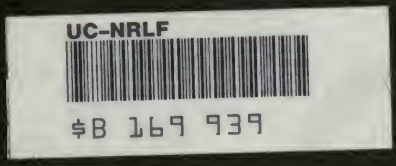

Central Government itself to take the initiative. The important conditions specified for the constitution and procedure of the councils were that they should be composed of equal numbers of employers and workmen, each of those classes electing their delegates; that the president, chosen ordinarily by the members, but whose office in case of need might be exercised by a justice of the peace, was to be only a presiding officer with no vote; that the council might, however, on request of all the parties interested, appoint an umpire or arbitrator; that the councils might meet at any time they chose, but could be convened at the call of the mayor of the commune, and must meet on demand of one-half of the members; and that reports of the proceedings of the councils were to be filed with the justice of the peace.

LAW OF AUGUST 16, 1887.

This plan recommended by the commission was patterned after the "joint committees" for conciliation and arbitration established under private initiative in England, and was confined simply to the question of settlement of disputes. The Belgian Parliament, however, manifested a decided preference for a very different scheme, which was embodied in a law of August 16, 1887, in which the settlement of disputes was but one part, and that a secondary one, in a larger system. This system was essentially a combination of suggestions made to the commission on labor by M. Hector Denis, professor of political economy in the University of Brussels, with the features of a private arbitration tribunal established for the boot and shoe industry, which had also been submitted to the commission. [a]

PROVISIONS OF THE LAW.

The law of 1887 provides for councils of industry and labor, whose rôle is declared to be "to deliberate upon the common interests of employers and employees, to prevent, and, if necessary, adjust differences which may arise between them."[b] The essential features in the constitution and procedure of these councils, as quite briefly prescribed in the act, are as follows: They are to be established by royal decree in every locality where their utility is clear. This establishment may be either at the will of the Royal Government, or upon request of communal councils, or upon application

[a] The above facts concerning the passage of the Belgian law are taken from the report of the French bureau of labor, De la Conciliation et de l'Arbitrage dans les Conflits Collectifs entre Patrons et Ouvriers en France et à l'Étranger, 1893, pp. 432 ff.

[b] Art. I of the law.

of employers or working people. Each council has as many sections as there are distinct industries in the locality. The section, which is the unit in the system, represents, therefore, a single industry in one locality and is composed of equal numbers of representatives, not less than six nor more than twelve, elected by employers and laborers separately, and the members choose a president and a secretary from their own number. As to procedure for the election of members, the statute simply prescribes that the regulations fixed by law for the election of members of the councils of prudhommes, or industrial courts, are to be followed. But by royal decrees of August 15, 1889, March 10, 1893 (the principal one), and of March 26 and April 11, 1897, this whole matter—qualification of electors and members, preparation of electoral lists, nomination of candidates, balloting, contested elections, etc.—is regulated in great detail. Each section must hold at least one meeting a year, at the time and place indicated by the permanent committee of the provincial council, but is to be convened at any time by the said committee upon the request of either employers or laborers. The communes are required to furnish the necessary meeting places for councils or sections. The council of any locality or several sections of the same or different localities may be summoned at any time by royal decree to a general assembly to give their advice upon any subject of general interest concerning labor or industry which the King may see fit to submit to them. These assemblies elect their own president and secretary, but the Government may appoint a commissioner to take part in the deliberations. In case of all the above-mentioned meetings of councils or sections or of assemblies, the subject to be considered and the length of the session are strictly determined by the convening order either of the permanent committee of the provincial council or the royal decree, and no other subject may be taken up. Members are allowed a per diem compensation for attendance at general assemblies, to be paid by the province in which the assembly is held. Finally, the one brief section dealing specifically with the subject of disputes provides simply that whenever circumstances appear to demand it, at the request of either party, the governor of the province, the mayor of the commune, or the president of the section for the industry in which the dispute occurs must convene that section, which is to endeavor by conciliation to arrange a settlement. If this effort is unsuccessful, a report of the proceedings is to be made public.

The function of the Belgian councils of industry and labor is thus threefold: (1) To give information or advice to the Government, (2) to furnish employers and employees the means for conference and discussion of common interests before the emergence of differences, and (3) to adjust any disputes that may arise. The first of these is

GOVERNMENT INDUSTRIAL ARBITRATION

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SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS
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GOVERNMENT INDUSTRIAL ARBITRATION.

BY LEONARD W. HATCH, A. M.

INTRODUCTION.

Briefly characterized this paper is a statistical account of laws and their results. Within its scope are included all laws in any land which have been enacted for the purpose of providing means for the settlement of collective industrial disputes. The aim has been to present as fully and accurately as possible both the essential features of such laws and the important facts as to their operation. The record has been brought as closely down to date (1905) as the necessary reports and documents available would permit, and so far as possible only official sources have been used. All the sources used will be found referred to either in the text or in footnotes.

GREAT BRITAIN.

One characteristic feature of collective industrial disputes being combined action by employees to better the conditions of labor, there was naturally no legislation in Great Britain for arbitration or conciliation in such cases until the repeal of the combination laws, which prohibited under severe penalties all combinations of workmen, in 1824 permitted concerted action on the part of employees. Coincident with that repeal[a] an arbitration act was passed, since known as the Consolidation Act.[b] That law, though in force until 1896, did not contemplate collective disputes, however, and belongs with the

[a] 5 Geo. IV, ch. 95. [b] 5 Geo. IV, ch. 96.

earlier régime of State regulation of the labor contract and suppression of combination, rather than with the modern system of free contract and combination. A glance at earlier legislation will make this clear.

Prior to 1824 a long series of laws, going back as far as the Statute of Apprentices in 1562, (a) had contained provisions for the settlement of individual disputes between masters and servants. Prior to 1747 these provisions appear in acts containing various other labor regulations, but in that year a special law, (b) dealing solely with the settlement of disputes, appears. This law, like all the earlier provisions, simply referred disputes to the justices of the peace or local magistrates, in harmony with the existing method of State regulation, which, as embodied in the Statute of Apprentices, had designated those same officials as the authorities to fix the rates of wages for labor generally.

After 1747 the next special act dealing with disputes was passed in 1800. The cotton industry, rapidly growing under the transforming influence of the industrial revolution, was the field upon which the struggle between the old system of State regulation and the new principle of free competition in determining the conditions of labor was fought out in the closing years of the eighteenth and the opening years of the nineteenth centuries. The outward manifestation of this strife appeared in a multiplication of disputes between masters and weavers, which inspired four laws providing for their settlement. These applied only to the cotton trade, the first being passed in 1800 for England, (c) the second for Scotland in 1803, (d) the third in 1804 replacing the former act for England, (e) while the fourth for Ireland was passed in 1813. (f) These last three laws were practically identical. They differed from earlier laws for the settlement of disputes chiefly in providing for arbitration by two referees appointed, one by the employer and the other by the employee, from nominations made by a justice of the peace, with reference for final decision to the justice only when those two could not agree. In common with the earlier statutes, they made reference of disputes compulsory upon the complaint of either party, and decisions were likewise compulsory, being enforceable by proceedings of distress and sale, or imprisonment, before a justice of the peace.

THE CONSOLIDATION ACT, 1824.

When the select committee of the House of Commons in 1824 reported in favor of the repeal of the combination laws, it also reported that "the practice of settling disputes by arbitration be-

a 5 Eliz., ch. 4.
b 20 Geo. II, ch. 19.
c 39–40 Geo. III, ch. 90.
d 43 Geo. III, ch. 151.
e 44 Geo. III, ch. 87.
f 53 Geo. III, ch. 75.

tween masters and workmen has been attended with good effects, and it is desirable that the laws which direct and regulate arbitration should be consolidated, amended, and made applicable to all trades." Accordingly, the Consolidation Act was passed, which was nothing more nor less than a consolidation—hence, its name—of the three existing laws for the cotton industry, and simply extended the system there provided to all trades. Like those acts, it was drawn for disputes between employers and individual workmen only, but in one respect its jurisdiction in such cases was narrower than theirs. Under the system of regulation of wages by justices of the peace, there was no occasion in the arbitration acts to draw a distinction between disputes over existing contracts and those as to future contracts. But the principle of freedom of contract as to the terms of employment having been established by the repeal of the Statute of Apprentices in 1814, a clause was inserted in the Consolidation Act prohibiting any justice of the peace in rendering awards to "establish a rate of wages or price of labor or workmanship at which the workmen shall in future be paid, unless with the mutual consent of both master and workmen."

The Consolidation Act of 1824 remained in force until 1896. It was slightly amended in some details in 1837 by 1 Vict., ch. 67, and in 1845 by 8–9 Vict., chs. 77 and 128, but it was practically a dead letter from its passage.

LORD ST. LEONARD'S ACT, 1867.

In 1867 a law was passed which enabled private councils of conciliation or arbitration, established voluntarily by employers and workmen, to exercise the powers which had been conferred upon referees under the Consolidation Act and earlier laws. It embodied the recommendations of a select committee of the House of Commons appointed in 1856 to "inquire into the expediency of establishing equitable tribunals for the amicable adjustment of differences between masters and operatives." The mover of the committee stated that he made his motion on account of the "great inconvenience from the want of equitable tribunals by means of which any difference between masters and operatives might be satisfactorily adjusted," and also in order "to ascertain whether the conseils des prud'hommes in France had answered the purpose for which they were established." He asserted also that "great dissatisfaction existed at that time among operatives of this country in consequence of the want of some such tribunal."(a)

The report of this committee was presented in the same year. (b) It stated that a considerable majority of the large number of wit-

a Hansard's Debates, 3d series, Vol. CXL, pp. 982, 983.
b Parliamentary Papers, 1856, Vol. XIII.

nesses examined concurred in favoring boards of arbitration. As to the constitution of such boards, however, and still more as to what their jurisdiction should be, they found much difference of opinion. It was pointed out that the Consolidation Act of 1824 had been almost entirely inoperative mainly because it required parties to go before a magistrate, by whom the arbitrators were to be appointed, and this the workmen were very unwilling to do, either because it bore the appearance of a criminal proceeding or because the magistrates in industrial centers, as a rule, belonged to the manufacturing class. Other objection was found to that law on the ground that, as the arbitrators were to be appointed as each dispute arose, one must practically refer his case to an unknown set of men. Finally, the committee noted that several attempts had been made to establish systems of arbitration without the intervention of law and that these had been successful while they lasted, but had generally been of short duration. In view of these facts the committee favored councils voluntarily established by employers and workmen and recommended, in order to give such councils permanence and legal standing, that provision be made for granting them a Government license, under which they could exercise the powers specified in the law of 1824 for compelling the attendance of witnesses and enforcing awards. Compulsory awards, however, the committee thought should be confined to disputes under existing contracts, and they opposed granting any power to regulate wages forcibly, though expressing the opinion that disputes over future wage rates would be frequently referred to the proposed courts by mutual agreement of the parties.

A bill embodying these ideas was introduced by the committee's chairman ([a]) in 1859, but too late for passage at that session. Seven years later, in 1866, the same measure was again introduced and passed the Commons, but died in the House of Lords. Finally, in 1867, it was again brought forward and became the Councils of Conciliation Act of August 15, 1867, ([b]) often called Lord St. Leonard's Act, after the author of the bill of 1867.

The general content of this act has already been indicated. It laid down a number of detailed requirements as to constitution and procedure which must be fulfilled by private councils in order to secure the license permitting them to compel the attendance of witnesses and enforce awards as in the law of 1824. These were patterned after the French system of industrial courts in the councils of prudhommes, the more important ones being as follows: Councils must consist of not less than two nor more than ten each of masters and of workmen, with a chairman chosen by the members, but who must be "some person unconnected with trade." Members must be elected for terms of one year, the employers and employees elect-

[a] Mr. W. A. Mackinnon. [b] 30–31 Vict., ch. 105.

ing their respective members in separate assemblies. A register of electors must be kept by the clerk of each council, upon which every person properly qualified must, upon application, be registered. The qualifications for registration, necessary both for voters and members of the council, were an age of 21 years, and, if an employer, six months' residence and occupation in the district for which the council was established; if an employee, seven years' residence and occupation in the trade over which the council was to have jurisdiction, these qualifications being specified as rendering eligible any "inhabitant householder or part occupier of a house, warehouse, counting-house, or other property." These same qualifications, except the age requirement, were specified also for those who might petition for a council, the petitioners for any council electing the first members. Councils were to elect such officers as were necessary and to establish rules and fees, which were to be binding when approved by the home secretary.

Each council was to appoint a "committee of conciliation," composed of one employer and one workman, and all cases were to go first to this committee, who should endeavor to "reconcile the parties in difference."[a] If their efforts failed, the case was to go to the council for hearing and award. In hearings by the council two members and the chairman were to be a quorum, and no attorneys were to be heard except by consent of both parties. Awards were to be enforced as provided in the Consolidation Act of 1824; that is, by proceedings of distress and sale, or imprisonment, before a justice of the peace.

The exact character of the law of 1867 is apparent only when its jurisdiction is noted. In the first place, it applied to disputes involving either one or many workmen; but in the second place, councils could take cognizance of disputes only when submitted by both parties. When the bill was before the House of Commons it was proposed to amend it so that cases might be acted on by the conciliation committee upon application of one party alone, but this amendment did not meet with approval and was withdrawn. In the third place, while no limitation as to subjects of disputes appears, councils could not "establish a rate of wages or price of labor or workmanship at which the workman shall in future be paid."[b] Obviously, under this last restriction, so far as arbitration as distinguished from conciliation was concerned, the councils could have but small jurisdiction in collective disputes, inasmuch as the great majority of such are concerned directly or indirectly with questions of future wages. As originally introduced the act had contained a provision enabling councils, with the consent of both parties, to fix rates of wages that should

[a] This committee of conciliation was the only feature of importance which was not in the Mackinnon bill of 1859.

[b] Sec. 4 of the law.

be binding for a period not exceeding twelve months. The author explained that this had not been in the original draft, but that both the masters and men whom he had consulted wished future wages to be within the power of the councils. He had himself objected at first, but upon reflection had concluded that binding force limited to a year might be granted, and so had added the clause; but in committee in the House of Lords this power was stricken out by the overwhelming vote of 9 to 1, the author alone voting for it.

Lord St. Leonard's Act remained on the statute books until 1896, but was never anything but a dead letter, and no application for a license under it was ever made. This complete failure is somewhat surprising in view of two facts, the one that the measure had been widely approved by workmen and employers, and the other that voluntary joint boards were already coming into existence at the time the law was passed. Thus, when the bill for the act was introduced in Parliament its author stated that the principle of the bill had received the approval of a deputation of operatives representing 100,000 men engaged in the building trades of the metropolis, who had an interview with him a short time before, (a) and on the second reading petitions in favor of it were presented, "signed by masters in the building trade and every description of labor in that trade, from Birmingham, Manchester, Stockport, Blackburn, Coventry, and other large manufacturing towns."(b) As already noted, the Committee of the House of Commons which recommended the law had found in 1856 that private boards were being established. Sidney and Beatrice Webb, in their History of Trade Unionism,(c) date the period of development of voluntary boards from the year 1867.

