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THE INDUSTRIAL COMMISSION OF WISCONSIN AND ITS ADMINISTRATION OF THE WORKMEN'S COMPENSATION ACT

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The Workmen's Compensation act has been a law in Wisconsin for eleven years.¹ The Industrial Commission of Wisconsin has successfully interpreted and administered the act. The purpose of this article is to briefly review some of the fundamental cases decided by our Supreme Court with reference to the administration of the Compensation act.

LEGAL STATUS OF THE INDUSTRIAL COMMISSION

When the act was first passed it was deemed to be unconstitutional because it was alleged it delegated to the Industrial Commission judicial and legislative powers, the opponents of the measure arguing that modern political analysis divided the powers of government into three great departments, 1 the legislative, 2 the executive, 3 the judiciary, and modern constitutional government has decreed a considerable separation of these departments to prevent abuses.² It was found, however, that an absolute separation of these departments is impracticable because the departments are but different aspects of one government and are closely connected at many points. The same argument was launched against the Railroad Commission of Wisconsin.³ But the Supreme Court of Wisconsin sustained the constitutionality of the Railroad Commission and stated that the division of governmental powers into executive, legislative and judicial, while of great importance in the creation or organization of a state, and from the viewpoint of constitutional law and otherwise, is not an exact classification. No such exact delineation of governmental powers is possible. In the process of enacting a law there is frequently necessary the preliminary determination of a fact, or group of facts, by the legislature, and it is well settled that the legislature may declare the general rule of law to be in force and take effect upon the subsequent establishment of the facts necessary to make it operative or to call for its application; as the bankruptcy law of the United States with reference to legislative action regarding exemption laws existing or to be thereafter enacted; or the law may be made to take effect conditionally, depend-

ing upon the action of the legislature of another state fixing the amount to be exacted; or it may be conditioned upon the legislative act of a city council, or upon action of the executive, or upon judicial action involving the determination of questions of fact; or upon administrative action; or upon a declaration of fact, or the creation of a condition by vote of the electors of a municipality. This power to ascertain facts by the Railroad Commission is such a power as may be delegated. So statutes declaring that railroad rates and service shall be reasonable and creating a commission with power to investigate existing rates and what services are reasonable, the statute then providing that the rates and service so fixed shall be in force, was held as a valid exercise of the legislative power.

The constitutionality of the Industrial Commission was also sustained as constitutional.⁴ In the attack the contention was made that the law was unconstitutional because it vests judicial power in a body which is not a court. The Court pointed out that it is not a delegation of judicial power but that the Industrial Commission is an administrative body, or arm of the Government, which in the course of its administration of a law is empowered to ascertain some question of fact and to apply the existing law thereto, and in so doing acts quasi judicially, but it is not thereby vested with judicial power in the constitutional sense. There are many such administrative bodies or commissions, and with the increasing complexity of modern government they seem likely to increase rather than diminish. Examples may be easily thought of, town boards, boards of health, boards of review, boards of equalization, railroad rate commissions and public utility commissions, all come within this class. They perform very important duties in our scheme of government, but they are not legislatures or courts. The legislative branch of the Government, by statute, determines the rights, duties and liabilities of persons and corporations under certain conditions of fact, varying as the facts and conditions change. Manifestly, the legislature cannot remain in session and pass a new act upon every change of condition, but it may, and does, commit to an administrative board the duty of ascertaining—when the facts exist which call into activity certain provisions of the law—when conditions have changed so as to call into activity other provisions. The law is made by the legislature; the facts upon which its operation is dependant are ascertained by the administrative board. While

acting within the scope of its duty, or its jurisdiction, as it is sometimes called, such a board may lawfully be endowed with very broad powers and its conclusions may be given great dignity and force so that courts may not reverse them unless the proof be clear and satisfactory that they are wrong. The jurisdiction of the Industrial Commission rests upon certain facts which must exist, first, that both employer and employee are subject to the act and, second, that the injury was received in service growing out of, or incidental to, the employment, as the result of accident and not of willful misconduct. The Industrial Commission must, of course, decide these questions in any case where they are raised, but it cannot decide them for their jurisdictional question on which its right to act at all depends. True, it says that the findings of fact made by the Commission shall, in the absence of fraud, be conclusive, but it provides for an action in the Circuit Court for Dane County, in which the Board's award may be set aside upon either of three grounds: namely, 1, that the Board acted without, or in excess of, its power; 2, that the award was procured by fraud; and 3, that the findings of fact do not support the award. The Supreme Court of Wisconsin regarded the expressions as substantially the equivalent, or at least as inclusive as the expressions, "without, or in excess of, its jurisdiction," and with this construction the Court said that it is certain that the constitutional powers of the courts have not been invaded.

