Wisconsin as a Leader in Labor Education

Leonard C. Fons
WISCONSIN AS A LEADER IN LABOR LEGISLATION

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TIMES have changed indeed, especially in the industrial field. Mankind has suddenly awakened to find itself half submerged in an over-mechanized civilization. In our material progress we have developed a great machine which will either serve us or run wildly away with its billions of motions and reactions. In order to protect man from complete domination by this material Frankenstein it was necessary to properly adjust rules of conduct so that the more important things of life, the rights and duties of mankind, might be preserved. During this movement to improve the conditions of labor we discovered how hard it is to change men's habits, once established, to open their hearts and minds for the cure of social ills. Liberty of the individual to exercise his natural rights as man was in the balance. It was the primary function of government to preserve the balance in this modern system of economics and thermodynamics. The people of Wisconsin recognized the dangers to society brought on by the industrial combination of iron, steam and coal, and immediately began a movement to symphonize the chaos into a new order. This was done for the most part through legislation which today comprises that group of laws known as the Labor Laws of the State of Wisconsin.

Workmen's Compensation

With widespread use of the machine in industry there arose the very vital problem of bodily harm and accident to the worker. As machinery grew in use so, too, proportionately, injuries increased in number. The minds of all engaged in manufacturing became concerned with the question of accidents, their causation, prevention, compensation and rehabilitation. Industrial accidents are responsible for the death of approximately twenty-five thousand persons every year in our United States. Annually there are more than one million persons totally disabled for periods of from two weeks and longer. About ten per cent of this number is partially disabled for life. The number of industrial accidents each year is nearly two and one-half million, the time loss suffered by these accidents annually reaches about one-quarter of a billion working days, amounting to an annual wage loss of about one billion dollars.¹

* Member Wisconsin State Senate; member of Milwaukee bar.
¹ United States Department of Labor, Monthly Labor Review, November, 1923, p. 3.
Wisconsin, as well as a number of other states, saw the waste caused by this loss of time and wages. The first bill for workmen's compensation was introduced in 1905. Thereafter we find compensation bills introduced in each session of the Wisconsin legislature until in 1911, the industrial commission was finally given administration of this law when all labor departments of the state were consolidated under it. There were many changes in succeeding years. In the early part of this legislative program, labor was faced with many difficulties, especially the opposition furnished by some of the large employers in the state. A few years after the enactment of the workmen's compensation act, through the fine administration of this law by the Industrial Commission, the employers of the state for the most part appreciated its need, and adopted a more favorable attitude towards its administration, along with organized labor, which had assisted in its passage. Today, opinion is universal that the workmen's compensation act has done great good for all citizens of Wisconsin, has saved tremendous losses to industry and preserved the bodies, lives and happiness of countless employes. However, due to the increase in hazards, the number of accidents in industry is still huge, but proportionately to the increase in dangerous machinery, the number of industrial mishaps has decreased.\(^2\)

It can readily be seen that without this piece of labor legislation industry would be in an intolerable condition. In the early Wisconsin compensation law we find that employers had the right of election. In 1913 a revision of the act made the law semi-compulsory. In 1917 provisions of the act were again changed so that all employers of three or more persons, unless they gave notice of their intention to remain outside the act, automatically were subject to it. There were many amendments liberalizing the method and amount of compensation passed by the 1931 Session of the Wisconsin Legislature. The law now requires all employers in the state of three or more persons automatically to come under the act. Every person, firm, private corporation, municipal government, district, and the state usually employing three or more employes, with some exceptions as to farm labor, are now subject to the compensation act.\(^3\)

Other important changes in the act pertain to the percentage of indemnity, compensation for partial and permanent injuries, the waiting period, and the use of an impartial physician in case of conflicting testimony.\(^4\)


\(^3\) See chapter 87 of *Laws of Wisconsin*, 1931.

