Said work stoppage would result in an immediate slow-down in the planned production of certain types of ammunition for the Armed Forces. The manufacturers of such ammunition do not have significant inventories of the types of steel used in such production because this usage is being rapidly accelerated. A similar situation prevails with respect to certain essential programs of the Atomic Energy Commission which depend on small, but vital, production of specialty items which are in critically short supply. If continued for a period as long as eight weeks, I believe that such a stoppage would paralyze the production of substantially all military weapons and equipment incorporating steel materials and components and also of many products and components incorporating steel materials required for the defense-supporting programs.

(d) In the field of general industrial components which are extensively used in both military and defense-supporting programs, the disruption caused by said work stoppage would be immediate and serious with respect to some items and more remote, but equally certain, with respect to others. The production of anti-friction bearings, mechanical power transmissions, and aircraft fasteners would be quickly affected due to the absence of significant steel inventories in the hands of many producers of these items. A disruption of the flow of these components would cause an immediate curtailment and a shutdown at an early date of the production of aircraft, tanks and other military equipment for which these components are required. Some of the manufacturers of such military equipment do not have on hand significant inventories of the components mentioned. The production of steel valves would also be immediately affected by such stoppage which would cause a disruption in construction programs of the Atomic Energy Commission and in the essential industrial expansion programs for which a substantial supply of steel valves is requisite.

(e) The production of heavy power equipment, such as engines and turbines, and of electrical equipment, such as motors and controls, switch gear and power transformers, would be immediately affected by said work stoppage due to the absence of balanced inventories of steel products in the hands of some manufacturers of such equipment. While a number of the manufacturers in this field would be able to continue production for a period of time, I estimate that shipments of such equipment would be discontinued by the manufacturers within one to three weeks after such stoppage. I estimate, with respect to the producers of engines and turbines, that even a one week's stoppage would cause as much as one month's delay in the production of engines and turbines because the producers of this equipment are presently operating under very tight delivery schedules and at full plant capacity. The loss of engine and turbine production would have serious effects upon the programs of the Atomic Energy Commission, the Navy's mine sweeper program, the power expansion program, and the aluminum and steel expansion programs.

(f) Said work stoppage would have an immediate and serious impact on the production of electronic equipment

used for military purposes. A stoppage of more than one week would result in substantial loss of production of such essential components as relays, synchros, servos, and similar type special components for military purposes. This is due to the fact that these items require special types of steels which the producers of these components have been able to acquire only in sufficient quantities to meet current production schedules. The limiting factor in the production of these components is final assembly and test and, since assembly and test facilities and all available technical personnel are presently being fully utilized, any loss in production is not recoverable. If there should be a loss in production of components for electronic equipment, there would be a corresponding loss in the production of the equipment itself since there are no significant inventories of components.

(g) Said work stoppage would seriously impede certain construction programs required to support the mobilization effort including facilities for the production of aluminum, steel, certain essential chemicals, urgently needed metal-working equipment, particularly machine tools, and aircraft, ships, tanks, guns, shells and guided missiles. These [fol. 60] construction projects will require a total of approximately 1,000,000 tons of steel for completion. All of these projects have a high degree of priority and any delay in completing them would set back the production schedules of military products urgently needed in the mobilization effort.

(Signed) Henry H. Fowler.

Subscribed and sworn to before me, this 14th day of April, 1952. (Signed) Ralph C. Barton, Notary Public, District of Columbia. My commission expires September 30, 1956. (Seal.)

[fol. 61]

AFFIDAVIT

CITY OF WASHINGTON,
District of Columbia, ss:

I, Oscar L. Chapman, being duly sworn, do depose and say:

1. I am Secretary of the Interior and I am making this affidavit on the basis of information obtained by the Department of the Interior in the performance of its functions.

2. The Secretary of the Interior bears the responsibility of assuring that adequate supplies of petroleum, petroleum products, and gas are available for the defense program and the essential civilian economy. The Petroleum Administration for Defense is the agency in the Department of the Interior through which this responsibility is discharged.

Recognizing that the United States and the free nations would be faced with a critical shortage of petroleum products in the event of an all-out war, the National Security Council has approved a world expansion program for the petroleum industry which will necessitate the use by the industry of large quantities of steel.

Despite the absolute necessity of increasing our petroleum reserves and oil transportation facilities and our refining capacity, material in forms critical to this program, such as oil country tubular goods, structural steel, and plate would not be made available during the second and third quarters and subsequent quarters in sufficient quantities to carry out the expansion program should there be [fol. 62] any substantial stoppage in deliveries of steel for even a short period of time.

A substantial stoppage in the production of steel would have drastic repercussions not only in retarding our present expansion program but would also delay important projects now under way. A slow-down in drilling operations due to the lack of oil country tubular goods would preclude the possibility of increasing our known reserves and would have an immediate effect on present production.

Many important oil lines are under construction and are contemplated, without which the transportation of petroleum from the wells to refining centers cannot be accom

plished. Storage of petroleum products, not only for industries but for direct military use, will be delayed and our refinery expansion program will be seriously affected in the event of a nation-wide stoppage in the production of steel.

Included in the petroleum program is the expansion of facilities for production of aviation gasoline and alkylates which are presently in critically short supply and which will be vitally necessary in the event of a major war.

Similarly, the country has insufficient natural gas available in many consuming areas to meet present requirements for industrial production and other use. Our expansion program to build transmission facilities to these areas is now in the process of execution and will be seriously delayed [fol. 63] by a steel stoppage. Any serious interference with delivery of steel pipe will prevent a number of major gas pipe lines being completed in time for service during the winter of 1952-53, which would result in a serious deficit of supply. The total tonnage of steel already allotted for use in major gas pipe line projects, primarily in the second and third quarters of 1952, is 377,400 tons. These projects are expected to deliver to market during the next winter approximately 2,160,000,000 cubic feet of gas.

The Defense Production Administration has determined that the steel requirements of the oil and gas industries to be met through deliveries in the second quarter of 1952 are as follows:

Carbon Steel—1,595,888 tons
Alloy Steel—108,967 tons
Stainless Steel—4,886,687 lbs.

For the third quarter the Defense Production Administration has allotted to the petroleum and gas industries the following amounts of steel:

Carbon Steel—1,763,000 tons
Alloy Steel—140,000 tons
Stainless Steel—1,500,000 lbs.

These determinations are on the basis of urgent needs and clearly indicate the substantial quantities of steel required

in the next several months for the programs of the Petroleum Administration for Defense.

[fol. 64] 3. An adequate supply of electric power and adequate facilities for its transmission and distribution must also be provided if the defense program is to be successfully carried out and the needs of the essential civilian economy are to be met. The Secretary of the Interior is charged with the responsibility of assuring the availability of adequate supplies of electric power. This responsibility is discharged through the Defense Electric Power Administration, an agency in the Department of the Interior.

The electric utility industry is a substantial user of steel and steel products. The following table shows the requirements of the electric utility industry for steel that were presented to the Defense Production Administration by the Defense Electric Power Administration for the second and third quarters of 1952 and the allotments of steel actually made by the Defense Production Administration for the electric utility industry for those periods.

Second Quarter 1952		
	Requirements (tons)	Allotments (tons)
Plate.....	65,351	44,500
Structural.....	196,658	148,500
Other carbon steel.....	168,772	138,105
Third Quarter 1952		
	Requirements (tons)	Allotments (tons)
Plate.....	47,142	45,000
Structural.....	122,083	120,000
Other carbon steel.....	127,134	125,000

The shortage of steel has already resulted in delaying the power program. The Defense Electric Power Administration [fol. 65] in cooperation with the power industry has made substantial efforts to conserve steel. On June 22, 1951, it issued Industry Letter No. 2 to all electric utilities urging the substitution of wood poles in place of steel towers wherever possible. In general, however, there is no substitute for steel in the power program.

The principal use of steel in the power program is for generating stations. Approximately 80 percent of all steel allotted to the Defense Electric Power Administration is used in generating plants and more than 90 percent of steel plate allotted is used in generating plants. For the

remainder of the calendar year 1952 approximately four and one-half million kilowatts of new generation is scheduled for completion. A substantial share of the output of generating plants now under construction will be directly devoted to the atomic energy and military production programs.

Inability to obtain steel on time will delay almost every new generating station included in this program, as well as delaying the 1953 and later generating stations which are now under construction. Another serious problem raised by an inability to procure steel is the delay in delivery of boilers, generators, turbines, and other installed equipment. The boiler program in particular has already slipped to an extent that any further delays in boiler shipments will almost certainly result in failure to meet in-service dates of new generating stations. This is true with respect to almost every single steam-generating plant now under construction.

[fol. 66] The increase in power loads throughout the country due to the expansion of defense industries has reduced power supply margins to the point where curtailment of service to a number of defense industries is more than likely to occur. In the Pacific Northwest, the power shortage of September, 1951 resulted in a reduction of power deliveries for aluminum production. Under the most favorable circumstances of material availability, power supply margins will not be generally adequate throughout the country until 1954. The possibility of further defense production curtailments will therefore be substantially increased if the power program is retarded by a stoppage of steel supplies.

4. Coal, coke, and coal chemicals in adequate quantities are required for the defense program. The responsibility of assuring adequate supplies of these commodities also is a charge of the Secretary of the Interior. This responsibility is discharged through the Defense Solid Fuels Administration, an agency in the Department of the Interior.

The effect of nonoperation of the steel plants upon the program of the Defense Solid Fuels Administration for the solid fuels industries may be summarized as follows :

The construction of new coke ovens which are now in progress to meet the approved expansion goals of the defense mobilization program for the production of steel and

of coal chemicals and to overcome the high percentage of obsolescence of coke ovens will be curtailed unless structurals, plates and other steel components continue to be [fol. 67] available. Moreover, the continued production of coal chemicals, such as benzene and toluol for the manufacture of plastics, explosives, and pharmaceuticals, is of high strategic importance within the defense program.

Today 92.6 percent of underground bituminous coal is cut by machines, and 71 percent is mechanically loaded. Twenty-two percent of all bituminous coal is mined by stripping methods, which are substantially dependent upon the ready availability of steel supplies. Over 42 percent of coal is cleaned mechanically. In addition, coal mining requires large quantities of steel rail and pipe and of roof bolts and other safety equipment. A stoppage of steel production will seriously impair the availability of steel supplies for the maintenance, repair and operation of mines, and for the manufacture of mining machinery, repair parts, and other equipment which are indispensable to the production of coal.

The construction of new mines which are now in progress to meet the approved expansion goals of the defense mobilization program will be curtailed unless structurals and other steel components continue to be available.

Approximately 62 percent of coal consumption at coke ovens operated by steel companies is produced at coal mines that are captive to the steel industry, and approximately 38 percent of coal so consumed comes from commercial coal mines. Because of the necessity for balanced production and shipment, these commercial mines are dependent on [fol. 68] the continuous shipment of this coal to steel plants. Otherwise, these mines will become substantially inoperative and will be unable to ship the balance of their tonnage into other commercial markets.