Why, then, did the act fail? The only definite answer which has been offered is to be found in parliamentary debates upon later acts and in the evidence collected by the Royal Commission on Labor of 1893, which is to the effect that the act was too inelastic, laying down too many hard and fast rules as to the constitution and procedure of the councils, so that no latitude was left to employers and workmen who might desire to form them. Such, for example, was the opinion expressed in Parliament in 1872 by the author of another measure upon the same subject, (d) and by the president of the London conciliation board before the Royal Commission on Labor in 1893.(e)

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a Hansard's Debates, 3d series, Vol. CLXXXV, p. 80.

b Ibid., p. 696.

c P. 322.

d Hansard's Debates, 3d series, Vol. CCXII, p. 1604.

e Report of the commission, vol. 39, p. 336. The London conciliation board is maintained by the London Chamber of Commerce.

Not the least serious of the law's defects would seem to have been the practical exclusion of all questions of future wages from arbitration by the licensed councils. As already noted, employers and employees had personally stated to the author of the act their desire that such questions should be within the jurisdiction of the councils. Moreover, such questions were precisely the ones which had called private boards into existence. Thus the famous board for the Nottingham hosiery and glove trade, with which the name of Mr. Mundella is associated, was born out of a strike for better wages in 1860, and the rules of that board defined its purpose to be "to arbitrate on any questions relating to wages that may be referred to it from time to time by the employers or operatives, and by conciliatory means to interpose its influence to put an end to any disputes that may arise." The license offered by the law of 1867 would have given private councils most ample powers for the adjudication of disputes under existing contracts—that is, individual disputes; but for nearly all disputes as to future terms of employment—collective disputes—it would have made them little more than conciliation committees, for which indeed the detailed requirements of the law were superfluous.

THE ARBITRATION (MASTERS AND WORKMEN) ACT, 1872.

Five years after Lord St. Leonard's Act another law was passed, the Arbitration (Masters and Workmen) Act, 1872.[a] This law was passed at the instigation of the Third Trades Union Congress, held in London in 1871. Resolutions favoring arbitration of industrial disputes had been passed at the first two congresses, and at the third the parliamentary committee was instructed to prepare a bill upon the subject. The bill was drafted by Mr. (afterwards Sir) Rupert Kettle, and approved by the fourth congress. After some modification through various conferences of the parliamentary committee with members of Parliament who had consented to support the bill, with its author and with Mr. Justice R. S. Wright, the bill was introduced April 17, 1872, by Mr. Mundella.[b] It attracted little interest in Parliament and was passed without opposition or amendment, becoming law on August 6, 1872.

The important provisions of this act, so far as collective disputes are concerned, were as follows:

(1) An agreement might be drawn up between individual masters and workmen, mutually binding upon both when the master gave

[a] 35–36 Vict., ch. 46.

[b] These facts as to the framing of this measure are as related by Mr. George Howell, secretary of the trades union parliamentary committee at the time, in his Labor Legislation, Labor Movements and Labor Leaders, London, 1902, pp. 219, 220.

and the workman accepted a printed copy of the same, and binding during the "continuance of any contract of employment and service which is in force between them at the time of making the agreement, or in contemplation of which the agreement is made, and thereafter so long as they mutually consent from time to time to continue to employ and serve without having rescinded the agreement."(a) The agreement might specify what number of days' notice of intention to cease to employ or be employed, not exceeding six, must be given by the parties to it, and until such time elapsed the agreement was to be binding. Workmen, however, might announce their withdrawal from the agreement any time within forty-eight hours after making it.

(2) The agreement must "designate some board, council, persons or person as arbitrators or arbitrator, or define the time and manner of appointment of arbitrators or of an arbitrator; and designate, by name, or by description of office or otherwise, some person to be, or some person or persons (other than the arbitrators or arbitrator) to appoint an umpire in case of disagreement between arbitrators."(b)

(3) The agreement might provide that the parties should be bound by its rules or those of the arbitrators or umpire in regard to the "rate of wages to be paid, or the hours or quantities of work to be performed, or the conditions or regulations under which work is to be done, and may specify penalties to be enforced by the arbitrators, arbitrator, or umpire for the breach of any such rule."(c)

(4) Power was given to arbitrators under such agreements to compel the attendance of witnesses and the production of books and papers.

It will be seen that the principle of this law was to put employers and workmen under written contract as to the terms of employment, which contract should bind them to submit disputes to arbitration. This idea was taken directly from a private arbitration system which had been in existence for eight years in the building trades of Wolverhampton, and of which Sir Rupert Kettle, who drafted the law, was the founder. Obviously for the success of this principle employers and workmen must first be brought to make such contracts, and then, having made them, be held to their fulfillment. But the law of 1872 provided nothing either to induce parties to enter into the proposed contracts or to enforce them when made. It was simply declared that employers and workmen "might" make the contracts if they were so disposed, and as for their enforcement, the act expressly permitted parties to withdraw from them at any time upon a week's notice by severing the relation of employer and employed, and specified no penalty whatever for nonfulfillment of the

a Sec. I (3) of the law. b Sec. I (1) of the law. c Sec. I (4) of the law.

contract in any other way. The contract itself might lay penalties, but the law made no attempt to give sanction to them. In fact, aside from the power to summon witnesses and secure books and documents, it is difficult to see wherein the act opened the way for anything which employers and employees might not have done without it.

Like its predecessor of 1867, the Arbitration Act of 1872 stood on the statute books until 1896, but was never put to practical use. As to why it failed the Royal Commission on Labor could offer no evidence except an opinion by the chairman of the London conciliation board that its failure to recognize concrete existing bodies or to provide any agency to put it in operation might have had something to do with it.[a] About all that can be said with certainty is that employers and employees never chose to make use of it, a not surprising result, however, in face of the above-noted negative character of the law.

THE CONCILIATION ACT, 1896.

HISTORY OF PASSAGE OF ACT.

After the fruitless measure of 1872 no further move to provide by law for the settlement of industrial disputes was made until 1893. In that year no less than four bills for arbitration or conciliation were introduced in Parliament, and the movement thus started was strong enough to persist through three years of delay and finally to pass a law.

Two of the above-mentioned proposals were practically identical, so that but three different schemes were presented. One of these was brought forward for the Government by the president of the board of trade. It contained three essential features:

(1) When a dispute should occur or be apprehended, on application by either party the board of trade might appoint one or more persons to act as conciliators, who should investigate and endeavor to bring about a settlement of the case.

(2) Where it should appear to the board of trade that in any locality where disputes are of frequent occurrence adequate means for settling such do not exist, it might appoint one or more persons to inquire into the circumstances and confer with employers and workmen with a view to establishing a board of conciliation or arbitration, composed of employers and laborers.

(3) The board of trade should keep a registry for all boards whose purpose is the settling of industrial disputes.

Another of the bills was presented on behalf of the London conciliation board, and was supported by the London Chamber of

[a] Report of the commission, vol. 39, pp. 338, 341.

Commerce and the principal London trades unions. It provided: (1) For registration of conciliation and arbitration boards by the board of trade, as in the Government bill, and (2) certain powers were to be granted to registered boards. They might summon and examine witnesses under oath. Where parties agreed in writing to submit any dispute arising out of an agreement enforceable at law a board's decision should be final and enforceable as a decision of the high court of justice, except that an award might not fix future wages. But if the parties should agree in writing to submit that question and deposit money forfeits for failure to abide by the award a compulsory decision as to future wages might be rendered. Boards were to try conciliation first and then arbitration. If no decision should be reached within a given time, an umpire was to be appointed by them or the board of trade.

The third measure offered in 1893 was by private parties. It proposed the establishment by county councils of boards of conciliation and arbitration in every district, composed of equal numbers of employers and laborers and another member belonging to neither of those classes, appointed by the county councils. Such boards were to have power to summon and examine witnesses under oath. They were to attempt conciliation first, but that failing they were to hold a hearing for arbitration. They were to report as to the parties responsible for the dispute and the proper settlement, but their decision was not to be compulsory.

None of the bills of 1893 reached a final hearing. All three were reintroduced in 1894, again in 1895, and the Government and London conciliation board bill for the fourth time in 1896, and in that year the Government bill was finally passed and became the law of August 7, known as the Conciliation Act, 1896. But before the Government measure became law it underwent a number of alterations which are worth noting. The bill of 1894 was identical with that of 1893 except for the addition of a provision that the board of trade might investigate disputes and try to bring about an amicable settlement without any application from the parties. But in both 1893 and 1894 considerable criticism was brought against the bill on the ground of its inadequacy and that it gave the board of trade no powers which it did not already possess. This was admitted by its advocates, though they urged that the bill gave the board of trade a locus standi in such cases not before recognized. The criticism evidently had its effect, however, for in 1895 the bill was modified, or rather certain features were added to it, whereby (1) county or borough councils were to have power to create local boards of conciliation to be constituted as they saw fit; (2) the board of trade might grant a guarded power to local boards to summon and examine witnesses under oath and compel the production of papers and accounts; (3) where there was a written

agreement to submit present or future differences to arbitration, boards might render compulsory decisions, and if such a case concerned future rates of wages, parties should deposit forfeits for breach of the award. Manifestly this bill of 1895 was simply the Government measure of 1894, with the addition of the most distinctive features of the other two bills before Parliament and already referred to. It was certainly not open to the criticism of previous years, for extensive powers were conferred in it. But when it was again introduced in 1896 several of these powers had been lopped off, viz, (1) the power of county councils to establish courts; (2) authority to render compulsory decision in any case not concerning "an agreement enforceable by law;" and (3) authority to fix future wages. And finally the parliamentary committee of trade to whom the bill was referred further amended it so as to drop out everything concerning arbitration except a single provision that when requested so to do by both parties the board of trade might appoint arbitrators. So that as finally passed the law contained essentially the same features as the bill of 1894. It should be added that it cleared away by repeal the dead-letter laws of 1824, 1867, and 1872.

Now the Conciliation Act of 1896 and the action of Parliament in finally refusing to enlarge the powers contained in it are in strict accord with the recommendations of the royal commission on labor whose final report was made in 1894. As setting forth the motives for the act of 1896, therefore, it will be worth while to quote the commission's conclusions upon the subject of Government action for the settlement of collective disputes. The significant portions of the recommendations of the majority ([a]) report of the commission were as follows:

In the case of the larger and more serious disputes arising with regard to the terms of future agreements, frequently between large bodies of workmen on one side and employers on the other, we have had to consider, in the first place, suggestions for the compulsory reference of such disputes to State or other boards of arbitration whose awards should be legally enforceable. No such proposal, however, appeared to us to be definite or practical enough to bear serious consideration.

[a] This portion of the report was signed by the Duke of Devonshire, who was chairman, David Dale, Sir Michael E. Hicks-Beach, A. J. Mundella, Leonard H. Courtney, Jesse Collings, Sir Frederick Pollock, Sir E. J. Harland, Sir W. Thomas Lewis, Alfred Marshall, G. W. Balfour, Thos. Burt, J. C. Bolton, Alfred Hewlett, Thos. H. Ismay, George Livesey, Samuel Plimsoll, Edward Trow, and William Tunstill. The four labor members of the commission, William Abraham, Michael Austin, James Mawdsley, and Tom Mann, in their minority report had only the following to recommend: "The only legislation relating to this subject that appears to be required is the grant of adequate power to the labor department to obtain the fullest possible information about the facts of every dispute, the actual net wages earned, the cost of living, the price of the product, the

We have, in the next place, discussed a proposal to establish by act of Parliament district boards of conciliation and arbitration, the chief object of which would be to bring about the settlement of questions relating to future agreements. These boards might, it was suggested, be established either by a Government department or, as some think would be a better plan, by town and county councils, subject, perhaps, in that case, to confirmation by some central authority. They would have statutory powers of intervening in trade disputes in the interest of the public, as well as that of the parties, of holding inquiries and using necessary means of procuring information, and, in cases where their intervention should fail to avert a conflict, would publish reports which would serve to guide public opinion as to the merits of the contest. It was represented that such boards need not displace existing or future voluntary boards of conciliation, but would fill up the void space not covered by those voluntary boards, and would be especially useful in the case of small trades or unorganized workmen.

On the other hand, we have had to consider that such boards, by whatever public authority they were established, would have an official character, and might, for that reason, be less popular and less resorted to than the present voluntary institutions; yet at the same time their presence might have the bad effect of arresting the growth of these institutions. Even if they did not injuriously interfere with the further development of boards of conciliation in large and well-organized trades, they would probably displace, or at least check, the extension of the district boards which are not limited to particular industries.

We are of opinion that no central department has the local knowledge which would enable it to attempt with success the creation of such institutions, and that the intervention of local public authorities can not be usefully extended at present beyond the experimental action suggested with regard to industrial tribunals to decide cases arising out of existing agreements.

We hope and believe that the present rapid extension of voluntary boards will continue until they cover a much larger part of the whole field of industry than they do at present. This development seems to us to be at present the chief matter of importance, and it has the advantage over any systematic establishment of local boards, of greater freedom of experiment and adaptation to special and varying circumstances. If, at some future time, the success of these voluntary boards throughout the country shall have become well assured,

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cost of manufacture, the salaries and interest paid, the employers' profits, and any other details that may seem material. We recommend that the labor department should be given power to obtain these facts, voluntarily if possible, but where necessary, by compulsory inspection of accounts, etc., in order that the issues between the contending parties may be impartially and accurately ascertained, and put fairly before the combatants and the public. The great and increasing part taken by the press and public opinion in large industrial disputes, even to the extent of contributing large sums in support of one or other party, not to mention the occasional intervention of the Government, renders the fullest possible investigation by a public department absolutely necessary in the interests of justice." (Final report of the commission, Part I, p. 145.)

and if any success should attend the experiment previously suggested of giving to local authorities the power of initiating the formation of industrial tribunals, it may be found expedient to confer larger powers either upon voluntary boards or upon such industrial tribunals. But, at the present stage of progress, we are of opinion that it would do more harm than good either to invest voluntary boards with legal powers or to establish rivals to them in the shape of other boards founded on a statutory basis and having a more or less public and official character.