\(^4\) See *Workmen's Compensation Laws of Wisconsin*, 1931.
It must be remembered that these changes made in the law effect a great portion of the citizens of our state, practically all people who are employed. The increase in cash benefits for the wage earner through the changes made in the compensation act during 1931 has been estimated at seven hundred thousand dollars per year, an increase of nearly twelve per cent. Wisconsin is now the second most liberal state in the union in compensation. Many interesting questions of law have arisen in connection with this act, starting with the question of its constitutionality and running the gamut of diverse injuries and accidents caused in our congested factories of today.5

The benefits under the compensation act accrue to both labor and industry, just as the loss from accidents is borne by both employers and employees and their families. It is now generally conceded that the workmen's compensation act has brought about three significant results:

(1) It has reduced by approximately sixty per cent avoidable accidents in industry. The worker is a human being possessed of a certain resource known as labor, which has an economic value to him and his fellow-man, besides this he has a personality of great worth. These qualities certainly make him worthy of very generous protective legislation. Insurance companies, employers' associations and labor are today all cooperating with the industrial commission of our state to make the factories safer places of employment.

(2) Besides this feature of prevention we find that workmen's compensation has saved much distress and suffering and harm in the economic life of the family by providing compensation when the workman has been injured. The underlying principle for compensation is one of modern business, namely that a person should be paid for assuming necessary risks; in fact this principle is one of the fundamentals of our entire structure of commerce and industry. Not only is the worker exposed to loss of life and limb, but he also suffers a loss of wage.6

(3) The third beneficial result comes to the worker after he has been restored to health. It is necessary, if he has some permanent

5 Borgnis v. Falk, 147 Wis. 327.
Anderson v. Miller Scrap Iron Co., 169 Wis. 106.
On services growing out of and incidental to the employment, Racine Rubber Co. v. Industrial Commission, 165 Wis. 600.
On the question of digression from duties, Seidl v. Knop, 174 Wis. 397.
On the question of what constitutes going to and from employment see Monroe County v. Industrial Commission, 184 Wis. 32.

disability, that he be re-trained or re-educated to some different work. This is known as rehabilitation, and it has become very prominent in the administration of workmen's compensation in Wisconsin. Vocational rehabilitation was made the object of legislation in Chapter 534 of the Laws of 1921. The aim, of course, of this part of the law is to provide the worker with some opportunity to support himself and family to the extent that his disabilities permit. It would take many pages to comment on the great merit and need of this particular piece of labor legislation. The problem of industrial accidents in Wisconsin can safely be said to be receiving the utmost of investigation, deliberation and solution. No portion of labor legislation in our state embodies more humanitarianism and practical good for the worker, as well as, indirect assistance to the employer, than the workmen's compensation act.

Child Labor

The employment of children in industry has received attention by Wisconsin legislatures since 1867. At that early date we find Chapter 83, Laws of 1867, which penalized employers who compelled children under eighteen to work for more than eight hours a day. In our present day we still read grim stories of child labor in industry, in the shop and in the mine. This problem has not been entirely solved in spite of the widespread public opinion against the exploitation of the labor of children. The first law setting a minimum age for children employed in Wisconsin industry provided that no child under twelve years of age might be employed while schools were in session, in a factory or cotton or woolen mills where more than three persons altogether were employed.7

The child labor law of the state has been improved gradually through many legislative sessions since that date. The coming of the vocational school has done much to better the conditions of our youth in Wisconsin. The Wisconsin law of today provides that the industrial commission shall have power, jurisdiction and authority to investigate, determine and fix reasonable classifications of employment and places of employment for minors and females and to issue general or special orders prohibiting the employment of such minors or females, in any employment or place of employment dangerous or prejudicial to the life, health, safety and welfare, of such minor or female.8

7 Chapter 289, Laws of Wisconsin, 1877.
8 Section 103.05 of Wisconsin Statutes of 1929.
There are numerous classifications in the statutes as to minors, places of employment, dangerous occupation, permits, etc.\footnote{9}

This statute confers plenary power on the Industrial Commission. The elasticity of the act has been an important feature in its successful growth and administration. Wisconsin is recognized as having one of the most advanced child labor codes in the country, and it likewise has the distinction of having been one of five states to ratify the federal child labor amendment.

