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Industrial Courts

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INDUSTRIAL COURTS:

WITH SPECIAL REFERENCE TO THE KANSAS EXPERIMENT

EMPLOYERS and employees often fail to realize that their objects, while not identical, are mutual. Neither can exist without the other, but despite the necessity for co-operation and good working methods, first one party and then the other attempts to dominate. The struggle between these two contending forces is not new but dates well back in history. For example, as early as 1349 England regulated the rate of wages in the first of a long series of Statutes of Laborers,¹ because the Black Death had reduced the numbers of workers, thus increasing the demand for laborers with a corresponding increase in wages. But it should be noted that the wage set by these laws was a maximum and not a minimum. Henry VIII destroyed the guilds which had performed many acts of helpfulness for workers, such as loaning them money without interest and assisting in favorable apprenticing and pensioning.² Elizabeth carried the degradation of the laborers one step further by the passage of the Statutes of Apprentices,³ but she attempted to atone for the havoc done by the enactment of the Poor Laws which brought government assistance to the most poorly paid workers.⁴ Enough examples have been cited to show that attempts at legal regulation are not new experiments. These acts for the most part were repressive as far as labor was concerned. They were passed in the interests of the landed, employing gentry. With the Industrial Revolution in England class consciousness was still further emphasized. The employers became a distinct set of capitalists while the employees without capital had nothing to sell but personal service. Manufacturing changed from a domestic to a factory system, thus building up the great modern city. The early repressive legislation against labor remained in force until 1802 when the first Factory Act which was distinctly in favor of the laborer was passed but it was not until 1825 that the most obnoxious laws against labor were repealed. Finally with the extension of suf-

¹ Thorold Rogers, "Work and Wages," 223; 227.

² *Ibid.*, 346.

³ 5 Eliz., cap. 4.

⁴ 43 Eliz., cap. 3.

frage and the extra-legal formation of workers, trade unions were legalized and the practice of collective bargaining established. The Factory Acts of England gave the cue for the early legislation in the United States and Australasia which took such forms as improvement of working conditions, employers' liability, hours of labor and compensation, but the most recent tendency in state regulation is to provide machinery for the settlement of industrial disputes between employer and employee. The state in the interest of industrial peace has been compelled to interfere in behalf not only of the two contending parties, but also the general public. The employers have organized gigantic combinations insisting on the sanctity of vested interests, freedom of contract, etc., which have brought about frequent resort to lockouts and black lists. The laborers in turn as a matter of self defense have organized huge labor unions whose methods of industrial warfare are strikes, boycotts and picketing. The present activity of the state is directed toward a settlement of industrial disputes and it is this phase that is to be dealt with in this and following articles. The discussion which follows will deal with (1) The Australasian Acts on industrial conciliation and arbitration; (2) the Canadian Disputes Act; (3) The British Industrial Court and Courts of Inquiry and (4) the Kansas Court of Industrial Relations. If the chronological order were observed, the Australasian acts with their adjudication should receive first treatment, but the situation in Kansas has aroused such widespread interest and the recently enacted law has such novel and drastic features as to justify devoting the present article to it, reserving the other acts for later treatment.

THE KANSAS COURT OF INDUSTRIAL RELATIONS

I. STEPS LEADING TO PASSAGE OF THE KANSAS LAW

Kansas with her accustomed initiative and energy is trying an experiment with the settlement of industrial disputes that may prove to be the solution of the warfare between capital and labor. The people of Kansas are courageous and far visioned, whether it be furnishing the prelude to the Civil War, prohibiting the manufacture and sale of intoxicating liquors, providing for the guaranty of bank deposits, curbing the railroads, furnishing a model for "Blue Sky" legislation, providing state mined coal in the face of opposition from both coal operators and

striking miners or creating a court of industrial relations which looks toward the settlement of industrial disputes.

By the enactment of this last law, Kansas is running true to form. She now occupies the center of the stage. The plot was a strike of coal miners just as winter was coming on, to frighten the people into compelling the coal operators to grant the miners' demands; the dramatis personae included coal operators, high officials of the labor unions, striking miners, judges of the courts, volunteer coal miners, members of the state legislature, state and federal troops and a doughty governor, Henry J. Allen. The scenes shifted rapidly; the time included only a few weeks; the action was fast and at times melodramatic. Then come the denouement, a law bottomed on the principle that government has the same power to protect society against the ruthless offenses of an industrial strife that it has to protect against recognized crime.

The steps leading to the enactment of the new industrial legislation may now be traced. During the world conflict the struggle between capital and labor, although ominous at times, was held somewhat in leash by appeals to patriotism and by strong governmental restraint, but as soon as the war was closed and the fuel ban lifted, the coal operators began raising the price of coal. The coal miners countered by contending that if the war was over for the operators, it was over for the miners, and insistently demanded a sixty per cent increase in wages and a reduction in working time to six hours a day five days a week. Upon being denied their demands, a coal strike was called in the dead of winter while the two sides to the controversy took the position that the public might freeze while they somewhat leisurely attempted to settle their quarrel by the old methods. Governor Allen discussing the situation before the League of Industrial Rights, said:⁵

"The idea that government could do anything about it was new. Ever since the episode of the Adamson Law, when the four Brotherhoods of American Railway Trainmen issued orders to Congress and held the stop watch while intimidated statesmen passed the Adamson Law, there has been a feeling that this country would have a recurrence of government by coercion whenever organized labor in any craft gained a solidarity sufficient to threaten the public with a general calamity."

The bewildered and frenzied public, threatened with the tragedy of a prolonged strike, closed the damper in the furnace

⁵ Saturday Evening Post, March 6, 1920, p. 6.

and anxiously scanned the papers for reports on the progress made in Washington between the debating representatives of the coal operators and the United Mine Workers of America. While these negotiations dragged on, Attorney General Palmer filed a bill with Judge Anderson of the federal bench in Indianapolis praying for a writ of injunction under the Lever Act to restrain the officials of the United Mine Workers of America from continuing the strike, and Judge Anderson, acting upon the technical assumption that the war was not over, issued the writ and then committed the officials of the labor unions to jail for contempt of court for disregarding the writ, when finally the officials, in order to secure release from jail, went through the form of calling off the strike, but the strike went on in most places. The Kansas miners were 100 per cent unionized and in open defiance of Judge Anderson's order continued the strike. It was at this juncture that the Kansas state officials under the leadership of Governor Allen, decided that the people of Kansas had rights that must be respected.

The writer surmises that the determination of Governor Allen to resort to extraordinary methods rests upon the theory that the public is entitled to a continuous and sufficient supply of the necessaries of life, and to uninterrupted, efficient and reasonable service in certain employments, and that employers' lockouts and laborers' strikes, while presumably directed primarily at a warring enemy, in reality are directed at the public that had nothing to do with the cause of the quarrel.

