

Giving the Public an Industrial Ballot

By W. L. HUGGINS

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UNDER the common law since very ancient times certain industries and vocations have been regarded as impressed or affected with a public interest. The inn, the blacksmith shop, the grist mill, are familiar examples. Two hundred and fifty years ago a noted English jurist, Sir Matthew Hale, stated the principle of public interest in language which has been frequently quoted by law writers and by courts. Sir Matthew said, in substance, that if the king himself be the owner of a public wharf which all must use who come to that port to unload their goods, then the charges which the owner may make for the use of his wharf and other loading facilities must not be exorbitant, but must be reasonable and fair because the wharf is now impressed with a public interest and is no longer a matter of private right only. This is the principle of public interest as accepted in all the English speaking countries. In the United States, the government regulates that class of industries known as "public utilities" in the interest of the general welfare.

However, under the American system, the legislative body is often called upon to declare and extend the law to new conditions. The legislature of my state, in attempting to find a solution for industrial problems, adhered strictly to the established principles of the common law. In enacting our industrial code, we have not attempted to destroy, nor to alter, nor to remove any of the ancient landmarks of the law. We have founded this legislation upon the principle that certain industries and vocations are affected with a public interest. We have added to the long accepted list of industries so affected those which directly and vitally influence the supply of food, clothing and fuel. These three classes of industries, together with those which heretofore have been known as public utilities, are deemed "essential industries," and are by legislative action declared to be subject to regulation. If the railroads, telephone lines, electric plants, and other similar institutions are so affected with a public interest as to be subject to regulation by the state, surely the lawmaking body has authority to designate industries vitally influencing the quantity and quality of food, clothing and fuel of the people as affected with a public interest. The legislature of my state in this new industrial code has attempted to do two new things only:

First. It has impressed with a public interest the manufacture of food and clothing, and the production of fuel.

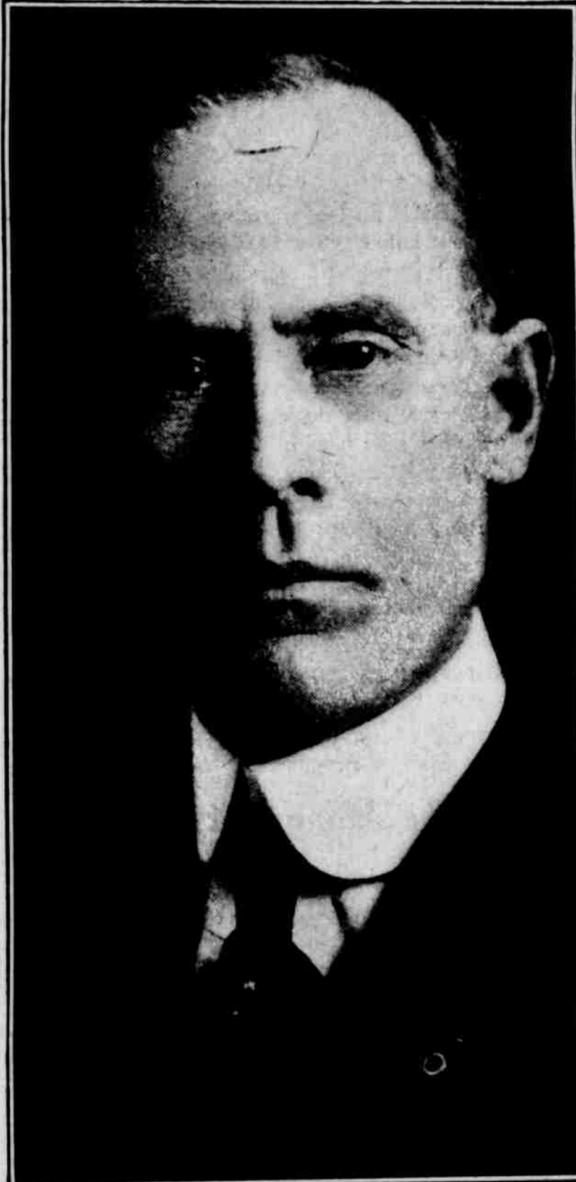
Second. It has declared labor as well as capital invested and engaged in these essential industries to be impressed with a public interest, and to owe a public duty.