Although we are unable to agree in supporting any proposal for establishing, at the present time, any system of State or public boards for intervening in trade disputes, we think that a central department, possessed of an adequate staff, and having means to procure, record, and circulate information, may do much by advice and assistance to promote the more rapid and universal establishment of trade and district boards adapted to circumstances of various kinds.

Mentioning then the two Government bills of 1893 and 1894, the report goes on:

We think that discretionary powers of this kind may with advantage be exercised by the board of trade. There seems to be no legal reason why the board, even without legislation, may not take steps of the kind indicated in the bills of 1893 and 1894, but a statutory provision of this character will probably be of use as giving to the board a better "locus standi" for friendly and experienced intervention in the case of disturbed trade relations, and would make it easier for it to employ a staff suitable and adequate for the purposes in question. The board of trade at present possesses advantages for this task, inasmuch as the duty of collecting labor statistics, which is being discharged by its labor department, brings it in many ways in touch with employers and workmen throughout the country, and the officials charged with this duty justly enjoy the confidence of both classes to a large extent.

Some of the trade boards of conciliation provide for recourse to arbitration as the last resort when the representatives of employers and workmen fail to agree as to the settlement of future wage rates or other general issues. The district boards of conciliation also, as a rule, make it one of their objects to induce employers and workmen who are at issue to refer to arbitration questions upon which they are unable to agree. Among trades which do not possess formal joint institutions it is not rarely a rule to offer reference to arbitration before proceeding to a strike or lockout.

It has been pointed out that even where there is a disposition on both sides to refer to arbitration there is often a difficulty in finding suitable arbitrators or umpires. Either the arbitrator is quite unconnected with industrial work, and then the process of informing his mind upon the matter is too long and costly, or he is in some way connected with the work, and then one party or the other is apt to suspect him of bias and partiality.

We think that this difficulty might in many cases be met if power were given to a public department to appoint, upon the receipt of a sufficient application from the parties interested or from local boards of conciliation, a suitable person to act as arbitrator, either alone or

in conjunction with local boards, or with assessors appointed by the employers and workmen concerned, according to the circumstances of each case. We think the arbitrators thus appointed would be fairly free from suspicion of bias, and that, if the same persons were habitually appointed to act, and their services were frequently required, they would acquire a certain special skill and weight in dealing with industrial questions. Their decisions, however, would not possess legally binding effect any more than those of unofficial arbitrators in industrial questions. (a)

The Conciliation Act of 1896 as finally passed is as follows:

AN ACT to make better provision for the prevention and settlement of trade disputes [7th August, 1896].

Be it enacted by * * * Parliament assembled, and by the authority of the same, as follows:

Any board established either before or after the passing of this act, which is constituted for the purpose of settling disputes between employers and workmen by conciliation or arbitration, or any association or body authorized by an agreement in writing made between employers and workmen to deal with such disputes (in this act referred to as a conciliation board), may apply to the board of trade for registration under this act.

The application must be accompanied by copies of the constitution, by-laws, and regulations of the conciliation board, with such other information as the board of trade may reasonably require.

The board of trade shall keep a register of conciliation boards and enter therein, with respect to each registered board, its name and principal office and such other particulars as the board of trade may think expedient, and any registered conciliation board shall be entitled to have its name removed from the register on sending to the board of trade a written application to that effect.

Every registered conciliation board shall furnish such returns, reports of its proceedings, and other documents as the board of trade may reasonably require.

The board of trade may, on being satisfied that a registered conciliation board has ceased to exist or to act, remove its name from the register.

Subject to any agreement to the contrary, proceedings for conciliation before a registered conciliation board shall be conducted in accordance with the regulations of the board in that behalf.

Where a difference exists or is apprehended between an employer, or any class of employers and workmen, or between different classes of workmen, the board of trade may, if they think fit, exercise all or any of the following powers, namely:

1. Inquire into the causes and circumstances of the difference;

2. Take such steps as to the board may seem expedient for the purpose of enabling the parties to the difference to meet together, by themselves or their representatives, under the presidency of a chairman mutually agreed upon or nominated by the board of trade, or by some other person or body, with a view to the amicable settlement of the difference;

(a) Final report of the commission, Part I, pp. 99–101.

3. On the application of employers or workmen interested, and after taking into consideration the existence and adequacy of means available for conciliation in the district or trade and the circumstances of the case, appoint a person or persons to act as conciliator or as a board of conciliators;

4. On the application of both parties to the difference, appoint an arbitrator.

If any person is so appointed to act as conciliator, he shall inquire into the causes and circumstances of the difference by communication with the parties and otherwise shall endeavor to bring about a settlement of the difference, and shall report his proceedings to the board of trade.

If a settlement of the difference is effected either by conciliation or by arbitration, a memorandum of the terms thereof shall be drawn up and signed by the parties or their representatives, and a copy thereof shall be delivered to and kept by the board of trade.

The Arbitration Act, 1889, shall not apply to the settlement by arbitration of any difference or dispute to which this act applies; but any such arbitration proceedings shall be conducted in accordance with such of the provisions of the said act, or such of the regulations of any conciliation board, or under such other rules or regulations as may be mutually agreed upon by the parties to the difference or dispute.

If it appears to the board of trade that in any district or trade adequate means do not exist for having disputes submitted to a conciliation board for the district or trade, they may appoint any person or persons to inquire into the conditions of the district or trade and to confer with the employers and employed, and, if the board of trade think fit, with any local authority or body as to the expediency of establishing a conciliation board for the district or trade.

The board of trade shall from time to time present to Parliament a report of their proceedings under this act.

The expenses incurred by the board of trade in the execution of this act shall be defrayed out of moneys provided by Parliament.

The Masters and Workmen Arbitration Act, 1824, and the Councils of Conciliation Act, 1867, and the Arbitration (Masters and Workmen) Act, 1872, are hereby repealed.

This act may be cited as the Conciliation Act, 1896.

ESSENTIAL FEATURES OF THE ACT.

This act, which is the present law upon the subject in Great Britain, may be briefly summarized thus. It provides three courses of action to be taken by the board of trade, viz:

(1) Any private conciliation or arbitration board may be registered by the board of trade upon proper application therefor. Such registration confers no powers upon the board registered, but the latter must furnish to the board of trade such information and documents as to proceedings as the latter may "reasonably require."

(2) If it appears to the board of trade that there are not adequate means in any district or trade for the submission of disputes to a

conciliation board, it may appoint one or more persons to inquire into the conditions and confer with employers and employed and with local authorities as to the expediency of establishing such a board.

(3) Whenever differences occur or are threatened between employers and employees, or between different classes of workmen, the board of trade may (*a*) inquire into the causes and circumstances of the difference; (*b*) take such steps as are deemed expedient for the purpose of bringing the parties together with a view to conciliation; (*c*) on application of employers or workmen appoint one or more persons as conciliators or as a conciliation board; and (*d*) on application by both parties appoint an arbitrator.

All expenses incurred by the board of trade under the act are borne by the Government.

REGISTRATION AND ESTABLISHMENT OF PRIVATE BOARDS UNDER THE ACT.

Four reports by the board of trade on proceedings under this act set forth in full what had been acomplished by it up to the middle of 1903.(a) Concerning the registration of private boards of conciliation or arbitration, in September, 1896, the board of trade called the attention of all such bodies to the matter by a circular letter in which the board said:

> The register may, it is hoped, be of service not only in keeping the public informed as to the progress of arbitration and conciliation as methods of settling labor disputes, but in enabling the board of trade to avoid overlapping the work of voluntary boards when carrying out the duties intrusted to them under the act. In discharging these duties it will be necessary for the board of trade to have regard to the work of existing boards of conciliation and arbitration, and it is therefore desirable that the register of such boards should be as complete as possible.

In response to this invitation, up to June 30, 1897 (eleven months from the time the law went into operation), 15 boards had registered, while 6 stated a decision not to register, 4 of these, however, expressing willingness to supply the board of trade with information. During the following two years 4 more boards registered, making a total of 19 up to July, 1899, and no others had registered up to 1903. Of the 19, 9 were trade boards, 9 were district boards, and 1 was a general board. The Annual Report of the Board of Trade on Strikes and Lockouts for 1903 gives the number of private boards known to have taken action in disputes in that year as 73. It appears, therefore, that only one-quarter of the boards in existence have registered under the act. The failure of a great majority of the

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a First Report by the Board of Trade of Proceedings under the Conciliation (Trade Disputes) Act, 1896, 1897. Second report, 1899. Third report, 1901. Fourth report, 1903.

boards to register, however, has not prevented the board of trade from securing all needful information, the third and fourth reports of proceedings under the act of 1896 stating that not only the registered but "most of the unregistered boards furnish the department with annual returns of the work done by them."

As regards consultation by the board of trade with employers and employed, or with local authorities, with a view to the formation of boards of conciliation and arbitration, only the first report mentions the subject, reporting a single case of very informal and fruitless action. The report explains that it was "considered desirable to await the experience to be gained in the course of the administration of the act with regard to the needs of the various districts and trades, and the adequacy of the existing machinery for the settlement of disputes, before attempting to any large extent to supplement their deficiencies by the promotion of the formation of additional voluntary boards of conciliation. Generally speaking, it may be said that action under this section of the act is most likely to be of service if taken with caution and after a careful study of the conditions of particular districts and trades and the organizations of employers and employed connected therewith."[a] This feature of the act has, therefore, been practically a dead letter.

SETTLEMENT OF DISPUTES UNDER THE ACT.

Considering, now, action by the board with a view to the settlement of disputes, the number of cases in which such action has been either taken or applied for is as follows:

CASES UNDER THE CONCILIATION ACT OF 1896, ACTED UPON BY THE BRITISH BOARD OF TRADE, AUGUST, 1896, TO JUNE, 1903.

Period covered by reports.	Cases.	Cases by years.
August, 1896, to June, 1897 (11 months)	35	35
July, 1897, to June, 1899 (2 years)	32	19
		13
July, 1899, to June, 1901 (2 years)	46	14
		32
July, 1901, to June, 1903 (2 years)	41	21
		20
Total	154	154

There was a considerable increase in the number of cases under the law in the two years 1899–1901 over the number for 1897–1899, but the number for the last two years declined slightly as compared with 1899–1901. It is noticeable that there were more cases during the first eleven months than in any one year thereafter.

Not all of the above were disputes involving stoppage of work, but if the total number be compared with the number of strikes and lock-

[a] First Report by the Board of Trade of Proceedings under the Conciliation (Trade Disputes) Act, 1896, pp. 46, 47.

outs recorded by the board of trade for the seven calendar years 1896 to 1902 it appears that the cases under the act have equaled 3 per cent of the strikes and lockouts. Carrying out this rough comparison for years shows the following:

CASES UNDER THE CONCILIATION ACT OF 1896, ACTED UPON BY THE BRITISH BOARD OF TRADE, 1896–97 TO 1902–3, COMPARED WITH TOTAL STRIKES AND LOCKOUTS IN GREAT BRITAIN, 1896 TO 1902.

Cases under the law.		Strikes and lockouts. (a)	
Year.	Number.	Year.	Number.
1896–97	35	1896	926
1897–98	19	1897	864
1898–99	13	1898	711
1899–1900	14	1899	719
1900–1901	32	1900	648
1901–2	21	1901	642
1902–3	20	1902	442
Total	154	Total	4,952

a From Reports of the British Board of Trade on Strikes and Lockouts, 1900, p. xii; 1903, p. 11.

Under the law the board of trade may take action in disputes either upon its own motion or upon application from one or both of the parties. As a matter of fact the board has taken the initiative in very few cases, as shown in the table below. In this connection it must be remembered that it was never intended that the act should be aggressively applied by the board of trade where private boards of conciliation or arbitration are available. And the third report states that "great care is taken by the board of trade to avoid any risk of interfering with or hindering the activity" of such boards. (a)

INITIATIVE IN CASES UNDER THE CONCILIATION ACT OF 1896, ACTED UPON BY THE BRITISH BOARD OF TRADE, FOR EACH PERIOD, 1896–97 TO 1901–1903.

Period.	Action upon application of—				Independent action by board of trade.	Total cases.
	Employers.	Workmen.	Both parties.	Total.		
1896–97	9	16	6	31	4	35
1897–1899	4	14	12	30	2	32
1899–1901	3	16	24	43	3	46
1901–1903	4	8	29	41		41
Total	20	54	71	145	9	154

This table brings out the fact that workmen have been more inclined to resort to the act than employers, and the still more striking fact of the large increase in joint applications by the parties in the second and third reports and the great preponderance of such cases in the last report. This frequency of joint applications in later years was the natural result of the increased resort to the law for

a Third Report by the Board of Trade of Proceedings under the Conciliation (Trade Disputes) Act, 1896, p. 12.

arbitration purposes noted below, since by the terms of the statute all applications for the appointment of arbitrators must be joint.

The cases acted upon under the law and their methods of settlement are set forth in the following table:

CASES UNDER THE CONCILIATION ACT OF 1896, ACTED UPON BY THE BRITISH BOARD OF TRADE, BY METHODS OF SETTLEMENT, 1896–97 TO 1901–1903.

Period.	Application declined by board of trade.	Settled by parties during negotiations.	Settled by—				Failed of settlement.	Total cases.
			Conciliators appointed by board.	Conciliation through representatives of board.	Arbitrators appointed by board.	Total.		
1896–97	7	4	2	12	5	19	5	35
1897–1899	5	3	[a]4	8	10	22	2	32
1899–1901	7	3	3	3	23	29	7	46
1901–1903	4	4	2	----------	27	29	3	[b]41
Total	23	14	11	23	65	99	17	[b]154

[a] In one case the conciliator subsequently acted as arbitrator on request of both parties.
[b] Including one case pending at time of report.

During the seven years the board declined to act on 23 applications "on the general ground that no useful purpose would be served by any action on the part of the department," to quote the first report.([a]) Such, for example, were cases in which employees had found work elsewhere, or new hands had been employed, or upon inquiry one or both parties manifested no inclination to make concessions. Fourteen others out of the total cases of action taken or invited are reported as settled by the parties after negotiations had been begun by the board. Nine of these settlements were already arranged or were under way before action by the board had gone further than simple communication with the parties or investigation of the facts. In two others the board had arranged for negotiations—in one case for a conference in the presence of a representative of the board and in the other for a hearing by an arbitrator appointed by the board—but before the time set therefor the parties came to terms. In another case a conference had been held in the presence of a representative of the board, after which the parties reached a mutual agreement by themselves. In another the employees were advised by the board to withhold a strike notice and confer with employers, which advice was taken and resulted in a settlement. Of the above thirteen cases it would appear that in the last two the board's action materially contributed to the termination of the dispute. The remaining case classified as settled by parties during negotiations was the great dispute in the engineering trade in 1897, and the action taken by the board of trade therein was

[a] First Report by the Board of Trade of Proceedings under the Conciliation (Trade Disputes) Act, 1896, p. 6.

as follows:[a] Beginning early in the year the differences reached the stage of strike and lockout in July. Through negotiation during October and November the board of trade arranged for conferences between the parties. These conferences were held during the last week in November and the first week in December, and from December 14 to 18, the parties having agreed to suspend all aggression in the form of lockouts or strikes pending the result. The board's efforts ended with the arrangement of these conferences, at which representatives of the parties alone were present. The negotiations failed to settle the controversy, however, as the terms arrived at by the representatives were decisively rejected by the unions, the result being an ending of the truce and resumption of hostilities. The matter stood thus until January 13, 1898, when negotiations between the parties were reopened by the unions, which led to a final agreement on January 28, with resumption of work the following week. This final settlement was reached by the parties alone and a little over a month after the failure of the conference arranged by the board of trade, but the essential part of the final agreement was the same as the proposed agreement of the earlier conference.