The heroic method decided upon was to petition the supreme court of the state of Kansas to appoint receivers to take over the mines, operate them with volunteer workers and furnish coal temporarily to the people of Kansas. In other words, the state of Kansas was to act as *parens patriae* for the people. Accordingly Richard J. Hopkins, Attorney General of Kansas, appeared as relator against the coal operators of southeast Kansas, defendants.⁶ In the petition the relator states that practically all the coal mines in the state of Kansas and all the coal available in the state were owned and controlled by the defendants, a corporation organized and doing business under the laws of the state of Kansas;⁷ that by reason of the general strike nearly all of the coal mines in the United States had been closed, thus making it im-

⁶ The Kansas Coal Case—State of Kansas, *ex rel.* Richard J. Hopkins Attorney General *v.* Mallams-Halsted Coal Company *et al.*, No. 22700.

possible for the people, the public utilities and the state of Kansas to obtain a supply of coal necessary for the general welfare unless the mines owned and controlled by the defendants were operated to the full extent of their capacity;⁸ that the defendants, acting through an association called the "Southwest Interstate Coal Operators' Association" had allowed the mines to remain closed since the first day of November, 1919, with no prospect of work being resumed at an early date;⁹ that the public need was so great and the magnitude of the work so apparent as to justify the appointment of a receiver or receivers at once.¹⁰ The petition of Attorney General Hopkins closed as follows:¹¹

"Wherefore, your relator now prays that a receiver or receivers be at once appointed by this court and be instructed to take immediate possession of all of the mines owned or controlled by said defendants and each of them, within the counties of Cherokee and Crawford in this state, and all machinery, implements, supplies and all other property, real and personal, used in connection therewith and useful in the operation of said mines and the production and distribution of coal therein and therefrom, and that said receivers be directed at once to operate said mines to their full capacity, so far as practicable, and to produce coal therefrom and sell and distribute the same in the state of Kansas, for the use of the inhabitants of the state of Kansas, and for that purpose be empowered and directed to employ all labor and agents necessary, and enter into and perform all contracts and furnish all material necessary and appropriate to the purpose of producing, selling and distributing coal, and to do all other things necessary to be done for said purpose; and that all of the corporation defendants herein be ousted from continuing and exercising any powers in pursuance of the agreement referred to herein and that all other defendants herein be forever enjoined from participating with said corporation defendants in carrying out and exercising said combination and agreement."

On November 17, 1919, the supreme court entered an order appointing three receivers, one an operator, one a miner and the third a business man not connected with the mining industry. The operator and the miner declined to serve and the court upon application appointed another receiver, fixing the bond of each at \$25,000. After the two receivers had qualified, the supreme court gave them authority to borrow not to exceed \$100,000 for current expenses and issue receivers' certificates to bear six per cent interest.¹²

⁷ *Ibid.*, 1-2.

⁸ *Ibid.*, 2.

⁹ *Ibid.*, 3.

¹⁰ *Ibid.*, 3.

¹¹ *Ibid.*, 3-4.

¹² *Ibid.*, 5.

On the same day the first receivers were appointed, Governor Allen went to Pittsburg, Kansas and spent a week endeavoring to induce the miners to resume work and prevent a coal famine. He asked them to work for the state at the old wage, with the state's guarantee that any benefits the miners might gain from the settlement at Washington would be retroactive; he also pledged that if the strike were not settled by January 1, 1920, the state would fix a satisfactory wage which should be retroactive. Many of the individual miners wished to accept the proposal and return to work but all the union officials, in open defiance of federal Judge Anderson's order, insisted that the strike should continue.¹³ All resources having been exhausted, Governor Allen called for volunteers to dig coal, and the so-called socialistic experiment in Kansas began.

When Governor Allen issued the call for volunteers to dig coal, the response was emphatic and instant. Within a few hours more than ten thousand men from every walk of life enrolled and waited for a summons to the coal fields. The first crew of volunteer miners went into the strip pits December 1. Along with them went a regiment of Kansas National Guardsmen and a detachment of federal troops to guard the mines and preserve law and order. The local striking miners were sullen and had assumed an unsympathetic attitude toward the public request for coal, taking the position that it is better that the public suffer from cold than that miners be treated unjustly by the operators. One incident that had wide circulation in the state and that had a marked influence on the determination of the volunteer coal diggers was the story of the deplorable situation at Mount Carmel Hospital, in Pittsburg, the center of the coal strike. This institution's coal supply being exhausted an appeal was made to the city officials who pointed out that the sick in the hospital would suffer for lack of fuel and asked the union officials to give permission for a few union miners to return to work in order that a sufficient supply of coal might be furnished to the hospital. The request was promptly refused. Upon hearing of the refusal, Simon Brothers, two business men who owned a coal mine and operated it for their own retail trade and who were old miners themselves, put on mining clothes, dug fifteen tons of coal and delivered it to the hospital at night. But spies informed the union officials and these two local business men were ordered

¹³ Saturday Evening Post, *op. cit.*

not to furnish another pound of coal to the hospital upon threat of being boycotted. Such stories maddened the arriving volunteer workers and made them grimly determined to prevent a coal famine. Moreover, they were a vigorous type of men. Many of them were members of the American Legion and most of them wore khaki. Army uniforms were in evidence everywhere. One of the striking miners said: "We seem to be up against the uniform proposition all around." The temper of these miners who went into the coal pits without union cards was well expressed by a volunteer who wore the insignia of the Rainbow Division upon his shoulder, as follows: "We are here to settle this thing up and get back home as soon as we can. Bring on your mines."

The first day in the mines produced coal which was mined in freezing weather. At night the men slept in tents and on the morning of December 2 washed their faces in ice-cold water, and ate their breakfasts muffled up in overcoats, ear muffs and gloves. But the college boys, and many of them were present, said: "We wouldn't think of postponing a football game a day like this, and it is easier to dig coal than it is to play football." They then gave their college yells and shouted the volunteer slogan "Lets go!" These inexperienced workers imbued with a dauntless spirit furnished coal and the second day the first car of coal was billed to the mayor of Coldwater, Kansas.¹⁴

On December 3 a Santa Fe switching crew at Frontenac, a mining camp near Pittsburg, refused to move a crew of volunteers, saying they feared physical violence at the hands of the miners, but on December 4 these switchmen were transferred and the railroads announced that satisfactory arrangements had been made for handling the volunteer workmen's trains and for switching coal cars hauling coal. Thus a sympathetic strike was averted.

Governor Allen on December 5 sent for a force of clerks and stenographers and established a temporary office in Pittsburg where he could be on the scene of action. He called for volunteer physicians and began the erection of community houses to care for the physical and social welfare of the volunteers. Every day saw an increase in the production and distribution of coal. On December 9 telegrams came from the east saying that the general coal strike was practically settled on the basis of President Wilson's propositions. December 11 and 12 representatives

¹⁴ Kansas City Star, Dec. 1, 2.

of District 14, United Mine Workers of America, met Governor Allen and Judge J. W. Finley representing the receivers of the supreme court and signed an agreement by which 13,000 union miners who had been on a strike since November 1, were to resume work under the state receivership temporarily and on December 13 the volunteer miners began returning to their homes. In the settlement Governor Allen would not consider the old dispute of the last summer. He said: "I came here to mine coal and am not going back to last July to settle labor troubles." Further he stated: "Not a word about withdrawing the troops before the men go to work. The movement of troops is a matter of government. The troops will move when the governor gives the order;" also, "The receivers represent the supreme court. It remains entirely with the court when the receivers are to be discharged."