THE PURPOSE OF THE COMPENSATION ACT

After an unsuccessful attempt was made to have the Industrial Commission and Workmen's Compensation Act declared unconstitutional, an effort was made so to construe its provisions as to largely defeat its purpose. In the case of *Miller vs. Milwaukee*, 154 Wis., 652, the Supreme Court of Wisconsin appreciated this effort and recognized the principle that a law however much needed for the promotion of the public welfare, and however wisely framed, may be made so unsatisfactory by the spirit of it not sufficiently pervading its administration, as to largely defeat its purpose and create danger of its abrogation, and a return to the distressing situation which gave rise to the effort for relief. The Court emphatically declared that such a narrow construction would be a public calamity, and warned everyone in authority, having to do with determining the precise scope of the act in letter

and spirit and applying it, to be alert at all times to the importance of not affording any reason to admit such result, and of making the wisdom embodied in the legislation so significant that no considerate person would indulge the thought of even a partial backward step toward the old system, characterized by incalculable waste to the detriment of every consumer of the products of human energy; by distressing, unequal distribution of misfortunes incident to necessary industrial pursuits, particularly misfortunes to employees by personal injury losses; by a lowering tendency of moral standards in the making and enforcing claims for such losses and by perversion of human perceptions of individual responsibility in such cases. The court also recognized that the law was a long step toward an ideal system requiring every consumer of any product of human industry, as directly as practicable, to pay his ratable proportion of the fair money cost of those things which he necessarily, or reasonably, destroys in conserving his life and welfare—personal injury losses, not intentionally incurred—losses, whether through the fault of the employer or employee, or without fault of either, being considered as legitimately an element of such fair money cost as expenditures for raw material, for machinery or wages. The administrative commission and the courts were warned to fully appreciate that and be imbued with, and guided by, the manifest intent of the law; to utterly eradicate the injustice to employers and employees and the public as well, of the old system, and to substitute in its place an entirely new one, based on the highest conception of man's humanity to man and obligation to industry upon which all depend; recognizing the aggregate of its attending accidents as an element of cost to be liquidated and balanced in money in the course of consumption; a system dealing with employees, employers and the public as necessarily mutual participants in bearing the burdens of such accidents, displacing the one dealing only with the class of injuries happening through inadvertent failure, without real moral turpitude, to exercise average human care, and placing employee and employer, whose interests are economically the same, in the false position of adversaries, to the misfortune of both; and the public, intensified by opportunity for those concerned as judicial assistants, to profit by such misfortunes. "Most lamentable," the Court said, "it would be if this new system—so freighted with hopes for the minimizing of human

burdens and their equitable distribution—shall not endure and be perfected to the best that human wisdom can attain.”

CONSTRUCTION OF THE ACT

In the light of the above purpose the Supreme Court early laid down the rule that that was the atmosphere, so to speak, in which the question of statutory construction should be examined, the conditions giving rise to a law, the faults to be remedied, the aspirations evidently intended to be efficiently embodied in the enactment, and the effects and consequences, as regards responding to the prevailing conceptions of the necessities of public welfare, play an important part in shaping the proper administration of the legislation. “In the aggregate,” the Court said, “they sometimes shed very efficient light in aid of clearing up obscurities as to the legislative intent.” Then follows a long line of cases by our Supreme Court construing the Workmen’s Compensation Act in a broad, liberal light, to the end that the beneficent purposes of the act might be fully carried out.⁵

The ordinary rule as to construing legislation in derogation to the common law strictly against a purpose to change it, has little or no application to legislative efforts to create a new system for dealing with personal injuries to employees, such as the Workmen’s Compensation Law.⁶ While a practical construction of the Workmen’s Compensation Act by the Industrial Commission might be of weight where the terms of the act are doubtful, a practical construction long adhered to cannot override the plain terms of the act.⁷