Subtracting the 37 cases in which applications were rejected or the parties came to terms independently during the negotiations, leaves 117 disputes in which procedure under the law was carried out. Of these, 99 were settled and 17 failed of settlement, while 1 was pending at the time of the last report. The number of disputes definitely settled under the law, therefore, was equal to 64 per cent of the total cases in which action was taken or invited, or 85 per cent of the cases of full procedure.

As between the different methods of settlement, more disputes were settled by arbitration than by conciliation. This was not the case during the first three years, for then the majority of settlements were by conciliation. But, as indicated in the table above, from the first there has been a constant decrease in number of conciliation cases and increase in arbitrations, so that during the last two years, outside of applications declined and disputes settled by the parties during negotiations, nearly all the cases under the act were arbitrations. This development of the law more and more in the direction of arbitration exclusively is the most striking feature of its application in practice. One result of the past success in this field, which at the same time indicates that extensive activity in it is likely to continue, has been the adoption by many private boards of conciliation of rules providing for an appeal to the board of trade to appoint an arbitrator or umpire under the conciliation act whenever the private board is unable to reach an agreement. In June, 1901, 35 such rules

[a] As described in Report of the Board of Trade on Strikes and Lockouts, 1897, p. lv.

were known by the board of trade to have been adopted. During the next two years 1 of these was rescinded, but 7 others were added to the list, so that in June, 1903, there were 41 conciliation boards, or agreements for the appointment of such in case of disputes, which had made permanent provision for appeal to the board of trade under the Conciliation Act. [a] During the two years, July, 1901, to June, 1903, 5 appeals from conciliation boards for arbitrators under such rules were received and complied with by the board of trade.

Of the 34 successful conciliation cases the great majority were conducted directly by representatives of the board of trade, outside conciliators being appointed but 11 times. In 2 of the 34 cases applications for action came from both sides, in 4 the board took the initiative without any application, while in the others application came from one side only.

Of the 17 cases which failed of settlement 16 were failures of conciliation. In 1 of these application for action came from both sides, in 3 the board acted on its own initiative, while in 12 one party only had applied to the board. In 4 of the 16 (one of these being the great coal-trade dispute of 1898) outside conciliators were appointed, while the efforts for settlement in the others were made by the board's representatives. In the one case in which arbitration failed the dispute was over the size of boxes for fish packing to be used by pontoon laborers and over the introduction of certain appliances for discharging fish cargoes which the employers wished to use. It was finally agreed by the employers' association and the laborers' union to refer the matter to arbitration, and joint application was made to the board of trade for an arbitrator; but when the arbitrator named by the board rendered an award which was in favor of the employers the men refused to accept it by declining to handle the boxes provided in accordance with its terms. This case occurred in June and July of 1902, and up to the middle of 1903 the workmen still refused to fulfill the award in spite of the efforts of their union officials to induce them to abide by it. This, however, was the only instance known to the board of trade in June, 1903, in which an award under the Conciliation Act had not been carried out.

Of the 99 disputes settled, in 49 a stoppage of work occurred, while in 50 there was no strike or lockout. Of the latter, all but 7 were arbitration cases in which the parties jointly petitioned the board of trade to name an umpire after they had of their own motion agreed to submit to arbitration.

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[a] Thirty-seven of the 41 provided specifically that the board of trade should appoint an arbitrator or umpire whose decision should be final. The other 4 simply stated that the matters in dispute should be referred to the board of trade for settlement under the act.

FRANCE.

MEASURES PROPOSED PRIOR TO 1892.

While Government provision for the settlement of individual disputes between employer and employee has existed in France for nearly a century in the councils of prudhommes, (a) it was not until 1892 that any such provision for collective disputes was made. Legislation upon the subject was proposed, however, as early as 1864. When the bill for the reform law of May 25, 1864, granting freedom of coalition to employers and work people, was under discussion, the question of providing therein for compulsory reference of collective disputes to conciliation committees appointed by the parties, with recourse to the councils of prudhommes where such committees failed, was considered. But the Government's fear of establishing tribunals which would attempt to fix wages prevented the incorporation in the law of this project, which would have amounted to compulsory arbitration.

After 1864 the next proposal of legislation appeared in the parliamentary session of 1886–87, when three bills for industrial arbitration and conciliation were introduced. One of these provided for compulsory arbitration before four impartial arbitrators, two to be chosen by each party and each side to be represented at the hearings by two delegates. In case of disagreement the four arbitrators were to choose a fifth, to act as umpire. A second bill was introduced by the minister of commerce and industry on behalf of the Government. This contemplated purely voluntary arbitration before temporary boards chosen by the parties in each dispute, the utilization of mayors of cities as means of communication between the parties in forming such boards, and the recording and publication by the mayors of all decisions rendered. The third measure resembled in part the Government bill, eliminating, however, the publication of refusals to arbitrate and substituting local tribunals of commerce, civil tribunals, or justices of the peace for the mayor as intermediary; but it provided also for a detailed system of permanent councils to be established by employers and employees, each council to contain a conciliation committee and council of arbitration.

The parliamentary committee to whom these three proposals were submitted made a report on June 27, 1889—too late for discussion at that session. The committee was opposed to any form of compulsory arbitration, but favored permanent councils for voluntary arbitration for all trade unions recognized by law; was in favor of mayors of cities in preference to other officials as intermediaries for special arbitrations in case of strikes, and was in favor of giving agreements made before councils the force of law, provided individual employees might

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a Established in 1806.

within forty-eight hours of the making of such agreements free themselves therefrom by notice to their employers to that effect.

The first and third of the above-mentioned bills of 1886–87 were reintroduced in 1890, that for compulsory arbitration having been so modified, however, as to eliminate legally enforceable awards, though still proposing to make reference to arbitration compulsory. In 1891 two more bills were introduced. One of these was almost an exact copy of the Belgian law for councils of industry and labor; the other was a bill introduced after an exhaustive investigation of the whole subject. To prepare this measure the Government had first asked advice of chambers of commerce, chambers of arts and manufactures, and the councils of prudhommes. The superior council of labor to whom the information so obtained was submitted found the majority of opinions to be against any legislation upon the subject. It was maintained that existing laws, in particular the trade union act of March 21, 1884, left employers and employees entirely free to establish tribunals if they chose, and that permanent councils would but duplicate the councils of prudhommes. It was held to be impossible to make arbitration awards compulsory, and the fear was expressed that any legislation would create dangerous agitation and tend rather to foment than prevent strikes.

Nothing daunted by these adverse opinions, the superior council of labor turned the whole subject over to a special committee, which reported in favor of legislation on the ground that while arbitration was to be looked for chiefly through the agency of trade unions, there were, nevertheless, many lines of industry in which organizations did not, or even could not, exist, and for such a special law was needed. The committee opposed extension of the jurisdiction of the councils of prudhommes to the field of collective disputes as a confusion of two separate and distinct classes, legally enforceable decisions being entirely practicable in case of individual disputes, but impossible for collective differences. Justices of the peace were favored as the most impartial officials for intermediaries between employers and employees, and the committee believed arbitration awards should be made public by the Government.

THE CONCILIATION AND ARBITRATION LAW OF 1892.

Out of the investigations of the superior council and further researches made by the French bureau of labor (a) came a Govern-

a The materials collected by the bureau of labor were published in 1893 in a report of over 600 pages, entitled "De la Conciliation et de l'Arbitrage dans les Conflits Collectifs entre Patrons et Ouvriers en France et à l'Étranger." At that time it was the most comprehensive review of the subject in existence, both for France and foreign countries. The facts for the above account of the inception and passage of the French law are taken therefrom.

ment bill, introduced in November, 1891, which contemplated both temporary and permanent councils. The parliamentary committee to whom the four bills then before the House of Deputies were referred reported in 1892 in favor of the Government measure so far as concerned temporary councils, but rejected that portion providing for permanent tribunals, whereby the system contained in the bill, notwithstanding the investigation and discussion of the interim, became essentially the same as that in the Government measure introduced six years earlier, in 1886. Before its passage, however, two important additions were made, i. e., one giving justices of the peace power to initiate proceedings independently of any requests from the parties, and another providing for the appointment of an umpire by the president of the local civil tribunal where the two arbitrators appointed by the parties could not agree upon one. So amended the bill became the law of December 27, 1892, (a) which is still the French law upon the subject in spite of numerous amendments or substitutes which have from time to time been proposed but never enacted. A decree of September 7, 1893, made the law applicable to Algiers.

ESSENTIAL FEATURES OF THE LAW.

The act applies to all collective disputes concerning the conditions of labor. Initiative for action may come from the parties, or, in case of strikes and lockouts, from justices of the peace. A difference having arisen, either party, or both parties jointly, may apply to the local justice of the peace for reference to conciliation. If the application comes from one party the justice must within twenty-four hours give notice thereof to the opposite party, who must reply within three days, unless notice of need of longer time be given, silence to be interpreted as refusal. Each party, either in its application or in notice of acceptance, must name not more than five persons as its representatives or delegates. In case of strikes, if neither party makes application it is the duty of the justice to request the parties to notify him within three days of their willingness or refusal to submit the difference to conciliation or arbitration, and if the parties accept either course the same procedure is to be followed as in case of uninvited application by the parties.

Both sides having agreed to proceedings under the act, the next step directed is an earnest effort by the justice to organize a conciliation committee, with himself as chairman. If an agreement is reached in this committee, it is to be embodied in a report drawn up by the justice and signed by the parties or their representatives. If

[a] For an English translation of the French law see Bulletin of the United States Department of Labor, No. 25, p. 854, or Report of the United States Industrial Commission, Vol. XVII, p. 510.

the conciliation committee fails in its efforts, the justice is to invite the parties to submit the case to arbitration, each side to name one or more arbitrators, or one common arbitrator being agreed upon. If the arbitrators can not reach a decision, they may name an umpire to decide the case, and if they can not agree upon an umpire they are to so report to the justice, who shall in turn notify the president of the local civil tribunal, and this official is to name the third arbitrator. Decisions by arbitrators must be delivered in writing to the justice of the peace. All expenses of proceedings are to be borne by the communes or departments.

The entire procedure from beginning to end, including the keeping of agreements or acceptance of awards, is absolutely voluntary for the parties. The only feature of the act designed to bring any pressure to bear upon them is the requirement that the reports of conciliation committees, decisions of arbitrators, and requests for and refusals of proceedings under the act are to be communicated by the justices to the mayors of the communes in which the disputes occur, and by the latter officials made public.

The one original feature in the French law, which is not to be found anywhere else, is the utilization of justices of the peace either as intermediaries where the parties to disputes take the initiative or, in case of need, as the means of independent initiative on behalf of the Government. In 1896 there were 2,870[a] justices of the peace in France who, under this provision, stood as official mediators in industrial disputes.

SETTLEMENT OF DISPUTES UNDER THE LAW.

The law went into effect upon its approval. In the following month—January, 1893—the minister of commerce and industry addressed a letter to all police prefects explaining the purpose and spirit of the act and urging those officials, even though not directly concerned in the execution of the law, to use all their influence in its favor. In February the minister of justice, in a circular sent to all justices of the peace, explained in detail their duties under the act, pointing out that its success depended in large measure upon them. Finally, in February also, copies of both the above were sent to all organizations of employers and all trade unions, accompanied by a note from the minister of commerce and industry, bespeaking their support for the law.

Beginning with 1893, the French bureau of labor has each year incorporated in its annual report on strikes and lockouts statistics concerning the operation of the arbitration law of 1892.[b] During

[a] Annuaire Statistique de la France, 1899, p. 574.

[b] Statistique des Grèves et des Recours à la Conciliation et à l'Arbitrage.

the eleven years from 1893 to 1903 recourse was had to the law 1,413 times, or an average of 128 per year. Twenty-three of the total number were disputes in which no stoppage of work occurred, while 1,390 were strikes or lockouts, which is equal to 23.7 per cent of the 5,874 such disputes reported by the bureau of labor during the eleven years. The record, by years, is as follows:

DISPUTES IN WHICH SETTLEMENT WAS ATTEMPED UNDER THE LAW, COMPARED WITH TOTAL STRIKES AND LOCKOUTS IN FRANCE, 1893 TO 1903.

Year.	Disputes in which settlement was attempted—			Total strikes and lockouts.	Attempts to settle per 100 strikes and lockouts.
	Before strike or lockout.	After strike or lockout.	Total.		
1893	7	102	109	634	17.2
1894	8	93	101	391	25.8
1895	5	80	85	405	21.0
1896	6	98	104	476	21.8
1897	3	85	88	356	24.7
1898	2	92	94	368	25.5
1899	2	195	197	740	26.6
1900	9	225	234	902	25.9
1901	6	136	142	523	27.2
1902	4	103	107	512	20.9
1903	9	143	152	567	26.8
Total	61	1,352	1,413	5,874	24.1

The largest number of cases of resort to the act appears in 1900, when the total was more than twice that of any previous year except 1899, while the smallest number was in 1895. The most noticeable variations from year to year appear in the great increases of 1899 and 1900, followed by equally striking decreases in 1901 and 1902, and then an increase in 1903 to a number higher than in any other outside of the exceptional years 1899 and 1900. These variations follow in general the variations in number of strikes and lockouts so that, as indicated in the last column of the table, proportionately to the total number of industrial disputes occurring the amount of recourse to the law varies much less noticeably. While no constant tendency either upward or downward is discernible throughout the period, there is a noticeable contrast between the last five years and the preceding six. Thus from 1893 to 1898 the actual attempts to apply the law averaged 97 per year, or 22.1 per hundred strikes and lockouts for each year, whereas from 1899 to 1903 the number per year averaged 166, or 25.6 per hundred strikes and lockouts.