**Unemployment Reserves and Compensation**

A number of years ago one of our leading economists stated that the worker in America in the dawn of his life faced three great fears. The fear of dependency in old age, the fear of sickness and accident, and the fear of unemployment. Since the laborer's only means for support of himself and his family is his labor or ability to work, these three menaces had rendered uncertain his very existence. However, in recent years we have eliminated to a great extent the fear of old age dependency by old age pension laws, the fear of sickness and accident through the media of benefit organizations, insurance and workmen's compensation. The one great remaining cause of uneasiness and worry in the worker's life is unemployment. During the last two and one-half years, due to the crisis that our nation and state are passing through, much has been said and done on this question of unemployment. In European countries we have seen the development of unemployment insurance. Wisconsin for the last ten years, has had an unemployment insurance measure before its legislature. From the very beginning Wisconsin adopted an unusual approach to this question, in placing the burden for the stabilization of employment upon the employer who was responsible and could control employment within his plant. It is in this very essential feature that the Wisconsin plan differed from the plans now operating in the European countries, which require contributions from the state, the workers and employers.\footnote{10}

Dr. F. J. Haas has given this question a great deal of study, and has concluded that the theory of prevention on which the Wisconsin plan rests is entirely sound. "The evil of unemployment is one which

\footnote{9} See Sec. 103.05 Wisconsin Statutes, 1929.
\footnote{10} On the question of misrepresentation of age, Stetz v. F. Mayer B. & S. Co., 163 Wis. 151.
\footnote{10} On employment not specifically prohibited see Schmidt v. Wisconsin Sugar Co., 175 Wis. 613.
\footnote{10} Where parent misrepresents child's age see Stryk v. Mnichowicz, 167 Wis. 265.
\footnote{10} Commons & Andrew, *Principles of Labor Legislation*, pp. 483 to 493.
neither the worker nor the taxpayer can prevent. Employers, however, are in a position to reduce unemployment to a very considerable degree."

The unemployment reserves and compensation act enacted in the 1931 Special Session of the Legislature of Wisconsin is the first law in America that provides some means of combatting sharp economic declines and unemployment. It embodies the basic features of prevention and employer's responsibility which signalized the earlier Wisconsin plans, such as the Huber Bill.

In the public policy declaration of the statute we find:

(1) "Unemployment in Wisconsin has become an urgent public problem gravely affecting the health, morals and welfare of the people of this State . . . ."

"The decreased and irregular purchasing power of wage earners in turn vitally affects the livelihood of farmers, merchants and manufacturers, results in a decreased demand for their products and thus tends partially to paralyze the economic life of the entire state."

(2) "The economic burdens resulting from unemployment should not only be shared more fairly but should also be decreased and prevented as far as possible."

"A sound system of unemployment reserves, contributions and benefits should induce and reward steady operations by each employer since he is in a better position than any other agency to share in and to reduce the social costs of his own irregular employment."

This act incorporates a voluntary alternative. If by June 1, 1933, companies then employing 175,000 workers have voluntarily established unemployment compensation plans as good as the state plan in the judgment of the Industrial Commission, then the law will not be compulsory on the employers of the state. This feature was inserted at the request of the employers' association of the state because of its recognition of the problem and preference for a voluntary system. If this condition is met, the compulsory act will not take effect, and it would require passage of another bill as some future session of the legislature to make unemployment reserves and compensation apply to all employers. The act covers workers employed by any employer of ten or more persons for four months or more in the past year.

There are a number of important exemptions made in the act, namely, farm labor, domestic servants, employees of a railroad engaged in interstate transportation, employment in logging operations, political officers and government employees on annual salaries, and part time

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12 Chapter 20 of the Special Session Laws of Wisconsin, 1931.
workers employed less than one-half time who are so registered at public employment offices. No employe is eligible to benefits if he has earned in the year preceding his lay-off fifteen hundred dollars. A worker is not entitled to benefits if he has lost his employment through misconduct or quitting voluntarily, but no worker may be denied benefits if he refused a job because of a labor dispute in the plant. A residence of two years, or employment of forty weeks in the state during the last two years is required for eligibility to benefits. The right to these benefits does not begin to accrue until one year after the employers begin to make contributions.