What was accomplished during the two weeks' state receivership? More than 2,000 men—soldiers and volunteers—were in Pittsburg and vicinity and there was not a riot or disturbance, not even a street fight between any of the volunteers and the miners. The volunteers found machinery to work, trains to run, engines to switch, hoisting gauges to operate, powder to explode for blasting purposes and dynamite to be touched off, but there was not a single serious accident and but little sickness.¹⁵

Governor Allen in his message to the special session of the Kansas legislature touching the two weeks' receivership said:¹⁶

"Under state operation, in two weeks, the mines that had been lying idle in the dead of winter, with the machinery out of repair and the pits flooded with water, were placed in working condition by inexperienced men, many of whom had never seen a coal mine. Under weather conditions so severe that in normal times these pits would not have been operated at all, a quantity production of coal was reached. During the first ten days of the receivership, two hundred cars of coal were mined through volunteer effort in Crawford, Cherokee and Linn counties. During the entire period of the receivership something like seven hundred cars were produced, but the two hundred cars accredited to the first efforts of the volunteers do not give any adequate measure of the practical value of their services in the mines. It was necessary to expend very much time and effort to get the idle mines back into condition for operation. The work they did in restoring these mines to productivity was at least equal, in value, to the produc-

¹⁵ Kansas City Star, Dec. 5th to 19th.

¹⁶ Message of Gov. Allen to special session of Kansas legislature, printed in "The Court of Industrial Relations," p. 7.

tion of two hundred additional cars of coal. When the volunteers went out and the union miners returned the latter found the pits in better shape than had characterized these mines for a long time. The water had been pumped out, new drainage conditions established and the machinery placed in better condition; in some mines better equipment provided and the possibility of increased productivity established. That the action of the state, in entering the situation, not only warded off the danger of famine, but hurried forward the settlement of the strike, no thoughtful person doubts. I am told by the receivers that the proceeds from the sale of coal will take care of the cost of mining operations. On the surface these volunteer lads had but one purpose and that was to dig coal to relieve a fuel famine, but the motive that animated them was more fundamental than that. They proved that the government of the state still has power to protect the people of the state."

On December 7 Governor Allen decided to call a special session of the legislature for January 5 to deal with industrial disputes. He frankly stated that no civilization is safe when the welfare of the people is made the subject of arbitration; that we must not take from any man his personal rights or deprive men in industry of the privilege of organizing for their own benefit, but above all must stand the government and it alone must have the power of final judgment. He frankly disavowed calling the special session to enact a law against either labor or capital, but to enact a law to protect each against the other and the public against both.¹⁷

The special session convened January 5, 1920 and Governor Allen delivered his message in person to a joint session of the two houses. The industrial court bill which had been prepared by Judge W. L. Huggins at Governor Allen's suggestion, was introduced in both houses as companion bills. The rules were suspended and the bill advanced to second reading. In the House the bill was referred to the committee of the whole, the hearings being open to the public and the Senate. Glen Willets, chairman of the joint state labor legislative committee presided at all the meetings. In the Senate the bill went directly to the judiciary committee and was reported out nine days later. On the 11th legislative day the bill passed the Senate on the third reading by a vote of 33 to 5. The Senate bill then went to the House and was substituted for the House bill, where after a few minor amendments it was passed by a vote of 106 to 7 and became effective as a law January 24, 19 days after the convening of

¹⁷ Kansas City Star, Dec. 7, 1919.

the special session.¹⁸ There was a thorough discussion of the bill by representatives of labor, capital and the general public. The leading arguments advanced by these representatives will be presented after the bill as it became a law is summarized.

II. LEADING PROVISIONS OF THE KANSAS LAW

1. *Composition and Procedure of the Court of Industrial Relations.* The law creates a court of industrial relations composed of three judges to be appointed by the governor with the consent of the Senate. The term is three years and one judge is appointed each year. The annual salary of each judge is \$5,000, payable monthly. The judge longest in service presides over the court.¹⁹ The court has offices at Topeka, the capital of the state; is a court of record, which record is open to inspection, the same as the public records of the state;²⁰ determines its own procedure subject to the limitation that the rules of evidence recognized by the supreme court of the state are binding upon it in the taking of testimony, one copy of which must be filed among the permanent records of the court and another copy submitted to the supreme court;²¹ employs a competent clerk, marshal, reporter and such expert accountants, engineers, stenographers, attorneys and other employees as may be needed to conduct all necessary investigations, inspections and hearings;²² reports annually to the governor all its acts and proceedings, including a financial statement of all expenses;²³ gives notice to all parties interested by United States registered mail if residence or business of the parties is known, and if not known by publication in some newspaper of general circulation in the locality before any hearing, trial or investigation; appoints, when in its opinion it is necessary, a person or persons having technical knowledge of the subject under investigation, as a commissioner for the purpose of taking evidence with relation to such subject.²⁴

2. *Business Affected With a Public Interest; Declaration of Purpose.* "Sec. 3. (a) The operation of the following named and indicated employments, industries, public utilities and common carriers is hereby determined and declared to be affected with a public interest and therefore subject to supervision by the state as herein provided for the purpose of preserving the public peace, protecting the public health, preventing industrial

¹⁸ The Court of Industrial Relations, p. 31.

¹⁹ The Industrial Court Law, Sec. 1.

²⁰ *Ibid.*, Sec. 4.

²² *Ibid.*, Sec. 11.

²⁴ *Ibid.*, Secs. 10 and 22.

²¹ *Ibid.*, Sec. 5.

²³ *Ibid.*, Sec. 27.

strife, disorder and waste, and securing regular and orderly conduct of the businesses directly affecting the living conditions of the people of this state and in the promotion of the general welfare, to wit: (1) The manufacture or preparation of food products whereby, in any stage of the process, substances are being converted, either partially or wholly, from their natural state to a condition to be used as food for human beings; (2) the manufacture of clothing and all manner of wearing apparel in common use by the people of this state whereby, in any stage of the process, natural products are being converted, either partially or wholly, from their natural state to a condition to be used as such clothing and wearing apparel; (3) the mining or production of any substance or material in common use as fuel either for domestic, manufacturing, or transportation purposes; (4) the transportation of all food products and articles or substances entering into wearing apparel, or fuel, as aforesaid, from the place where produced to the place of manufacture or consumption; (5) all public utilities as defined by section 8329, and all common carriers as defined by section 8330 of the General Statutes of Kansas of 1915.

(b) Any person, firm or corporation engaged in any such industry or employment, or in the operation of such public utility or common carrier, within the state of Kansas, either in the capacity of owner, officer, or worker, shall be subject to the provisions of this act, except as limited by the provisions of this act."

The law declares that it is necessary for the public peace, health and general welfare of the people that the industries . . . be operated with reasonable continuity and efficiency in order that the people may live in peace and security and be supplied with the necessaries of life; nor may any person, firm, corporation or association of persons wilfully hinder, delay, limit or suspend such continuous and efficient operation except as provided by the act.²⁵

3. *Jurisdiction and Power of the Court.* All the powers, authority and jurisdiction of the Public Utilities Commission as defined in sections 8329 and 8330, General Statutes of Kansas for 1915, are transferred to the court and the Commission is abolished.²⁶

In case a controversy arises between employers and workers, or between groups or crafts of workers engaged in any of said industries . . . and it appears to the court that the controversy . . . many endanger the continuity or efficiency of the industries . . .

²⁵ Ibid., Sec. 6. In this and the succeeding paragraphs the summary adopts as nearly may be the words of the Act but without quoting, verbatim. Where important omissions occur they are indicated.

