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# HISTORY OF CHILD LABOR LEGISLATION IN WISCONSIN AND ATTEMPTS BY THE U. S. GOVERNMENT TO REGULATE CHILD LABOR

HARRY R. McLOGAN\*

CHILD labor statutes, at least those of Wisconsin, are not simple nor easily understood. The Industrial Commission is constantly receiving requests for construction and explanation of the law. Not a few of such requests come from judges and attorneys. In these circumstances it is fortunate that the administration of the Child Labor Law is charged to a single administrative commission whose interpretations of the law are of state-wide and uniform effect until overruled by the courts. A centralized administration of child labor laws is important to the employer, as well as to the child who is its special beneficiary.

## CENTRALIZATION OF ADMINISTRATION

Wisconsin's first law regulating child labor provided a penalty for any employer who should *compel* any child under 18 years of age to work more than 8 hours a day in any factory or workshop and also provided a penalty for any employer who should *permit* any child under 14 years of age to work more than 10 hours a day in such places of employment. This law was enforceable by local officials, and no state body was charged with its administration.<sup>1</sup>

The provision against any employer compelling work beyond eight hours per day proved to be a dead letter. A complainant was obliged to assume the burden of bringing to trial such employer and of giving testimony which might establish that the employer used compulsion. Then again, it was difficult to determine what constituted proof of such compulsion. Moreover, the employee incurred the risk of the loss of his job and the expense of prosecution. This type of regulatory measure was never of any particular value to the state.

An administrative measure to control the entry of children of permit age into industrial employments was provided when in 1899 the statutes were amended to provide for the issuance of labor permits (certificates of authorization) to employ children.<sup>2</sup> With various changes from time to time the permit system of child labor administration has been continued in this state up to the present time.

\* In collaboration with Orrin A. Fried, Statistician of the Wisconsin Industrial Commission.

<sup>1</sup> Wis. Laws 1867, c. 83.

<sup>2</sup> Wis. Laws 1899, c. 519.

During the period from 1899 to 1917 the power to issue child labor permits was placed equally with the State Labor Department and with the judges of county, municipal and juvenile courts. During the latter part of this period, however, to promote uniformity in the issuance of labor permits the law was amended requiring judges to file copies of all permits issued by them with the State Labor Department, which was at the same time authorized to revoke permits which appeared to have been issued unlawfully or irregularly.

This power to revoke permits proved embarrassing to the Commissioner of Labor because he lacked any effective means of preventing the repetition of any irregularities in the issuance of labor permits by county, municipal and juvenile court judges. Indeed, on one occasion a judge warned the then State Labor Department that if it revoked a certain labor permit he would issue another and that he would continue to issue labor permits to the child in question as long as the State Labor Department might continue to revoke them.

#### INDUSTRIAL COMMISSION GIVEN ENFORCEMENT TASK

In 1917 the legislature took notice of the unsatisfactory administration of the Child Labor Law under divided authority and responsibility by placing full and sole responsibility for the issuance of child labor permits upon the Industrial Commission. It authorized the commission to designate persons to assist it with the work.<sup>3</sup> The vital importance of this change in the administration of the permit system cannot be over-estimated.

From and after 1917 there has been but one standard for the issuance of labor permits in Wisconsin—that fixed by statute and the lawful orders of the Industrial Commission.

Copies of permits containing a statement of evidence on which they are issued must be sent to the Industrial Commission by permit officers. Such copies are checked promptly upon receipt and if any irregularities appear therein they are called to the attention of the officer issuing the permit for correction. The commission has had comparatively little trouble in getting corrections made—far less than perhaps would be the case if permit officers were statutory appointees.

The labor permit system is intended to give the state an opportunity to make sure of the age of a child, his schooling, his fitness and eligibility for the proposed employment before he is allowed to leave school and go to work.

The employment of a child is limited to the employer named in the permit. When the employment terminates, the employer must return the labor permit to the child named in the permit. Before the child

<sup>3</sup> Wis. Laws 1917, c. 624.

can again be lawfully employed, a new permit must be issued or the old one must be re-issued. All blanks used in the issuance of labor permits are furnished by the commission.

In the appointment of permit officers to assist in the issuance of permits throughout the state, the Industrial Commission is not limited to persons of any class or condition. In practice the commission has always tried to secure persons already connected in some capacity with public service. Over one-half of all permit officers are local school officials. County and municipal judges, bank officials, village clerks, postmasters and other public servants are also included among those appointed.

Permit officers serve wholly without pay for their services.<sup>4</sup> It is to the great credit of these public spirited citizens that many of them have served from five to fifteen years with great loyalty and fidelity to the trust and confidence placed in them by the Industrial Commission. Permit officers are members of the commission's organization. The commission gives them every assistance in their duties. Where a permit officer is in doubt whether the child is eligible for the proposed employment, or questions the application for a permit in any way, he is encouraged to submit the case to the commission's office at Madison for advice before taking final action. Some 225 permit officers are needed to issue child labor permits throughout Wisconsin—outside of the City of Milwaukee, where the Industrial Commission through its own employees issues all child labor permits. All appointments of permit officers terminate as of June 30th of each year. Under no conditions does an appointment hold for more than one year without its renewal.