The plan briefly provides that each employer set up a reserve fund unless he is specifically exempt by the Industrial Commission because of a personal plan which will give his employes as much or more protection than they would receive under the provisions of the state act. The employer subject to the act has a separate account in the state employment reserve fund which account can be used for payment of benefits to his own employes only, when laid off. The payment of benefits will be made by the Industrial Commission through public employment offices. The employer pays into the reserve fund at the maximum rate of two per cent of the payroll. The two per cent contribution rate is reduced to one per cent when the reserve amount reaches fifty-five dollars per employe. When it reaches seventy-five dollars per employe he may stop paying into his reserve account so long as it remains at or above that figure. The contributions by the employers will not start until July 1, 1933.

The act provides limited compensation to employes who are laid off and are unable to find other jobs. The weekly benefits amount to fifty per cent of the wages, but shall never be more than ten dollars per week nor less than five dollars per week. The number of weeks of benefits or compensation an employe can receive depends upon how many weeks of employment he has had in the year preceding the lay-off. One week of benefits is payable for every four weeks of such employment. The maximum period of compensation in any one year is ten weeks. These provisions apply to adult men, women and minor employes as well.

Reserves must be established by all persons, associations, partnerships, corporations, including the state and all subdivisions thereof. The act further provides that regular employment shall be planned and stimulated through advisory committees of employers, labor and public representatives. It appropriates funds for more adequate employment offices to assist workers in finding jobs. It provides for vocational training for unemployed workers, and for the encouragement of public works in times of depression, through the use of bene-
fits due employes as part of the wages for such workers employed on public works.

It is generally admitted that most people reach old age in a more or less dependent condition through no fault of their own. Economic causes including low wages account for approximately one-half, who have earned insufficient wages in their earlier days to permit the storing up of any surplus funds. There are other causes, such as exceptional longevity, business failure, social causes, etc. The number of those who wasted their means is only between five and ten per cent. This problem of old age pension is deserving of exceptional study because it has become acute during the last ten years due to the rejection of older men from our system of production. Wisconsin enacted an old age pension law in 1929, which established the humane care of aged dependent persons, under a state system of old age assistance, to be administered in each county by the county judge under the supervision of the Board of Control.\textsuperscript{14}

The cost of old age pension is borne by the county, but the county is entitled to reimbursement from the state, and from the cities, villages and towns, in which the beneficiaries are residents.\textsuperscript{15}

This system of old age pension is optional with the counties. Only a few counties, however, had exercised the option to come under the law, but in the last session of the legislature, the old age pension law was made compulsory upon all counties of the state beginning July 1, 1933.\textsuperscript{16}

In order to be eligible for old age pension, a person must have reached the age of 70 years, or the combined property of himself and his spouse may not exceed three thousand dollars, he must be born in the United States, or must have been a citizen of the United States for at least fifteen years before making application for old age assistance.

Resident in the state and county for at least fifteen years immediately preceding the date of application, or for forty years, with at least five years of residence immediately preceding the application is required.\textsuperscript{17}

The Wisconsin law is adjusted to this theory by limiting the pension to not more than one dollar per day. If the pensioner has a slight income from property this income is included in establishing his monthly pension, never to exceed the maximum of one dollar per day.

\textsuperscript{14} Wisconsin Statutes, 1929, Sections 49.20 to 49.39.

\textsuperscript{15} The provisions of Section 49.20-49.39. Section 49.37 shall apply only to such counties which have made appropriations to carry out these provisions.

\textsuperscript{16} Some very important changes. c.f. Chapter 239, Laws of Wisconsin, 1931.

\textsuperscript{17} Section 49.22 of Wisconsin Statutes, 1929.
This Wisconsin system of old age assistance is more meritorious to the individual as well as to the various divisions of the state. It more universally handles the problem since it attracts many deserving persons who might otherwise refuse to seek out assistance or an admittance to the poorhouse. Moreover, it has been established by many surveys on this question, that three times as many aged persons can be cared for under the pension plan than under the community system of almshouses.\textsuperscript{18}

Today there are seventeen states in the Union which have definitely adopted the policy of old age pensions as the means of protecting their citizens against old age dependency. Wisconsin is in step on this proposition with the leading states of the Union.