The loss of steel supplies will result in a progressively severe decline in the production and availability of coal, which is vitally important to the health, economic welfare, and security of the Nation, including the generation of electric power, and the supply of energy to other industries that are vital to the national defense and to essential civilian requirements.

(Sgd.) Oscar L. Chapman, Secretary of the Interior.

DISTRICT OF COLUMBIA,
City of Washington:

Subscribed and sworn to before me this 9th day of
April, 1952. (Sgd.) Alfred L. Pace, Notary Pub-
lic in and for the District of Columbia. My Com-
mission expires December 14, 1955. (Seal.)

[fol. 69]

AFFIDAVIT

CITY OF WASHINGTON,
District of Columbia, ss:

Jess Larson, being duly sworn, deposes and says:

1. I am the duly appointed Administrator of General Services, and, as such, am the head of the General Services Administration. I am also the duly appointed Defense Materials Procurement Administrator, and, as such, am the head of the Defense Materials Procurement Agency.

2. Among the functions and responsibilities of these two agencies are the following:

(a) The procurement of common-use items for the various agencies, including defense agencies, of the Federal Government.

(b) The construction, maintenance and repair of public buildings.

(c) The purchase of strategic and critical materials for the national stock pile established under the Strategic and Critical Materials Stock Piling Act.

(d) The encouragement of expansion of the production of materials necessary for the national defense and the purchase of such materials for Government use and resale, pursuant to the Defense Production Act of 1950, as amended, and the Executive Orders issued thereunder.

(e) The installation of equipment and facilities in [fol. 70] Government and privately-owned plants under the authority of the Defense Production Act of 1950, as amended, and said Executive Orders.

3. In the discharge of these responsibilities, the constant availability of steel in all forms is essential.

4. Steel production capacity existing at the outbreak of hostilities in Korea proved inadequate to meet defense and civilian needs. Consequently, the Government was compelled to place severe restrictions on various civilian uses of steel and to make every effort under authority of the Defense Production Act of 1950 to increase production facilities.

5. The Defense Production Administration has certified to Defense Materials Procurement Agency the necessity of greatly expanding the production of aluminum, copper, zinc, tungsten, manganese, molybdenum and other materials required for the national defense and essential civilian needs, by entering into contracts pursuant to which producers will expand existing facilities or create new facilities as rapidly as possible for such production. In carrying out such programs the availability of steel for new plants and plant expansion is absolutely essential. Steel is equally essential for the expansion of machine tool capacity and the production of new machine tools under a certified program being carried out by the General Services Administration. Stoppage of steel production will delay these expansion programs and will therefore seriously affect the ability of the General Services Administration and the Defense Materials Procurement Agency to perform their responsibilities in this field under the Defense Production [fol. 71] Act of 1950, as amended.

6. In connection with the procurement of common use items for agencies, including defense agencies, of the Federal Government, the construction, maintenance and repair of public buildings, and the installation of equipment and facilities in Government and privately-owned defense plants, steel and many products containing steel are required. In view of the present shortage of steel, stoppage of production will seriously hinder, if not entirely stop, such procurement, construction, maintenance, repair, and installation.

7. In view of the circumstances described above, it is my opinion that stoppage of steel production will imperil the national safety and welfare as well as curtail immeasurably the performance of the critical and urgent statutory re-

sponsibilities of the General Services Administration and the Defense Materials Procurement Agency.

(Signed) Jess Larson, Administrator of General Services, Defense Materials Procurement Administrator.

Subscribed and sworn to before me this 9th day of April, 1952. (Signed) Madeleine O'Brien, Notary Public. [Seal.] My commission expires August 1, 1952.

[fol. 72] AFFIDAVIT OF HOMER C. KING, ACTING ADMINISTRATOR DEFENSE TRANSPORT ADMINISTRATION

UNITED STATES OF AMERICA,
District of Columbia, ss:

Homer C. King being first duly sworn on oath deposes and says:

He is the Acting Administrator of the Defense Transport Administration and as such maintains his office in the City of Washington, District of Columbia. In his official capacity he is familiar with the domestic surface transport, warehousing and port facilities and services of the Nation and the Nation's needs therefor. In such capacity he is also familiar with the effects thereon of a shortage or cessation in the supply of iron and steel and iron and steel products necessary for the production and operation of such facilities.

The interruption in the production of iron and steel and iron and steel products used in the production of domestic surface transport facilities and warehousing and port facilities arising from the current labor dispute between the steel producers and their employees who are members of unions having membership in or affiliated with the Congress of Industrial Organizations (C. I. O.) will have the effects hereinafter mentioned upon domestic transport, warehousing, and port facilities and services.

Such interruption will materially reduce the production of vehicles used on the streets and highways for the transportation of property and passengers. Because of the mass

production method of manufacture of such vehicles, a continuous flow of steel is required daily. After a discontinuance in the supply of needed steel, production of such vehicles may continue for only a few days after which it will cease entirely. The producers of trucks and automobiles have been allotted controlled materials barely sufficient during the remainder of this year for replacement needs where as government agencies, including Defense Transport Administration [fol. 73] are endeavoring to promote an expansion of fleets of such vehicles in the hands of carriers sufficient to meet essential needs in the event of an emergency or all out war. Failure of production to maintain present fleets may be disastrous to the movement not only of critical defense or war materials but also essential products for the civilian economy. The eventual effect of such an interruption will be a curtailment in the volume of traffic handled by street and highway transport facilities; a cessation of operations of a large number of highway carriers engaged in the transportation of iron and steel products; and unemployment of employees engaged in such transportation.

Such interruption will delay current construction of warehousing facilities. Many projects involved in the construction of warehouses for agricultural commodities could not be completed in time for the 1952 harvest. This will require the movement of some grains to warehouses located at more distant points thus using additional transportation services, or the storage of grain on the ground with attendant loss.

Such interruption will retard new construction, conversion, and repair of port facilities.

It will result in shutting off the movement of steel scrap to the steel mills. When the operation of such mills is resumed, the gathering and shipping of scrap will also be resumed, but because of the interruption, such scrap may not come into the channels of movement to the mills in time to prevent serious delays in the production of steel.

When the steel mills are in full operation, tens of thousands of freight cars are used daily to transport scrap, limestone, ore, and coal into the plants. A lesser number of cars is required to move the finished products from the

plants. Closing of the steel mills will almost immediately immobilize the freight cars normally used in connection with this traffic. Another effect would be the closing of all captive coal mines with resultant reduction in train service. This in turn would necessitate a reduction in the maintenance-of-way forces and shop crews.

[fol. 74] The railroads in the Great Lakes area have begun to assemble equipment at Lake ports to handle coal and ore moving by vessels on the Great Lakes. Most of these cars would be stranded in the event of an interruption in iron and steel production. Some of the vessels used in the transportation of iron ore, coal, limestone, and other materials, on the Great Lakes would be completely tied-up as the crews of the vessels are members of the Steel-workers' Union involved in the aforementioned labor dispute. The Great Lakes iron ore fleet carried 89 million gross tons of iron ore in 1951—a new peacetime record. The iron ore target for the fleet is 96 million gross tons during the 1952 shipping season. This target cannot be met if there is any interruption in iron and steel production or in the operation of vessels on the Great Lakes.

The Great Lakes shipbuilding program as well as the United States barge and towboat building program would soon feel the effects of an interruption in iron and steel production. This would be particularly serious, if, as appears likely, steel obtained under the controlled materials plan for private industry were diverted to meet military needs as a result of such interruption.

The effect of a loss of steel tonnage as a result of a closing of the steel mills will be reduced production of freight cars and locomotives, reductions in the number of cars and locomotives repaired, in the replacement of rails, and in the repairs to structures. Present shortages of steel have already required curtailments in these programs. The present short supply of plates, bars, and structural steel will be intensified.

Homer C. King.

Subscribed and sworn to before me this 9th day of April, 1952. Lillian L. Coley, Notary Public. My commission expires January 31, 1955. (Seal.)

[fol. 75]

AFFIDAVIT

CITY OF WASHINGTON,
District of Columbia, ss:

Charles Sawyer, being duly sworn, deposes and says that

1. I am Secretary of Commerce of the United States and as such am vested among other powers and duties with the claimancy function under the Defense Production Act, as amended, with respect to priorities and allocations of materials in connection with construction, maintenance and repair programs in the transportation field as follows:

Bureau of Public Roads.—Programs for highway construction and maintenance, including urban streets, (whether Federally financed or not).

Maritime Administration.—Programs for coastwise, intercoastal and overseas shipping, and merchant ship construction and repair.

Civil Aeronautics Administration and Civil Aeronautics Board.—Programs for air navigation facilities, civil airports, new civil aircraft and concurrent spares for air carrier and non-air carrier aircraft and maintenance, repair and operation of equipment and facilities.

2. I have investigated the impact of a national stoppage in steel production on the transportation programs of these agencies, which are vital both to defense and essential civilian activities, and have determined that the impact would be as stated below:

EFFECT OF STEEL SHUTDOWN ON HIGHWAY PROGRAM

A. *Specific Program Affected.*—The highway program involves the rehabilitation of approximately 64,600 miles of highways in a 1-year period. It also includes the maintenance of the Nation's entire highway transportation system of 3,322,000 miles of roads under the control of approximately 18,000 State, city, county, and local governmental highway agencies and toll road authorities. The roads are [fol. 76] being rehabilitated and maintained for the safe and expeditious use of over 50 million motor vehicles operating on the highway plant to the extent of approximately 488 billion vehicle-miles per year.

4—744-745

Included within the highway systems are access roads to defense establishments and sources of raw materials, industrial access roads and the interstate system of highways, urban and rural. The interstate system is a limited mileage of highway routes directed by Congress to connect the principal metropolitan areas, cities, and industrial centers to serve the national defense. The Department of Defense has determined that this system of roads is of greatest strategic importance for service of the highway necessities of war.

B. *Units of Production Affected—*

1. *Highway Construction Loss:*

	Feet of bridge	Miles of highway
Essential work for which steel was requested in the second calendar quarter 1952.....	582,813	7,947
Essential work for which steel was allotted and which is under way in second quarter.....	370,000	6,000
10-day strike loss.....	96,000	1,500
20-day strike loss.....	149,000	2,280
30-day strike loss.....	196,000	2,950

The above estimate takes into account the lag which accompanies the strike and the probability that the Department of Defense and Atomic Energy Commission will obtain all the steel they require in the second quarter and that other claimants including the industrial expansion program will take proportionate losses. The highway construction program cannot continue production from inventory. Steel for highways and bridges is ordered for a specific use, delivered for a specific use, and if it is not produced and delivered, the program is delayed. In fact, nondelivery of one piece of structural steel may delay an entire project. The loss of steel production will also affect the availability of construction equipment and repair parts.

