

in the selection of such cases in the future? (b) What review of the facts and arguments regarding wage and price decisions is to be made, and in what forum, in advance of the conclusion that the 'guideposts have been violated' and that a wage or price decision is 'against the public interests'? * * *

"I am personally disturbed by the absence of due process in the administration of the policy. * * * The judgment that a wage or price increase is violative of the public interest is a serious conclusion that should warrant dispassionate review with full opportunity for the presentation of contesting views. The present policy does not afford this elementary right."⁴³

The third aspect is discrimination in enforcement policy as between industry and labor. Public confrontations with industry over prices have been numerous; those with unions over wages, few and far between. Even when they have occurred, moreover, the action has been irresolute and largely ineffective:

"Despite many public statements about the desirability of following the guideposts, the Government has been exceedingly wary about backing them up when it seemed likely that a strike might result, or might be prolonged by insisting on them."⁴⁴

One reason for the lopsidedness of the enforcement effort has been the difference in the receptivity of the two sides to hortatory intervention. The CEA has reported its experience with industry as follows:

The response on the part of the businesses involved has been extremely encouraging. Only in rare cases has the Council been told that it had no right to question private decisions. Almost invariably the companies involved have recognized a larger public interest in their pricing decisions and have made a sincere effort to take that interest into account. Some large companies agreed to give the Council advance notice of their intention to change prices.⁴⁵

There has been no similar report by the Secretary of Labor, and for obvious reasons. The unions have been generally resentful of interference, and frequently defiant. Concentrating on industry has therefore been the line of least resistance.

Limited coverage

Enforcement of the guideposts has been directed on both sides to those possessing something called "discretionary" or "market" power:

The guideposts were never intended to apply in highly competitive sectors where market forces determine prices and wages in an impersonal manner. They are applicable to markets in which discretionary power exists.⁴⁶

On the wage side, such power has been imputed to organized labor only (unorganized workers being deemed to have none); on the price side to "firms which have appreciable discretion with regard to their prices," these being identified alternatively as "large" firms and as firms "in industries where the number of competitors is limited."⁴⁷

⁴³ John Dunlop, *Guidelines, Informal Controls, and the Market Place* (symposium), pp. 87-88. University of Chicago Press, 1966.

⁴⁴ Sheahan, *op. cit.*, p. 45.

⁴⁵ Economic Report, 1967, p. 127.

⁴⁶ Economic Report, 1969, p. 119.

⁴⁷ Economic Report, 1964, p. 114 and *ibid.*, 1967, p. 119.