#### USE OF DISCRETION IN GRANTING PERMITS

In 1917 when the legislature centralized the issuance of labor permits with the Industrial Commission of Wisconsin, it also enacted a provision giving the commission authority to refuse to issue a labor permit if in its judgment the best interests of the child would be served by such refusal.<sup>5</sup>

A child may be of the required age and have had the schooling or educational opportunity called for in the statute and none the less be obviously unfit for the proposed employment even though such employment be lawful for a child of its age. Most usually such cases are those of children representing serious cases of goiter, organic heart defects, malnutrition, eye defects and various other physical conditions needing correction. In Milwaukee the City Health Department cooperates with

<sup>4</sup> In the absence of specific statutory authority to charge a fee for issuing labor permits, no such charge is lawful. Atty. Gen. Opin. (1908) 624. *Hoffman v. Lincoln County*, 137 Wis. 353, 118 N.W. 850 (1908).

<sup>5</sup> Wis. Laws 1917, c. 624.

the commission by providing a routine physical examination for children making application for labor permits during the period from June to September of each year. Such medical examiners indicate whether the child may safely be permitted to enter the proposed employment, subject to taking corrective treatment as may be selected by its parents (or guardian) while employed under a labor permit. In many cases children having physical defects either were not previously aware of their defects, or considered them of too little importance to give them any attention. Upon securing a labor permit the child is encouraged to undertake the correction of the physical defects found upon medical examination. The physical defects called to the attention of children are those which if left uncorrected forbode trouble and inefficiency for adult life. These physical examinations are also of importance to employers in that they may save the employer from losses due to accidents and diseases which might arise because of such defects.

In 1930 a total of 1,684 children in Milwaukee were given medical examinations without cost. A total of 1,617 children out of this number received advice with regard to the correction of physical defects noted. Among such children were 48 who had serious heart defects, and 81 who were seriously underweight due to malnutrition.

#### PRIVILEGE TO EMPLOY PERMIT CHILDREN CAN BE WITHHELD FROM EMPLOYER

Under its statutory powers the Industrial Commission may withhold the issuance of permits when in its judgment for statutory reasons such action is in the best interests of the child.

The power to refuse to issue permits can be used to withhold permits from children to work for any employer who may be seriously violating any of the labor laws of the state. In the case where an employer makes it a policy to discharge permit children as soon as their age and experience entitles them to increased wage rates, only to take on new recruits at beginner's wages, the commission will advise the employer against such labor policy and unless the employer corrects this practice the commission will issue no further labor permits for children to work for such offending employer.

Another case: The employer who fails to organize his factory or work place to furnish the necessary supervision to keep permit children within lawful employments is given notice of the necessity of providing against future violations of the Child Labor Law. The commission may withhold future permits authorizing the employment of children to such employer while he refuses cooperation in keeping the employment of children within lawful bounds, or fails to assist in the prevention of accidents to children.

If deemed necessary, the outstanding permits of children employed by an offending employer may be recalled for cancellation by the Industrial Commission.

#### EDUCATIONAL REQUIREMENTS FOR LABOR PERMITS

There are no educational requirements for labor permits to employ children during school vacations. Contrary to the practice of a number of other states, Wisconsin allows children down to the age of 12 to be employed in certain commercial employments during school vacations. In Wisconsin, children between the ages of 12 and 14 may not be employed in industrial and commercial pursuits while the schools are in session. The legislature reasoned that a child under 14 years of age has enough to do if he does his school work in the modern, high-pressure school and attends to his home duties without having the added burden of industrial or commercial work on his shoulders while he is attending school. Children from 14 to 17 who are attending school and who are able to do outside work in addition to their school work may have permits to work after school hours and on Saturdays during school terms.

The educational requirements for labor permits must be complementary to statutory provisions relating to compulsory school attendance, truancy, vocational education, apprenticeship and other requirements to be fulfilled by the child and by others charged with administration affecting the child's education.

The Wisconsin legislature has tended towards the idea that a child shall have had either a modicum of education, or a reasonable educational opportunity, before he is allowed to work while schools are in session. Under the present Child Labor Law, the child under age 16 must either have completed the most advanced course of study offered in the public schools of the school district, or city of the child's residence, or of the school district or city in which the child is to be employed, whichever offers the more advanced course, before the child may be allowed to quit school and go to work while the schools are in session.

Under the foregoing provisions and under the requirements of compulsory school attendance laws,<sup>6</sup> it is certain that the child will have had some nine or ten years of educational opportunity before reaching the age where labor permits are no longer required, or the compulsory school attendance law does not apply.

