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Recommended Citation
Carl I. Wheat, American Legislation for the Adjustment of Industrial Disputes, 28 W. Va. L. Rev. (1921). Available at: https://researchrepository.wvu.edu/wvlr/vol28/iss1/3

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AMERICAN LEGISLATION FOR THE ADJUSTMENT OF INDUSTRIAL DISPUTES

By Carl I. Wheat**

THE LIMITS OF EFFECTIVE STATE ACTION.

IV. SUGGESTIONS FOR STOPPAGE-AT-THE-SOURCE MECHANISM.

Recent plans for agencies to stop strikes and lockouts, have usually been built on the idea that a national body is necessary, somewhat after the order of the National War Labor Board, as "a supreme court for industry." Such plans are those of the President's Industrial Conference, and of the Hon. Basil M. Manly. Certainly some national machinery is necessary, especially for the cases of interstate strikes and lockouts, but the very vastness of the problem is such as to preclude effective action if only the national government creates the machinery, and federal action of a truly comprehensive sort is extremely improbable at the present time. Therefore, the proposals which follow are for a state and not a national system, although the same principles apply to both, and although the national system might be preferable were we to have to choose between them. The plan for an agency for stoppage-at-the-source of the industrial difficulties which today cause most strikes follows.

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A Bureau of Industrial Relations should be created within the state Department of Labor, the chief of this bureau to be a salaried official, giving his full time to the work and chosen for merit rather than on any political basis. This chief of the Industrial Relations Bureau should be one of the state deputy commissioners of labor, but his work and his bureau should be totally distinct from those bureaus which enforce the workmen's compensation or the minimum wage laws.

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* This is the conclusion of the series of articles on this subject. They consist of chapters from a forthcoming book which is to be published as one of the new series of Harvard Studies in Administrative Law.

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The value of a trained, salaried official for this position cannot be discounted. He should not be too closely connected with the compulsory features of the Department of Labor, for nothing hinders the work which he must do more than the feeling on the part of employers and employees that they are being "forced" to do something. He should be chosen by competitive examination and paid sufficient salary to enable the state to set its standard high.

—B—

The Bureau of Industrial Relations should be provided with at least two salaried assistant chiefs, chosen by competitive trial from men who understand industry and its problems, and who can give full time to the work.

The work of these assistants would be similar to that now done by the various state boards of mediation and arbitration. They would be chiefly engaged in the mediation of such strikes and lockouts as should occur, and they should be particularly active in attempting to prevent the development of acute disputes in industries in which strikes would deleteriously affect the public welfare. They should be selected by competitive examination, in like manner as the bureau chief.

—C—

The Bureau of Industrial Relations should be provided, as soon as possible, with a staff of deputy industrial relations commissioners, selected from employers' associations, trade unions, and also from industrial localities. These persons should receive no salary, but should be paid a per diem allowance for time actually spent in the interests of the bureau, and expenses connected therewith.

The value of such deputies in the field of industry itself cannot be overestimated, and has not been given its proper place in most of the plans as yet formulated. In every large industrial center at least one, and probably two such deputies should be chosen. In addition, every trade union of any consequence, and the associations of employers in the various industries should have representatives upon this staff. Together, they would make up a consulting and advisory staff, and their efforts in the way of notification of threatened difficulty to the bureau would be invaluable. As yet, no state board of arbitration has been able to solve the difficulty of getting early notification of trouble before it becomes acute. This system would make such early notification possible, and the frequent conferences of the whole staff would be invaluable.
A small, but selected, statistical staff should be provided within the Bureau of Industrial Relations, working in close co-operation with the state Bureau of Labor Statistics, and those of other states and the Federal government.

This small group of experts would take the place of hit-or-miss experts at present provided for in such states as Massachusetts. They would be permanently on the job, and it would be well to allow them to call in for their assistance other experts in various special lines if information on those special lines is needed. Such action would serve to give the parties to disputes greater confidence in their researches.

Such a group, under the direct orders of the Bureau of Industrial Relations, would be able to furnish data at any time for the assistance of the bureau or any of its officers in determining any particular question. The lack of such a statistical body has been one of the great faults of state boards of arbitration in the past.

The state, having formulated a code of industrial relations, its enforcement, in so far as any enforcement by parties outside of industry itself is necessary, should be given over to the state Department of Labor. As many of the principles of this code as possible should be made enforceable by the courts, either on petition by an injured party, any other interested person, or the state Department of Labor.

The function of the Bureau of Industrial Relations in connection with this code would be to make its provisions clear to industry, as the National War Labor Board did in its decisions during the war. Through its corps of deputies it would have the very best possible means of coming into direct touch with the various phases of industry, and could furnish data to courts before which industrial questions were being tried.