²⁶ Ibid., Sec. 2.

or affect the production or transportation of the necessities of life affected or produced by said industries . . . or produce industrial strife, disorder or waste, or endanger the orderly operation of such industries . . . the court has full power and authority upon its own initiative to summon all necessary parties before it and to investigate the controversy, temporarily protecting the status of the parties, property and public interests involved pending the investigation . . . and to investigate the conditions surrounding the workers and to consider the wages paid to labor and the return accruing to capital and the rights and welfare of the public and all other matters affecting the conduct of said industries . . . and to settle and adjust all such controversies . . . The court is further empowered to investigate and determine controversies upon complaint of either party to the controversy, upon the complaint of any ten citizen taxpayers of the community in which said industries . . . are located, or upon complaint of the attorney general of the state. After the investigation and as expeditiously as possible the court serves upon all interested parties its findings, stating specifically the terms and conditions upon which the industries . . . may be conducted insofar as the matters determined by the court may be concerned.²⁷ The court orders such changes, if any such are necessary, to be made in and about the conduct of said industries . . . in the matters of working and living conditions, hours of labor, rules and practices and a reasonable minimum wage or standard of wages . . . with the proviso that all such terms, conditions and wages must be just and reasonable and such as to enable these industries . . . to produce or transport their products or continue their operations in such a manner as to promote the general welfare. The terms ordered by the court continue for such reasonable time as may be fixed or until changed by the parties with the approval of the court; but if the party complies in good faith with the terms of the order for sixty days or more and finds the order unjust, unreasonable or impracticable, he may apply to the court for a modification.²⁸

For guidance in the exercise of the court's powers, the law declares that it is necessary for the promotion of the general welfare that workers in any of the industries . . . should receive at all times fair wages and have healthful and moral surroundings while engaged in such work. The capital invested in such indus-

²⁷ *Ibid.*, Sec. 7. . . . ²⁸ *Ibid.*, Sec. 8.

tries . . . should produce a fair return to the owners. The right of every person to make his own choice of employment and make his own just and reasonable contracts of employment is recognized, but if during the continuance of any such employment the terms or conditions of the contract hereafter entered into be found to be unfair, unjust and unreasonable by the court in any action properly brought before it, the court may modify the terms and conditions so as to make the contract fair, just and reasonable.²⁹

The court has full power and authority to issue summons and subpoenas and compel the attendance of witnesses and the production of books, correspondence . . . of any industries . . . and to make all investigations necessary to ascertain the truth of any controversy. In case any person refuses or fails to obey any summons or subpoena after due service, then the court is empowered to take proper proceedings in any court of competent jurisdiction to compel obedience.³⁰ Further, in case of the failure or refusal of either party to the controversy to be governed by the order of the court, then the court may bring proper proceedings in the supreme court of Kansas to compel obedience to said order; moreover, in case either party to a controversy feels aggrieved at any order made and entered by the court, the party may within ten days after service of such order, bring proper proceedings in the supreme court of Kansas to compel the court to make and enter a just, reasonable and lawful order in the premises. In such proceedings in the supreme court the evidence in the case before the Court of Industrial Relations may be considered, but either party may introduce such other evidence as the supreme court may deem necessary. Such a proceeding in the supreme court is given precedence over other civil cases and the same is to be expedited as fully as possible, keeping in mind a thorough consideration of the matter.³¹ Any proceeding in law or equity to set aside a decision of the Court of Industrial Relations must be brought within thirty days from the time the decision is rendered.³²

4. *Collective Bargaining.* Any union or association of workers engaged in the operation of such industries . . . and incorporated under the laws of the state of Kansas is regarded as a legal entity and may bargain collectively; moreover, the individual members of unincorporated associations desiring to bargain

²⁹ *Ibid.*, Sec. 9. ³⁰ *Ibid.*, Sec. 11. ³¹ *Ibid.*, Sec. 12. ³² *Ibid.*, Sec. 13.

collectively may appoint in writing a person or persons with authority to represent them and the written appointment must be made a permanent record of the union or association.³³

5. *Unlawful Acts.* It is unlawful for any person, firm or corporation to discharge or discriminate against an employee who testifies as a witness before the court or signs a complaint or does any other thing to bring the attention of the court to any controversy; or for any two or more persons to combine or conspire to boycott, picket, advertise or carry on propaganda against any person, firm or corporation because of any action taken under the direction of the court or because the jurisdiction of the court has been invoked.³⁴

It is unlawful for any person, firm or corporation wilfully to limit or cease operations for the purpose or limiting production or transportation to affect prices or to avoid the provisions of the law; but any person . . . so engaged may apply to the court for permission to cease operation; and if the application be found in good faith and meritorious, it is granted by the court; but in all such industries . . . in which operation may be ordinarily affected by changes in season, market conditions or other reasons or causes inherent in the nature of the business, the court may upon application, notice and investigation, make orders fixing rules, regulations and practices to govern the operation of such industries . . . for securing the best service to the public consistent with rights of employers and employees engaged in the operation of such industries³⁵ . . .

It is unlawful for any person, firm, corporation or association of persons to do any act with the intent to hinder, delay, limit or suspend the operation of any of the industries . . . or delay, limit or suspend the production or transportation of the products of such industries . . . However, it is not unlawful for any individual engaged in the operation of such industries . . . to quit his employment at any time, but he must not conspire with other persons to quit their employment, induce others to quit, engage in picketing, intimidate by threats for the purpose of inducing others to quit such employment, deter or prevent others from accepting employment for the purpose of limiting, delaying or suspending the operation of any industries . . . governed by the act.³⁶

³³ *Ibid.*, Sec. 14.

³⁴ *Ibid.*, Sec. 15.

³⁵ *Ibid.*, Sec. 16.

³⁶ *Ibid.*, Sec. 17.

6. *Penalties.* Any person wilfully violating the act or any valid order of the court is guilty of a *misdemeanor* and upon conviction thereof in any court of competent jurisdiction in the state is fined not to exceed \$1,000 or imprisoned in the county jail for not to exceed one year or both fine and imprisonment may be imposed.³⁷ Moreover, an officer of any corporation engaged in any of the industries . . . named and specified or any officer of any labor union, association or persons engaged as workers in any such industries . . . or any employer of labor coming within the act who wilfully uses the power or influence incident to his official position and by such means intentionally influences, impels or compels any other person to violate the act or a valid order of the court, is guilty of a *felony* and upon conviction thereof is punished by a fine of not to exceed \$5,000 or by imprisonment in the state penitentiary at hard labor for not to exceed two years or by both fine and imprisonment.³⁸

7. *Emergency State Operation.* In case of the suspension, limitation or cessation of any of the industries . . . affected by the act contrary to the provisions thereof or to the orders of the court and the court is satisfied such action will seriously affect the public welfare by endangering the public peace or threaten the public health, the court takes proper proceedings in any court of competent jurisdiction in the state to take over, control, direct and operate such industries . . . during the emergency, but a fair return must be paid to the owners of the industry and also a fair wage to the workers engaged therein during the time of such operations³⁹ . . .