Entering industry involves leaving school. Because of this relationship the legislature has always required the State Bureau of Labor

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<sup>6</sup> Wis. Stats. (1933) §§ 40.70, 40.73.

Statistics and its successor, the Industrial Commission, to assist in maintaining school attendance in this state.

Agitation for a compulsory school attendance law began soon after Wisconsin became a state and such a law was recommended to the legislature by a committee of the State Teachers' Association in 1865, and again in 1867. The report of the State Superintendent of Public Instruction, who was directed by the legislature of 1873 to investigate the subject of compulsory education, stated that there were 55,441 illiterates ten years of age and over in Wisconsin. Of this number 14,538 were between ten and twenty-one years of age. The report further stated that about 50,000 children in Wisconsin did not attend any school in the year 1873.

The first compulsory school attendance law was enacted in the year 1879.<sup>7</sup> It provided that all children between seven and fourteen years of age should be sent to some public or private school *for at least twelve weeks of the year*. Fines were imposed on parents and guardians for failure to obey the law. While this law promptly resulted in an increase in attendance of nearly 10,000 during the first year of its operation, the enforcement of the law was left wholly in the hands of local authorities and very soon the people learned that the law would not be enforced and that there was no danger in violating it. Commissioner of Labor Fowler in his biennial report (1874) noted that about 16,000 local officers were responsible for the enforcement of the compulsory school attendance law and that the law had rapidly become a dead letter.

This first compulsory school attendance law exempted any child ten years of age or over who could read and write English, *and whose family needed its support*, if the county judge issued a labor permit authorizing it to work during the school year. The theory of this exemption was that the state should waive its school attendance requirements in favor of the child whose parents wished its services to increase the family coffers.

The state has gradually advanced from that theory to the theory that the unsatisfied needs of the family are not properly chargeable to a child. The legislature in the year 1889 prohibited the employment of children under 14 years of age in factories, workshops and mines while schools were in session, and added other regulations, including the first prohibition of night work in factories (after nine o'clock in the evening and before six o'clock in the morning).<sup>8</sup>

In 1903 the legislature made it the duty of factory inspectors to report cases of truant children discovered by them to the local school

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<sup>7</sup> Wis. Laws 1879, c. 519.

<sup>8</sup> Wis. Laws 1889, c. 274.

boards.<sup>9</sup> This was done on the theory that the local school boards would enforce the attendance law after they were informed of cases. As a matter of fact, the boards generally did not do this and the compulsory attendance law once more failed of its object. A little later the factory inspectors were given authority to act as truant officers in dealing with unlawfully employed children who were found by them in the course of their inspections in factories. This law proved to be of some value and resulted in the factory inspectors returning a considerable number of children into the schools of the state.

In 1907 representatives of various educational interests in Wisconsin were invited into conference with the educational committees of the legislature and after long and thorough discussions a law was passed which insofar as attendance requirements are concerned is essentially the same as our present school attendance law, except for the age requirement.

The enforcement of the law, however, was still left in the hands of local authorities, but this arrangement was later modified to some extent by the legislatures of 1911<sup>10</sup> and 1913.<sup>11</sup>

#### LABOR PERMITS

Child labor laws were in force in this state for thirty-two years before a labor permit system was provided for. During these early years it was found impossible to administer the law with any satisfactory degree of efficiency in the absence of some sort of permit or license or so-called working paper. Since labor permits are intended to give the state an opportunity to make sure of the age of the child, *his schooling*, and his eligibility for the proposed employment before he is allowed to leave school and go to work, it is most natural that the educational requirements have been fixed to correspond with the requirements of school attendance, truancy, vocational education and apprenticeship laws of the state.

#### AGE BASIS FOR PERMITS

The age of a child is definitive. It can be established by documentary proof, or by legal process. From the time of the first child labor law in 1867<sup>12</sup> the legislature has always provided certain provisions applicable according to the age of the child. The statutory treatment of

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<sup>9</sup> Wis. Laws 1911, c. 479 § 1728 (d) provided: "The factory inspector and assistant factory inspector shall have the power of truant officers to enforce all legal requirements relating to school attendance." Wis. Laws 1903, c. 349 § 4.

<sup>10</sup> Wis. Laws 1911, c. 421.

<sup>11</sup> Wis. Laws 1913, c. 584 § 1728(d) : "The Industrial Commission, for the purpose of the enforcement of sections 1728a to 1728j, inclusive, shall have the power of truant officers to enforce all legal requirements relating to school attendance."

<sup>12</sup> Wis. Laws 1867, c. 83.



children by single age groups is exemplary of a simple, direct and positive administrative arrangement for the enforcement of regulations dealing with child labor.