The table above brings out the fact that nearly all action under the French law has been taken after disputes had developed into strikes or lockouts. The cases in which proceedings were instituted before that stage had been reached average less than half a dozen per year, and in a majority of these (38 in all), as noted below, stoppage of work occurred later.

The following table shows by whom the initiative for procedure under the law was taken:

INITATIVE IN ATTEMPTS TO SETTLE DISPUTES IN FRANCE, 1893 TO 1903.

Year.	Disputes, attempts to settle which were initiated by—				
	Employers.	Work people.	Both parties.	Justices of the peace.	Total.
1893	5	56	2	46	109
1894	4	51	2	44	101
1895	2	46	3	34	85
1896	4	57	4	39	104
1897	4	46	1	37	88
1898	3	57	2	32	94
1899	1	112	4	80	197
1900	6	141	8	79	234
1901	5	67	3	67	142
1902	5	60	2	40	107
1903	3	89	2	58	152
Total	42	782	33	556	1,413

Employers have shown but little inclination to resort to the act, while working people have of their own motion appealed to it in over one-half of the attempts to apply it. The cases in which the parties turned to the law by joint agreement have been even fewer than the cases of initiative by employers alone. Justices of the peace have manifested considerable activity in applying the law, having instigated proceedings independently in over one-third of the total number. The relative amounts of each kind of initiative remain very much the same throughout the eleven years.

Many of the attempts to apply the law get no further than mere proposal to resort to it, one or other of the parties refusing to join in the proceedings, thus:

DISPUTES IN WHICH SETTLEMENT WAS REJECTED, AND PER CENT OF REJECTIONS OF TOTAL ATTEMPTS TO SETTLE, FRANCE, 1893 TO 1903.

Year.	Disputes in which settlement was rejected by—				Total attempts to settle disputes.	Per cent of rejections of total attempts.
	Employers.	Work people.	Both parties.	Total.		
1893	34	6	2	42	109	38.5
1894	24	4	1	29	101	28.7
1895	29		2	31	85	36.5
1896	41	3		44	104	42.3
1897	20	2	3	25	88	28.4
1898	32	1	5	38	94	40.4
1899	65	1	13	79	197	40.1
1900	88	3	5	96	234	41.0
1901	51	4	6	61	142	43.0
1902	35	2	5	42	107	39.3
1903	46	1	8	55	152	36.2
Total	465	27	50	542	1,413	38.4

Over 38 per cent of all the attempts in the eleven years failed thus at the very outset, and these failures, except in a very few cases, were due to refusal on the part of employers. The proportion of such

failures remains fairly constant throughout the period. As a rule these rejections meant the continuance or the inauguration of strikes. But in a few cases each year, amounting to 69 for the eleven years, the refusal of employers was followed by the abandonment of the struggle by the employees.

Besides the above cases in which proceedings for conciliation were never reached there were some others each year, amounting to 87 for the entire period, in which disputes were brought to an end after procedure under the law had been inaugurated but before the conciliation committees had been organized. Some of these arrangements were the result of direct efforts of justices of the peace as informal mediators, the remainder being effected by the parties themselves.

By subtracting the cases of rejected proceedings and agreements reached during preliminary negotiations from the total attempts to apply the law the cases in which full procedure was carried out are found. The results in those cases are set forth in the following table:

CASES OF FULL PROCEDURE SETTLED BY CONCILIATION AND BY ARBITRATION AND CASES WHICH FAILED OF SETTLEMENT, FRANCE, 1893 TO 1903.

Year.	Total cases of full procedure.	Cases settled by—			Cases which failed of settlement.	Per cent settled.
		Conciliation.	Arbitration.	Total.		
1893	54	28	5	33	21	61.1
1894	64	37	2	39	25	60.9
1895	50	27	3	30	20	60.0
1896	53	21	1	22	31	41.5
1897	54	25	5	30	24	55.6
1898	52	20	2	22	30	42.3
1899	109	40	6	46	63	42.2
1900	124	64	18	82	42	66.1
1901	72	41	8	49	23	68.1
1902	59	34	2	36	23	61.0
1903	93	51	2	53	40	57.0
Total	784	[a] 388	54	442	342	56.4

[a] Thirty-three of these were not definitely arranged in the conciliation committees, but were arranged in continued negotiations between the parties afterwards. They may fairly be credited to the law, however.

In over 56 per cent of the cases in which full trial of the procedure provided in the law was made a settlement was effected. As between different years it will be seen that the proportion of success from 1896 to 1899 was considerably lower than from 1893 to 1895, but in 1900 and 1901 the percentage suddenly leaps up much beyond that of any earlier year only to decline sharply in 1902 and 1903, so that the period as a whole does not show an increasing proportion of settlements. The table brings out clearly the fact that nearly all the success of proceedings under the law has been attained by conciliation. Further facts as to the arbitration cases are set forth in the following table:

CASES IN WHICH ARBITRATION WAS PROPOSED UNDER THE LAW IN FRANCE, BY RESULTS, 1893 TO 1903.

Year.	Number of cases in which arbitration was—						
	Proposed.	Refused by—				Accepted but failed.	Successful.
		Employers.	Work people.	Both.	Total.		
1893	23	9	3	3	15	3	5
1894	18	13		3	16		2
1895	22	7	2	8	17	2	3
1896	22	12	2	5	19	2	1
1897	23	13	2	3	18		5
1898	21	9	1	8	18	1	[a]2
1899	40	13	1	20	34		6
1900	51	16	5	9	30	3	18
1901	19	5	2	4	11		8
1902	15	4	3	4	11	2	2
1903	20	4	6	6	16	2	2
Total	274	105	27	73	205	15	54

[a] One of these successful arbitrations was not exactly by the method prescribed in the law. The parties submitted the case to the justice of the peace in the first instance, without the formation of a conciliation committee.

In the great majority of cases where conciliation committees failed to settle disputes efforts for arbitration were made, as directed by the law, but out of 274 cases of this kind the effort was fruitless in all but 54. Nearly all of these failures were due to refusal of arbitration by the parties at the very outset, and though such refusals have come much oftener from employers than from work people, they have been by no means confined to the former class. The fact is, as pointed out in each of the first four annual reports on its operation, the French law encountered a pretty general and strong opposition to arbitration as distinguished from conciliation. This opposition served not only to prevent arbitration proceedings after conciliation had failed, but, owing to a misunderstanding of the law, proved a serious obstacle to conciliation. All four of the above-mentioned reports complain of a prevalent misconception which interpreted the statute as compelling resort to arbitration in case conciliation failed, which naturally operated to keep those opposed to arbitration from conciliation proceedings as well. Evidence of this appeared, say the reports, in the fact that the reason oftenest given for refusal to join in conciliation negotiations was that the dispute in question was not susceptible of arbitration, and the report for 1895 asserts that had the law been perfectly understood there would not have been more than one-third as many refusals of conciliation as there were during the first three years. So far as can be seen in the annual number of refusals of conciliation and refusals of arbitration above given there is no sign of any lessening of such opposition, with the possible exception of a noticeably smaller number of rejections of arbitration by employers in the last three years.

Where the parties submitted to it, arbitration proved successful in over three-fourths of the cases. Of the 15 cases in which it failed, in 8 the difficulty was in connection with the appointment of arbitrators—once the parties were unable to agree upon arbitrators, four times one or both of those chosen declined to serve, twice the arbitrators could not agree upon an umpire, and once two successive umpires appointed by the president of the local civil tribunal refused to act. Of the other 7 failures, in 3 the arbitrators were unable to agree upon an award, in 1 the employer announced his acceptance of the award, but refused to reemploy the strikers, while in the other 3 the work people rejected the award, though in one of these they afterwards accepted it.

As already indicated, nearly all that has been accomplished by the French law has been in connection with disputes which involved stoppage of work. During the eleven years to 1903, out of the 1,413 attempts to apply the law, but 61 were made before work had been interrupted by strike or lockout, and strikes or lockouts afterwards occurred in more than half of these, so that the law served to prevent stoppage of work in but 23 cases, with, moreover, no sign of any increase of success in this direction, as indicated by the following figures:

DISPUTES IN WHICH SETTLEMENT UNDER THE LAW WAS ATTEMPTED BEFORE STRIKE OR LOCKOUT AND NUMBER OF STRIKES AND LOCKOUTS PREVENTED, FRANCE, 1893 TO 1903.

Year.	Total attempts to settle disputes.	Attempts before strike or lockout.	Attempts followed by strike or lockout.	Strikes and lockouts prevented.
1893	109	7	3	4
1894	101	8	2	6
1895	85	5	4	1
1896	104	6	4	2
1897	88	3	2	1
1898	94	2	2	----------
1899	197	2	2	----------
1900	234	9	6	3
1901	142	6	4	2
1902	107	4	2	2
1903	152	9	7	2
Total	1,413	61	38	23

If, following the practice of the official reports, all cases be classed either as settlements or failures, the following summary of results under the French law may be made:

TOTAL DISPUTES SETTLED AND WHICH FAILED OF SETTLEMENT UNDER THE LAW, FRANCE, 1893 TO 1903.

Year.	Total attempts to settle disputes.	Total disputes settled.	Total disputes which failed of settlement.	Per cent of settlements of attempts to settle.	Per cent of settlements of all strikes and lockouts.
1893	109	51	58	46.8	8.0
1894	101	53	48	52.5	13.6
1895	85	36	49	42.4	8.8
1896	104	37	67	35.6	7.8
1897	88	41	47	46.6	11.5
1898	94	30	64	31.9	8.1
1899	197	59	138	29.9	8.0
1900	234	106	128	45.3	11.8
1901	142	65	77	45.8	12.4
1902	107	47	60	43.9	9.1
1903	152	70	82	46.1	12.3
Total	1,413	595	818	42.1	10.1

Under settlements are here included those disputes terminated before the organization of committees was completed, and those abandoned as soon as proposed procedure under the law was rejected, as well as those settled in full procedure. Failures include cases in which the dispute was continued, either because the proposition for conciliation or arbitration had been refused at the outset or the regular negotiations had been unsuccessful. Crediting thus everything possible to the law it is found to have settled 42.1 per cent of the disputes in which any trial was made of it, and to have terminated 10.1 per cent of all the strikes occurring during the eleven years. The proportion of success to failure and the proportion of all disputes settled both fluctuate from year to year, but during the eleven years to 1903 show no general tendency either upward or downward.

BELGIUM.

A single law of 1887 comprises Belgian legislation upon the subject of conciliation and arbitration in collective disputes. The royal commission on labor appointed in 1886 assigned the subject of conciliation and arbitration to one of its sections for special investigation. The result was the recommendation by the commission of a law which contemplated permanent councils of conciliation to be established by the Central Government for single firms or establishments or for groups of establishments. Initiative for the formation of councils was to be left, so far as possible, to the employers and employees, who were to make request therefor to the local communal council, by whom, after deliberation, the request was to be transmitted to the Central Government. But the way was to be left open for the communal council, or in case of existing dispute or strike the

Central Government itself to take the initiative. The important conditions specified for the constitution and procedure of the councils were that they should be composed of equal numbers of employers and workmen, each of those classes electing their delegates; that the president, chosen ordinarily by the members, but whose office in case of need might be exercised by a justice of the peace, was to be only a presiding officer with no vote; that the council might, however, on request of all the parties interested, appoint an umpire or arbitrator; that the councils might meet at any time they chose, but could be convened at the call of the mayor of the commune, and must meet on demand of one-half of the members; and that reports of the proceedings of the councils were to be filed with the justice of the peace.

LAW OF AUGUST 16, 1887.

This plan recommended by the commission was patterned after the "joint committees" for conciliation and arbitration established under private initiative in England, and was confined simply to the question of settlement of disputes. The Belgian Parliament, however, manifested a decided preference for a very different scheme, which was embodied in a law of August 16, 1887, in which the settlement of disputes was but one part, and that a secondary one, in a larger system. This system was essentially a combination of suggestions made to the commission on labor by M. Hector Denis, professor of political economy in the University of Brussels, with the features of a private arbitration tribunal established for the boot and shoe industry, which had also been submitted to the commission. [a]

PROVISIONS OF THE LAW.

The law of 1887 provides for councils of industry and labor, whose rôle is declared to be "to deliberate upon the common interests of employers and employees, to prevent, and, if necessary, adjust differences which may arise between them."[b] The essential features in the constitution and procedure of these councils, as quite briefly prescribed in the act, are as follows: They are to be established by royal decree in every locality where their utility is clear. This establishment may be either at the will of the Royal Government, or upon request of communal councils, or upon application

[a] The above facts concerning the passage of the Belgian law are taken from the report of the French bureau of labor, De la Conciliation et de l'Arbitrage dans les Conflits Collectifs entre Patrons et Ouvriers en France et à l'Étranger, 1893, pp. 432 ff.

[b] Art. I of the law.

of employers or working people. Each council has as many sections as there are distinct industries in the locality. The section, which is the unit in the system, represents, therefore, a single industry in one locality and is composed of equal numbers of representatives, not less than six nor more than twelve, elected by employers and laborers separately, and the members choose a president and a secretary from their own number. As to procedure for the election of members, the statute simply prescribes that the regulations fixed by law for the election of members of the councils of prudhommes, or industrial courts, are to be followed. But by royal decrees of August 15, 1889, March 10, 1893 (the principal one), and of March 26 and April 11, 1897, this whole matter—qualification of electors and members, preparation of electoral lists, nomination of candidates, balloting, contested elections, etc.—is regulated in great detail. Each section must hold at least one meeting a year, at the time and place indicated by the permanent committee of the provincial council, but is to be convened at any time by the said committee upon the request of either employers or laborers. The communes are required to furnish the necessary meeting places for councils or sections. The council of any locality or several sections of the same or different localities may be summoned at any time by royal decree to a general assembly to give their advice upon any subject of general interest concerning labor or industry which the King may see fit to submit to them. These assemblies elect their own president and secretary, but the Government may appoint a commissioner to take part in the deliberations. In case of all the above-mentioned meetings of councils or sections or of assemblies, the subject to be considered and the length of the session are strictly determined by the convening order either of the permanent committee of the provincial council or the royal decree, and no other subject may be taken up. Members are allowed a per diem compensation for attendance at general assemblies, to be paid by the province in which the assembly is held. Finally, the one brief section dealing specifically with the subject of disputes provides simply that whenever circumstances appear to demand it, at the request of either party, the governor of the province, the mayor of the commune, or the president of the section for the industry in which the dispute occurs must convene that section, which is to endeavor by conciliation to arrange a settlement. If this effort is unsuccessful, a report of the proceedings is to be made public.