EXTRA TERRITORIAL EFFECT

Where an employee resides in the state, and is in the employ of an employer having a residence in the state, but is injured in another state while on his way to such state to work, the liability of the employer is to be determined by the Workmen’s Compensation Act of Wisconsin. The liability of the employer under the act being statutory, the act enters into and becomes a part of every contract, not as a covenant thereof, but to the extent that the law of the land is a part of every contract just as the Law of Negotiable Instruments is a part of every promissory note to the extent that the rights and liabilities of the parties thereto must be determined with reference to the law of the place where the promissory note is made, executed and delivered; so the rights

and liabilities of every employer and employee who enter into a contract of employment within this state must be determined with reference to the Workmen's Compensation Act. The Court held that the Workmen's Compensation Act of Wisconsin is so far a part of every contract of employment that the rights and liabilities of the parties thereto in case of injury to the employee, both being subject to it, must be determined in accordance with its provisions, whether such injuries occur within or without the state.⁸

EXCLUSIVENESS OF REMEDY

The liability provided by the Workmen's Compensation Act is in lieu of any other liability whatsoever, and the remedy under it is exclusive.⁹

PROCEDURE BEFORE INDUSTRIAL COMMISSION

The Industrial Commission is not a court, but merely an administrative body.¹⁰ Having determined that the Industrial Commission has jurisdiction of the subject matter, the procedure before the Commission is not hampered by useless formalities nor technicalities.¹¹

The right to object to the jurisdiction of the Industrial Commission is not waived by appearing before it.¹²

The same strict rule with respect to rulings on the admission of evidence as courts of law are not followed before the Industrial Commission.¹³ The Commission may even take *ex parte* evidence, but such evidence becomes a public record and either party may examine the same, and the law clearly contemplates that the parties shall have the right to meet any new matter in such *ex parte* evidence.¹⁴

The Commission may ascertain facts pertaining to the accident by referring to the report of the accident made by the employer even though at the hearing such report is not formally introduced in evidence.¹⁵ The Industrial Commission is not necessarily bound by the testimony of experts merely because of their special knowledge, but have a right, and it is their duty, to apply their own common sense and experience to the situation presented.¹⁶

FINDINGS AND EFFECT OF DECISIONS

The Industrial Commission can make no award unless it is supported by findings of fact.¹⁷

In the absence of fraud, findings of fact made by the Industrial Commission are conclusive and its decision cannot be set aside except upon the grounds, (1) that it acted without, or in excess of, its powers; (2) that it was procured by fraud; or (3) that its findings of fact do not support the order of award. The findings of the Industrial Commission on questions of fact will not be disturbed if there is a substantial basis for their decision.¹⁸

The party is bound by a decision of the Industrial Commission if he fails to appeal therefrom whether such decision is right or wrong.¹⁹

The Industrial Commission may modify its award because of a mistake,²⁰ and such right is not suspended by the bringing of an action to review such award.

APPEALS FROM DECISION OF THE COMMISSION

An action for review of the Industrial Commission's award must be commenced within twenty days from the date of the order or award and the provisions of the Statute must be pursued closely.²¹ To comply with the Statute on Appeals it is necessary that the summons and complaint in such an action for the review of the award be served on the adverse party within the twenty days limited by the Statute,²² and such service must be made on the applicant as well as on the Commission.

The findings of fact made by the Industrial Commission must have some support in the evidence and such evidence must be made a part of the record that is returned to the Circuit Court for review.²⁴ Recourse may be had to supply a defect in the findings of the Industrial Commission to a memorandum made by the Commission as a basis for its formal findings.²⁵

POWER OF THE CIRCUIT COURT IN THE REVIEW

The Circuit Court considers the case upon the record submitted by the Industrial Commission, and evidence may be taken by the Circuit Court upon an appeal from an award when the award is attacked for fraud, and this is the only ground on which the Circuit Court can consider any facts not found in the record as returned.²⁶ The Circuit Court may remand to the Industrial Commission the entire record for further proceedings.²⁷ The Court may set aside the award or may confirm the action of the Industrial Commission.²⁸

REVIEW BY SUPREME COURT

Any party aggrieved by a judgment entered upon in review or award of the Industrial Commission may appeal therefrom to the Supreme Court of this state.²⁹ The function of the Supreme Court upon an appeal from the Circuit Court is simply to determine whether there is sufficient evidence to afford jurisdiction to make the findings complained of by the Industrial Commission.³⁰

¹ Chap. 50, *Laws of 1911*.

² *In re Revisor*, 141 Wis., 592.

In re Janitor of the Supreme Court, 35 Wis., 410.

In re Court Room, 148 Wis., 109.