8. *Minimum Wage; Reciprocity.* The orders of the court as to minimum or standard of wages are deemed prima facie as reasonable and just and such minimum takes effect as of the time the investigation by the court began. Either party having a balance from the other may sue for it in any court of competent jurisdiction.⁴⁰

9. *Extension to Industries not Specifically Mentioned.* An industrial controversy in any industry not specifically mentioned may, by mutual consent of the parties, evidenced by writing and by the permission of the court, be submitted to the court whose findings and orders have the same effect and force as the decisions in the industries . . . specifically mentioned in the act.⁴¹

³⁷ Ibid., Sec. 18.

³⁸ Ibid., Sec. 19.

³⁹ Ibid., Sec. 20.

⁴⁰ Ibid., Sec. 23.

⁴¹ Ibid., Sec. 21.

10. *Miscellaneous Provisions.* The judges of the court with the consent of the governor and at state expense may make or cause to be made within the state or elsewhere such investigations as to industrial conditions as may be necessary for the purpose of familiarizing themselves with industrial problems.⁴²

The rights and remedies in the act are to be construed as cumulative of all other laws on the subject and not as a repeal except when the same are inconsistent with the act.⁴³

Liberal construction of all incidental powers necessary to carry out the provisions of the act is provided for;⁴⁴ and the entire act is not to be regarded as invalid because one or more sections may be declared invalid by any court of competent jurisdiction.⁴⁵

III. ARGUMENTS FOR AND AGAINST THE BILL IN THE KANSAS LEGISLATURE

The main provisions of the law having been presented, the reader is now in a position to understand the arguments advanced for and against the bill.

At the opening of the special session of the Kansas legislature, employers, labor, and the general public manifested the keenest interest. The chief arguments of labor against the bill were made by Messrs. Alexander Howatt, president of District 14, United Mine Workers of America, W. J. Lauck, statistician for the railway brotherhoods, J. I. Sheppard, special attorney for labor, Glen Willets, chairman of the joint state labor legislative committee, and Frank P. Walsh, general attorney for labor in the Middle-West and formerly a member of the War Labor Board. The different bodies represented were: Order of Railway Conductors, Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen, State Federation of Labor and the United Mine Workers of America.

Alexander Howatt sent out a letter to the miners in his district urging them to file protests with members of the legislature against the enactment of the bill. In the course of the letter he stated that the enactment of the bill would mean slavery for the coal miners and all other classes of labor in the state; that there is a provision in the bill for compulsory arbitration and a prohibition against calling a strike under any circumstances regardless of any injustice imposed by an employer

⁴² *Ibid.*, Sec. 24. ⁴³ *Ibid.*, Sec. 25. ⁴⁴ *Ibid.*, Sec. 26. ⁴⁵ *Ibid.*, Sec. 28.

upon labor. He insisted that the right to strike is the only weapon labor has by which to compel employers to listen to reason. When this right is taken away, labor is rendered helpless.⁴⁶

Mr. Glen Willetts argued that the interests of all producers of the state, whether in field, mine, workshop, railroad or mercantile establishment, would be injuriously affected, as the bill strikes at every fundamental right that labor holds dear; that the bill has the term "collective bargaining," but as a matter of fact it destroys every vestige of collective bargaining; that it attempts to impose involuntary servitude upon the great masses of the producing people of Kansas; that organized labor in Kansas is highly patriotic and will proceed in the future as it has in the past along the lines laid down in the constitution of Kansas and of the United States but he warned the legislature that organized labor will protest to its last breath against losing its God-given right of free action.⁴⁷

Mr. J. I. Sheppard warmly commended Governor Allen for his recent action in the coal strike and shamed labor for not allowing a hospital in Pittsburg to be supplied with coal. He pleaded for labor to have the right to strike unimpaired until it could get a square deal, then co-operation and love in his opinion will take the place of coercion. He insisted that the bill does not need more teeth, as the tooth and claw business should stop, but if a prison sentence as the penalty is put into the law, the teeth are in another place. He insisted that depriving labor of the right to use force by the state itself using force against labor is inconsistent; that it is impossible to allay unrest with threats of jail. He argued that coal miners had a right to break contracts because the courts had permitted the public service corporations to break their contracts with the public.⁴⁸

Mr. W. J. Lauck, statistician for the Railway Brotherhoods, admitted the public's right should be first, but pointed out that the fundamental assumption that strikes can be prevented by legal coercion is contrary to the experience of all leading commercial nations of the country, pointing out that the only effective coercion had been military in France and Russia. Legal coercion with jail penalty is practically impossible because large numbers of men cannot be put in jail and the state cannot attach trade

⁴⁶ Kansas City Star, Jan. 7, 1920.

⁴⁷ Ibid., Jan. 4, 1920. ⁴⁸ Ibid., Jan. 9, 1920.

union funds. He claimed that the fundamental theory underlying the bill is unsound and unjust and urged the legislature to enact a law establishing a tribunal composed of one representative of labor, one of employers and one of the public to act as a board of conciliation and arbitration similar to the Whitely councils in Australia.⁴⁹

Mr. Frank P. Walsh, the general attorney for labor in the Middle-West made a seven-hours speech against the bill. Mr. Walsh sketched the formation and growth of labor unions and dwelt at length upon the great benefits that had come out of the right to strike, a right which he called an industrial weapon for coercing, if need be, a reluctant employer into granting an approximate measure of justice to laborers. He pointed out that the struggle of labor has been cotemporaneous with the development of human freedom as against economic oppression. It is a struggle "toward a higher goal of living and a more fair and beautiful life." The strife of modern industry is a struggle not between those who have and those who have not, but between the actual producer of the commodity and those who live off the actual producer of the commodity. He insisted that the bill contains all the bad features of compulsory arbitration and none of the good ones, arguing that it is un-American and violates the constitution both of Kansas and the United States. It provides a so-called court which is nothing but an administrative commission with the power of life and death given to a body of three men who can scourge labor with a cat-o-nine tails. It, in his opinion, provides an iron band around the state of Kansas and attempts to wipe organized labor off the map. It is undemocratic as the judges are to be appointed by the governor and not elected by the voters. He pointed out that jokers in the bill would permit industrial atrocities as employers might operate in a chosen season and under favorable conditions, then having a large supply of commodities on hand, close down and throw labor out of employment during the dull months. He charged that the employers of labor had brought the Bolsheviki into this country, in order to get cheap labor. But he was not afraid of Sovietism in this country, especially between the Ohio river and the Rocky Mountains. He insisted that organized labor is patriotic and pointed to the fact that not a single day of production of war materials was lost because of labor's attitude during the war.

⁴⁹ *Ibid.*, Jan. 13, 1920.

Further he stated that organized labor did not wish to incorporate because it is inexpedient to do so, that it is impossible to hold labor to strict terms of a contract because labor cannot barter away human relations such as "the laughter and the tears, the joys and sorrows of human beings, the efforts of human beings to make the world more beautiful and advance the human race." He said organized labor is opposed to every section and every utterance of the bill except the object to be obtained through its passage, namely, continuous operation of industries and such settlements as will produce industrial peace, but the methods provided in the bill would not produce these results. He characterized the unrest of labor as a divine unrest and insisted that democracy will find a way to settle its labor disputes through co-operation rather than the exercise of autocratic powers.