**Wisconsin Labor Code of 1931**

During the regular session of the Wisconsin Legislature in 1931 a bill known as The Wisconsin Labor Code was enacted into law\textsuperscript{19} which embodies various major provisions relative to labor, and procedure in labor litigation. This law was the first of its type in the United States having antedated by a year the similar anti-injunction law which has been recently passed by Congress.\textsuperscript{20}

One of the most interesting examples of public opinion gradually crystallizing into legislative relief is this present Wisconsin Labor Code, which specifically declares the policy of the state against the indiscriminate use of injunctions in labor disputes, against yellow dog contracts and establishes the doctrine of trial by jury in civil and criminal contempt.s. Besides these major provisions there are a number of other extremely vital declarations relative to the rights of labor.

The use of the injunction in labor disputes is not very old, it dates back to 1888. Its use, however, grew rapidly, until in recent years we have witnessed the issuance of between six or seven hundred a year in the United States. Originally the injunction was not resorted to because courts frowned upon collective bargaining as unlawful conspiracy. Subsequently, when capital became organized through mergers it became necessary to recognize these trade associations and the courts were then forced likewise to give recognition to organizations of labor or trade unions. In recent years courts have declared unions legal and strikes legal, but have issued injunction against the acts of union men

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\textsuperscript{18} Old Age Commission of Pennsylvania—*Report*—1925, p. 24.
\textsuperscript{19} Chapter 376 Wisconsin Session Laws, 1931, also Sec. 268.19 to 268.30 of Wisconsin Statutes, 1931.
\textsuperscript{20} *Injunctions in Labor Disputes*, by Hon. George W. Norris—Marquette Law Review, April, 1932.
in furtherance of their rights while striking or while organizing a union shop.\textsuperscript{21} Nothing has brought about greater disrespect and disdain for the court of our country than the use of this type of injunction. Back in 1908 President Roosevelt declared, "They are blind indeed who fail to recognize the bitterness caused among large bodies of worthy citizens by the use that has been repeatedly made of the power of injunction in labor disputes." Writing on injunctions in 1919, Chief Justice Wm. Howard Taft, then in private life, had this to say, "Labor troubles are not permanently solved in any such way. Government of the relations of capital and labor by injunction is a solecism. It is an absurdity."

In the Truax case the Supreme Court of the United States by a five to four decision declared unconstitutional, a statute making strikes legal in Arizona, which had been passed by both houses of the Arizona legislature, signed by the governor, sustained by the trial court and upheld as constitutional by the supreme court of that state. By this five to four decision one man frustrated the legislative, executive and judicial powers of the government thereby bringing about the condition described above,—government by injunction. Strangely, as it may seem, the injunction has not been proven very satisfactory and has not brought the results that many employers using it had anticipated.\textsuperscript{22}

Wisconsin passed an anti-injunction law as early as 1919. This was supplemented by legislation in 1925. In 1931 we find an entire revision and restatement of this branch of the labor law. The public policy of the state is declared in favor of equity procedure that shall issue injunctions only upon notice and oral examination in open court. The statute likewise prevents courts from issuing injunction as to certain acts. It prevents injunctions being issued against the payment of strike benefits and against helping union men who are engaged in litigation against giving publicity to labor disputes and against peaceful picketing: These constitute the important abuses in injunctions in recent years. Before an injunction can be issued certain facts must be found to exist. Chief among which are; that the police and sheriff's department have failed or are unable to furnish adequate protection; that there has been a threat or commission of violence; that substantial and irreparable injury to complainant's property will follow unless the immediate relief requested is granted. Temporary injunctions as used


\textsuperscript{22} For the most recent work on this question see The Government in Labor Disputes, Dr. Edwin E. Witte, chief of the Wisconsin Legislative Reference Library.
in the Allen A. case,\textsuperscript{23} cannot be issued without 48 hours notice and if issued, remain in force for only five days after which time a hearing on the facts in the case shall be held. The clean-hands doctrine enunciated in recent Wisconsin decisions is incorporated in this code.\textsuperscript{24} Excepting the provisions for temporary restraining orders, no injunctions shall be granted without a trial. The injunction must be based on findings of fact made and filed by the court in the record, and the prohibition of acts must relate to specific acts complained of in the bill of complaint or petition, and shall be binding only on those agents, servants and parties who shall have been served by personal service, or otherwise had actual notice of the suit. Appeal from the decision of the court is to be heard with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character.