Power should be given to the Bureau of Industrial Relations to investigate any situation which it considers serious. In this connection it should have all the powers of a court of record in the way of summoning and enforcing the attendance and testimony of witnesses, and of calling for and enforcing the production of books, papers, and other necessary documents.
Such investigations should not necessarily wait until a dispute has become so acute as to threaten a strike or lockout. They should be begun at the very outset, and the investigating body might well be composed of members of the corps of deputies, particularly those who are connected with the same industry in which the dispute has arisen. In this way, whatever power there is in the force of an enlightened public opinion can be brought into play.

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Within the Department of Labor, but distinct from the Bureau of Industrial Relations, should be erected a carefully constructed Employment Bureau.

This is an absolute necessity if the present chaotic condition of labor and employment is to be bettered. The evils of unemployment are so great as to warrant all possible efforts on the part of the state to minimize the suffering contingent thereto. The fear of unemployment, and unemployment itself, constitute together one of the most potent causes of industrial unrest.

In addition, anything that can be done to systematize and better the life of the migratory laborer could well come through such a bureau. This problem is an insistent one and cannot be solved by repression, nor can it be ignored, for the migratory laborer forms an increasingly large class in the community and is a danger from every point of view.

While clearly recognizing that the Bureau of Industrial Relations, here suggested, offers no final solution of the problem, which can only be solved by removing the cause, it would, nevertheless, if ably administered, serve to accomplish in large measure the ends which the state boards of arbitration have failed to accomplish. Its chief aim should be to seek the causes of industrial strife and to devise methods for eliminating them, and mediation and arbitration should be clearly recognized as merely temporary palliatives, serving the "end" of peace until such time as that of the social good can be more nearly realized.

Whatever be the nature of the body created, if it is to be successful it must be rather a co-ordinating than a ruling body. It must not only be the central body from the geographical standpoint, but it must become the co-ordinating body for the various industries of the state in which it exists. The Second Presidential Industrial
Conference erred in putting all the emphasis upon organizing peaceful agencies along geographical lines, rather than in organizing the means for peace vertically in each industry. The projectors of the Whitley Councils in England recognized this fundamental matter, and urged the organization of councils in each industry, and not inter-industrially in each locality. The relation of a state Bureau of Industrial Relations to the organizations which may be built up within each industry is that of a co-ordinating body, and through its advisory staff it will be in a position to direct the paths of organization into the most successful channels.

As for the increased cost of such a body, it would be met by the savings to the people from an adjustment in a single large strike. This should be taken into consideration by those legislators who, in the past, have been prone to deny to state agencies sufficient nourishment in the way of funds. The local and industrial deputies could be used in a variety of ways, such as for the purpose of gathering statistics and developing new machinery, and would not be costly when measured against the saving they would no doubt be able to effect by their activities.

V. "THE ESSENCE OF LAW IS ITS ENFORCEMENT."

No legislation, no matter how theoretically well constructed, can ever take the place of brain, tact, good-will and energy on the part of those who administer and enforce the law. This has been abundantly proved by the history of the state board of arbitration, and the like, with whose work we have been concerned in the present study. Too many complaints on the part of both parties to industry that they are forced to direct action by the inaction of public enforcement agencies is justified. If men cannot gain justice by means of law they will fight for it. If labor in the modern state cannot by means of lawful and peaceable methods, attain that condition of security and proper living standards to which it aspires, it will attempt to do so by force. The same is true of employers. The use of force in industrial disputes, say some, is unreasonable and unjustified. But until we provide methods by which justifiable ends may be attained through some other agency, force will continue to rule in industrial relations. And unless the agency which is provided gives to the aim of better relations its fullest possible genius, it will fail. "The essence of law is its enforcement."

The distrust by the parties of industry of the means as yet pro-
vided or planned for these purposes was well expressed by President Scott of the International Typographical Union in his annual report published in August, 1920, when he said:

"Why wait for political action? [Joint conference councils composed of representatives of employers and employees in each industry] could do more to adjust the grievances of the workers in a month than government commissions could accomplish in ten years. There has been too much unnecessary delay, too many professional politicians and too many amateur cooks on the job, and too many new-fangled inventions which do not function."

The difficulty in the past has been largely due to the fact that no "continuous process" had ever been devised to deal with the problem in a systematic and rational way. The state boards of arbitration were not constructed in such a manner as to make such action possible, and they invariably failed to accomplish the end for which they had been constructed,—i.e., the abolition of strikes and lockouts. It has been said that "there is no final solution so long as there is life," since life means change and difficulties. But it is evident that the obvious defects of the present state boards can be largely eliminated, and that much work of value can be accomplished, provided, that the efficacy of prevention rather than mere cure be recognized, and provided, that the administration of the statutes be made very much more efficient than was possible under the old arbitration laws. The first aim must be the creation of a mechanism of industrial peace within the workshop, and the creation of a desire for industrial peace in the minds of those actually engaged in industry. In too many cases the legislators of today are demanding compulsory arbitration, thus adding palliative to palliative and ignoring the fact that in prevention lies the only sure cure.1