Mr. J. S. Dean speaking against the bill in behalf of the employers, said that they opposed it because it gives the court of industrial relations power to control not only wages but also the hours of labor and the living conditions of the workmen, and further because in case of labor disputes upon the failure to submit to the court's orders, the state may take over and operate an industry pending the settlement of the trouble. This action amounts to state socialism. He said the employers are chiefly opposed to that part of the bill which declares the manufacture of food, fuel and clothing to be under state control. He then made an argument against the constitutionality of the bill and asked for amendments. He closed by saying that not all strikes are for higher wages or shorter hours, but these demands are sometimes made merely to camouflage the real purpose of many laborers, which is to destroy capital and private ownership.⁵¹

The leading proponents of the bill were Messrs. E. J. Kulp, pastor of the First M. E. Church, Topeka, Kansas, William Allen White, the Emporia editor, Judge W. L. Huggins, and Governor Allen.

Mr. Kulp stated: "If it is not true that the right of the whole is greater than the right of any part, no matter how powerful or well organized, then there is an end of government." He did not question the right of labor to strike, but said there is a limit

⁵⁰ Mimeographed transcript of hearings before Special Session of Kansas Legislature, pp. 1-91.

⁵¹ Kansas City Star, Jan. 10, 1920.

to this right and the point of this limitation is reached when the effect of the strike is transcended by the well-being of the whole people. In his opinion the main question is whether or not we continue to settle industrial disputes by a struggle of groups or by using a body of distinguished men who after full investigation make an honest and just decision concerning the matter in controversy.⁵²

Mr. White spoke in behalf of the public and pointed out that as civilization grows it becomes more complex and will never return to its simple form. He said the bill proposes that Kansas take a step which must be taken throughout the civilized world to affect with a public interest those things which are concerned with productive industry. Reviewing the subject historically he pointed out that every age, every century and every decade sees some business or interest formerly considered a private business or interest taken over in the public interest. Formerly if two persons had a private quarrel it was settled by the duel, but too many innocent bystanders were injured and duelling was stopped. The time was when a person's money invested in bank stocks and railroads was considered private money but government affected all such investments with a public interest and now controls it in the interest of the public. Now if labor and capital engage in a brawl, this bill says the dispute must be settled in the interest of the public. The court in establishing wages will be interested not in labor as a commodity but in labor as a citizen. The public is interested in capital chiefly to see that it gets justice and a sufficient return to encourage enterprise. In other words, the object of the bill is not to throttle either capital or labor but to emancipate them from their own strangle hold upon each other, and to establish an equitable and living relation between them.⁵³

Judge W. L. Huggins who wrote the first draft of the bill at Governor Allen's request, spoke in behalf of the general public. He replied to the arguments of the representatives of organized labor and then warmly defended the bill. He emphasized the proposition that we must have government not by a class or small group but government of all the people, by all the people, that the will of the majority must be expressed in a legal way. He cited Chief Justice White's opinion interpreting the Adamson Law⁵⁴ as showing that Congress was compelled to pass this act

⁵² *Ibid.*, Jan 12, 1920. ⁵³ *Ibid.*,

⁵⁴ *Wilson v. New*, (1918) 243 U. S. 332, 61 L. Ed. 755, 27 S. C. R. 298.

to prevent a nation-wide strike which would have paralyzed the industry of the country. This, he declared, is not democracy, but legislation by coercion. Further, the refusal of the union coal miners to dig coal at the request of Governor Allen was a similar act. Continuing the discussion, he said that the bill offers a tribunal where labor in the industries included can go and nobody says: "Where is your bond for costs?" It is a court in which the poor man has a chance because the state of Kansas provides him with all the expert advice and legal assistance necessary to make investigations and develop his case with no expense to himself and when the matter comes on for trial he does not have to hire a lawyer. Further, the evidence taken in shorthand by the court reporter is paid for by the state and a transcript is furnished for the supreme court. All this is without cost to the litigant. In deference to labor the state provides a court where industrial justice is administered to the penniless man on the same terms as to the millionaire.

Taking up the charge that the bill is an anti-union measure, the judge denied that the bill throws an iron ring around the state of Kansas and declared there is not a word in it that penalizes labor unions as such. It does prohibit a strike which is a coercive measure relying on force, but an individual worker may quit his work at any time. It is only when he quits for the purpose of hindering . . . any of the industries . . . included in the act he is punished. In other words, it is the intent that makes the crime. There is not a line in the bill that penalizes laborers for holding a meeting for discussing their wrongs. He said:

"No right is taken away from union labor except the right to violate the law. That is all. The bill does say when you quit your employment you have to quit your job. You can't eat your cake and have it. When you quit, you quit, and if someone else wants to come and work in your place you can't prevent him from doing it."

The bill provides a court in a general not a technical sense. It is not a mere commission. It is a court much the same as the court of industry in New Zealand and Australia is a court, where a case is approached in a judicial frame of mind, where there is taking of evidence, finding of facts and the entering of an order. Further, there is a penalty for the violation of the law

because you cannot make bad people obey law unless there is punishment attached.⁵⁵

Governor Allen advocating the bill in his message before the special session of the legislature showed that from April, 1916, to December 31, 1918, there had been 364 strikes in the Kansas coal mines, or an average of 11 strikes a month, most of them called upon the most trivial grounds; that the amount gained by the strikers was \$784.84, with a total loss in wages amounting to \$1,600,454.41; that union labor's bill for industrial warfare in Kansas the past year amounted to \$157,000. He charged that the miners are not left to form their own judgment in the matter but are being urged by a lot of professional labor officials to oppose this measure and to fight this bill because if passed it will render their particular form of leadership unnecessary. He explained that the strongest fight against the bill is being made by the officials of the four railway brotherhoods who constitute "the aristocracy of organized labor" and are leading this fight because they have received orders from their national leaders to kill any bill that looks toward depriving organized labor of that club called a strike. He argued for a court that would meet industrial discontent in such a way as to prevent injustices which breed class hatred and strife, a court that would mete out equal and exact justice for employers, employees and the public. Continuing, he said:

"Any minority which has secured control of a product upon which life depends and which undertakes for the purpose of affecting wages or profit to withhold that product from the public until the public shall freeze or starve has in effect superseded government and has arrogated to itself the control of the destinies of human life which government alone may have the power to safeguard."

Replying to the contention that labor is not a commodity such as merchandise or capital may be, Governor Allen admitted that labor problems involved humanitarian considerations that are vital but he vigorously argued that in dealing with a supply of the necessities of life for the public we deal with humanitarian considerations also and said that fair-minded laborers would admit that the rights of women and children and the general public to an adequate supply of the necessities are paramount to the right of labor and employer to stop production while a selfish

Printed transcript of hearings before the Special Session of Kansas Legislature, pp. 1-19.

quarrel is being settled. He closed his discussion of the settlement of labor disputes as follows:

"By means of such legislation I believe we will be able—

"1. To make strikes, lockouts, boycotts and blacklists unnecessary and impossible, by giving labor as well as capital an able and just tribunal in which to litigate all controversies.

"2. To insure to the people of this state, at all times, an adequate supply of those products which are absolutely necessary to the sustaining of the life of civilized peoples.

"3. That by stabilizing production of these necessities we will also, to a great extent, stabilize the price to the producer as well as the consumer.

"4. That we will insure to labor steadier employment, at a fairer wage, under better working conditions.

"5. That we will prevent the colossal economic waste which always attends industrial disturbances.