The function of the Belgian councils of industry and labor is thus threefold: (1) To give information or advice to the Government, (2) to furnish employers and employees the means for conference and discussion of common interests before the emergence of differences, and (3) to adjust any disputes that may arise. The first of these is

of no significance in the present connection, although in practice it has been increasingly the most important one exercised by the councils.(a)

The second function of the councils above noted is here significant as a means of preventing disputes. In connection with it two points in the Belgian law are worthy of notice: First, members of a section, representing the employers and laborers of a given industry in the locality, must come together at least once in a year; secondly, a very close government control is exercised over all consultations of sections in that all meetings are convened by the provincial government and the convening order limits the discussion strictly as to time and subject.

The third function of the councils holds a quite subordinate place in the law, though possibly because much was hoped from the second. The only mode of dealing with disputes contemplated is conciliation of the most informal character, this to be applied only upon the request of one of the parties.

ESTABLISHMENT OF COUNCILS OF LABOR AND INDUSTRY.

Turning to the operation of this law, the reception accorded it by the two industrial classes was anything but cordial. For more than two years the Government waited in vain for communal authorities, employers, or working people to take the initiative in establishing councils. None of the interested parties having made any request therefor, the Government finally, in December, 1889, took matters into its own hands and, after consulting the communal authorities, issued decrees for 17 councils, and followed this up by others in the same manner in succeeding years. In a few cases decrees for the establishment of councils have subsequently been rescinded, but on January 1, 1904, decrees for 76 councils were in force, these having been issued by years as follows:(b)

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a As a system of Government advisory boards the organization of the institution was completed with the establishment, by royal decree of April 7, 1892, of the "higher council of labor" (*conseil supérieur du travail*), a central body composed of employers, employees, and experts in economic and labor problems, whose business it is to prepare the inquiries to be made of the local councils and to summarize the results of such inquiries for presentation to the Government. It may also be noted that an added importance has been given to the councils of industry and labor by a requirement that they shall be consulted in the administration of the factory laws, viz, those of August 16, 1887, concerning the payment of wages, of December 22, 1889, concerning the employment of women and children, and of July 2, 1899, concerning the protection of the health and safety of employees.

b Annuaire Statistique de la Belgique, 1903, p. 343.

DECREES FOR THE ESTABLISHMENT OF COUNCILS IN BELGIUM ISSUED EACH YEAR, 1889 TO 1903, AND IN FORCE JANUARY 1, 1904.

Year.	Number.	Year.	Number.
1889	16	1898	1
1890	13	1899	----
1891	16	1900	----
1892	9	1901	----
1893	8	1902	1
1894	7	1903	----
1895	2		
1896	----	Total	76
1897	3		

The existence of these authorizing decrees, however, does not signify the actual existence of the councils. Thus on January 1, 1903, in the case of no less than 23 of the councils, which should have comprised 70 sections, no sections at all were organized, which leaves but 53 councils actually in existence on that date. These 53 were to have comprised a total of 241 sections, according to their decrees, but as a matter of fact 78 of these sections, belonging to 24 councils, were not organized. There were in existence, therefore, at the beginning of 1903, 53 councils with 163 sections. Twenty-nine of these councils were composed of but 1 section, 9 had either 2 or 3 sections, 7 had 4 or 5 sections, 5 had 7 to 9 sections, while of the other three 1 had 11 sections, 1 had 13, and the council at Brussels comprised 19 sections. Within the territorial jurisdiction of 41 of the established councils, for which alone the figures are reported, there was at the end of 1902 about one-eighth of the population of the Kingdom.

According to the report of the first general investigation made by the Government through the councils, the failure of sections to become organized after the Government had issued the necessary legal authorization for them was due simply to the failure of employers and work people to elect their members.[a] Considerable abstention from elections appears also in the case of the sections which were organized. Thus in the case of 29 councils formed during the years 1889, 1890, and 1891, for 38 sections for which both classes elected members the proportion of those entitled to vote who actually voted was but 34 per cent for employers and 38 per cent for the work people. But one-half or less of the employers voted in the case of 22 out of the 38 sections, and in 13 elections only one-fourth of them, or less, voted. Fifty per cent or less of the work people voted in 32 cases, and in 17 of these only one-fourth or less voted.[b] This abstention from elections of members, as well as

[a] Salaires et Budgets Ouvriers en Belgique au Mois d'Avril, 1891, Brussels, 1892, pp. 7, 8.

[b] Report by the French bureau of labor, De la Conciliation et de l'Arbitrage dans les Conflits Collectifs entre Patrons et Ouvriers en France et à l'Étranger, 1893, p. 447.

the fact that the Government was forced to inaugurate the system upon its own initiative, points to a considerable degree of indifference toward the councils on the part of employers and employees. Signs of the same lack of active interest appear also in more recent years. Thus the report of a meeting of the higher council of labor in 1898 states that to inquiries addressed to the industrial and labor classes upon the subject of the revision of the law relating to the councils of labor and industry "little attention was paid." [a] The report of a meeting of one section of the Ghent council, one of the four largest councils in the Kingdom, complains in 1899 that 6 out of the 14 sections were entirely inactive because the employers had neglected to appoint any representatives on them. [b] In 1903 elections fell due for 26 councils, comprising, according to their decrees, 111 sections. The elections resulted, however, in the formation of only 29 sections (31 had been organized prior to the elections), and the failure of the other 82 to organize was due in the case of 72 to the failure of both employers and work people to present candidates, while for 8 the employers alone, and for 2 the workers alone, presented no candidates. [c] Judging by the number of sections remaining thus unorganized each year, it would appear that indifference toward the councils has grown rather than diminished, as follows:

SECTIONS DECREED AND UNORGANIZED IN BELGIUM AT VARIOUS DATES, 1894 TO 1904.

Date.	Sections decreed.	Sections unorganized.	Date.	Sections decreed.	Sections unorganized.
January 1, 1894	294	100	January 1, 1902	303	149
January 1, 1897	309	109	January 1, 1903	311	148
January 1, 1900	306	120	January 1, 1904	311	150
January 1, 1901	303	145			

SETTLEMENT OF DISPUTES UNDER THE LAW.

Of the work of the councils in the prevention and settlement of disputes no statistics for the entire period since their establishment are available; but the following facts are sufficient to give a fair measure of what has been accomplished. To the report of the first general investigation made by the Government through the councils, published in 1892 by the minister of agriculture, industry, and public works, is appended a note upon the activity of the councils in the way of conciliation. Therein 14 cases are reported in which sections were convened to adjust differences between employers and employees during the four years 1889 to 1892. In 6 of these the sections were called upon to deal with existing strikes, and succeeded

[a] The monthly Revue du Travail of the Belgian bureau of labor, 1898, p. 613.
[b] Idem., 1899, p. 1311.
[c] Revue du Travail, 1904, p. 550.

in settling one-half of them, failing in the other 3. In 4 others sections met to consider differences in which no stoppage of work had occurred, and brought about an amicable adjustment in all 4. Twice sections convened without any special dispute to deal with, and elaborated general rules regulating conditions of employment for the industry represented in the section. These rules covered practically all the relations between employers and employees, and contained provisions requiring that every laborer entering the trades must accept them; so that these two cases practically realized the law's aim to prevent disputes through the formulation of general agreements in the councils. The other 2 of the 14 cases were meetings by sections representing the tobacco industry to protest against the employment of convict labor in cigar making, which had been the subject of differences between employers and work people. A protest addressed to the minister of justice led to the suppression by him of the practice complained of. In these 14 cases meetings were held at the instance of laborers five times, employers once, both parties once, the provincial governor or council three times, while one was the regular annual meeting required by law, and in three the initiative is not definitely indicated.

A special report on strikes recently published by the Belgian bureau of labor yields the following statistics as to the work of the councils for the years 1896 to 1900.

TOTAL STRIKES AND NUMBER SETTLED BY COUNCILS, BELGIUM, 1896 TO 1900.

[From Statistique des Grèves en Belgique, 1896–1900, Brussels, 1903, pp. xxx, 185.]

Year.	Total strikes.	Settled by councils.
1896	139	4
1897	130	2
1898	91	5
1899	104	4
1900	146	1
Total	610	16

This shows that the councils have settled less than 3 per cent of the strikes in the Kingdom during the five years. The work of the councils has not been confined to strikes, however, as shown by the following figures, which also indicate the relative degree of success attained in interventions:

INTERVENTIONS BY COUNCILS IN STRIKES AND OTHER DISPUTES AND SETTLEMENTS EFFECTED, BELGIUM, 1896 TO 1903.

[Compiled from periodical accounts of conciliation and arbitration by the councils or others, published by the bureau of labor in its monthly Revue du Travail, except for 1902 and 1903, for which annual reviews of work by the councils given each year since 1901 in the June or July numbers of the Revue have been utilized.]

Year.	Interventions by councils—			Settlements effected—		
	In strikes.	In other disputes.	Total.	In strikes.	In other disputes.	Total.
1896	6	2	8	1	2	3
1897	6	2	8	2	2	4
1898	5		5	3		3
1899	2	1	3	1	1	2
1900	8	3	11	2	3	5
1901	4	2	6	1		1
1902	(a)	(a)	6	(a)	(a)	2
1903(b)						
Total	(a)	(a)	47	(a)	(a)	20

[a] Not separately reported for 1902.

[b] That there were no interventions in 1903 is not specifically stated in the review of that year's work (cf. Revue du Travail, 1904, pp. 550 et seq.), but is assumed from the absence of any notice of such intervention, the review being made up in precisely the same form as in 1902 and 1903.

The table indicates that in general the councils have succeeded not quite as often as they have failed. They appear to have been especially successful when intervention occurred before the strike stage had been reached, while in strikes success attended their efforts in one-third of the cases.

Action by the councils in the great coal strike of 1899, which involved between 50,000 and 60,000 miners, is not included in the second table above, but should be mentioned. The various sections for that industry were twice summoned by royal decree to discuss the subject of wages in the coal mines, which was the point in dispute. The thorough examination of the question thus made contributed in no small degree, apparently, to the final settlement, though the latter was not primarily the work of the councils.

As an agency for preventing disputes by furnishing ready means for negotiating terms of employment it appears that the Belgian councils of industry and labor have been of very little service to judge by the accounts of their work for 1901, 1902, and 1903, as given in the Revue du Travail of the Belgian bureau of labor. [a] Meetings of the councils called at the request of employers or employees very rarely occur, only three such (in 1901) being reported in the three years. In two of these cases sections drew up a minimum scale of wages to be paid on work done for the Government, while in the third a section was called upon to consider four questions, namely, an increase of 50 per cent in wages for work on the seventh day in the week, furnishing of tools by the employer, establishment of the first day of May as a holiday, and an eight-hour workday. The result of

[a] Revue du Travail, 1902, p. 603; 1903, p. 707; 1904, p. 550.

the meeting was that the question of a wage increase was laid aside by common consent. The employers promised to take experimental steps in the direction of supplying tools, but on the question of May Day as a holiday and eight hours of work the section could not reach an agreement.

The regular annual meetings of sections summoned by the provincial authorities according to law, which are reported in considerable numbers for the three years, were devoted chiefly to the consideration of questions of Government industrial policy or general problems of industrial betterment, such, for example, as insurance against involuntary idleness, establishment of baths and lavatories in mines, etc. In a number of cases sections were called upon at these annual meetings to fix minimum wage scales for Government work, but not always with favorable results. Thus, in 1901, 4 sections were asked to establish such scales, but only 2 could come to an agreement as to the rates to be included. In 1902 out of 23 sections asked for similar service in only 4 could the employers' and the workers' representatives reach an agreement as to the rates. No work of this kind is reported for 1903. Outside of fixing wages for public work, only 3 instances are reported for the three years in which terms of employment were up for determination in annual meetings. Once, in 1901, a section for mining took up the subjects of the furnishing of tools by the employers, May Day holiday, baths in the mines, and biweekly payment of wages, but on the first two points no agreement could be reached, while on the last two the employers promised to do their best to meet the desires of the workmen. Similarly in a second case (in 1902) another mining section had before it four questions, including the suppression of fines and an increase of wages, and could agree on but two, the employers insisting that fines should be continued and the workers standing out for their abolition, while on the wages question the employers took the position that the section had no right to discuss the subject at all. The third case above referred to, in which a section in annual meeting considered terms of employment, was in 1902, and in this instance positive service toward industrial peace seems to have been rendered in that the question of wages in the industry was discussed and the conclusion reached that existing rates were satisfactory to both employers and work people.

PROPOSED REVISION OF THE LAW.

It remains to notice briefly a revision of the law of 1887 recommended by the higher council of labor in 1899. Although these recommendations have not as yet resulted in any amendment of the law, they are of some significance in view of the careful study upon

which they were based and as indicating the changes in the system which, in the opinion of the higher council, were needed. In November, 1897, that body appointed a special commission to examine and report upon the subject of revision. This commission, after prolonged investigation by means of inquiries addressed to the various councils and otherwise, presented a preliminary draft for a bill to the council, where it was gone over in detail and finally adopted in June, 1899. This bill contemplates a much more detailed regulation of the system than the old law, especially in relation to elections, qualifications of members and voters, and the organization of the councils. It is worthy of note in this connection that it is proposed, evidently as a cure for the abstention of voters from elections above noted, to make voting compulsory and allow working people free transportation by rail to the place of election.

The general functions of councils were to be in nowise altered by the revision. As regards conciliation and arbitration, however, several additions were proposed, the most important being (1) provision for action by councils when disputes are threatened as well as when they have actually arisen, which was the reading of the old law; (2) provision that in connection with conciliation councils are not only to be summoned at the request of parties, but may be summoned by the governor, burgomaster, or president, independently of such request, and that when a council has been summoned for conciliation, pending the full meeting, its "bureau" or executive committee is to endeavor to adjust or prevent the dispute; (3) provision for arbitration, entirely voluntary in character, either before an arbitrator named by the section interested or before a commissioner named by the minister of industry and labor upon application from the section; (4) provision that where a dispute affects a number of establishments in the same industry but affiliated with different councils the minister of industry and labor may summon them all to act in the case, and (5) provision that where disputes arise outside the jurisdiction of councils the governor of the province, or the burgomaster, shall make every possible effort to adjust the difference.

THE NETHERLANDS.

LAW OF MAY 2, 1897.

The first move for legislation concerning the settlement of labor disputes in the Netherlands was made in 1892 by the introduction into the lower chamber of the States-General of two bills of similar tenor, the one to establish "chambers of labor and industry," the other to establish, under a shorter title, "chambers of labor." The parliamentary consideration of these bills led their authors to present a combined measure just at the close of 1892. This having

failed of passage the same authors again presented separate measures in 1893 and 1894, but with no better success. The introduction and discussion of these projects, however, had the effect of inciting the Government to the proposal of a law for chambers of labor in October, 1895. This accorded with the recommendation of a royal commission on labor, appointed in 1890, which in its report in 1894 had favored the establishment of such bodies. This Government bill, as the result of discussion in the session to which it was introduced, was presented in modified form at the next session (1896–97), where it resulted in the law of May 2, 1897,[a] which is still in force and unamended.