Under the Child Labor Law of 1867 the affidavit of the parent or guardian was sufficient proof of the age of the child. The affidavit could be made before any official legally qualified to administer oaths. Under this system there was so much misrepresentation of the ages of children, *even under oath*, that the legislature of 1903 found it necessary to change the law. It discarded the system of establishing age by affidavit of parents and placed the power to issue labor permits with the State Bureau of Labor Statistics, and with county, municipal and juvenile courts.<sup>13</sup>

As a proof of age the child applying for a labor permit was now required to produce a duly attested transcript of a birth certificate, or a passport, or a duly attested transcript of a certificate of baptism, or if the child was an eighth grade graduate the school record might be used. In case none of these proofs could be furnished, the permit officer was entitled to accept such proof as was satisfactory to him.

In 1917, when the enforcement of the Child Labor Law centralized completely in the Industrial Commission, the legislature gave the commission power to make regulations regarding proofs of ages of minors who apply for labor permits.<sup>14</sup>

The regulations adopted by the Industrial Commission with regard to proofs of age to be furnished are:

Persons designated by the Industrial Commission to issue child labor permits under the authority of the statutes shall require the child desiring employment to make application for the permit in person, accompanied by its parent, guardian, or custodian, and shall receive, examine and approve documentary evidence of age showing that the child is 14 years of age or over, which evidence shall consist of one of the following named proofs of age, to be required in the order herein designated, as follows:

(a) A birth certificate or attested transcript thereof issued by a registrar of vital statistics or other officer charged with the duty of recording births.

(b) A record of baptism or a certificate or attested transcript thereof showing the date of birth and place of baptism of the child.

(c) A bona fide contemporary record of the date and place of the child's birth kept in the Bible in which the records of the births in the family of the child are preserved, or other documentary evidence satisfactory to the Industrial Commission or such person as the commission

<sup>13</sup> Wis. Laws 1903, c. 349.

<sup>14</sup> Wis. Laws 1917, c. 633.

may designate, such as a passport showing the age of the child, a certificate of arrival in the United States issued by the United States immigration officers and showing the age of the child, or a life insurance policy: provided that such other satisfactory documentary evidence has been in existence at least one year prior to the time it was offered in evidence; and provided further that a school record or a parent's, guardian's, or custodian's affidavit, certificate or other written statement of age shall not be accepted except as specified in paragraph (d).

(d) A certificate signed by a public-health physician or public-school physician, specifying what in the opinion of such physician is the physical age of the child; such certificate shall show the height and weight of the child and other facts concerning its physical development revealed by such examination and upon which the opinion of the physician as to the physical age of the child is based. A parent's, guardian's or custodian's certificate as to the age of the child and a record of age as given on the register of the school which the child first attended, or in the school census, if obtainable, shall be submitted with the physician's certificate showing physical age.

The officer issuing the permit for a child shall require the evidence of age specified in subdivision (a) in preference to that specified in any subsequent subdivision and shall not accept the evidence of age permitted by any subsequent subdivision unless he shall receive and file evidence that the evidence of age required by the preceding subdivision or subdivisions cannot be obtained.

The legal age of a child who is unable to furnish a genuine documentary proof of the date of his birth may be established by any county court. Furthermore, under the Child Labor Law the Industrial Commission is empowered to issue certificates of age of minors, which are conclusive evidence of their ages in any proceeding under any of the labor laws and the Workmen's Compensation Act. The Industrial Commission has authorized permit officers to issue such certificates of age.<sup>15</sup>

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<sup>15</sup> § 103.05 (6b) reads: "The Industrial Commission shall have the power to issue certificates of age of minors under such rules and regulations as it deems necessary. The Industrial Commission shall also have the power to designate persons to issue such certificates of age. Such a certificate as issued shall be conclusive evidence of the age of the minor to whom it was issued, in any proceeding under any of the labor laws and workmen's compensation act of this state, as to any act or thing occurring subsequent to the date such certificate was issued," and paragraph

(6c) reads: "Any person who knowingly offers or assists in offering false evidence of age for the purpose of obtaining an age certificate, or who alters, forges, fraudulently obtains, uses, or refuses to surrender upon demand of the Industrial Commission a certificate of age, shall be guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned not to exceed three months."

Age certificates for minors between 17 and 21 are not required as a condition of employment, but are available to employers who desire to take advantage of them in securing themselves against any misrepresentation of age and other dangers in the employment of minors.

Many of Wisconsin's larger industrial concerns, chain store organizations and public utilities have adopted the policy of requiring age certificates from minors who claim to be over seventeen years of age before permitting them to enter upon employment.

#### LEGAL IMPORTANCE OF CORRECT AGE

The age of a child bears on the requirements of a labor permit, and also on the list of prohibited employments. Experience has repeatedly shown that there is no safety in employing minors on their own representations of age or on the representations of parents or others, whether oral or written, or in the form of affidavits. Genuine proofs of age, such as copies of birth or baptismal records must be required, for if the employer allows himself to be deceived regarding the age of a minor, no matter how, and employs the child in violation of law, the employer is liable under penal provisions and also under increased compensation provisions of the statutes.