[fol. 77] 2. *Highway Maintenance Loss:*

Approximately 300,000 major equipment units are stationed along the Nation's highways for road maintenance and traffic safety operations. This equipment requires repair parts made of steel. This is a representative example. Included within the equipment fleet are 50,000 motor graders requiring 51,000 tons of steel cutting edges per

year. This steel has been in short supply for some time and there are no accumulated inventories. For want of a steel cutting edge, a motor grader which can maintain 85 miles of farm-to-market roads becomes inoperative. A steel production stoppage for each of the following number of days will decrease the steel cutting edge supply for road maintenance in at least the following amounts:

	<i>Steel loss</i>
10-day strike	2,800 tons
20-day strike	4,200 tons
30-day strike	5,600 tons

C. *Effect of Dislocation that Accompanies Work Stoppage.*—It is estimated that the loss of steel production occasioned by a strike would result in the following loss of employment:

	<i>Man-hours</i>
10-day strike	6,500,000
20-day strike	9,900,000
30-day strike	12,700,000

The above estimate includes only the labor loss on the highway project and does not include the man-hours lost by the fabricators of steel and the suppliers of other materials and services who are delayed by the nondelivery of steel to the job. Although there is some possibility that the highway construction contractor could and would absorb some of this labor on other work, the majority of the men affected would be laid off. After being laid off there is a strong possibility that they would find other work and would not be available to continue the highway work after the necessary steel became available. Additional time would be necessary to reassemble an adequate working force.

[fol. 78] D. *General Discussion.*—Highway construction has a broad scope of influence on the economy of the Nation affecting highway transportation in all areas of the United States. In illustration there is given below a description of three projects which will show clearly the importance of the construction work to Defense and the National economy:

*Discussion of three specific highway projects:**Atlanta Expressway, Georgia—Project UI-536(2)—10*

Northwest section of the Atlanta Expressway which serves as transportation facility for defense workers to the Lockheed Aircraft plant near Marietta, Georgia.

Newton-Southbury, Connecticut—FI-41(8) on U. S. Route 6

This route carries an average of 4,200 vehicles per day. It is the main route between Danbury and Waterbury and Hartford. This highway not only serves a large unit of State movement but also considerable intercity traffic. Defense workers and defense materials use this route to go to Danbury on the west and Waterbury and Hartford on the east.

With the new facility, the workers and defense materials will find a dependable highway facility to move safely and expeditiously. This will save time in going to work and also speed the flow of defense material.

Congress Street Expressway, Illinois—Project -261(9)

This is a major link in the arterial system of highways in the Chicago area and will not only accommodate passenger vehicles but also truck transport and mass transit, including a rapid transit rail facility carrying hundreds of thousands of workers to and from work daily. Industrial and passenger traffic will generate 100,000 vehicle-trips per day over the expressway.

[fol. 79] PARTIAL LIST OF HIGHWAY PROJECTS ALLOTTED STEEL
IN THE SECOND QUARTER 1952

There follows below a listing of a number of highway projects that have been allotted 250 tons or more of structural steel shapes. Because these materials are in short supply, these important projects are being continuously watched by the Bureau of Public Roads, Department of Commerce:

State	Project Identification
Connecticut.....	FI-41 (8) US 6 Newtown Southbury
Massachusetts.....	Fall River-Freetown Forest Hills Boston Lancaster-Leominster
New Jersey.....	U-188 (21)
New York.....	Brooklyn-Queens Expressway So. St. Elev. Highway Vernon Avenue Bridge HT-52-1 Nyack Bridge
Rhode Island.....	U1-50 (3)
Maryland.....	N-383-5-315 US240
Ohio.....	Lucas 120-3-46-FAU Akron Expressway FA-U Hamilton Beechmont Levee FA-U-416 (3)
Pennsylvania.....	Allegheny UI 797 (2) Cumberland US 111 Bucks US 2 LR 281-A Montgomery UI 981 (3) Delaware River Bridge Lancaster F813 (2) F167 (10) Allegheny U794 (5) Beaver 18 Homewood Indiana—West US 22 Indiana—US 119 Lancaster—US322 Crawford US 6 & 19 Indiana 32003-2 Lehigh-Catasauqua Bridge McKean S-601 (2)
Virginia.....	S 102 (2)
West Virginia.....	UI 203 (9)
Alabama.....	UG-316 (2) Jefferson
Florida.....	7202-275 b FG-002-2 (6), (7), (8) 1517-7 179
Georgia.....	FI-009-2-(6) UI-536(2)-10
[fol. 80] Mississippi.....	Toll Proj. No. 1
Tennessee.....	R-9359 & R-9464 Shelby
Illinois.....	Chicago Pk. Dist. 23 St. Via Ill. Proj. 261 (9) Cook County Sec. 044-0505.2 Chicago Pk. Dist. Outer Driver Ind. Proj. RI 69 (24)-3390 FI-75 (11)-3431 U-724 (6) 3393
Michigan.....	B-31 & 32 of 82-22-10
Wisconsin.....	Juneau Ave. Bridge FO3-1 (23)
Iowa.....	Van Buren SN-737 Wapello WER-39 (1)
Missouri.....	UI-892 (5) City of St. Louis F-176 (10) Group 66 Phelps City
Arkansas.....	6316-5-FI-522 (1)
Texas.....	UGI 832 (9) Dallas City F158 (10) Hemphill County Harris County Stacosita Rd.
California.....	VII-VEN-FAS-876 52-14 DO7-P VII-LA-166 A 52-7 VC 17-F VII-LA26 ALH. MON P, E. 52 VII-LA26 E 52-7BC 30F VII-LA 2 LA 2 LYN St. City of Los Angeles
Montana.....	S-77 (2) Plate
Washington.....	Indust. Waterway in Tacoma Columbia Rv. Bridge at Tasco

[fol. 81] Effect of Steel Shutdown on Shipbuilding Program

The current building program of ocean-going ships for which the Maritime Administration, Department of Commerce, is responsible, consists of 35 Mariners (20 knot, 12,700 deadweight tons, cargo ships), 58 tankers, 3 transports, 1 ore carrier, and 1 superliner. These ships are in varying degrees of construction, the most recent contracts calling for delivery as late as mid-1955. Of the 98 ships mentioned herein, there is sufficient steel in the building yards to permit completion of 21 of the ships (including the 3 transports, the ore carrier, and the superliner). Thirty-nine ships are in that stage of construction as to be directly dependent on the receipt of steel products during the present quarter. It is for these ships that the Maritime Administration has received an allocation of 117,000 tons of carbon steel for the second quarter 1952. The remaining 38 ships are scheduled for later construction and do not require steel at this time.

The units of production immediately affected by a lack of steel would be the 39 ships under active erection (19 Mariners and 20 tankers). The Mariner is a new type, fast cargo ship designed especially in the course of preparation for adequate defense to cope with the submarine menace. The annual cargo capacity, under average conditions, of the 19 Mariners, is approximately 3,100,000 tons of cargo to be moved at a speed of 20 knots, a cargo service not hitherto available to the United States in time of emergency. The 20 tankers that would be affected are also new high-speed vessels with an average annual capacity of 9,400,000 tons of cargo.

Under the assumption that the steel mills have been and, after the stoppage, will be operated at full capacity, it appears that the delays in the shipbuilding program for these 39 ships would not be less than the number of days the steel mills are shut down.

[fol. 82] Much of the lost time could not be regained by the shipyards even by making full use of all materials now on hand. Such a use of materials would, however, involve changes in established erection schedules so that efficiency would be substantially decreased and costs would be increased.

If the stoppage of steel production were for as extended a period as 30 days, there would be an effect on subsequent programs scheduled to make use of the construction facilities when the facilities are cleared of the ships which now occupy them. Hence, the 38 ships scheduled for later construction would find that materials and facilities will not be available to permit the ships to be started in accordance with current schedules. Both types of delay would directly affect the preparedness program by depriving the nation of the use of fast, efficient ships of the latest type.

Three of the major shipbuilding yards engaged on the current Maritime Administration program have sizeable shipbuilding contracts from the Department of the Navy and delays in the Maritime Administration program will inevitably cause corresponding delays in the program for the Department of the Navy and vice versa.

If the work stoppage due to lack of steel were for a period as long as 30 days, there would be an adverse effect on the labor force and on shipyard organization. The shipyards have experienced difficulty in building up their working force of skilled labor consisting of riggers, pattern-makers, riveters, plumbers, pipefitters, boiler-makers, etc., and any stoppage would cause many of these employees to leave the area or seek other employment. Considerable time will be necessary to recruit and reorganize a labor force. It seems that this adverse effect would be more or less in proportion to the duration of the work stoppage.

The above discussion is limited to the work in the shipyards proper. If we assume that component manufacturers have received their steel in approximately the same proportions as the shipyards, then the delays which will be experienced by the component manufacturers will be about the same as the delays experienced by the shipyards.

[fol. 83] Effect of Steel Shutdown Strike on Aeronautical
Transportation Programs

(A) *Specific Aeronautical Transportation Programs Affected.*—Programs here discussed with regard to the effect

of a possible steel strike on aeronautical transportation programs are:

(1) *Air Carrier Production Program*, involving the manufacture of 439 civil transport aircraft by Martin, Douglas, Lockheed, Convair and Sikorsky, scheduled for delivery to the U. S. air carriers and foreign air carriers during the succeeding 10 quarters.

(2) *Non-Carrier Aircraft Production Program*, involving the manufacture of 9,211 civil aircraft scheduled for delivery over the next three years.

(3) *Maintenance of civil air carriers* which involves the repair and maintenance of approximately 1,300 transport type aircraft now engaged in air transportation in the United States.

(4) *U. S. Airport Construction Program*, involving new construction, improvements and enlargement of approximately 6,000 airports located within the United States.

(B) *Units of Production Affected.*—

(1) *Air Carrier Aircraft Production Program*: Except for a small number of steel items which are already in short supply, it is considered that there is sufficient material on hand in the form of fabricated parts, inventory and steel-in-shipment to maintain the production lines on the first 182 civil transport aircraft which are now in the process of being produced for delivery in the second, third and fourth quarters of 1952. For this reason, any strike for a period of ten to thirty days would affect the delivery of the balance of the 439 aircraft; namely, 247 now on order for delivery during 1953 and 1954. Normal lead times for material for delivery during the time of the threatened strike would cause these aircraft to be affected. Some companies indicate that steel shortages would therefore likely cause a shutdown by the end of 1952.

[fol. 84] The 182 aircraft may also be affected to some degree by those items already in short supply. For example, the case of stainless steel exhaust stacks for transport type aircraft which depend on material produced by the steel industry, has, because of nickel shortages, become a number one problem even without a strike. Should the production of these components be delayed, it is anticipated

that both the Convair and Douglas production lines would have to be stopped within sixty days. This situation applies to many other small components.