\textbf{Yellow Dog Contracts}

The yellow dog contract has been used for many years in order to defeat the organization and association of working men in labor unions. This contract has been the basis of many injunctions in the past. It is forced upon the employe at the time of his receiving employment. The usual provisions of such agreement are that he will not join a union or that he is not a member of a union; that he consents to the employer's right to discharge him without notice, and many other similar provisions, all pointing towards the same objective and having the same general effect, inasmuch as they take away from the laboring man the right of free contract and free bargaining on the conditions of his employment. These contracts are declared by Wisconsin Statute to be contrary to public policy and to afford no basis for injunctions. These contracts certainly, if permitted to spread, would take away the liberty which is guaranteed by Article 13 of the Constitution of the United States, "Neither slavery nor involuntary servitude, except for punishment of crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction." The first anti-yellow dog contract law was enacted in Wisconsin in 1922 and was the first piece of legislation of this kind in our country. It was then restated in 1931\textsuperscript{25} and has been enacted in five other states during the last year as well as by the Federal Congress.

\textsuperscript{23} Allen A. Co. v. Steel, et al, E. D. Wis., 1928.
\textsuperscript{24} A. J. Monday Co. v. Automobile Air Craft & Vehicle Workers of America, 171 Wis. 532.
David Adler & Sons Co. vs. Maglio, 200 Wis. 153; 228 N. W. 123.
State vs. Meese, 200 Wis. 54; 225 N. W. 746.
\textsuperscript{25} Chapter 376, Wisconsin Session Laws, 1931.
Section 268.19, Wisconsin Statutes, 1931.
Jury Trial for Civil or Criminal Contempts

The abuses in contempt proceeding arising through the issuance of injunctions brought much harm to the American working man. The Constitution of the United States, Article 3, says:—"The trial of all crimes except in case of impeachment shall be by jury." The Wisconsin Constitution, Article 1, Section 7, reads as follows:—"In all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel; * * * and in prosecutions by indictment or information to a speedy public trial by an impartial jury of the county or district wherein the offense shall have been committed." There have been many instances where men were found guilty of contempt by the same judge who issued the restraining order or injunction for acts, criminal in their nature, without any trial by jury. In order to prevent such violation of liberty the contempt section was included in the Labor Code of 1931. It provides that a person charged with contempt shall be admitted to bail. That he shall be advised of the accusation against him and be given a reasonable time to make his defense. It reaffirms the constitutional guarantee of the right of trial by jury in civil and criminal contempts, which courts in the absence of statutes have denied. A very reasonable provision of the bill is that upon the filing of an affidavit of prejudice against the judge issuing the injunction he shall call in an outside judge to try the person charged with contempt. This part of the statute is merely an edict of common sense and ordinary justice. It is a procedural restatement of the guarantees given to man under our constitution.

The Wisconsin Labor Code of 1931 eliminates many of the abuses that have existed and inequalities brought on by procedural technicalities and a codeless conglomerate of precedent running back to the dark ages of the common law. Equality of opportunity and equality before the courts of justice are the basis of liberty and good government. Unless the foundation be laid in justice the social structure regardless of its form or name cannot endure. It seems reasonable that the limitations in this new code can be placed upon the equity jurisdiction of our state. In the famous Truax case Judge Brandeis said, "What congress can do in curtailing the equity powers of the federal courts, state legislatures may do in curtailing equity powers of the state courts unless prevented by the constitution of the state."

The Labor Code passed by the 1931 session of the legislature will not only overcome many of the injustices and much of the bitterness caused by labor disputes, but will elevate and clarify the procedure in our courts, thereby winning trust and faith in their decrees.
CONCLUSION

There are many pieces of recent legislation such as the minimum wage law, the regulation of hours of labor, the apprenticeship law, prevailing wage law and others which mark Wisconsin as a leader in the field of labor legislation. Democratic governments such as ours depend largely for their success on the quality of citizenship. Promotion of the temporal well-being of all its citizens regardless of class, social standing or wealth and the complete protection of all in the enjoinment of the things that make for the good life has been the Wisconsin policy.