GENERAL PROVISIONS OF THE LAW.

The law provides that a chamber of labor may be established by royal decree upon recommendation of the minister of waterways, commerce, and industry, either for one commune or for several communes combined, and for a single or several industries, and chambers may be abolished in the same way. The mission of such a chamber is fourfold: (1) To collect information concerning labor conditions; (2) to give advice to Government authorities, provincial or communal, concerning questions of interest to labor either upon request or of their own motion; (3) at the request of interested parties to advise as to proposed agreements or regulations, and (4) to prevent or settle labor disputes.

A chamber is composed of equal numbers of employers and employees, each class electing its own representatives for terms of five years. The mode of electing members, qualifications of members and electors, etc., are prescribed in detail, elections being under the direct supervision of the communal authorities.

Each chamber chooses its own presidents and secretary. Two presidents are elected, the one by the members representing employers and the other by those representing laborers, and the two alternate in presiding for periods of six months. The " bureau " of the chamber consists of a president and two members, one each chosen by and from among the two classes of members. Each chamber makes its own rules of procedure subject to approval by the Government.

Chambers must meet at least four times a year, and at such other times as the president deems advantageous, or whenever the two members of the bureau or at least two-thirds of the members of the entire chamber request it in writing. One-half the members of each class must be present to constitute a quorum, and for any vote an equal number of each class must be voting. The bureau meets as often as the president considers it necessary, or whenever one of the members

[a] A French translation of this law may be found in the Annuaire de la Législation du Travail of the Belgian bureau of labor, 1897, p. 289.

makes written request therefor. Decisions in either body are made by majority vote with deciding vote by the president in case of a tie, but when a chamber is making recommendations to the Government the minority have the right to express a separate opinion. Meetings are held with closed doors and the chamber may preserve secrecy in all its proceedings. Each chamber must make an annual report to the Government, which is to be transmitted in whole or in part to the States-General. Aside from this report, information is to be furnished to the Government under regulations fixed by administrative decree, such information to be published periodically if desirable. The communes must provide places of meeting and bear the costs of elections, while the pay of members for attendance at sessions and traveling expenses, together with the secretary's expenses, are provided by the State.

PROVISIONS FOR INTERVENTION IN DISPUTES.

So much for the general features of the system. It remains to notice particularly that part having to do with labor disputes. Chapter V of the law, which is devoted to this subject, provides that whenever a dispute occurs or is threatened in an industry represented in a chamber, either party may call for the intervention of a council of conciliation by written request to the chamber setting forth the cause of the dispute. When the parties belong to an industry not represented on a council, they may make the application to any chamber in the same or a neighboring commune. But request by one or both the parties is not a necessity for intervention by a council, as this may occur at the instance of the burgomaster of a commune or the royal commissioner of a Province.

Upon receipt of any such application the bureau of a chamber, if it considers the difference to be of a simple character, shall endeavor to arrange a settlement. Otherwise, or if the bureau's efforts prove fruitless, the matter is to be immediately referred to the full chamber. If the latter considers that intervention will prevent or settle the controversy it is to name a conciliation council consisting of a president chosen either from or outside of the chamber and members taken in equal numbers from the employers' and the laborers' representatives in the chamber, the secretary of the latter acting as secretary of the council. It is the duty of the president to use his best endeavors to persuade the parties not to suspend work during the negotiations without previous reference of the matter to him. The council of conciliation shall meet as often as the president deems it necessary, and upon the conclusion of its investigations shall render a written opinion upon the dispute and the proper means of adjusting it, which is to be transmitted to the parties, and may be published either

in whole or in part. In the deliberations of the council the president has a deciding vote, except as concerns the contents of this report, in which the minority, if they so desire, have a right to express their opinion. Except as contained in the report the proceedings of the council are not to be made public. There is no provision as to arbitration in the law beyond the simple declaration that the parties to a dispute may submit it to arbitration if they choose, and that women may act as arbitrators.

In general plan and purpose these Dutch "chambers of labor" are very similar to the Belgian "councils of industry and labor." Indeed, the latter would seem to have served as a model for the Dutch legislation. The most noteworthy points of difference between the two systems are (1) the single organization of the Dutch chamber in place of the Belgian council subdivided into sections for different industries; (2) the provision for the "bureau" or executive committee of the chamber in the Netherlands; (3) the greater freedom allowed the Dutch chambers when acting in the capacity of standing committees of employers and employees or of Government advisers, there being no Government supervision over meetings as in Belgium; (4) the authority given local government authorities in the Netherlands to initiate conciliation proceedings independently, whereas Belgium provides for reference only upon the request of one or both of the parties; (5) the more elaborate procedure in the Netherlands, including informal conciliation efforts in minor cases by the executive committee, decision to refer by the full chamber, and the formal conciliation by a special committee or council named for the purpose, instead of the one procedure by the section in Belgium.

ESTABLISHMENT OF CHAMBERS OF LABOR.

The reports of the chambers, as published by the minister of waterways, commerce, and industry,[a] and the reports of strikes and lockouts published by the central bureau of statistics of the Netherlands in its Journal,[b] show the following facts as to the operation of the Dutch system, so far as concerns the settlement of collective disputes:

Up to January 1, 1904, royal decrees of establishment had been issued for 99 chambers. Nine of these had been abolished before 1904, leaving a total of 90 in existence at the beginning of that year. The following table shows the number of chambers decreed, abolished, and in existence on January 1 for each year since the law went into effect:

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[a] Verslagen der Kamers van Arbeid over 1899; idem., 1900, 1901, 1902, 1903.

[b] Tijdschrift van het Centraal Bureau voor de Statistiek.

CHAMBERS OF LABOR DECREED AND ABOLISHED, AND NUMBER IN EXISTENCE IN THE NETHERLANDS, ON JANUARY 1 OF EACH YEAR, 1898 TO 1904.

Year.	Number of chambers of labor—			Year.	Number of chambers of labor—		
	Decreed.	Abolished.	In existence January 1.		Decreed.	Abolished.	In existence January 1.
1898	30			1903	3		87
1899	30		30	1904			90
1900	19	2	60				
1901	7	2	77	Total	99	9	
1902	10	5	82				

The system was extended quite rapidly down to 1901, but since then has grown much more slowly.

The 90 chambers in existence on January 1, 1904, were in 38 different localities, namely: Amsterdam, with 11 for as many different industries; Rotterdam, with 9; Utrecht, with 6; Haarlem and The Hague, with 5 each; 6 other localities with 3 chambers in each; 9 localities with 2 chambers each, and 18 places with a single chamber in each.

SETTLEMENT OF DISPUTES UNDER THE LAW.

In their work under the law's provision for intervention in disputes between employer and employed, the chambers have dealt with a large number of individual disputes, that is, controversies over the rights of the individual worker and his employer under existing terms of employment. This work of the chambers corresponds to that of the industrial courts found in France, Germany, and other European countries, and need not be considered here, although it has constituted in practice the major part of their work in the field of industrial disputes.

An examination of the reports of the individual chambers and the reports on strikes and lockouts published by the central bureau of statistics[a] yields information in considerable detail concerning intervention by chambers in strikes and lockouts. A summary of all such cases found is as follows:

SUMMARY OF INTERVENTIONS BY CHAMBERS OF LABOR IN STRIKES AND LOCKOUTS IN THE NETHERLANDS, 1899 TO 1904.

	1899.	1900.	1901.	1902.	1903.	1904.
Total chambers in existence (Jan. 1)	30	60	77	82	87	90
Number of chambers which intervened or offered to intervene in strikes and lockouts	3	7	8	16	13	12
Total interventions, actual or proposed	3	7	9	19	18	13
Total strikes and lockouts in the Kingdom	(b)	(b)	122	142	163	102
Interventions per 100 disputes	(b)	(b)	7.4	13.4	11.0	12.7

[a] Tijdschrift van het Centraal Bureau voor de Statistiek. [b] Not reported.

With respect to any comparison between years it should be explained at once that the figures for 1899 and 1900 were compiled from the reports of the chambers alone, no reports of strikes and lockouts having been published for years prior to 1901. For 1901, 1902, and 1903 both the reports of the chambers and reports on strikes and lockouts were available, while for 1904 the strike reports alone were at hand, as the annual reports of the chambers had not been published at the time this chapter was completed. As the two sources have been found to be slightly supplementary in respect of total number of interventions, the figures here given for 1904 are not exactly comparable with those of 1901, 1902, and 1903. It would appear, however, on the basis of the differences between reports discovered in the earlier years that the total actual or proposed interventions in 1904 at the most did not exceed those in 1902 or 1903.

During the four years 1901 to 1904 interventions of chambers were proposed in 59 out of a total of 529 strikes and lockouts, or in a little more than one in 10 cases. The total 69 proposed interventions for the entire six years were distributed among 40 different chambers, 24 of which had but one case, 9 had two apiece, 4 had three cases each, while 1 chamber had intervened in four cases, 1 in five, and another in six instances. It will be seen that since 1901 more than half the chambers have not intervened in strikes or lockouts at all, and that in any one year four-fifths of all the chambers, or more, have not intervened in such disputes. That this nonintervention was by no means all due to the absence of strikes or lockouts within the jurisdiction of the chambers may be inferred from the fact that, according to the report on strikes and lockouts for 1903, there were 81 strikes during that year in industries under the jurisdiction of chambers of labor, whereas in that year there were but 18 proposed interventions by 13 chambers.

As a rule intervention has been proposed or accomplished in the case of strikes and lockouts only after the stoppage of work, that having been apparently the case in all but 8 of the 69 interventions above noted. In those 8 cases (one each in 1901 and 1902 and three each in 1903 and 1904) a strike or lockout occurred after action had been taken by the chambers, although in two the chambers finally settled the dispute.

It appears from the accounts as given in the reports that in two-thirds of the cases (45 out of 69) the initiative for action by the chambers was taken by one or other of the parties, there being twice as many cases of initiative by the workers alone (30) as by employers only (14), while in one instance both parties applied to a chamber. In 23 cases the chambers themselves appear to have taken the first steps. Only one case is reported in which the mayor of a commune

called upon the chamber to intervene. By years these figures as to initiative are as follows:

INITIATIVE OF INTERVENTION BY CHAMBERS OF LABOR IN STRIKES AND LOCKOUTS IN THE NETHERLANDS, 1899 TO 1904.

Year.	Interventions asked or proposed by—					
	Workers.	Employers.	Both parties.	Chambers.	Mayors.	Total.
1899	3					3
1900	3	2		2		7
1901	4	1		4		9
1902	6	7		5	1	19
1903	8	3		7		18
1904	6	1	1	5		13
Total	30	14	1	23	1	69

The following table gives a summary of the results of the above actual or proposed interventions by chambers in strikes or lockouts, these figures, like those above, being obtained by an analysis of the accounts of the individual cases as given in the reports.

PROPOSED AND ACTUAL INTERVENTIONS BY CHAMBERS OF LABOR IN STRIKES AND LOCKOUTS IN THE NETHERLANDS, BY RESULTS, 1899 TO 1904.

Year.	Proposed interventions not carried out owing to—		Actual interventions.			Settlements per 100 strikes and lockouts.
			Total number.	Resulting in—		
	Refusal by parties.	Settlement by parties.		Settlement.	Failure.	
1899			3	3		[a]
1900	1		6	4	2	[a]
1901	1		8	3	5	2.5
1902	1	2	16	9	7	6.3
1903	4	2	12	8	4	4.9
1904	2		11	5	6	4.9
Total	9	4	56	32	24	[b] 6.0

[a] Not reported. [b] Four years.

In 7 of the 9 cases in which proceedings were blocked at the outset by refusal of the parties the offer of intervention appears to have been made to both, neither accepting. In the other instances offer to, and rejection by, the employer only is mentioned.

In 1 of the 4 cases settled by the parties the chamber had offered its services to the employer, who agreed that if the strike did not soon end, as he anticipated, he would call upon the chamber to act, but the dispute ended without need for the chamber's services. In the other 3 cases application for intervention had been made by one of the parties. In one of these the chamber's executive committee was considering the case when a settlement was reached independently by the parties; in another a conciliation council had been appointed by the

chamber, but before it could act the parties had reached an agreement; while in the third case the chamber declined to intervene, on the ground that the employer, who had applied for the intervention, had already agreed to the demands of his employees, and all that remained was for him to carry out his expressed intention.

In 13 of the 32 settlements the proceedings were conducted either by the executive committee (bureau) or other representative (an officer, a member, or a special committee named for the case) of the chamber; in 10 instances the chamber itself conducted the case, while in 9 a conciliation council was appointed as specially provided in the law. In 25 of the 32 settlements the procedure may be said to have been conciliation alone, the parties being brought to an agreement by conference or through the chamber as intermediary. Of the remaining cases, in 4 a conciliation council rendered a formal decision which both the parties accepted—twice in accordance with agreement to accept, and in one of these also with resumption of work pending such decision. In 2 cases decisions were rendered by the chambers themselves, the parties having agreed beforehand to accept them; in one of these cases also having resumed work pending the decision, while in the other case the chamber persuaded the parties to submit the case to arbitration by a board of seven persons, two of whom only were members of the chamber, the others being outsiders, all, however, chosen by the chamber.

Of the 24 disputes in which the chambers' intervention failed to bring about a settlement, in 4 the action taken was by the executive committee or a representative of the chamber, in 9 the chamber itself conducted the proceedings, while for 11 resort was had to a conciliation council. A comparison of these figures as to mode of procedure with those for the settlements as above gives, of course, no indication of the relative efficiency of procedure by a chamber or its representative and of that by a conciliation council. The relatively greater number of failures by conciliation councils reflects rather the fact that as intended by the law itself these councils are usually a second resort for more serious disputes, and frequently are appointed only after preliminary effort by the chamber's executive committee or other representative has proved insufficient.

All but two of the failures may be regarded as failures of conciliation. In one of these two cases the failure of procedure by a conciliation council was due to the fact that none of the members of the chamber from the employing class would serve on the council. The other case was the one in which both parties had applied to the chamber asking it to render a decision as to wages, which was the question at issue, the parties having agreed to accept such decision. The projected arbitration failed, however, owing to a disagreement

in the chamber, two members favoring one rate, a third another, and the fourth member still another, and no compromise decision could be reached. In the cases in which conciliation efforts by a conciliation council failed it appears that as a rule the decision or final opinion of the conciliation council on the dispute and the best means of adjusting it, which the law prescribes, was transmitted only to the chamber and the parties. In three such cases, however, the reports state that the council's findings were made public, without, however, causing a settlement of the controversy.