(2) *Non-Carrier Production Programs*: To a large extent, a steel strike will affect the non-carrier production program in the same manner as it affects the manufacture of transport aircraft discussed above, with the exception that the lead times are shorter and the delays in production will be experienced sooner. It is considered that a strike, whether ten days or thirty days, would probably not be felt on an over-all production for a period of four months, and the length of the delay or shutdown of the manufacturing facilities would be in direct proportion to the length of the strike. Based on the present inventory position and the goods in process, it is estimated that 2160 aircraft scheduled for delivery in the second and third quarters of 1952 will not be affected. However, the balance of the 9211 aircraft; namely, 7043 airplanes, would be affected. These aircraft are now being produced at a rate of 3500 per year are the minimum considered necessary to maintain the existing fleet of 48,000 non-carrier type aircraft now used in essential civil activities, such as crop dusting, forestry patrol, executive and industrial transport and similar essential activities.

(3) *Maintenance of Civil Air Carriers*: Civil aircraft, foreign and domestic, use approximately 150 tons of carbon steel, 40 tons of alloy steel, and about 150,000 pounds of stainless steel per quarter. The inventory position of the airlines is generally 30 to 40 days, depending upon the availability of warehouse stocks. Except for some items, which are already in short supply, such as the exhaust stacks for Douglas DC-6 and Convair 240 aircraft, which are now in operation in the civil fleet, it is anticipated that the strike would affect the operation of air carriers within [fol. 85] a period of 30 to 45 days. In some instances, however, the failure to get component parts, already in short supply, might subject the fleet to grounding within a very few weeks.

(4) *U. S. Airport Construction Program*: The maintenance, expansion and development of the civil airports in the U. S. involve the allocation of 12,578 tons of carbon steel

in the second quarter, 1952. This total includes 5623 tons of structural steel. The delay in this steel will affect 127 airport construction projects divided as follows:

- 35 direct military requirements for joint-use airports
- 24 military connected civil requirements projects
- 68 urgent civil transportation construction projects.

As all of these projects have steel allotments for the second quarter of 1952, any delay which would be reflected in production during that period would adversely affect these projects.

(C) *Effect of Dislocations that Accompany Work Stoppages Due to Lack of Steel.*—All aircraft manufacture is of a production line nature. Therefore, any item in short supply would affect the entire production operation. A steel shortage, though there may be an abundance of aluminum or magnesium parts available, would sooner or later require the entire line to stop and have a direct effect on the fabrication of the other components, making it impossible to continue the balance of the operation. It is therefore considered that the steel shortage could tie up the entire production effort within the times discussed earlier. Although only a small percentage of the total weight of aircraft is steel, the entire production process is keyed to the steel supply. The time period needed to readjust the labor forces and to get the production underway again would in many instances require several times the number of days of stoppage in steel production.

[fol. 85A] (D) *General Discussion of the Effects Peculiar to the Aircraft Production Program.*—The manufacture of aircraft is a complicated procedure requiring highly skilled labor. If the higher priority military programs are given such steel that may be available, the aircraft companies sooner or later will be required to close, and no doubt the resulting effect would be that this labor once lost would never return to the civil aircraft producers as the same type of labor is used, of course, for military aircraft as well as the guided missile program.

Also, the direct effect of a delay in the program as discussed previously may cause a work stoppage from 60 to 90 days after the strike is commenced, and may vary in length

of stoppage in proportion to the length of the strike. However, one manufacturer of aircraft has indicated that this operation is so sensitive to the steel situation that it would be preferable to close down his operations immediately rather than wait for a number of small items to cause him to close.

The present mobilization plan contemplates immediate transfer of a large percentage of the present air carrier fleet to the military service. Any delay in the aircraft on order or the maintenance of existing fleet would adversely affect the preparedness program in which the air carrier fleet plays a major part as first line standby reserve.

Charles Sawyer.

Subscribed and sworn to before me this 14th day
April, 1952. Francis B. Myers, Notary Public. My
Commission Expires April 14, 1954.

[fol. 86]

AFFIDAVIT

CITY OF WASHINGTON,
District of Columbia, ss:

Harry Weiss, being duly sworn deposes and says:

That he is the duly appointed Executive Director of the Wage Stabilization Board; that in the regular course of business all of the administrative work relating to the disputes functions of the Wage Stabilization Board (hereinafter referred to as the Board), is performed under his supervision and that appropriate official dockets and records are made of any such work; that the official dockets and records of the disputes between the United Steel Workers of America, CIO (hereinafter referred to as the Union) and various steel and iron ore companies, reveal that:

(1) These disputes were referred to the Board by the President of the United States, in accordance with the terms of Executive Order 10233, on December 22, 1951. A copy of the letter of reference, dated December 22, 1951, and addressed to Mr. Nathan P. Feinsinger, Chairman of the

Board, is attached hereto. In addition to the letter of reference, the President of the United States transmitted a statement explaining the relation of these disputes to the defense effort. A copy of that statement, dated December 22, 1951, is also attached. Subsequently, on December 24 and December 29, 1951, by direction of the President, lists of the companies involved in the disputes, referred to in the President's letter of December 22, 1951, were transmitted to the Board. Copies of the transmittal letters and lists are attached.

Upon receipt in the Disputes Office of the Board, the documents relating to these disputes were officially docketed and identified as "Case D-18-C".

(2) Immediately upon receipt of the President's letter of referral, the Board, through its Chairman, Nathan P. Feinsinger, requested the Companies to maintain normal work and production schedules, and the Union to instruct its members to remain at work while the matter was before the Board. The parties agreed to this request. Copies of the [fol. 87] telegrams from the Board making this request and several typical replies are contained in Appendix I of the "Report and Recommendations of the Wage Stabilization Board", a copy of which is attached.

(3) The Board, on January 3, 1952, appointed a tripartite special steel panel consisting of Dr. Harry Shulman, Chairman and Public Member; Ralph Seward, Public Member; John C. Bane, Jr., Esq., and Admiral Earle W. Mills, Industry Members; and Mr. Arnold Campo and Mr. Eli Oliver, Labor Members; to hear the evidence and arguments in the disputes involving the steel producing and fabricating companies and to make such reports thereon as the Board might direct. The Board, on January 7, 1952, met with the parties in a procedural meeting.

(4) The special tripartite panel appointed by the Board held public hearings beginning in Washington, D. C. on January 10 to 12, 1952, and in New York City on February 1 to February 16, 1952. The parties were afforded an opportunity to present evidence and arguments on all of the issues in dispute. A list of the parties who participated in the proceedings before the panel is contained in Appendix III of the "Report and Recommendations of the Wage Stabilization Board", a copy of which is attached.

(5) In accordance with instructions from the Board, the panel prepared a report dated March 13, 1952, outlining the issues in dispute (except the issue as to the Union's request for a union shop and a guaranteed annual wage) and summarizing the positions of the parties. This report was submitted to the parties for comment. A copy of that report is attached.

(6) On March 15, 1952, the Board again requested the parties to continue work and production to permit consideration of the report of the panel. Copies of the telegrams exchanged between the Board and the parties are included in Appendix IV of the "Report and Recommendations of the Board", a copy of which is attached.

[fol. 88] (7) During the period while the panel report was being prepared and afterwards, the Board met and considered the issues in dispute and prepared its report to the President and recommendations to the parties, dated March 20, 1952. A copy of that report is attached.

(S.) Harry Weiss.

Sworn to before me this 14th day of April 1952 at Washington, D. C. (S.) Virginia E. Crowder, Notary Public. My Commission expires January 31, 1953.

[fol. 441] Letter dated December 22, 1951 from the President to Nathan P. Feinsinger (omitted in printing).

[fol. 444] Statement by the President, December 22, 1951 (omitted in printing).

[fol. 446] Letter dated December 24, 1951 from William J. Hopkins, Executive Clerk, the White House, to Nathan P. Feinsinger with attachments (omitted in printing).

[fol. 521] Panel Report No. D-18-C March 13, 1952 (omitted in printing).

[fol. 470] Report and Recommendations of the Wage Stabilization Board, March 20, 1952 (omitted in printing).

[fol. 89]

AFFIDAVIT

CITY OF WASHINGTON,
District of Columbia, ss:

Nathan P. Feinsinger, being duly sworn, deposes and says:

That he is the duly appointed Chairman of the Wage Stabilization Board; that he personally participated in the deliberations of that Board in the disputes between the United Steelworkers of America, CIO, and various steel and iron ore companies, identified as "Case D—18—C" in the official dockets and records of the Wage Stabilization Board; and that the recommendations of the Wage Stabilization Board to the parties to the disputes, contained in the report to the President of the United States dated March 20, 1952, are in his opinion fair and equitable and not unstabilizing and are within the jurisdiction and authority of the Wage Stabilization Board as conferred by Executive Order 10161, as amended by Executive Order 10233.

(S.) Nathan P. Feinsinger.

Sworn to before me this 14th day of April, 1952 at
Washington, D. C. (S.) Virginia E. Crowder,
Notary Public. My Commission expires January
31, 1953.

[fol. 232] UNITED STATES DISTRICT COURT FOR THE DISTRICT
OF COLUMBIA

Civil Action No. 1550-52

THE YOUNGSTOWN SHEET AND TUBE COMPANY, a Body
Corporate, Youngstown, Ohio, the Youngstown Metal
Products Company, a Body Corporate, Youngstown,
Ohio, Plaintiffs

vs.

CHARLES SAWYER, the Westchester, 4000 Cathedral Ave.
N. W., Washington, D. C., Defendant

Civil Action No. 1635-52

THE YOUNGSTOWN SHEET AND TUBE COMPANY, a Body
Corporate, Youngstown, Ohio, the Youngstown Metal
Products Company, a Body Corporate, Youngstown,
Ohio, Plaintiffs

vs.

CHARLES SAWYER, Secretary of Commerce, U. S., the West-
chester, 4000 Cathedral Ave., N. W., Washington, D. C.,
Defendant

Civil Action No. 1539-52

REPUBLIC STEEL CORPORATION, a New Jersey Corporation,
Plaintiff

vs.

CHARLES SAWYER, Westchester Apartments, Washington,
D. C., Defendant

Civil Action No. 1647-52

REPUBLIC STEEL CORPORATION, a New Jersey Corporation,
Plaintiff

vs.

CHARLES SAWYER, Secretary of Commerce, Department of
Commerce, Washington, D. C., Defendant

[fol. 233] Civil Action No. 1732-52

E. J. LAVINO & COMPANY, a Delaware Corporation, Plaintiff

vs.

CHARLES SAWYER, Individually and as Secretary of Commerce of the United States of America, Washington, D. C., Defendant,

Civil Action No. 1700-52

ARMCO STEEL CORPORATION and SHEFFIELD STEEL CORPORATION, Plaintiffs

vs.

CHARLES SAWYER, Individually and as Secretary of Commerce of the United States of America, Defendant

Civil Action No. 1549-52

BETHLEHEM STEEL COMPANY, et al., Plaintiffs

vs.