The Statutes (§ 103.05) provide that the employer shall—

(1) Never employ a minor under seventeen years of age without first having on file a labor permit issued by the Industrial Commission or some person designated by it, authorizing him to employ the child.

(2) Never permit a minor to work at employment prohibited to a minor of his age.

Employments prohibited to minors fall into three lists under the Child Labor Law:

1. Employments prohibited under age 16.
2. Employments prohibited under age 18.
3. Employments prohibited under age 21.

In addition to employments specifically prohibited by law, certain other employments are prohibited by resolutions of the Industrial Commission.

No opinion as to the appearance of a child, as proving him or her to be sufficiently large or strong, or old and capable enough for the proposed employment, is of any value, nor is the financial need of the child or its parents of any consideration.

Criticism is sometimes aimed at the law because it put upon the employer the burden of making sure of the age of the child whom he employs. The experience of every state and country that has administered a child labor law has led to the conclusion that this is the only method that promises results. No one who is correctly informed and

entirely frank should disagree with the proposition that this system is more or less of a hardship upon the employer, but world-wide experience has shown that this burden must be placed upon the employer if the child is to be saved. It may be interesting to know that practically all of the states put this burden upon the employer.

#### PROTECTION OF CHILD FROM PHYSICAL HAZARDS IN INDUSTRY

Regulations to protect the health and safety of children and to promote their attendance at school were advanced as reciprocal parts of a general program.

In the year 1877 the employment of children under 12 years of age at manual labor in any factory hiring three or more persons in specified employments, such as tobacco and cigar manufacturing, cotton and woolen mills, and iron foundries, during the school year was prohibited.<sup>16</sup>

The following year the limitations of employment injurious to children in specified employments were eliminated and made to apply to all factories and workshops employing three or more persons.<sup>17</sup>

In the year 1899 the legislature prohibited children under 16 years of age to operate an elevator.<sup>18</sup>

In the year 1901 the legislature added to the list of prohibited employments for children under 14 years of age.<sup>19</sup>

From time to time the legislature added prohibitions of employments in declared hazardous jobs for children within fixed age groups.

The legislature of 1909 made sweeping changes in the law, prohibiting the employment of children under age 16 in adjusting belts, oiling machinery and cleaning machinery in motion, operating circular and band saws, wood shapers, jointers, planers, sandpaperers, wood-polishers, picker machines, paper lacers, leather burnishers, dough brakes, laundry machinery and emery polishing machinery.<sup>20</sup>

In 1911 the legislature increased the list of prohibited employments for children under 16 years of age to include the taking away of material from saws, the use of scaffolding and ladders in building trades, working in bowling alleys, carding machines, cylinder and job presses and certain occupations injurious to health because of the prevalence of dusts and gases.<sup>21</sup>

The legislature of 1913 effected large changes in the statutes relating to child labor. The Industrial Commission was given the power and

<sup>16</sup> Wis. Laws 1877, c. 289.

<sup>17</sup> Wis. Laws 1878, c. 187.

<sup>18</sup> Wis. Laws 1899, c. 274.

<sup>19</sup> Wis. Laws 1901, c. 182.

<sup>20</sup> Wis. Laws 1904, c. 338.

<sup>21</sup> Wis. Laws 1911, c. 479.

jurisdiction to ascertain and determine and fix such reasonable classifications of employments and places of employment for minors and females and to issue special orders prohibiting employment of minors and females in any employment dangerous or prejudicial to the life, health, safety and welfare of such minors.<sup>22</sup> This law also included a schedule of employments which the legislature then and there prohibited for children under certain specified ages until such time as the Industrial Commission might have an opportunity to investigate and determine additional classifications of employments which should be prohibited to minors and females. (We may note that in the same year by another act, the legislature exempted domestic service and farm labor from the operation of Section (1728c), the provision requiring child labor permits.)<sup>23</sup>

In 1915 the legislature amended the so-called penalty section of the Child Labor Law (1728h) and inadvertently failed to mention the employment of children without a permit. The effect of this omission, as shown in the case of *Reiten v. J. S. Stearns Lumber Company*<sup>24</sup> decided in 1918, caused the Wisconsin Supreme Court to repeal the rule which it had laid down in two earlier cases<sup>25</sup> that the defense of contributory negligence was not available to the employer in child labor cases where children were employed without a permit.

In the year 1917 another far reaching change was made by the legislature. Section 2394-1 was amended to include under the Workmen's Compensation Act "*minors of permit age or over*" and provided for treble compensation to minors who were hired without a permit or employed at prohibited work. At the request of representatives from employer groups, the legislature brought the illegally employed child under the Workmen's Compensation Act. This for the reason that the rule of contributory negligence was no longer available since the decision in the Foth case.

