CHAPTER X

WISCONSIN AND THE PROBLEMS OF THE INDUSTRIAL WORKER

The people of Wisconsin who live on farms have problems which are different from those of other states where the soil and climate are different. The people who work in the stores, factories, hotels, and other places of business in the city have very much the same problems as those who live in Chicago, New York, and San Francisco.

One of the biggest problems for them is personal safety. They work in great buildings owned by people they have never seen. They have no way of knowing whether these buildings are safe; and they could do very little about it if they knew they were not. They often do not know the employers who own the machinery and equipment. They do not know anything about the people with whom they work, and they have nothing to say about it.

The machines with which we work are growing larger and more dangerous. There is a good deal of difference between the hand spade with which we used to excavate our cellars, and the great monsters that scoop up tons of earth at one time. A light tap with one of these big scoops could flatten out a little human being instantly.

Grandmother could doze over her knitting needles without much danger. But grandmother's grandchild, who watches over a knitting machine with fourteen thousand needles might find herself pretty well cut up if she tried dozing over her work.

The increase in the number of work accidents in the last century brought about an increase in the number of damage cases in the courts. Several centuries ago the English courts declared that when a person was injured, he could recover damages from the person responsible for the injury. As machinery increased and it became more and more dangerous to work, the number of cases of persons injured at work asking for damages from their employers greatly increased.

It was often very hard for the employer to pay damages. A single serious accident in a plant might cost the employer so much for damages that it would break up the business. Many employers tried to get out of paying damages. They used various methods. Some of them asked their employees to sign a paper assuming the risks they took and relieving the employer of responsibility. This was known as the "assumption of risk" method. Some tried to get out of paying and did get out of it on the ground that some other employee, not the employer, was responsible for the accident. This excuse was known as the "fellow-servant" theory. Still others tried to escape and did escape on the ground that the employee injured had done something he ought not to have done, and was at least partly to blame for the accident. This was known as the "contributory negligence" theory.

Some courts accepted all these defenses of the employer. This meant that as a rule the injured employee got nothing. It could almost always be proved that either the employee or some fellow servant had been negligent in some way.

So far as the suffering of the injured wage earner and his family was concerned, it did not make any difference who was to blame for the accident; the employer, the injured employee, or some careless co-worker. The family needed the money it was losing. Consequently they would take a chance on suing for damages, even though the outcome was doubtful.

The courts became clogged with damage cases. If after a year of postponement the lower court got to a case and decided for the injured wage earner, the employer
might appeal to a higher court and there would be another long wait. Sometimes whole families would grow up in dire poverty while they waited for damages for some injury to their father.

Worse still, by the time the damages were awarded, the lawyer’s costs on both sides were so much that it took most of the damages to pay the workman’s lawyer, and the employer had a big bill to pay his own lawyer besides.

It was a bad situation. The employees did not like it; the employers did not like it. Only the lawyers profited, and many of them were disgusted with the whole arrangement.

The result was that after years of agitation and discussion, the legislatures of Wisconsin and other states worked out a regular plan of accident compensation and set up a board to administer it.

In 1909 the legislature of Wisconsin appointed a committee to study the question for two years, and report some plan to the next legislature. Meanwhile, in 1910 the legislature of the state of New York passed a law requiring employers to pay compensation for accidents regardless of contributory negligence, fellow-servant negligence and assumption of risk.

The Supreme Court of New York held the law unconstitutional. They said that it violated the fourteenth amendment to the constitution of the United States which provides that no person shall be deprived of his property without due process of law. They held that simply compelling employers generally to pay a certain amount to a person for a certain kind of injury was taking property away from one individual to give to another without due process of law and was not legal.

The Wisconsin lawmakers took warning from the troubles over the New York law. The Wisconsin law of 1911 was very carefully worked out. There were long hearings before the legislative session began and long hearings afterwards. Criticisms and advice were welcomed. The members of the interim committee and the draftsmen in the Legislative Reference Library did their best.

They produced a law which the courts could not say was taking property without due process of law. The law gave the employer the choice between coming under the new arrangement or staying under the old. If the employer came into the new scheme, he could join some insurance company—either a regular old-line company or a cooperative company made up of employers, and pay regular premiums so that there would be sure to be a fund from which to pay for accidents to his workmen. In case of accident, payment would be made from this fund according to a regular schedule; so much for a broken right arm, so much for an eye, so much for a leg. The employer could, if he preferred, stay out of the new compensation arrangement, and let his employees continue to sue him for damages as of old, but without the right to use the three defenses of assumption of risk, contributory negligence, and fellow-servant negligence.