CHARLES SAWYER, Individually and as Secretary of Commerce of the United States of America, Washington, D. C., Defendant

Civil Action No. 1581-52

JONES & LAUGHLIN STEEL CORPORATION, a Pennsylvania Corporation, Plaintiff

vs.

CHARLES SAWYER, Westchester Apartments, Washington, D. C., Defendant

Civil Action No. 1624-52

UNITED STATES STEEL COMPANY, Plaintiff

vs.

CHARLES SAWYER, 4000 Cathedral Ave. N. W., Washington, D. C., Defendant

[fol. 234] Civil Action No. 1625-52

UNITED STATES STEEL COMPANY, Plaintiff

vs.

CHARLES SAWYER, Department of Commerce, Washington,
D. C., Defendant

John J. Wilson, John C. Gall, and J. E. Bennett, Esquires,
Attorneys for plaintiffs The Youngstown Sheet and Tube
Company and The Youngstown Metal Products Company.

Hogan and Hartson, by Edmund L. Jones and Howard
Boyd, Esquires; Gall, Lane and Howe, by John C. Gall,
Esquire; Jones, Day, Cockley and Reavis, by Luther Day
and T. F. Patton, Esquires, Attorneys for plaintiff Re-
public Steel Corporation.

James C. Peacock, Randolph W. Childs, and Edgar S. Mc-
Kaig, Esquires, Attorneys for plaintiff E. J. Lavino &
Company.

Breed, Abbott & Morgan, by Joseph P. Tumulty, Jr., Es-
quire; and Charles H. Tuttle, Esquire, Attorneys for
Plaintiff Armco Steel Corporation.

Cravath, Swaine & Moore, by Bruce Bromley, Esquire; Wil-
mer & Broun, by E. Fontaine Broun, Esquire, Attorneys
for Bethlehem Steel Company.

Jones, Day, Cockley and Reavis, by Sturgis Warner, Es-
quire; H. Parker Sharp, Esquire; Reed, Smith, Shaw &
McClay, by John C. Bane, Jr., and Walter J. McGough,
Esquires, Attorneys for plaintiff Jones & Laughlin Steel
Corporation.

Davis, Polk, Wardwell, Sunderland & Kiendl, by John W.
Davis and Theodore Kiendl, Esquires; Covington &
Burling, by John Lord O'Brian and Howard C. West-
wood, Esquire; and Roger M. Blough, Esquire, Attorneys
for plaintiff United States Steel Company.

Holmes Baldridge, Esquire, Assistant Attorney General of
the United States, and Marvin Taylor, Esquire, Assistant
Attorney General of the United States, Attorneys for
defendant.

5-744-745

[fol. 235] OPINION—Filed April 29, 1952

By Executive Order 10340, promulgated April 8, 1952, the President of the United States directed defendant to take possession of such plants of companies named in a list attached thereto as he deemed necessary in the interests of national defense, to operate them or arrange for their operation, and to prescribe the terms and conditions of employment under which they should be operated. The plaintiffs are among those named in the list. In the recitals of the Executive Order, the President stated that a controversy had arisen between certain companies producing and fabricating steel and certain of their workers represented by the United Steel Workers of America, C. I. O., regarding terms and conditions of employment; that the controversy had not been settled through the processes of collective bargaining or through the efforts of the Government, and a strike had been called for April 9, 1952; that a work stoppage would immediately jeopardize and imperil our national defense and the defense of those joined with us in resisting aggression; and that in order to insure the continued availability of steel it was necessary that the United States take possession of and operate the plants. By virtue of this Executive Order, defendant issued his Order No. 1 bearing the same date, stating that he deemed it necessary in the interest of national defense that possession be taken of the plants of the companies named in a list attached to his order, including the plants of plaintiffs, and that therefore he did take possession of the same, effective April 8, 1952. By the same order, he designated the president of each company as operating manager for the United States until further notice, and directed him to operate the plants of such company, subject to defendant's supervision. Telegraphic notification to this effect was given to the president of each company.

Plaintiffs thereupon brought these actions praying for declaratory judgments and injunctive relief, and there are now before me for decision motions for temporary injunctions seeking to restrain the defendant from taking any action under the authority of the Executive Order. These motions were combined for hearing and have been fully heard. Voluminous briefs have been filed and considered.

[fol. 236] At the hearing, plaintiff United States Steel limited its motion to a preservation of the status quo in respect of terms and conditions of employment.

Plaintiffs contend that defendant's acts under the Executive Order resulting in the seizure of their plants are without authority of law and constitute an illegal invasion of their property and rights, and that they are entitled to preliminary injunctions to restrain defendant from acting thereunder, particularly in the light of his threat to make changes in terms and conditions of employment. The basis of plaintiffs' contention is that there is no constitutional or statutory right in the President to issue the Executive Order, and there being none, defendant acting thereunder is acting without legal authority and his acts are illegal and contrary to law. Plaintiff Lavino has urged an additional reason, namely, that it has been improperly included among the plants seized.

Defendant contends in his Opposition to the motions that the breakdown of collective bargaining negotiations "created an immediately impending national emergency because interruption of steel manufacture for even a brief period would seriously endanger the well-being and safety of the United States in a critical situation"; that the President has "inherent power in such a situation to take possession of the steel companies in the manner and to the extent which he did by his Executive Order"; that the courts are without power to negate Executive action of the President by enjoining it; that the courts will not interfere in advance of a full hearing on the merits except upon a showing that the damage to flow from a refusal of a temporary injunction is irreparable and outweighs the harm which would result from its issuance; and that, since the right of the companies to recover all damages resulting from the taking has been recognized by Supreme Court decisions, there is no showing that the companies' legal remedy is inadequate or that their injury is irreparable.

Before proceeding to a discussion of the points of law involved herein, it should be said that the merits of the con-[fol. 237] troversy between plaintiffs and the United Steel Workers of America, C. I. O., are not before the Court for adjudication. Further, it should be noted that, although there is no law of the case rule in interlocutory orders in

this jurisdiction, these cases are in a materially different posture than they were when Judge Holtzoff of this court refused a temporary restraining order in respect of several of them.

The fundamental issue is whether the seizure is or is not authorized by law. In my opinion, this issue should be decided first, and that I shall now do.

There is no express grant of power in the Constitution authorizing the President to direct this seizure. There is no grant of power from which it reasonably can be implied. There is no enactment of Congress authorizing it. On what, then, does defendant rely to sustain his acts? According to his brief, reiterated in oral argument, he relies upon the President's "broad residuum of power" sometimes referred to as "inherent" power under the Constitution, which, as I understand his counsel, is not to be confused with "implied" powers as that term is generally understood, namely, those which are reasonably appropriate to the exercise of a granted power.¹

This contention requires a discussion of basic fundamental principles of constitutional government, which I have always understood are immutable, absent a change in the framework of the Constitution itself in the manner provided therein. The Government of the United States was created by the ratification of the Constitution. It derives its authority wholly from the powers granted to it by the Constitution; which is the only source of power authorizing action by any branch of Government. It is a government of limited, enumerated, and delegated powers.² The office of President of the United States is a branch of the Govern- [fol. 238] ment, namely, that branch where the executive power is vested, and his powers are limited along with the

¹ *McCullock v. Maryland*, 4 Wheat. 316, 4 L. Ed. 579.

² *McCullock v. Maryland*, *supra*; *Dorr v. United States*, 195 U. S. 138, 140, 49 L. Ed. 128; *Graves v. New York ex rel O'Keefe*, 306 U. S. 466, 83 L. Ed. 927; *Scott v. Sandford*, 60 U. S. 393, 19 How. 401, 15 L. Ed. 691.

powers of the two other great branches or departments of Government, namely, the legislative and judicial.³

The President therefore must derive this broad “residuum of power” or “inherent” power from the Constitution itself, more particularly Article II thereof, which contains the grant of Executive power. That Article provides that the Executive power shall be vested in the President; that he shall swear that he will faithfully execute the office of President and will to the best of his ability preserve, protect, and defend the Constitution of the United States (Sec. 1); that he shall be commander in chief of the army and navy of the United States (Sec. 2); and that he shall take care that the laws be faithfully executed (Sec. 3). These are the only sections which have any possible relevancy, and their mere enumeration shows the utter fallacy of defendant’s claim. Neither singly nor in the aggregate do they grant the President, expressly or impliedly, as that term has hereinabove been defined, the “residuum of power” or “inherent” power which authorizes him, as defendant claims, to take such action as he may deem to be necessary, including seizure of plaintiffs’ properties, whenever in his opinion an emergency exists requiring him to do so in the public interest.^{3A} Instead, in Congress is lodged,

³ Ex parte Quirin, 317 U. S. 1, 25; Ex parte Milligan, 4 Wall. 2, 136-137, 18 L. Ed. 281; Lichter v. United States, 334 U. S. 742, 779. Amendment IX to the Constitution provides that the enumeration therein, of certain rights, shall not be construed to deny or disparage others retained by the people, and Amendment X provides that 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.

^{3A} The Supplemental Memorandum of defendant, received April 29, 1952, after argument, states that he does not go beyond claiming “that the President possesses the constitutional power and duty to take action in a grave national emergency such as existed here.” This statement relates his claim to the instant case, but does not change his general basic claim as above set forth, which he necessarily must assert to sustain his defense herein.

within Constitutional limitations, the power “to provide for the common defense and general welfare” (Art. I, Sec. 8).

[fol. 239] The non-existence of this “inherent” power in the President has been recognized by eminent writers, and I cite in this connection the unequivocal language of the late Chief Justice Taft in his treatise entitled “Our Chief Magistrate and His Powers” (1916) wherein he says: “The true view of the Executive function is, as I conceive it, that the President can exercise no power which cannot be fairly and reasonably traced to some specific grant of power or justly implied and included within such express grant as proper and necessary to its exercise. Such specific grant must be either in the Federal Constitution or in an Act of Congress passed in pursuance thereof. There is no undefined residuum of power which he can exercise because it seems to him to be in the public interest, and there is nothing in the Neagle case and its definition of a law of the United States, or in other precedents, warranting such an inference. The grants of Executive power are necessarily in general terms in order not to embarrass the Executive within the field of action plainly marked for him, but his jurisdiction must be justified and vindicated by affirmative constitutional or statutory provision, or it does not exist.”