In 1925 a distinction was made in the statute providing for increased compensation to injured minors hired without a permit and those working at prohibited employments. Double compensation for injuries to minors hired without a permit was provided, while the compensation for injuries received in prohibited employments remained the same as before, that is, treble the amount otherwise provided.<sup>26</sup>

The double and treble liability provisions of the compensation law as enacted in 1925 are the law at this date.

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<sup>22</sup> Wis. Laws 1913, c. 466.

<sup>23</sup> Wis. Laws 1913, c. 421.

<sup>24</sup> 166 Wis. 605, 165 N.W. 337 (1918).

<sup>25</sup> *Foth v. Macomber & Whyte Rope Co.*, 161 Wis. 549, 154 N.W. 369 (1915); *Stetz v. Mayer Boot & Shoe Co.*, 163 Wis. 151, 156 N.W. 971 (1916).

<sup>26</sup> Wis. Laws 1925, c. 384.

The increased compensation provisions have served as an extremely effective means of enforcing the Child Labor Law since the increased compensation must be paid by the employer himself and cannot be insured against. This provision of the law makes it vitally important from a financial standpoint for the employer to see to it that under no circumstances should a child under permit age or over be employed at illegal work. The legality of the provision granting increased compensation to minors was established by a decision of the Supreme Court in the Brenner case decided in February 1920.<sup>27</sup>

#### PRIMARY LIABILITY FOR INCREASED COMPENSATION IS NOT INSURABLE

The liability for increased compensation never comes because of any hazard of the employment. It accrues only in cases where the employer, or those to whom he has delegated the right to hire help, fail to obtain the required labor permit, or fail to keep the child out of employments prohibited to a child of its age. To allow an employer to insure this liability would encourage disregard of the Child Labor Law by many employers, for the reason, if none other, that if liability attached it would, notwithstanding, be borne by the insurance company, and spread the cost of increased compensation among all the employers of the insurance group class.<sup>28</sup>

Increased compensation liability is not a personal penalty, even though such extra compensation is payable by the employer instead of the insurance company. The additional liability provisions were prompted for the following reasons:

(1) To place children injured in unlawful employments under the Workmen's Compensation Act with its fixed measure of liability instead of leaving their cases open to trial by jury with its speculation on damages caused by wage loss, permanent disability, disfigurement, pain and suffering, etc.

(2) To secure for the child without contest substantially as much indemnity as would have been his net recovery at common law.

<sup>27</sup> In the case of *Brenner v. Heruben*, 170 Wis. 565, 176 N.W. 228 (1920), the constitutionality of the increased compensation provisions was upheld.

<sup>28</sup> Provisions for increased compensation are contained in the Workmen's Compensation Act, § 102.09.

##### Double Compensation

- (a) If a minor of permit age is injured while employed without a labor permit in otherwise lawful employment he shall be entitled to double indemnity for the injury.

##### Treble Compensation

- (a) If a minor of permit age or over is injured in an occupation which the legislature has closed to him because of its dangers, he shall be entitled to treble indemnity for the injury.
- (b) If a minor of permit age is injured while employed without a permit in any place of employment for which permits may not be issued under written resolution of the Industrial Commission, he shall be entitled to treble compensation for the injury. (Section 103.05 [b] Statutes).

## VOCATIONAL GUIDANCE AND PLACEMENT

The administration of the labor permit provisions of the Child Labor Law have brought out sharply the difficulties in the way of a child's having sufficient knowledge of industry or business to make a wise choice of work. To meet this situation in a helpful way the Commission organized a Junior Placement Bureau in September 1921, in its branch office at Milwaukee. This bureau (of one employee) was devoted more especially to assist children (and sometimes parents also) to a greater realization of the value of an education and its relation to future jobs. Many children still in school but interested in securing Labor Permits, with the aid of needful vocational guidance, decided to continue for from one to four years longer in school work:

The Bureau also served to find the most suitable jobs available for those who were compelled to leave school, or had already done so. In this work the Bureau enjoyed the active cooperation of about 25 different social agencies in Milwaukee.

In February 1922 such Junior Placement Bureau was recognized by the U. S. Employment Service as a Junior Guidance and Placement Office of its Junior Division. With the cooperation of other institutions in the city dealing with children of permit age, the Junior Placement Bureau gradually became a real clearing house for junior placement work in the City of Milwaukee.

## STREET TRADES LAW

In 1909 the legislature enacted the Wisconsin Street Trades Law, applicable only to the City of Milwaukee until 1918, when its provisions were extended to all places in the state. The Industrial Commission at present has no control over street trades in Milwaukee (where the local Board of Education has exclusive jurisdiction) but has limited supervision and control over the administration of the law in the rest of the state.

The immediate responsibility for issuing street trades permits and for enforcement of the Street Trades Law rests with local school boards. To facilitate their work the Industrial Commission is directed to provide the necessary printed blanks and to hold itself ready to assist in interpreting the law and in organizing the work in local communities.