³ *Soo Railway Company vs. Railroad Commission*, 136 Wis., 146.

⁴ *Borgnis vs. The Falk Co.*, 147 Wis., 327.

⁵ *Hennig vs. Industrial Commission*, 159 Wis., 646, 648.

Village of Kiel vs. Industrial Commission, 163 Wis., 441, 445.

Federal Rubber Co. vs. Industrial Commission, 162 Wis., 341, 342.

Bremer vs. Wisconsin Public Service Co., 166 Wis., 24, 27.

Vennen vs. New Dells Lumber Co., 161 Wis., 370, 373.

Wausau Lumber Co. vs. Industrial Commission, 166 Wis., 204, 207.

⁶ *Sabowski vs. Thomas Furnace Co.*, 157 Wis., 443.

⁷ *Waldum vs. Lake Superior Terminal & Transfer Railway Co.*, 169 Wis., 137.

⁸ *Anderson vs. Miller Scrap Iron Co.*, 169 Wis., 106.

⁹ *Milwaukee vs. Althoff*, 156 Wis., 68.

Vennen vs. New Dells Lumber Co., 161 Wis., 370.

Anderson vs. Miller Scrap Iron Co., 169 Wis., 106, 118.

Section 2394-3, Wis. Stats.

Smale vs. Wrought Washer Mfg. Co., 160 Wis., 331.

¹⁰ *Borgnis vs. Falk*, 147 Wis., 327.

Menominee, Bay Shore Lbr. Co. vs. Industrial Commission, 162 Wis.,

344. ¹¹ *Eggers Veneer Seating Co. vs. Industrial Commission*, 168 Wis., 377.

¹² *Waldum vs. Lake Superior Terminal Transfer Railway Co.*, 169 Wis.,

137. ¹³ *First Wisconsin National Bank of Milwaukee vs. Industrial Commission*, 161 Wis., 526.

¹⁴ *International Harvester Co. vs. Industrial Commission*, 157 Wis., 167.

¹⁵ *Eggers Veneer Seating Co. vs. Industrial Commission*, 168, Wis., 377.

¹⁶ *Milwaukee vs. Miller*, 154 Wis., 652.

¹⁷ *Welz vs. Industrial Commission*, 161 Wis., 240.

¹⁸ *Northwestern Iron Co. vs. Industrial Commission*, 154 Wis., 97.

William Rahr Sons vs. Industrial Commission, 166 Wis., 28.

Milwaukee Coke & Gas Co. vs. Industrial Commission, 160 Wis., 247.

Eagle Chemical Co. vs. Nowak, 161 Wis., 446.

¹⁹ *Carney vs. Northwestern M. I. Co.*, 160 Wis., 316.

²⁰ Section 2394-17.

Jordan vs. Weinman, 167 Wis., 474.

²¹ Section 2394-19.

Great Northern Railway Co. vs. King, 165 Wis., 159, 163.

Gough vs. Industrial Commission, 165 Wis., 632, 635.

²² *New Dells Lumber Co. vs. Industrial Commission*, 166 Wis., 208.

²³ *Hannan Chandler Lbr. Co. vs. Industrial Commission*, 163 Wis., 596.

²⁴ *International Harvester Co. vs. Industrial Commission*, 157 Wis., 167.

Bekkedal Lbr. Co. vs. Industrial Commission, 168 Wis., 230.

MARQUETTE LAW REVIEW

- Lezala vs. Jazek*, 170 Wis., 532.
- ²⁵ *Manitowoc Boiler Works vs. Industrial Commission*, 165 Wis., 592.
- ²⁶ *International Harvester Co. vs. Industrial Commission*, 157 Wis., 167.
- ²⁷ *Wm. Rahr Sons Co. vs. Industrial Commission*, 166 Wis., 28.
- Karges vs. Industrial Commission*, 166 Wis., 69.
- Section 2394-20.
- ²⁸ Section 2394-19.
- ²⁹ Section 2394-21.
- Wm. Rahr Sons Co. vs. Industrial Commission*, 166 Wis., 28.
- ³⁰ *Wisconsin Drainage Co. vs. Industrial Commission*, 161 Wis., 42.
- Heilman Brewing Co. vs. Industrial Commission*, 161 Wis., 46.
- Pawling & Harnischfeger Co. vs. Mildenberger*, 170 Wis., 146.
- Breslauer vs. Industrial Commission*, 167 Wis., 207.