I stand on that as a correct statement of the law. Defendant, realizing the untenable position in which that statement places him, attempts to weaken it by referring to statements made by Chief Justice Taft in *Myers v. United States*, 272 U. S. 52, 164 (1923) wherein the Court sustained the President’s authority to remove a postmaster appointed with the advice and consent of the Senate, but all that the Court held was that Article II granted the President “the executive power of the Government, i. e., the general administrative control of those executing the laws, including the power of appointment and removal of executive officers—a conclusion confirmed by his obligation to take care that the laws be faithfully executed.” I see in that decision nothing inconsistent with his previous pronouncement, in that he traces the authority to a specific power granted to the President; but apparently fearing that someone might [fol. 240] read certain obiter in the *Myers* case as contrary

thereto, as defendant now does, the Supreme Court in *Humphrey's Executor v. United States*, 295 U. S. 602, 626 (1935), in a unanimous opinion written by Mr. Justice Sutherland, removed any doubt with respect thereto, in the following language: "In the course of the opinion of the Court [in the Myers case], expressions occur which tend to sustain the Government's contention, but these are beyond the point involved and, therefore, do not come within the rule of *stare decisis*. Insofar as they are out of harmony with the views here set forth, these expressions are disapproved." And the view set forth in that opinion was that the President had no power to remove a member of the Federal Trade Commission by reason of the fact that he was a member of a quasi-legislative and quasi-judicial agency of government and not a purely executive officer as was Myers.

This would seem to dispose of defendant's contention that the Supreme Court differed from the hereinabove quoted views of Chief Justice Taft.

But defendant goes further and says there is no lack of judicial recognition of this "flexible executive power" to seize property without authority of a statute, and he cites, in support of this statement, the following cases: *Roxford Knitting Co. v. Moore & Tierney*, C. C. A. N. Y. 265 Fed. 177, 179; but that case involved power exercised under a war statute. *Employers Group of Motor Freight Carriers, Inc., et al. v. National Labor Board et al.*, 79 U. S. App. D. C. 105, 107, 111, 143 F. 2d 145, 147, 151; but that likewise involved a war statute, and no rights had been taken or threatened to be taken which required review of the Board's order. *Alpirn et al. v. Huffman et al.*, D. C. Nebr., 49 F. Supp. 337; but that likewise was under a statute authorizing the President during the national emergency to make requisitions. *United States v. Pewee Coal Co., Inc.*, 341 U. S. 114, where there was a nonstatutory seizure during World War II, and where compensation was allowed; but he neglected to state that the legality of the seizure was not in issue in the case (88 F. Supp. 426). These cases are therefore not apposite.

[fol. 241] He next cites general language from the works of Alexander Hamilton, Vol. 4, page 438, but it is far from convincing when read in context. He thereafter cites *In re Neagle*, 135 U. S. 1, involving a habeas corpus proceeding

brought by Neagle, a United States Marshal who killed David S. Terry in defense of Judge Stephen J. Field, but that case traced the source of power in the Executive to Article II, Sec. 3, requiring that he shall "take care that the laws be faithfully executed." He also cites the Prize Cases, 2 Black 635, 17 L. Ed. 459, but that simply upheld the validity of President Lincoln's blockade of southern ports and was predicated upon the existence of a state of war, which is not claimed by defendant to exist. He also cites *In re Debs*, 158 U. S. 564, concerning the dispatch of troops by President Cleveland in a labor dispute, for the purpose of enforcing the faithful execution of the laws of the United States and the protection of its property and removing obstructions to interstate commerce and the United States mail. There, again, the authority is traced to an express grant of power. These cases therefore do not support his contention, but refute it. He next refers to seizures by former presidents, some during war and several shortly preceding a war, without the authority of statute, but it is difficult to follow his argument that several prior acts apparently unauthorized by law, but never questioned in the courts, by repetition clothe a later unauthorized act with the cloak of legality. Apparently, according to his theory, several repetitive, unchallenged, illegal acts sanctify those committed thereafter. I disagree.

Defendant also contends that the Executive has an inherent power in the nature of eminent domain, which justifies his action. The power of eminent domain is a Congressional power. As stated by the Supreme Court in *Hooe v. United States*, 218 U. S. 323, 336, "The taking of private property by an officer of the United States for public use, without being authorized, expressly or by necessary implication, to do so by some act of Congress, is not the act of the Government." The President therefore does not have the power of eminent domain, and the cases defendant cites do not disclose that he has anything in the nature of such power. [fol. 242] Instead, they relate to the right of the Government to take and destroy property in connection with military operations. They set forth the stringent requirements for the exercise of this right and hold that, in some instances, there is an obligation, "upon the general principle of justice," to pay therefor. *United States v. Pacific R. R.*, 120

U. S. 227. These cases have no application to the issues here involved, and there is no merit to this point.

Defendant also quotes from the autobiography of President Theodore Roosevelt at pages 388-389, wherein he states that it was “not only his right but his duty [as President] to do anything that the needs of the Nation demanded unless such action was forbidden by the Constitution or by the laws”; and that he “acted for the public welfare . . . acted for the common well-being of all our people, whenever and in whatever manner was necessary, unless prevented by direct constitutional or legislative prohibition.” That is defendant’s only support for his position and for his “Stewardship” theory of the office of President, but with all due deference and respect for that great President of the United States, I am obliged to say that his statements do not comport with our recognized theory of government, but with a theory with which our government of laws and not of men is constantly at war.

Enough has been said to show the utter and complete lack of authoritative support for defendant’s position. That there may be no doubt as to what it is, he states it unequivocally when he says in his brief that he does “not perceive how Article II [of the Constitution] can be read . . . so as to limit the Presidential power to meet all emergencies,” and he claims that the finding of the emergency is “not subject to judicial review.” To my mind this spells a form of government alien to our constitutional government of limited powers. I therefore find that the acts of defendant are illegal and without authority of law.

I shall next turn to defendant’s claim that the courts are without power to negate executive action of the President. Defendant relies on the case of *Mississippi v. Johnson*, 4 [fol. 243] Wall 475, where the Supreme Court held that the Judiciary would not attempt to control the President. But in this case the President has not been sued. Charles Sawyer is the defendant, and the Supreme Court has held on many occasions that officers of the Executive Branch of the Government may be enjoined when their conduct is unauthorized by statute, exceeds the scope of constitutional authority, or is pursuant to unconstitutional enactment. *Larson v. Domestic and Foreign Commerce Corp.*, 337 U. S. 682. *Land v. Dollar*, 330 U. S. 731. Philadelphia

Co. v. Stimson, 223 U. S. 605. Lee v. United States, 106 U. S. 196. There is no doubt, therefore, that the defendant is subject to an injunction, and the President not only is not a party but he is an indispensable party to this action, as held in Williams v. Fanning, 332 U. S. 490. Hynes v. Grimes Packing Co., 337 U. S. 86. I find this point no bar to plaintiff's claim to relief.

Taking up the next point, namely, that the courts will not interfere in advance of a full hearing on the merits⁵ except upon a showing that the damage to flow from a refusal of a temporary injunction is irreparable and that such damage outweighs the harm which would result from its issuance, I first find as a fact, on the showing made and without burdening this opinion with a recital of facts, that the damages are irreparable. As to the necessity for weighing the respective injuries and balancing the equities, I am not sure that this conventional requirement for the issuance of a preliminary injunction is applicable to a case where the Court comes to a fixed conclusion, as I do, that defendant's acts are illegal. On such premise, why are the plaintiffs to be deprived of their property and required to suffer further irreparable damage until answers to the complaints are filed and the cases are at issue and are reached for hearing on the merits? Nothing that could be submitted at such trial on the facts would alter the legal conclusion I have reached. But assuming I am required to balance the equities, what is the situation in which I find this case? I am told by defendant of the disastrous effects [fol. 244] on our defense efforts and economy if an injunction should be granted, because it would automatically be followed by a crippling strike; and I am asked to weigh that damage against the incalculable and irreparable injuries to plaintiffs' multi-billion-dollar industry, if I should refuse to issue it. Assuming the disastrous effects on the defense effort envisioned by the defendant, that can come about only in case of a strike, and that presupposes that the United Steel Workers will strike notwithstanding the damage it will cause our defense effort. It also presupposes that the Labor Management Relations Act, 1947, is inade-

⁵ Expedition of a hearing on the merits has been opposed by defendant.

quate when it has not yet been tried, and is the statute provided by Congress to meet just such an emergency. And it further presupposes, as defendant apparently does, that, this statute being inadequate, Congress will fail in its duties, under the Constitution, to legislate immediately and appropriately to protect the nation from this threatened disaster. I am unwilling to indulge in that assumption, because I believe that our procedures under the Constitution can stand the stress and strains of an emergency today as they have in the past, and are adequate to meet the test of emergency and crisis.

Under these circumstances I am of the opinion that, weighing the injuries and taking these last-mentioned considerations into account, the balance is on the side of plaintiffs. Furthermore, if I consider the public interest from another viewpoint, I believe that the contemplated strike, if it came, with all its awful results, would be less injurious to the public than the injury which would flow from a timorous judicial recognition that there is some basis for this claim to unlimited and unrestrained Executive power, which would be implicit in a failure to grant the injunction. Such recognition would undermine public confidence in the very edifice of government as it is known under the Constitution.

The remaining claim of the defendant is that plaintiffs have a plain, adequate, and complete remedy by a suit in the Court of Claims for damages, and therefore equity can not take cognizance of the case. The records show that monetary recovery would be inadequate; but aside from [fol. 245] that, the seizure being unauthorized by law, there could be no recovery under an implied contract,⁶ and there can be none under the Federal Tort Claims Act.⁷ This Act expressly provides that any claim based upon an act of an employee of the Government in the execution of a

⁶ *Hooe v. United States*, supra; *United States v. North American Transportation & Trading Co.*, 253 U. S. 330, 64 L. Ed. 935.

⁷ 28 U. S. C. A. 1346b.

regulation, whether or not it be valid, is excepted from its terms.⁸

For the foregoing reasons I am of the opinion that preliminary injunctions restraining defendant from acting under the purported authority of Executive Order 10340 should be issued in favor of all plaintiffs except the United States Steel Company. That company verbally limited its motion to one for a preliminary injunction to restrain defendant from making any changes in the terms and conditions of employment. That I am unwilling to issue because of its stultifying implications. I could not consistently issue such an injunction which would contemplate a possible basis for the validity of defendant's acts, in view of my opinion hereinabove expressed, and moreover, a preliminary injunction should maintain the status quo as of the date of the wrongful acts complained of. If the United States Steel Company wishes to withdraw its verbal amendment and proceed on the basis of its original motion, leave will be granted for that purpose, and the same injunction issued to it as to the other plaintiffs.

Counsel will submit, with all due speed, orders in accordance herewith.

David A. Pine, Judge.

[fol. 246] IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

THE YOUNGSTOWN SHEET AND TUBE COMPANY, a Body
Corporate, et al., Plaintiffs,

v.