The Street Trades Law prohibits street trading to boys under the age of 12 and to girls under the age of 18; provides for the issuing of permits to boys 12 to 17, and limits the hours during which they may engage in such work. No child may be employed during school hours, after 7 p.m. or before 5 a.m. (except that boys over age 14 may begin

delivering newspaper at 4 a.m.).<sup>29</sup> The Industrial Commission has power to make further regulations applicable outside of Milwaukee, but to date none have been made and the provisions of the Street Trades Law are the only regulations applicable at this time.

There is some feeling that street trades work in small communities is suitable for boys of any age at any time. On the other hand, a survey of the hazard of street employments will not support any relaxation in the enforcement of the existing Street Trades Law.

#### FEDERAL ATTEMPTS TO REGULATE CHILD LABOR

The right of a sovereign state to limit, regulate and prohibit the labor of its minor children in employments prejudicial to their life, health or safety has never been denied. Nearly all states of the union have variously undertaken to regulate child labor. In the presence of a great diversity of child labor standards in the different states the federal government undertook to remedy in some degree the lack of uniformity and insufficiency in state standards for child labor.

The Congress of the United States in 1916, after much agitation on the subject, enacted a law fixing nation-wide standards, though not very high ones, for the labor of children under age 16 in mills, factories, work-shops, mines and quarries. This law was based upon the power of Congress to regulate interstate commerce. It placed restrictions upon interstate traffic in the products of child labor. After being in operation a little less than two years the law was declared unconstitutional on June 3, 1918 by the United States Supreme Court on the grounds that Congress had exceeded the proper exercise of its power to regulate interstate commerce, and had invaded powers reserved to the states.<sup>30</sup>

The failure of the first federal Child Labor Law was followed by a second attempt to regulate child labor by federal law. The Congress in 1919 enacted another law identical in scope with the first but based upon the taxing power of the government. This law, included in the revenue act approved February 24, 1919, placed a tax upon the products of child labor. It was thought that this power would surely be upheld by the Supreme Court. However, on May 15, 1922 this law was also declared unconstitutional.<sup>31</sup> The decision of the Supreme Court on this second law made it plain that Congress could not regulate child

<sup>29</sup> Wis. Stats. (1921) § 1728 (p-1); Wis. Stats. (1933) c. 291 § 3; Wis. Stats. (1933) § 103.22.

<sup>30</sup> *Hammer v. Dagenhart*, 247 U.S. 251, 38 Sup. Ct. 529, 62 L.Ed. 1101, Anno. Cas. 1918 E. 724, 3 A.L.R. 649 (1918).

<sup>31</sup> *Bailey, Collector of Internal Revenue v. Drexel Furniture Co.*, 259 U.S. 20, 42 Sup. Ct. 449, 66 L.Ed. 817, 21 A.L.R. 1432 (1922).



labor unless the federal constitution be first amended to give it that power.

In 1924 Congress, by a two-thirds vote of each house, submitted to the states for ratification an amendment to the federal constitution which shall invest the Congress of the United States with power to legislate on the subject of child labor. This proposed amendment reads as follows:

“Section 1. The Congress shall have power to limit, regulate and prohibit the labor of persons under eighteen years of age.”

“Section 2. The power of the several states is unimpaired by this article except that the operation of state laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress.”

When approved by the legislatures of three-fourths of the states this amendment will become a part of the constitution of the United States.

It may be noted that the proposed amendment is simply an enabling act to give the Congress power to legislate on the subject of child labor—a *power which it does not now possess*. The amendment does not fix standards for the employment of children; that remains to be done by law upon action of Congress after the adoption of the amendment.

It may be pointed out that the congressional thought on federal child labor regulation was without doubt fairly expressed in the two federal laws enacted when it was believed that Congress had power to legislate on the subject of child labor. The child labor standards fixed by those laws were very modest in their requirements.

It is important to note that the proposed amendment does not give Congress exclusive power to deal with child labor regulation; Congress may simply fix standards below which no state may go. The power of any state to fix higher standards than those fixed by federal law is expressly safe-guarded.

The proposed child labor amendment has been ratified by more than twenty states. Thirty-six ratifications are necessary to secure its adoption.

There is no express provision in the constitution of the United States, nor in the proposed amendment limiting the time within which ratification must be accomplished. The proposed amendment is now pending in its tenth year.

The proposed child labor amendment has been strongly opposed by an organization styling itself as “National Committee Against Child Labor Amendment.” It declares that “the amendment should be re-

jected because it violates the right to life, liberty and the pursuit of happiness on which American constitutional government was founded." The life, liberty and happiness at stake for child labor in this country seemingly is the life of child labor in blind alley jobs, the liberty to leave school and become a factory worker at age ten or twelve and the happiness of a disillusioned soul that has no childhood in which to play or grow. The Wisconsin legislature ratified the child labor amendment by Joint Resolution No. 6S (Regular Session) at 4:15 p.m., February 20, 1925.