The other provisions of the law merely establish the procedure by which the Court of Industrial Relations functions in adjudicating controversies and in the regulation and supervision of the essential industries "for the purpose of preserving the public peace, protecting the public health, preventing industrial strife, disorder and waste, securing the regular and orderly conduct of the businesses directly affecting the living conditions of the people . . . and in the promotion of the general welfare."

The Kansas Court of Industrial Relations is emphatically not a tribunal for arbitration. It is, therefore, fundamentally different from the labor courts of Australasia. The Kansas law is based upon the principle of adjudication, not arbitration. None of the three members of the court have any interest in the controversy. It is intended that they shall be as impartial and, if you please, as ignorant as the judges of the supreme court of the state. The law provides for the adjudication of industrial controversies in the same orderly way, by the same kind of tribunal, as has been used in the adjudication of all other classes of controversies for hundreds of years. The Anglo-Saxon people in general accept without question the authority and jurisdiction of their courts to adjudicate all matters affecting the life, the liberty, and the property of the citizen. If a man's right to live is justifiable, if his liberty, which to the Anglo-Saxon is dearer than life itself, can be taken away from him by the judgment of a court, surely disputes as to wages, hours of labor, and working conditions are also subject to adjudication by the courts. A man who has no faith in the courts, has no faith in, and no love for, democratic institutions.

The Kansas industrial code provides for a Court of Industrial Relations consisting of three judges to be appointed by the governor for definite terms. It provides that, in case of a controversy between employers and workers, or between crafts or groups of workers, engaged in any of said industries, if the controversy shall reach the point that it endangers the continuity of service, the supply of the necessities of life, threatens the public peace, endangers the public health, or affects the general welfare of the people, the court, upon its own initiative, or upon the application of either party to the dispute, or upon the petition of the attorney-general, or upon the complaint of ten citizen taxpayers of the locality, shall take jurisdiction, shall investigate, determine and adjudicate such differences, make findings of fact and issue an order in the premises. By such order the court may fix rules and regulations concerning hours of labor and working conditions and establish a minimum wage or standard of wages, all of which must be observed by both parties unless changed by agreement of the parties and ap-

proval of the court. It provides that if either party to the controversy be dissatisfied the matter may be taken directly to the supreme court of the state for review and shall be by the supreme court given preference over other civil cases in the matter of an early hearing. Throughout the controversy and litigation the industry must continue to operate. In other words—when a private quarrel between employers and employes approaches the point at which open hostilities and industrial warfare are imminent, when the homes of the



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land are threatened, when the health and comfort of women and children are jeopardized, the state, in the exercise of its police powers, steps forward and says: "Hold! Thou shalt not. Thou shalt not."

The prime purpose of the industrial law is the protection of the public against the inconvenience, the hardships, and the suffering so often caused by industrial warfare. This is an experiment in government, not a problem in sociology. However, while the Kansas Industrial Law is founded upon the proposition that the government has the power and right to use any means necessary to preserve the public peace, protect the public health, and promote the general welfare, yet the law also guarantees Anglo-Saxon justice both to employer and to employe. It protects every citizen in his God-given right to work, to support his family like a free man without molestation and without fear. It confirms the right of every man to quit, to change his employment like a free man; but it forbids him either by violence or by intimidation to prevent others from working. It assures capital invested in the essential industries freedom from the great economic waste incident to industrial warfare. It offers a fair return upon such investments. It guarantees to workers engaged in these essential industries a fair wage, steady employment, and healthful and moral surroundings. It gives to employer, to employe, and to the general public alike an impartial tribunal to which may be submitted all controversies vitally affecting the three. It declares anew the democratic principle that the will of the majority legally expressed shall be the law of the land. It prohibits and penalizes the rule of the minority by means of intimidation. It prohibits trial of industrial disputes by gauge of battle, but it offers in place thereof a safe, sane and civilized remedy for industrial wrongs. In other words—the Kansas law is founded upon the old principle of public use an-

nounced so long ago by Sir Matthew Hale, but it has extended that principle to meet modern conditions.