CHARLES SAWYER, Secretary of Commerce, U. S., Defendant

PRELIMINARY INJUNCTION—Filed April 30, 1952

This cause came on to be heard at this term upon motion of the plaintiffs for a preliminary injunction, and upon consideration thereof, the affidavits and briefs filed by the re-

⁸ See *Old King Coal Co. v. United States*, S. D. Iowa, 88 F. Supp. 124; *Jones v. United States*, S. D. Iowa, 89 F. Supp. 980.

spective parties, and the arguments of counsel, and the Court having determined by its opinion filed herein on April 29, 1952, in which the Court's findings of fact and conclusions of law appear, that the seizure and taking possession on or about April 8, 1952 of the plaintiffs' plants, facilities and properties by the defendant was, and his continued possession thereof is, illegal and without authority of law, and that irreparable damage will result to the plaintiffs unless the defendant is enjoined and restrained as hereinafter provided, it is by the Court this 30th day of April, 1952,

Adjudged and ordered, that, pending the final hearing and determination of this cause, the defendant, his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, be, and hereby are, enjoined and restrained from continuing the seizure and possession of the plants, facilities and properties of the plaintiffs and from acting under the purported authority of Executive Order No. 10340;

[fol. 247] Provided, however, that the plaintiffs shall give security, in the sum of One hundred Dollars (\$100) (or make deposit of cash with the Clerk of this Court in said sum in lieu thereof) for the payment of such costs and damages as may be incurred or suffered by the defendant if he should be found to have been wrongfully enjoined or restrained.

David A. Pine, Judge.

[File endorsement omitted.]

[fol. 248] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed April 30, 1952

Notice is hereby given that the defendant appeals to the United States Court of Appeals for the District of Columbia from the order of the United States District Court for the District of Columbia dated April —, 1952, granting a pre-

liminary injunction, and from each and every part of said order.

Respectfully submitted, Holmes Baldrige, Assistant Attorney General.

Of Counsel: James R. Browning, Edward H. Hickey, Marvin C. Taylor, Samuel D. Slade, Benjamin Forman, Herman Marcuse, T. S. L. Perlman, Attorneys, Department of Justice.

[File endorsement omitted.]

[fol. 249] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION FOR STAY OF THE ORDER GRANTING PRELIMINARY INJUNCTION—Filed April 30, 1952

Now comes the defendant in the above-entitled case, pursuant to the provisions of Rule 62 (c) of the Federal Rules of Civil Procedure, having appealed from this Court's order herein dated April —, 1952 granting a preliminary injunction against the defendant and others as therein specifically stated, and prays that said order be stayed pending disposition of defendant's appeal therefrom, and in support thereof respectfully shows the Court:

That as found by the President in Executive Order No. 10340, and as established by the uncontested affidavits of Robert A. Lovett, Secretary of Defense, Gordon Dean, Chairman of the United States Atomic Energy Commission, Manly Fleischmann, Administrator of the Defense Production Administration, Henry H. Fowler, Administrator of the National Production Authority, Oscar L. Chapman, Secretary of the Interior, Jess Larson, Administrator of General Services, Homer C. King, Acting Administrator of the Defense Transportation Administration, Charles Sawyer, Secretary of Commerce, Harry Weiss, Executive Director of the Wage Stabilization Board, and Nathan P. Feinsinger, Chairman of the Wage Stabilization Board, [fol. 250] filed herein, a work stoppage in the steel industry

would immediately jeopardize and imperil our national defense and the defense of those joined with this Nation in resisting aggression; and

That, as the head of the United Steel Workers of America, CIO, has publicly announced, such a work stoppage will immediately result if the order appealed from is not stayed and the possession of the steel plants by the United States is terminated.

Respectfully submitted, Holmes Baldrige, Assistant Attorney General.

Of Counsel: James R. Browning, Edward H. Hickey, Marvin C. Taylor, Samuel D. Slade, Benjamin Forman, Herman Marcuse, T. S. L. Perlman, Attorneys, Department of Justice.

[File endorsement omitted.]

[fol. 251] [Appellant's Designation of Content of Record on Appeal—Omitted in Printing]

[fol. 252] [Order for Clerk to Transmit Original Record to Court of Appeals—Omitted in Printing]

[fol. 257] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

[fol. 259] ORDER UPON DEFENDANT'S APPLICATION FOR A STAY—Filed April 30, 1952

This cause came on to be heard upon the defendant's motion for a stay pending appeal of the Court's order of April 30th, 1952, granting a temporary injunction as therein stated, and was argued by counsel. Upon consideration thereof, it is hereby

Ordered, adjudged and decreed that the said motion be and the same hereby is denied.

David A. Pine, Judge of U. S. District Court for the District of Columbia.

[File endorsement omitted.]

[fol. 94] IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

Civil Action No. 1625-'52

No. 11404-13

UNITED STATES STEEL COMPANY, 525 William Penn Place,
Pittsburgh, Pennsylvania, Plaintiff,

v.

CHARLES SAWYER, Department of Commerce, Washington,
D. C., Defendant

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE
RELIEF—Filed April 11, 1952

Plaintiff, United States Steel Company, alleges:

1. This is an action for a declaratory judgment brought pursuant to the provisions of the Act of June 25, 1948, c. 646, 62 Stat. 964, as amended by the Act of May 24, 1949, c. 139, sec. 111, 63 Stat. 105 (28 U. S. C. A. §§ 2201 and 2202) and for an injunction.

2. Plaintiff is a corporation organized and existing under and by virtue of the laws of the State of New Jersey and is a citizen and a resident of said State. It is engaged in integrated operations for the production and sale of a wide variety of steel products, and operates, among other things, steel producing, manufacturing and fabricating plants in various states of the United States. In the operation of said plants and related facilities plaintiff owns and uses extensive real and personal properties, funds, rights, franchises and other valuable assets. It employs over 260,000 persons in its enterprise and has an investment totaling many millions of dollars in plant and related facilities. [fol. 95] Many of plaintiff's customers have pending orders for steel and steel products for use in applications having no relation to the defense effort of the United States.

3. Defendant, Charles Sawyer, is Secretary of Commerce of the United States and is a resident of the District of Columbia.

4. This action involves questions under the Constitution and laws of the United States. The matter in controversy

exceeds, exclusive of interest and costs, the sum of \$3,000. There exists between the parties herein an actual justiciable controversy in respect of which plaintiff requires a declaration of its rights by this Court.

5. On April 9, 1952, plaintiff received from defendant a telegram and on April 10, 1952 an order designated Order No. 1 and dated April 8, 1952, which telegram and order purport to take possession of all properties of plaintiff, except railroads and all coal and metal mines. The telegram and order, which are annexed hereto as Exhibits A and B, respectively, purport to have been issued pursuant to authority vested in defendant by Executive Order No. 10340 issued by the President of the United States on April 8, 1952. Such Executive Order is annexed hereto as Exhibit C.

6. Prior to April 9, 1952, plaintiff had enjoyed peaceful possession and the exclusive operation of the properties referred to in paragraph 2 hereof, and had operated the same in all respects consistent with applicable laws of the United States and of the various States of the United States having jurisdiction thereof.

[fol. 96] 7. The United Steelworkers of America (hereinafter called the "Union") represents certain employees of plaintiff at the plants and facilities referred to in paragraph 2 hereof for the purposes of collective bargaining. Since November 27, 1951, plaintiff has been engaged in collective bargaining negotiations with the Union concerning wages and other conditions of employment. On December 22, 1951, the President referred the matter to the Wage Stabilization Board for consideration and recommendation. Plaintiff did not agree to be bound by or to accept any recommendations by the Wage Stabilization Board. On December 31, 1951, the labor agreements which had theretofore been in effect between plaintiff and the Union expired. On March 20, 1952, the Wage Stabilization Board made certain recommendations with respect to the employment conditions under negotiation. Plaintiff has not accepted the recommendations of the Wage Stabilization Board. A strike of the employees of plaintiff and of most other producers of steel products was called by the Union for 12:01 a. m., April 9, 1952.

8. On April 8, 1952, the President issued the aforesaid

Executive Order No. 10340, purporting to authorize and direct defendant to take possession of all or such of the plants, facilities and other property, or any part thereof, of listed companies, including plaintiff, as he may deem necessary in the interest of national defense; and to operate or to arrange for the operation thereof and to do all things necessary for, or incidental to, such operation. The Executive Order recites the fact that a strike had been called, and states that the Executive Order is issued to assure the [fol. 97] continued availability of steel and steel products. The Executive Order directs defendant, among other things, to determine and prescribe terms and conditions of employment under which the plants, facilities, and other properties, possession of which is taken pursuant to that Order, shall be operated.

9. Defendant's Order No. 1 provides, among other things, that plaintiff's plants, facilities and other properties are to be operated in accordance with such regulations and orders as are promulgated by defendant and recites that the management, officers and employees of plaintiff's plants are serving the Government of the United States.

10. Sections 206-210 of the Labor Management Relations Act of 1947 (61 Stat. 136; 29 U. S. C. A. App. § 141) provide specific machinery for dealing with threatened or actual strikes which affect an entire industry or a substantial part thereof and which in the opinion of the President imperil the national health or safety. Congress in the course of its consideration of this Act considered and specifically rejected the device of seizure as a means of dealing with such a strike. In the Act Congress has authorized the President to establish a Board of Inquiry and to petition a district court of the United States to enjoin a threatened or actual strike for a period not exceeding 60 days, during which period it shall be the duty of the parties to the labor dispute to make every effort to adjust and settle their differences. In the event the dispute is not resolved during such period, and after a secret ballot of the employees of each employer involved in the dispute, the Act requires the President to submit to the Congress a full and [fol. 98] comprehensive report of the proceedings together with such recommendations as he may see fit to make for consideration and appropriate action by the Congress. The

President has not invoked the provisions of this Act in connection with the labor dispute between plaintiff and the Union.

11. Section 18 of the Universal Military Training and Service Act (62 Stat. 635; 50 U. S. C. A. App. § 468) provides that, upon the President's determination that it is in the interest of the national security 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 the use of the Atomic Energy Commission, the United States is authorized to place orders for such articles or materials. Any person with whom such an order is placed is to be advised that such order is placed pursuant to the provisions of this section. In case the person with whom such an order is placed refuses or fails to fill such order, the President is authorized to take immediate possession of the plant of such person and to operate it for the production of such articles or materials as may be required by the United States. Plaintiff has received no orders placed pursuant to the provisions of this Act.

12. Section 201 of the Defense Production Act of 1950, as amended (64 Stat. 799, 65 Stat. 132; 50 U. S. C. A. App. § 2081) authorizes the President, whenever he deems it necessary in the interest of national defense, to acquire any real property including facilities, temporary use thereof, or other interest therein, together with any personal property located thereon or used therewith, upon the payment of just compensation in accordance with procedures set forth in the Act. The President has made no determination pursuant to this Act with respect to any property of plaintiff nor has he taken any action to acquire any such property in accordance therewith.

13. Executive Order No. 10340 and the actions of defendant taken or to be taken in pursuance thereof are unlawful and without effect in that

(a) They are without authority under any statute of the United States, and specifically are outside of and inconsistent with the authority and procedures provided under the Labor Management Relations Act of 1947, the Universal Military Training and Service Act,

and the Defense Production Act of 1950, as amended.