Twenty states have ratified the proposed Child Labor Amendment to the Constitution of the United States.<sup>32</sup> The National Child Labor Committee, 419 Fourth Ave., New York City, is actively promoting ratification of the Child Labor Amendment in states which have not given ratification to date.

Ahead of the possible adoption of the proposed child labor amendment we have presently advanced far in the matter of legal restrictions against child labor. Emergency federal legislation for industrial recovery has brought the codification of nearly all industries under codes of fair practices. Such NRA codes have generally set a 16-year minimum age limit for the employment of children, and an 18-year minimum age limit for employment in hazardous occupations. The restrictions against child labor take into account the fact that jobs do not lapse by reserving such jobs to older persons, including those having dependents to support. During the first month of 1933 some thirteen and one-half millions of workers were unemployed in this country and the restrictions placed upon child labor were universally acclaimed as being right in principle and exemplary for future guidance.

One may speculate that if child labor regulation under NRA codes were to be given up, it is very certain that "cheap" child labor would again be in demand because it would prove to be profitable.

## APPENDICES

### FIRST FEDERAL CHILD LABOR LAW

Declared Unconstitutional by the U. S. Supreme Court June 3, 1918.  
The Provisions of the Law.

(Approved September 1, 1916. Public No. 249—64th Congress.)

H. R. 8234—An Act to prevent interstate commerce in the products of child labor, and for other purposes.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no producer,

|                       |           |               |               |
|-----------------------|-----------|---------------|---------------|
| <sup>32</sup> Arizona | Iowa      | New Hampshire | Oregon        |
| Arkansas              | Maine     | New Jersey    | Pennsylvania  |
| California            | Michigan  | North Dakota  | Washington    |
| Colorado              | Minnesota | Ohio          | West Virginia |
| Illinois              | Montana   | Oklahoma      | Wisconsin     |

manufacturer, or dealer shall ship or deliver for shipment in interstate or foreign commerce any article or commodity the product of any mine or quarry, situated in the United States, in which within thirty days prior to the time of the removal of such product therefrom children under the age of sixteen years have been employed or permitted to work, or any article or commodity the product of any mill, cannery, workshop, factory, or manufacturing establishment, situated in the United States, in which within thirty days prior to the removal of such product therefrom children under the age of fourteen years have been employed or permitted to work, or children between the ages of fourteen years and sixteen years have been employed or permitted to work more than eight hours in any day, or more than six days in any week, or after the hour of seven o'clock p.m., or before the hour of six o'clock a.m.: Provided, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any article or commodity under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such article or commodity before the beginning of said prosecution."

Section 2-6 contain provisions for enforcement and prescribe penalties for violation of the Act.

Section 7 provides that the Act shall take effect one year from the date of its passage.

#### SECOND FEDERAL CHILD LABOR LAW

Declared Unconstitutional by the U. S. Supreme Court May 15, 1922.

#### THE PROVISIONS OF THE LAW.

Included in the Revenue Act Approved February 24, 1919.

(Public No. 254—65th Congress.)

#### Title XII.—Tax on Employment of Child Labor.

"Section 1200. That every person (other than a bona fide boys' or girls' canning club recognized by the Agricultural Department of a State and of the United States) operating (a) any mine or quarry situated in the United States in which children under the age of sixteen years have been employed or permitted to work during any portion of the taxable year; or (b) any mill, cannery, workshop, factory, or manufacturing establishment situated in the United States in which children under the age of fourteen years have been employed or permitted to work, or children between the ages of fourteen and sixteen have been employed or permitted to work more than eight hours in any day or more than six days in any week, or after the hour of seven o'clock p.m., or before the hour of six o'clock a.m., during any portion of the taxable year, shall pay for each taxable year, in addition to all other taxes imposed by law, an excise tax equivalent to 10 per centum of the entire net profits received or accrued for such year from the sale or disposition of the product of such mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment."

Sections 1201-1207 provide in the order given for deductions, liability for unfair sale of products, employment certificates, sales returns, inspection of premises, and taxable year.

(Jt. Res. No. 6, S.)

No. 7, 1925

JOINT RESOLUTION

Ratifying an amendment to the Constitution of the United States relating to child labor.

WHEREAS, Both houses of the sixty-eighth congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, made the following proposition to amend the constitution of the United States of America in the following words, to wit:

JOINT RESOLUTION Proposing an amendment to the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution:

ARTICLE-----

“Section 1. The Congress shall have power to limit, regulate, and prohibit the labor of persons under eighteen years of age.

“Section 2. The power of the several States is unimpaired by this article except that the operation of State laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress.”

Resolved by the Senate, the Assembly concurring, That the said proposed amendment to the constitution of the United States of America be, and the same hereby is, ratified by the legislature of the state of Wisconsin. And be it further

Resolved, That copies of this joint resolution, certified by the secretary of state, be forwarded by the governor to the secretary of state at Washington, and to the presiding officer of each house of the congress of the United States.

(February 20, 1925)