"6. That we will make the law respected, and discourage and ultimately abolish intimidation and violence as a means for the settlement of industrial disputes."⁵⁶

IV. ACTIVITIES UNDER THE NEW LAW

The Kansas industrial bill became a law January 24, 1920, and Governor Allen at once appointed W. L. Huggins, Clyde M. Reed and George Wark as the judges of the new court. In selecting these particular men, Governor Allen announced that he was guided by the desire to avoid selecting one representative of labor, one representative of capital and one representative to act as an umpire. He said he did not want men to act as a board of conciliation or arbitration but rather men who would render justice to all.

Judge W. L. Huggins, the author of the bill, was formerly a member of the Public Utilities Commission. He was raised on a farm, was a country school teacher, then county superintendent of schools and finally a lawyer in Emporia, Kansas. His son was one of the volunteer coal miners who answered Governor Allen's call for emergency work in December, 1919.

Judge Reed was the governor's private secretary. He was formerly in the railway mail service but resigned to run his own newspaper, *The Parsons Sun*.

Judge Wark is a graduate of the University of Kansas Law School. During the war he organized a machine gun company and was cited for bravery following the Argonne Forest en-

⁵⁶ Message of Gov. Allen to the Special Session of the Kansas Legislature, printed in "The Court of Industrial Relations," pp. 3-15.

gagement. In announcing Mr. Wark's appointment, Governor Allen said:

"George Wark is the man who left his business to get into the fight. A man can't go through with what Senator Wark has as a soldier and not be broadened to a great extent. We want not only brains in this court; we want heart, for it is to deal with human relations. He is a lawyer, but he is a man and a soldier first."⁵⁷

Before the Court was fully organized, 400 union miners in the Pittsburg district went on a protest strike in defiance of the law. As soon as the attorney general heard of the strike, he started for the scene of action, called the strike leaders before him and asked them to explain their actions. They were taken off their feet by the quick work of the authorities and promised to return to work and obey the law.⁵⁸ The new law was at once invoked. A coal company was closing down one of its mines and other companies served notice of suspending operations that would have thrown several hundred men out of employment. But the new law says that coal mines and other industries supplying the necessities of life may not cease operations without permission of the court following a hearing. By direction of Governor Allen the attorney-general brought suit against the owners of the mines to prevent them from closing. The mines at once reopened and the men were restored to their employment.⁵⁹ The meat-packers in Kansas City, Kansas, discontinued work in several departments because of the switchmen's "out-law" strike, but were reminded at once of the Kansas law and representatives of the packers journeyed to Pittsburg, Kansas, for the purpose of explaining their action. The proposed nationwide strike of the United Brotherhood of Maintenance of Way and Railway Shop Laborers threatened to test the interstate character of the new Kansas law, but the Kansas officials took the position that in case a strike should be called by national, state and local officials of labor unions, they would be subject to criminal prosecution for violation of the Kansas law. Governor Allen contended that if someone outside of Kansas should order someone within Kansas to violate the law and it is done, then those persons are subject to extradition proceedings to bring them within the jurisdiction of the Kansas courts. But the

⁵⁷ Kansas City Star, Jan. 24 and 26, 1920.

⁵⁸ *Ibid.*, Jan. 26, 27, 1920.

⁵⁹ *Ibid.*, Feb. 1, 1920.

national officials weakened and promise was made that Kansas should be exempt from the strike order.⁶⁰

The first complaint on wages to be brought against the railroads after their return to private ownership and the first to be brought with the approval of an international union was filed in the court March 1 by the International Brotherhood of Stationary Firemen, Oilers, etc. The International Board met in St. Louis and authorized the filing of the complaint by the union in the state of Kansas. It was resolved if a strike is ordered by the board the locals in Kansas should be entirely eliminated from either a vote or a call for a walk-out. This was done because of the conviction that Kansas had an unbiased court for the settlement of industrial controversies.⁶¹

A recent letter to the writer from Judge W. L. Huggins describing the activities of the Court of Industrial Relations says:

"We have just recently finished a three-weeks' investigation into the coal mining situation in southeastern Kansas. This was an investigation simply and has resulted in the accumulation of very much valuable information. Although it was undertaken purely as an investigation, we did make some minor orders. These orders were made informally and orally from the bench. I might say, that, in substance, they were as follows:

"1. An order requiring the coal operators to furnish powder and other pit supplies at the same price as heretofore until an agreement could be reached between the miners' and operators' committees.

"2. An order reducing the discount heretofore charged where miners draw wages already earned but before pay day. The evidence developed the fact that the operators had been charging a flat ten per cent discount, which in many cases would amount to 520 per cent per annum. By order of this court the charge hereafter is in no case to exceed two per cent flat discount with a minimum charge of 25c on the smaller amounts, for the purpose of covering the actual book-keeping and cashier expense.

"3. We ordered the 'check-off system' modified. Under this system the union dues, sick and death benefits, union fines, and all special assessments, were 'checked off' by the operators and taken out of the miners' pay checks and turned over directly to the union. The evidence developed the fact that grievous and burdensome fines have been imposed by the union officials for the most trivial causes, that by recent amendments to the consti-

⁶⁰ *Ibid.*, Feb. 12, 1920. This contest was before the railroads were returned to private ownership and the Attorney-General explained that it would be a one-sided contest because of the control by the federal government.

⁶¹ *Ibid.*, March 1, 1920.

tution a fine of \$50 was to be imposed upon any miner who undertook to invoke the assistance of the Court of Industrial Relations in any controversy that he might have either with his union or with his employer, with a fine of \$5,000 for the same reasons to be levied upon any officer of any local union who might do likewise.

"The evidence developed the further fact that the funds of the miners collected in this way have been used for unlawful purposes, such as financing a socialist paper, the defense of men charged with violation of the federal laws such as the recent I. W. W. cases, furnishing a cash bail to persons in prison charged with violation of the federal laws, etc. The temporary order of the court is aimed at these evil purposes."

In addition to the investigation and the informal orders made by the court, two industrial cases have been decided and orders entered.⁶² In the "Topeka-Edison" case⁶³ the complainants prayed the court to make an investigation and prescribe such rules and regulations, wages and hours of labor as may be just and reasonable. The respondent instead of the usual answer in such cases, stated that it "respectfully submits and tenders the issues here presented and welcomes the good offices of the court in a judicial determination of that which is equitable and just in the premises." The court pointed out that originally the matter was filed as action upon a controversy under the compulsory features of the industrial law, but it was really in its present form more in the nature of a voluntary submission by mutual agreement under section twenty-one of the Kansas industrial act. The court took jurisdiction because the controversy was of such a character as to endanger the public peace, health and general welfare, and the continuity and efficiency of the service of furnishing electric current to the people in the city of Topeka and held: Section 9 of the industrial act requires for the promotion of the general welfare that workers engaged in said industries . . . should receive at all times a fair wage while engaged in such labor and that capital invested therein should receive a fair rate of return to the owners thereof. After examining the evidence as to (1) scales of wages paid for similar kinds of work in other industries; (2) the relation between wages and the cost

⁶² State of Kansas ex rel. Richard J. Hopkins, Attorney-General et al. v. The Topeka Edison Company, a corporation. Docket No. 3254-1-2, printed transcript; also Clyde Davidson, Secretary . . . members of Amalgamated Association of Street and Electric Railway Employees of America v. The Joplin and Pittsburg Railway Company, a corporation. Docket No. 3283, carbon transcript.