(b) They are without authority under any provision of the Constitution of the United States, and specifically are beyond the powers conferred upon the President by Article II of the Constitution. They constitute a usurpation by the President of the powers placed by the Constitution in the Congress of the United States.

(c) They are unconstitutional in that they deprive the plaintiff of liberty and property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

(d) They are unconstitutional in that they unlaw-[fol. 100] fully take from the plaintiff private property without just compensation in violation of the Fifth Amendment to the Constitution of the United States.

(e) They are unconstitutional in that they constitute an unreasonable seizure of the property, papers, and effects of plaintiff and a denial and disparagement of the rights of plaintiff in violation of the Fourth and Ninth Amendments to the Constitution of the United States.

14. Defendant's seizure of plaintiff's properties has been effected without the consent of plaintiff and over its protest. Plaintiff is without any means, save by this suit, to protect and to assert its rights in its properties.

15. The actions of defendant taken or to be taken pursuant to Executive Order No. 10340 substantially and irreparably injure plaintiff and will continue to do so, in the respects, among others, hereinafter set forth. For such injury plaintiff has no prompt, adequate, and effective remedy at law.

(a) Seizure by defendant deprives plaintiff of its right to bargain collectively with its employees. Under defendant's Order No. 1 plaintiff's management is directed to act, in its relations with its employees, in accordance with the instructions of defendant. This unlawful interference with, and denial of, plaintiff's right freely to bargain collectively, imposed at a critical stage of plaintiff's negotiations with the Union, will irreparably alter, to plaintiff's injury, the status of the

bargaining between plaintiff and the Union, particularly in connection with the current labor dispute.

[fol. 101] (b) In view of the provision of Executive Order No. 10340 that defendant shall determine and prescribe terms and conditions of employment in plaintiff's plants, the necessary effect of the seizure if permitted to continue is to enable defendant to concede to the Union and place in effect the recommendations of the Wage Stabilization Board, including an increased wage scale, the union shop, and other concessions to the Union. Plaintiff is subject to coercion by defendant as to the future conditions of employment of its employees.

(c) The placing into effect of and the coerced compliance by plaintiff with the recommendations of the Wage Stabilization board would result in greatly increased cost of production of plaintiff's products. These products are subject to price regulations imposed by the United States and the governmental agency regulating such prices has failed and refuses to permit increases in the prices of such products so as to enable plaintiff to attempt to recoup such increased costs.

(d) The seizure enables defendant to alter, disrupt, and otherwise interfere with normal customer relationships between plaintiff and its customers, and gives to defendant and his agents unlimited access at any time to confidential information and trade secrets of immeasurable value to plaintiff in its business.

(e) Under the terms of defendant's Order No. 1, transferring plaintiff's plant, facilities, and business [fol. 102] from plaintiff to defendant for an indefinite period of time plaintiff is deprived of its right freely to operate its property, to program its future business, to expand its facilities, and to protect its investment. Even though the present management personnel of plaintiff remain in their respective positions and even though defendant does not immediately issue any order designed to alter plaintiff's normal course of business, plaintiff's management and directors cannot fully and freely exercise managerial judgment since they cannot know how long defendant's control will continue, when

or in what respects defendant will veto or otherwise affect a given management decision, what are and will be their legal rights and obligations under contracts entered into prior to defendant's seizure, or what will be the legal consequences of any contracts entered into during the period of defendant's seizure of plaintiff's properties. They know only that they are now directed to serve defendant, purportedly in the name of the United States.

(f) The goodwill of the nationwide business of plaintiff in a going concern which has been built up during the first half of this century with tremendous and continuous effort and at enormous expense is threatened with adverse and permanent impairment by defendant's seizure of its properties.

(g) Plaintiff's loss of freedom of collective bargaining, of maintenance of normal relationships in its business, of the benefit of private management and initiative in the control of a vast and complicated property, the injury to its goodwill and other elements of damage specified herein cannot possibly be adequately measured in monetary terms or be remedied in an action at law. Plaintiff necessarily faces the prospect of being forced to resort to successive, numerous and burdensome actions at law to recover for such measurable damage to it as may occur from time to time during the indefinite period of, and because of, defendant's seizure of plaintiff's properties. It is plaintiff's information and belief that defendant would not be financially able to pay judgments, which might run into many millions of dollars, growing out of action taken with respect to the vast and complicated properties of plaintiff. Plaintiff has no assurance that it will recover full and adequate compensation, if any, from the United States for damage to its properties and business arising from defendant's unlawful action herein set forth.

Therefore the injunctive and declaratory relief prayed herein is the only means available to plaintiff for the protection of its rights.

Wherefore, it is prayed that:

A. Defendant be declared to have no right to seize plaintiff's properties under the purported authority of Executive Order No. 10340, or to require compliance by plaintiff with defendant's Order No. 1 or other orders of a supplementary or similar nature.

[fol. 104] B. Defendant and all persons acting as his agents or under his direction or authority be temporarily enjoined, pending a final determination of this cause, from taking any action under the purported authority of Executive Order No. 10340 which in any way would affect, impair, or restrict plaintiff's possession, control and management of any of its properties.

C. Upon a final hearing, the aforesaid temporary injunction be made permanent.

D. Plaintiff be granted such other or further relief as may seem appropriate in the premises.

John W. Davis, Theodore Kiendl, Davis, Polk, Wardwell, Sunderland & Kiendl, 15 Broad Street, New York 5, N. Y. John Lord O'Brian, Howard C. Westwood, Covington & Burling, 701 Union Trust Building, Washington 5, D. C. Roger M. Blough, 525 William Penn Place, Pittsburgh, Pennsylvania, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 105] [Duly sworn to by John A. Stephens, jurat omitted in printing.]

[fol. 106] EXHIBIT A

Telegram

[Omitted. Printed side page 38 ante.]

[fol. 108] EXHIBIT B

Order No. 1

[Omitted. Printed side page 40 ante.]

[fol. 115]

EXHIBIT C

Executive Order No. 10340

[Omitted. Printed side page 8 ante.]

[fol. 122] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR PRELIMINARY INJUNCTION—Filed April 19, 1952

The plaintiff, United States Steel Company, moves the Court for an order granting a preliminary injunction against the defendant, Charles Sawyer, and all persons acting as his agents or under his direction or authority, pending this suit, and until further order of the Court, upon the grounds and in accordance with the prayers as set forth in the complaint filed in this action on April 11, 1952.

Howard C. Westwood, Attorney for Plaintiff, Covington & Burling, 701 Union Trust Building, Washington 5, D. C.

[File endorsement omitted.]

[fol. 123] Service of the foregoing motion, and annexed points and authorities, by copies thereof, is hereby acknowledged and accepted this 18th day of April, 1952.

Charles Sawyer, Department of Commerce, Washington, D. C., Philip B. Perlman, Acting Attorney General of the United States, Department of Justice, Washington, D. C., Charles M. Ireland, United States Attorney, District of Columbia, United States Court House, Washington, D. C.

[Certificate of service omitted in printing.]

[fol. 124] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION—Filed April 19, 1952

Point 1

The defendant's action in seizing the properties of the plaintiff is completely unauthorized and unlawful under the Constitution and statutes of the United States. *Ex parte Milligan*, 4 Wall. 2, 136-37 (1886); *Hooe v. United States*, 218 U. S. 322 (1910).

Point 2

The plaintiff is entitled to injunctive protection against the irreparable injury which will otherwise result from the defendant's actions. *Federal Rules of Civil Procedure*, Rule [fol. 125] 65 (b); *Hynes v. Grimes Packing Co.*, 337 U. S. 682 (1949); *Kendall v. United States ex rel Stokes*, 12 Pet. 524 (U. S. 1838); *Publicker Industries, Inc. v. Andersen*, 68 F. Supp. 532 (D. D. C. 1946); *Hart Coal Corp. v. Sparks*, 9 F. Supp. 825 (W. D. Ky. 1935).

Point 3

An unlawful taking under claim of exercise of eminent domain will be enjoined to avoid irreparable injury. *See Osborne v. Missouri Pacific Railway*, 147 U. S. 248, 258-59 (1892); *Porto Rico Tel. Co. v. Puerto Rico Comm. Authority*, 189 F. 2d 39 (1st Cir. 1951); *cf. Hurley v. Kincaid*, 285 U. S. 95, 104 (1932).

Point 4

The defendant may be enjoined from exceeding his legal authority. *Larson v. Domestic & Foreign Commerce Corp.*, 337 U. S. 682 (1949).

Respectfully submitted.

Howard C. Westwood, Attorney for Plaintiff, 701
Union Trust Building, Washington 5, D. C.

April 18, 1952.

[File endorsement omitted.]

[fol. 126] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

AMENDMENT NO. 1 TO COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF—Filed April 24, 1952

Plaintiff, United States Steel Company, hereby amends its complaint as follows:

1. *Paragraph 10.* Change “60 days” in line 14 to read “80 days.”

2. *Paragraph 13.*

a. Add new subparagraph (e) as follows:

“(e) They are unconstitutional in that they take from the plaintiff private property for a use other than a public use in violation of the Fifth Amendment to the Constitution of the United States.”

b. Redesignate the present subparagraph “(e)” as “(f).”

c. Add new subparagraphs (g)-(i) as follows:

“(g) They are unconstitutional in that they violate and invade the rights reserved to the people under the Tenth Amendment to the Constitution of the United States.”

[fol. 127] “(h) They are unconstitutional in that they invade the powers vested exclusively in the Congress under Section 1 and under Section 8, Article I, and Section 3, Article IV, of the Constitution of the United States.”

“(i) They violate the plaintiff’s right under the National Labor Relations Act, as amended, to bargain collectively with its employees concerning terms and conditions of employment.”

Howard C. Westwood, Covington & Burling, 701 Union Trust Building, Washington 5, D. C., Attorney for Plaintiff.

[File endorsement omitted.]

Duly sworn to by John A. Stephens. Jurat omitted in printing.

[fol. 128] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT—Filed April 24, 1952

DISTRICT OF COLUMBIA, ss:

Wilbur L. Lohrentz, being duly sworn, deposes and says:

1. I am Assistant to the Vice President of Industrial Relations of the United States Steel Company.

2. In the course of my duties, I have followed step by step and have participated in many of the bargaining conferences between the United States Steel Company and the United Steelworkers of America which commenced in November 1951 and have not yet been concluded. The Company's official records of these negotiations have been maintained under my supervision and direction.

3. The attached Exhibit A contains a chronology of these negotiations which I have prepared from the records above referred to. The statements contained in Exhibit A are [fol. 129] true and correct to the best of my knowledge and belief.

4. The attached Exhibit B is a true and correct copy of a letter dated November 1, 1951, received by the plaintiff from Philip Murray, President of the United Steelworkers of America.

Wilbur L. Lohrentz.

Sworn to and subscribed before me this 23d day of April, 1952. Margaret MacPherson, Notary Public. My Commission expires March 14, 1957.
(Seal.)

[File endorsement omitted.]