The "rights of the public" were not discovered by certain Kansas authorities early in 1920, despite loud trumpeting in the press to that effect. What they did discover was a serious situation,—coal for their homes and hospitals was being withheld through a strike,—and they decided to demand that the 90% non-industrial popula-

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1 "It is useless to multiply laws, writs and compulsory processes, until the public has definitely and unmistakably set its face towards the enforcement of the law. A compulsory statute might be praiseworthy as the expression of a pious wish, but it would settle no controversy." James T. Young, "Government Arbitration and Mediation," 69 ANNALS OF THE AM. ACAD. OF SOC. & POL. SCI. 265, 277.
tion of the state should be given the coal that was needed. They did this through prohibiting strikes. It is true that they tried to put another means of enforcing his rights into the hands of the laborer, i.e., the Court of Industrial Relations, but the law provided this court, with no norms for decision, and left it to its own devices, not even providing that the personnel of the court should be drawn from men connected with industry and its problems. A recent authority has said, "The plan contained in the Court of Industrial Relations, as passed recently by the Kansas legislature, is unacceptable because it forces compulsory adjustments without any safeguards to capital and labor." It is possible that the court, if it be in the hands of able administrators, will be able to work out such a code of principles of industrial relations, and to make industrial justice a reality, but the method taken is a round about one and possesses within it the seeds of failure and the germs of distrust. Already, many strikes have marred its career, and the attempts of the court to enforce its orders by imprisonment and repression have caused serious unrest.

Complete publicity with all the cards on the table, and good faith with no suspicion of repression or double-dealing is the secret of satisfactory industrial relations. This is what certain writers have recently been calling "the golden rule in industry." It is not a guaranteed panacea, but it will accomplish much if tried in absolute good faith. Moreover, the administrators of whatever law is placed upon the statute books to aid better relations, in addition to being energetic in its enforcement, must demonstrate their complete openness, frankness, disinterestedness and good faith. These are the real safeguards against arbitrariness on the part of the administrative, and even where no standards or norms of decision are provided, a frank recognition that we are in the field of "judicial guesswork" makes for success. As yet there remains a temporary, but vast residuum which has not been explored, and about which "the returns are not yet all in," and the danger of a too early attempt to formulate an exact code should be remembered. A stage of strict law would be perhaps more dangerous than our present anarchy in industrial relations. Clearly, the problem is one of striking a balance between the two great opposing forces — on the one hand discretionary power, unhampered by rules or principles, which in

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the case of arbitration leads to the unfortunate result of compromise and splitting-the-difference—and on the other, the tendency of administrative bodies, both public and private, to "crystallize particular applications to particular cases into rules and thus destroy the standard" by ushering in an era of strict law wherein rules become fetishes, and the doing of justice is forgotten. The success of any system which may be devised depends entirely upon the type of men who are selected to administer it. Blind obedience to rules is as bad or worse than having no rules at all, and to strike the happy medium requires the exercise of a high degree of skill. For this reason the selection of men to fill these positions is a matter of the highest importance.

While the main necessity is to have some sort of machinery ready and in action before disputes arise—for any machinery is better than none—the type of machinery which is provided will have much to do with the success or failure of the agency created, as has been seen in the histories of our various state boards of arbitration.

Whether the desirable end of voluntary action through internal machinery for conference and bargaining will come through the joint-council type of agency, as exemplified by the Whitley Councils in England, or will develop along some other line, will probably not be known for some time, even in England, which is immeasurably nearer its attainment than are we in the United States. Meanwhile, although we must never forget the inadequacy of state action in the past, we must realize that only the state is in a position to take general jurisdiction over the problem, and to lead industry out of the woods. Moreover, there will always be, as has been pointed out before, an unorganized fringe of unskilled and migratory labor that can only arrive at industrial peace through the efforts of society at large. Frank recognition of the fact that collective bargaining is better than arbitration, that voluntary action is immeasurably preferable to force, and that the state has a real function to perform in the field of industrial relations will do far more for the cause of industrial peace than all the incantations of "law and order." The new structure of society is not to be founded upon incantations, but only upon "a new public temper" combined with earnest, intelligent study of the difficulties confronting us.

Legislation devised in that temper can be confidently expected to bear much fruit. What must be borne constantly in mind is the necessity of getting away from mere peace as the end of effort, of reaching beyond this primitive conception and endeavoring to procure certain gains for society as a whole, at the same time that peace is secured in industry. To do this we must develop as far as possible the private agencies for furthering industrial peace, and if we set up a state agency for furthering our aims, it must not be a mere paper board, but a real working body which may function under the authority of reason as well as the authority of the state. If such an agency works in collaboration with the private bodies that are growing up in industry, encouraging agreements between the parties to the end of avoiding disputes before they arise; if it keeps in close touch with both parties to industry and learns their needs, and if it offers careful and thorough statistical assistance to all who call for it, it is assured a reasonably successful career.

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