⁶³ "The Topeka-Edison Case," *op. cit.*, p. 4.

of living; (3) the hazards of the employment; (4) the training and skill required; (5) the degree of responsibility; (6) the character and regularity of the employment; (7) the inequalities of increases in wages or of treatment the result of previous wage orders or adjustments; and (8) the skill, industry and fidelity of the industrial employee; the court granted essentially the contentions of the workers and set the date when the minimum wage should begin with a basic eight-hour day, time and a half for over time and double time for Sundays, and directed the continuance of the order for six months unless changed by agreement of the parties with the approval of the court.⁶⁴

In the Joplin and Pittsburg Railway case,⁶⁵ the wage paid workers by a common carrier was considered. The complaint of the workers cites the fact that a controversy existed between the respondent and employees regarding the matter of wages which were unfair, and not sufficient to provide a reasonable living for the employees; that if the controversy remains unsettled it would endanger the continuous operation and efficiency of the service rendered by the respondent; that the controversy if not speedily settled would endanger the public peace, the public health and general welfare of a large section of the state of Kansas. To the complaint the respondent answers that the court had no jurisdiction because the service rendered by respondent included inter-state as well as intra-state business; but the court took jurisdiction and granted the prayer of the workers following the same line of reasoning as in the Topeka-Edison case. Touching the point that respondent was not financially able to pay an increased wage, the court said:

"However, it must be admitted that wages to labor should be considered before dividends to the investor and that business which is unable to pay a fair rate of wages to its employees will eventually have to liquidate."⁶⁶

The court made its order apply only to such employees of the respondent as are actual bona fide residents of the state of Kansas and whose work is located wholly or principally within the state.⁶⁷

The leading opponent of the new Kansas legislation is Mr. Alexander Howatt, President of District 14, United Mine Workers of America. He was committed to jail by Judge A. B.

⁶⁴ *Ibid.*, pp. 5-10.

⁶⁵ "The Joplin Pittsburg Railway Case," *op. cit.*

⁶⁶ *Ibid.*, p. 6.

⁶⁷ *Ibid.*, p. 7.

Anderson of the federal court at Indianapolis December 22, 1919, because he did not promptly call off the coal strike in Kansas in compliance with the court's order, but after having been in jail a short time he was released on probation when Mr. Warum, his counsel, satisfied Judge Anderson that President Howatt would comply with the court's order.

Upon returning to Kansas, Mr. Howatt immediately assumed a belligerent attitude toward the new Kansas legislation. On March 12, 1920, under his leadership, the convention of delegates from District 14, United Mine Workers of America, amended the constitution to empower the placing of a fine of \$50 on any member who should appeal a case to the Kansas Industrial Court over the head of district officials and a fine of \$5,000 for any district official who appealed a case to the Court. Further in a speech before the representatives of the Illinois Coal Miners' Union, Mr. Howatt on March 20 announced a program for launching a general miners' strike in Kansas early in April in defiance of the law. In the course of his speech he said:

"But come what will and whether or not my bones rot in a prison cell, I am going to fight this law with the force of 12,000 miners in Kansas and regardless of consequences give Governor Allen cause to remember that organized labor must and will have the right to cease work at its will."⁶⁸

Because of these threats Attorney-General Richard J. Hopkins and Fred S. Jackson, attorney for the Court of Industrial Relations, filed a petition with Judge Andrew J. Carrant of the Crawford County district court praying for an injunction against Alexander Howatt and forty-seven officials to restrain them from calling a strike early in April. The petition stated that these officials were engaged in a conspiracy to defy the industrial law and occasion economic waste, loss of wages to labor and suffering to the people of Kansas. On March 30 Judge Curran granted the prayer and issued a temporary order to restrain the mining officials from interfering with the production of coal.⁶⁹

Early in April, 1920, some of the conservative members of the coal miners' union requested the Industrial Court to come to Pittsburg and make a thorough investigation of conditions in this district. The court went to Pittsburg and subpoenaed President Howatt and several other union officials to appear and testify. Mr. Howatt declined to appear and testify, whereupon the

⁶⁸ Kansas City Star, March 12, 1920.

⁶⁹ Ibid., March 30, 1920.

Industrial Court requested Judge Curran to compel him to do so, and the judge ordered Mr. Howatt to appear forthwith before the Kansas Court of Industrial Relations to testify in the investigation that was instituted in compliance with the request from various members of the union. This Mr. Howatt again indignantly refused to do, saying:

"We officials of the United Mine Workers of District 14 do not recognize this Industrial Court. Let its members go down into the mines and learn the business the same as we did. We may be dragged into court but we will absolutely refuse to answer any questions as we do not recognize the court's authority or existence. Since it is not a court, it has no power to summon us."

On April 7 Judge Curran cited President Howatt for contempt of court and on April 9 committed him to the Crawford County jail. In the course of his decision Judge Curran said:

"The judgment of this court is that you be confined in the Crawford County jail until such time as you consent to appear before the Court of Industrial Relations of Kansas and answer such questions as the court may ask you."⁷⁰

On April 12 a big demonstration was held in Girard for Mr. Howatt where he was in jail for contempt of court. Sheriff G. C. Webb so far forgot his official duty as to allow Mr. Howatt to make a one-hour speech to the assembled crowd of miners from the balcony of the jail. In the course of the speech Mr. Howatt said: "We will not recognize the court. It is no court." He paid his respects to Governor Allen and Judge Curran, saying: "People talk about them as sturdy Americans. Sturdy Americans who send men to jail who have committed no crime!" After the speech he held a reception for the crowd. As a result of Sheriff Webb's neglect of official duty, ouster proceedings were filed in the supreme court, and rather than face the charges, Mr. Webb resigned.

On April 16 President Howatt through his attorney filed a motion with Judge Curran for a new trial. The motion was denied, whereupon an appeal was taken to the supreme court of Kansas and President Howatt and other union officials were released from jail on bond.

Judge Andrew J. Curran on April 29 overruling the demurrer to the application for a temporary writ of injunction to restrain the officials of the Kansas miners' union from calling a

⁷⁰ *Ibid.*, April 9, 1920.

strike, held the Kansas law creating the Court of Industrial Relations constitutional. This prepared the way for an appeal to the supreme court of Kansas and finally an appeal to the Supreme Court of the United States. Judge Curran in the course of his opinion holding the act constitutional said:

"Counsel for defense have had much to say about the divine right to quit work, but they have had nothing to say about the divine right to work. Their talk about the divine right to quit work should be relegated to the realm to which has been relegated the divine right of kings."

Judge Curran did not find the act in conflict with the constitution of Kansas or the federal constitution. He said the legislature had expressed the will of the people and any doubt as to the motives of the legislature or the economic reasons for its action must necessarily be resolved in favor of the legislature.⁷¹

In this article the writer has attempted to do nothing more than give the steps leading to the passage of the new Kansas legislation on industrial disputes; set forth the leading provisions of the law; give the arguments for and against the bill as it was discussed at the hearings of the special session of the Kansas legislature; and finally detail the activities of the new Kansas court of industrial relations. In the next article the constitutionality of the Kansas statute will be examined.

(To be continued.)

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⁷¹ Printed transcript of Judge Curran's decision.