The Wisconsin law was passed in May 1911. Many states passed similar laws in that same year. The state of Washington passed a law in March which contained the very features which the New York Supreme court declared unconstitutional. The Washington court upheld the Washington act by a decision given in September. In November the Supreme Court of Wisconsin passed upon the Wisconsin law.

The opinion upholding the Wisconsin law was written by the late Chief Justice Winslow. It is such a good statement of the principle which the Wisconsin court has followed in dealing with new and strange measures rising out of the people’s needs that Wisconsin people should know it just as Americans generally know the Declaration of Independence and the Constitution of the United States. None of these is light erading, but they are good to remember.
"When an eighteenth century constitution forms the charter of liberty of a twentieth century government, must its general provisions be construed and interpreted by an eighteenth century mind surrounded by eighteenth century conditions and ideals? Clearly not. This were to command the race to halt in its progress, to stretch the state upon a veritable bed of Procrustes.

"Constitutional commands and prohibitions, either distinctly laid down in express words or necessarily implied from general words, must be obeyed and implicitly obeyed so long as they remain unamended or unrepealed. But where there is no language or policy to be considered, the conditions prevailing at the time of its adoption must have their due weight, but the changed social, economic and governmental conditions and ideals of the time, as well as the problems which the changes have produced, must also logically enter into the consideration, and become influential factors in the settlement of problems of construction and interpretation."^1

The passage of this accident compensation law, known as "The Workmen's Compensation Act," did not insure against disputes between employees and employers. There were found to be many differences of opinion concerning the nature and extent of the injury, whether or not the injury occurred during the time the workman was employed, and many other questions.

To insure quick settlement of dispute and relieve the courts, the Wisconsin Industrial Commission of three members was set up. They settle the cases without the formalities of the courts and without a jury. If either side is dissatisfied, it can appeal to the Circuit Court of Dane County and from there to the Supreme Court. Without this appeal it might have been said that due process of law was lacking.

Many problems besides accident compensation were turned over to the Industrial Commission. One of these is the prevention of accidents in industry. Their work with the victims of accidents shows under what conditions accidents are most likely to occur. This knowledge is very helpful to them in framing safety regulations. The Industrial Commission draws up rules and regulations of safety and sanitation for factories, restaurants, and all places of work, as well as of recreation, where there are known to be dangers; and the inspection of these places to see that they comply with the rules. Boiler explosions used to be very common. The commission has worked out rules for the installation and operation of boilers, and inspects them to see that the rules are followed. It has rules for putting up buildings, for installing and running elevators, for lighting industrial plants, for the prevention of fires; for keeping clean hotel and restaurant kitchens; for making mines and quarries as safe as possible; for the lighting of automobiles.

Another duty laid upon the Industrial Commission by the legislature is to determine the occupations in which children may work, and to give out permits only in those occupations where it is considered safe. Still another is to study the hours which women and children can and ought to work, and to issue orders forbidding work beyond a safe period or under unsafe conditions. In 1913 the commission was ordered to study the wages for which children and women worked, to determine the lowest wages at which it was safe for the community to let them work, and to order industry to pay no less than that wage.

In 1911, the year of the Workmen's Compensation Act, another important duty was laid upon the new Industrial commission. By the Apprenticeship Act the Commission was empowered to cooperate with industry in setting up regular courses of training for young people and to supervise the drawing up of apprentice contracts binding

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^1 Borgnis v. Falk. 147 Wis. 327, 133 N. W. 203.
young people to work a certain length of time on condition of receiving the training outlined.

In carrying out all these duties, the Commission has often called in for advice and information the people actually affected and primarily interested. Thus representatives of employers and employees as well as experts and people interested in a general way, have been invited to form committees to frame apprentice programs in every trade; to work out minimum wage orders and orders concerning safety and sanitation. The orders proposed in this way are put out for hearing either at Madison or elsewhere in the state. After the public is given a chance to criticize and suggest, the committee and commission work on the problem again. This method of getting the state's work done by getting together those with different opinions and letting them thresh it out, is one of the most important items in the Wisconsin Idea. It is a slower way of getting things done than for the commission to lay down orders without asking anybody, but it seems to be more satisfactory in the long run.

There used to be many employment agencies in the state. They charged large fees just at the time when the worker was least able to pay. To protect the worker, the state has told the Industrial Commission to keep an eye on these agencies; to make and enforce rules for their conduct; and to set up state agencies for the benefit of both the worker and employer, wherever possible.