Some have called this effort to compel capital and labor to cease industrial warfare an infringement of corporate and individual rights. If so, it is simply a re-statement of the old principle that the rights of the many are superior to the rights of the individual; that every man's rights leave off where his neighbor's begin; that no man may so use his own as to injure others.

It is the glory of Anglo-Saxon jurisprudence that it affords a remedy for every wrong and that justice is administered by impartial tribunals according to established rules. The Kansas industrial code provides a remedy for wrongs inflicted upon the public by industrial disputes, but it also carefully guards the rights of the parties to the dispute. The law "withholds no good from them to whom it is due." The legislature of my state in the Court of Industrial Relations has provided a tribunal in which justice is administered without money and without price. The penniless man, if he be engaged as a worker in any of the essential industries, may come into this court with his complaint. He is not required to give security for costs nor even to pay his own witnesses. The state provides him with legal advice, with expert accountants and engineers, and with trained examiners who will investigate his case, prepare his evidence and present it to the court without a penny's charge. The law enjoins upon the court that it shall do all things necessary to develop the facts in the case.

The law does more than this for the worker. It provides that if he be dissatisfied with the adjudication of his case by the Court of Industrial Relations, he may take it for review to the supreme court of the state. The transcript of his evidence is prepared for him and he goes with his grievance and with all his evidence to the supreme court still without a penny's cost. I am not aware that any other legislature or parliament in any state or country has ever created such a tribunal to which the penniless man may come and receive the same treatment as though he were a millionaire.

The law has done more than this for the worker in the essential industries. It has expressly declared that it is necessary for the general welfare that he shall receive a fair wage and have healthful and moral surroundings while engaged in his labor. The law has a tender regard for the wife and children of the laboring man. The duty is thus placed upon the Court of Industrial Relations to determine in each controversy what is a fair wage. The court has already, in one of its orders, defined a fair wage. It has said that a fair wage is one which will enable the frugal and industrious workman to provide himself and family with all the necessities and a reasonable share of the comforts of life; that, in addition thereto, a fair wage should provide opportunities for intellectual advancement and reasonable recreation; that a fair wage should be such as to enable the parents working together to provide the children with good, moral surroundings, opportunities for education and a fair chance in the race of life; that a fair wage should enable the frugal man to provide for sickness and old age.

Further than this the law has extended to unorganized the same opportunity as to organized labor, and so the individual worker on his own responsibility may invoke the jurisdiction of the court to protect him.

There is one question which I will not debate with any man. It is the question of obedience to the law of the land. Loyal, patriotic citizens will obey the law from choice, and the other kind will obey it from compulsion. I believe that the great majority of organized workmen in America are loyal and patriotic. I am not disturbed by the loud boasting of some of the alleged leaders that "organized labor will not give up the right to strike, law or no law." But this declaration on the part of some of the responsible heads of organized labor has joined the issue in this country. The question thus is: "Shall democracy prevail and the will of the majority legally expressed remain the law of the land, or shall Bolshevism take the place of democracy?" The issue is plain and it cannot be misunderstood.

The only surprise that I have had in regard to this legislation and this court has been that which has come to me when I have learned that men, who are receiving salaries from labor unions and who are under the strongest moral obligations to use their utmost endeavors to promote the best interests of the real workers of the land, have denounced this beneficent law as an instrument of oppression. Such a position upon the part of highly paid officials of labor organizations is to me simply astounding.

We are not boasting. We fully realize the force of the Scriptural injunction: "Let not him who girdeth on his harness boast himself as he who putteth it off." We realize that we are operating in the experimental stage but we are going forward with great confidence. We believe our industrial code will stand, for we have builded it upon the firm foundation of the common law. We have a state of approximately two millions population. I feel safe in saying that seventy-five per cent of our people are of Anglo-Saxon stock, and I also feel confident in asserting that practically all the other twenty-five per cent are fully imbued with the Anglo-Saxon spirit. The spirit is more important than the blood. We feel we shall succeed. Our cause is just. Our trust is in the intelligence and patriotism of our fellow citizens.