As was indicated in the analysis of the law governing the chambers of labor, their function is not only the settlement but the prevention of industrial disputes by furnishing a convenient agency for the negotiation of terms of employment. An examination of their reports shows that the Dutch chambers have accomplished not a little in the last-mentioned direction. Indeed, their activity in this field appears to have considerably exceeded that in the settlement of strikes and lockouts above considered. A count of all cases of collective bargaining between employer and employed in which the chambers appear to have assisted directly or indirectly, or endeavored to assist, shows the following totals, by years, divided as to whether the negotiations concerned work done by or for the Government, State or local, or concerned private undertakings.

NEGOTIATIONS CONCERNING EMPLOYMENT IN WHICH CHAMBERS OF LABOR ASSISTED IN THE NETHERLANDS, 1899 TO 1903.

Year.	Negotiations concerning employment—		
	On Government work.	In private undertakings.	Total.
1899	6	7	13
1900	8	37	45
1901	8	45	53
1902	12	46	58
1903	28	45	73
Total	62	180	242

These figures include all cases in which the chambers assisted in any way or were called upon to assist in determining the conditions of employment for a body of workers collectively—that is, for those in a given establishment, trade, or class. The cases included vary all the way from intervention with a view to settling well-developed differences over the terms of employment or the amicable negotiation of general agreements for an entire trade to simply furnishing advice or information upon the request of one party. Taking these figures as a very rough measure of the extent of the work done by the chambers in the way of preventing industrial disputes, it would

appear that such work has increased down to 1903 at least, but the increase of 1902 and 1903 was almost entirely in the way of assistance in determining conditions on Government work. This latter class of cases, it may be observed, has much less significance with respect to the general problem of preventing industrial disputes than the cases of negotiation between employers and employed in other undertakings; and the chambers, being created by the Government for the especial purpose of furnishing the latter with information concerning labor and industry, would be the natural agency to assist in determining conditions of employment for Government undertakings or Government contract work. It is not surprising to find, therefore, that in some 17 of the 40 negotiations touching employment on Government work during 1902 and 1903 the chambers formulated schedules of wages or hours of labor for such work.

Of the degree of success achieved in these cases of collective bargaining which came before the chambers it is impossible to present even a rough measure, either because of the nature of the cases or from lack of sufficient information in the reports as to the outcome of the chambers' efforts. It appears, however, that the work in this field has been done chiefly by the chambers themselves, their executive committees, or one or more members as their representatives, since in but 22 (one only in negotiations touching Government work) of the total 242 cases noted was resort had to a conciliation council.

Among the occasional comments concerning their work by the chambers themselves, which are to be found in the reports, none is more significant in the present connection than one found repeatedly, in different years and by different chambers, to the effect that the chambers found a large degree of indifference or even pronounced opposition on the part of the employers and work people within their jurisdiction. If the number of employers or workers who take part in the elections of members of chambers may be taken as an indication of their attitude, it would appear that the serious difficulty in the way of successful work, especially in the field of conciliation and arbitration, suggested by the above comments, is a very real one for the chambers generally. For it appears that, as a rule, but a small proportion of the employers and work people have enough active interest in the chambers to vote for members of them, as shown by the following table, which has been made up from the numbers of electors and voters as given in the reports:

PERCENTAGE OF PERSONS ENTITLED TO VOTE WHO VOTED IN ELECTION OF MEMBERS OF CHAMBERS OF LABOR IN THE NETHERLANDS, 1898 TO 1903.

Year.	Chambers holding elections.	Percentage of those entitled to vote who voted.	Number of elections in which of those entitled to vote there voted—		
			One-half or more.	One-fourth to one-half.	Less than one-fourth.
Employers' elections:					
1898	5	39.4	1	3	1
1899	33	25.5	5	11	17
1900	30	16.7	1	14	15
1901	20	18.3	5	5	10
1902	12	16.6	----	3	9
1903	22	20.1	3	6	13
Total	122	20.7	15	42	65
Workers' elections:					
1898	5	37.9	----	4	1
1899	33	32.5	10	12	11
1900	26	26.0	7	7	12
1901	18	31.0	2	9	7
1902	10	15.1	2	1	7
1903	19	20.5	5	5	9
Total	111	27.5	26	38	47

GERMANY.

LAW OF JULY 29, 1890.

The first German law dealing with arbitration or conciliation for collective disputes was that of July 29, 1890, regulating the industrial courts (*Gewerbegerichte*). These courts are of the same type as the French councils of prudhommes, and are designed for individual disputes. They had existed in various parts of Germany since the first quarter of the nineteenth century, the oldest ones being in the Rhine Province and of French origin. Previous to 1869, three States—Prussia, Saxony, and Saxe-Weimar—had passed laws providing for such tribunals, and the Industrial Code of 1869 adopted by the North German Union contained a brief section authorizing local authorities to establish them, specifying only that there must always be equal representation of employers and employees on them, and this section was retained in the amended code of July 17, 1878. Being left thus to the regulation of various laws and governments, the result was great diversity of form and procedure in the courts, and it was dissatisfaction therewith which, after numerous efforts beginning with the early seventies, finally led to the law of 1890, which created no new institution but simply specified uniform regulations for the courts established by the various local authorities.

None of the State laws nor the imperial code before 1890 had contemplated other than individual disputes. Nevertheless three courts in existence before that year—in Leipzig, Frankfort, and Berlin, all

three being of one model—were empowered by the local acts establishing them to intervene under certain conditions in cases of strike or lockout; and although it does not appear that any of the three had ever made use of that power, [a] the law of 1890, which follows in many parts the local statute for the Frankfort court, copied therefrom the provision for intervention in cases of collective disputes which became Part III of the new law.

The provisions of this law aside from Part III need not be reviewed here. Of the general character of the courts suffice it to say that they must be composed of equal numbers of representatives chosen by employers and employees, respectively, with a president and deputy appointed by the local authorities; that their prime function is the settlement of individual disputes upon complaint by either party, by conciliation if possible, otherwise by compulsory awards; and that their jurisdiction extends to factory employees only.

PROVISIONS OF THE LAW RELATIVE TO COLLECTIVE DISPUTES.

Part III [b] of the law of 1890 specified that courts may act as conciliation bureaus in case of disputes concerning "the terms of continuation or renewal of the labor contract" (art. 61), but only on condition that both parties request such action and, where they number more than three, appoint delegates to the hearing. Such delegates must be 25 years of age and in the enjoyment of full legal rights. The conciliation bureau consists of the president of the court and at least four members, two employers and two workingmen, but there may be added, and must be when the delegates of the two parties so request, representatives in equal numbers named by the employers and employees. Both these representatives and the members of the bureau must not be concerned in the dispute in question.

The first step in the procedure is a determination of the facts by hearing of the delegates from each side and the examination of witnesses, the bureau having power to summon and examine witnesses, though no penalty is provided to compel their presence. Following this each side must formulate in conference its opinion upon the allegations made by the other party and the witnesses, and then an effort at conciliation is to be made. If this succeeds, the agreement signed by the bureau and the delegates is to be published. If not, the court

[a] Report of French bureau of labor, De la Conciliation et de l'Arbitrage dans les Conflits Collectifs entre Patrons et Ouvriers en France et à l'Étranger, 1893, p. 476.

[b] Reichsgesetzblatt, 1890, No. 24. A French translation of Title III is given in De la Conciliation et de l'Arbitrage, etc., p. 477. Amendments of the law in 1901 are noted later.

is to render a decision by majority vote, though in case of a tie the president may decline to vote and declare that no decision could be rendered. When a decision has been given, the delegates must declare within a specified time either acceptance or rejection thereof, failure to make declaration to be taken as refusal. At the end of the time allowed the bureau is to publish the decision. It will be seen that everything in the proceedings is absolutely voluntary for the parties in dispute.

SETTLEMENT OF DISPUTES UNDER THE LAW OF 1890.

Inquiring as to the practical results accomplished by the German industrial courts under the above provisions, which went into effect April 1, 1891, the following table presents a general view of such work for the eight years, 1893 to 1900.

STATISTICS OF INTERVENTION BY INDUSTRIAL COURTS IN COLLECTIVE DISPUTES, GERMANY, 1893 TO 1900.

[This table is made up from figures given in Das Gewerbegericht, a monthly periodical published by the Verband Deutscher Gewerbegerichte. That association was formed in 1893, its aim being the interchange of information concerning the work of courts, important decisions, etc. The above figures, except for 1900 and for the number of courts in existence, were quoted by Das Gewerbegericht as those presented by a Government official to a parliamentary committee in 1901, when an amendment to the law of 1890 was under consideration. The same figures for 1893 to 1896 had been laid before the Reichstag in 1897–98.]

Year.	Courts in existence January 1.	Applications for intervention.	Settlements effected by conciliation.	Decisions rendered.	Decisions accepted by both parties.	Total cases settled.
1893	154	5	3	----------	----------	3
1894	217	16	7	3	1	8
1895	[a] 272	19	13	3	----------	13
1896	275	44	18	11	2	20
1897	285	27	12	4	2	14
1898	[b]	30	9	6	1	10
1899	[b]	50	16	5	2	18
1900	[c] 316	80	28	9	5	33
Total	----------	271	106	41	13	119

[a] In August. [b] Not reported. [c] On December 31.

Only those disputes are here included in which formal application came to the courts. Besides such it appears that many cases have occurred in which presidents of courts intervened informally without any request from the parties. How much there has been of this intervention, which is not provided for in the law, can not be estimated, but it is stated that in 1896, for example, there were no less than 23 such instances, equal to one-half the number of formal actions in that year. ([a])

As a supplement to the above table the following figures, from the annual reports on strikes and lockouts, published by the imperial statistical bureau, are given:

[a] Das Gewerbegericht, vol. 6 (1901), p. 187.

TOTAL STRIKES AND LOCKOUTS AND NUMBER SETTLED BY INDUSTRIAL COURTS, GERMANY, 1899 TO 1901.

	1899.	1900.	1901.	Total.
Total strikes and lockouts	1,364	1,500	1,109	3,973
Number settled by industrial courts under law of 1890 (a)	55	45	32	132

[a] Apparently these figures include some cases settled informally by presidents, being larger than the figures above. Or they may include settlements by guild courts (*Innungschieds gerichte*), which are not represented in the first table.

Compared with the number of courts in existence and with the number of disputes occurring, the foregoing tables show but limited activity by the industrial courts in the field of collective disputes. Nevertheless, there has been an increasing amount of such action, as indicated by the first table, the second being less trustworthy for comparison on this point, although it would seem to show that interventions in strikes and lockouts have not increased during the last three years.

The proportion of successful to unsuccessful intervention is not indicated in the above table, for the reason that the difference between the 119 settlements and the 271 applications does not represent the number of failures, but includes other cases. Just what are included therein does not appear in the published returns, nor is the number of definite failures of conciliation ascertainable, except for 1900. The record for that year ([a]) gives 9 as the number of cases in which conciliation failed and no decision was rendered, leaving 34 classed as "other cases," including apparently applications by one side only, disputes withdrawn by the parties, etc.

It will be seen that settlements were effected almost entirely by conciliation and that two-thirds of the formal decisions rendered after conciliation had failed were rejected by one or other of the parties. While both parties have frequently rejected the decisions, it appears that work people have been, at least in recent years, much more favorable to action by the courts than employers, as a brief comment in Das Gewerbegericht ([b]) on the work of the courts in collective disputes during 1901 states that applications came chiefly from employees, the employers frequently declining negotiations. The same note remarks also that 1901 showed an increasing intervention informally by courts without any application from parties, and that such independent initiative was increasingly successful.

The records of individual courts vary greatly. Thus the Dresden court during the ten years 1892 to 1901 acted as conciliation board in collective disputes but five times—once in 1896, twice in 1899, and once in 1900 and in 1901—although in the three years 1899 to 1901

[a] Das Gewerbegericht, vol. 6, p. 274. [b] Vol. 7, p. 164.

alone, 61 strikes or lockouts occurred in the city.(a) Similarly in the Kingdom of Wurttemberg from 1892 to 1895 no case of such intervention occurred, though there were during those years from 8 to 14 courts in the Kingdom, and there were but 8 such cases during 1896 to 1900 among 16 to 19 courts.(b) On the other hand, the Berlin court, whose record far surpasses that of any other, intervened, or attempted or was requested to intervene, during the five years 1895 to 1899 in no less than 103 disputes. Of these, in 60 action got no further than preliminary negotiation, while in 16 application came from one side only, leaving 27 cases in which intervention was accepted by both parties. In 18 of the 27 cases settlements were effected by conciliation, and in the other 9 decisions were given, though how many were accepted is not stated. Among the strikes settled was one involving 2,000, and 3 others involving from 700 to 900 work people.(c)

AMENDMENT OF 1901.

Such work as that of the Berlin court inspired, in 1901, some important changes in the law with reference to action in collective disputes. These appear in an extensive amendment to the general law of 1890, made by act of June 30, 1901,(d) which went into force January 1, 1902. Therein is provided in the first place that where but one party applies to the court for action the president shall make every effort to induce the other to join in the application, and if neither applies he is likewise to endeavor to persuade them to refer the case to the court. So far the new law simply makes legal the independent initiative which some courts, as noted above, had been before exercising in an informal way. In the next place an important change is made in the constitution of the conciliation bureau. Instead of being composed of members of the court, with the possible addition of representatives named by the parties as formerly, the bureau is to consist of the president of the court, with four or more representatives named by the parties in equal numbers, who may or may not be members of the court, but who, as formerly,

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a Statistisches Jahrbuch für die Stadt Dresden, 1901, pp. 130, 132.

b Würtemburgisches Jahrbuch für Statistik und Landeskunde, 1900, III, p. 104.

c The above facts as to the Berlin court are taken from a review of the court's work by one of its members, published in Sociale Praxis for March 1, 1900, and from Das Gewerbegericht, vol. 6, p. 107, and vol. 7, p. 164. The above is the complete record of the Berlin court down to 1899, inclusive, as no case of action occurred before 1895.

d Reichsgesetzblatt, 1901, No. 29. This amendment is given in full in the monthly publication of the Austrian bureau of labor statistics, Sociale Rundschau, 1901, II, p. 297. The entire industrial court's law, with the amendments of 1901, in French, may be seen in Annuaire de la Législation du Travail, 5e annee, 1901, p. 9.

must not be concerned in the dispute. If they be not named by the parties, the president may appoint them. He may appoint also, after consulting the parties, one or two persons not concerned in the dispute to have simply an advisory voice in the proceedings. In the third place the president of the court is given power, when application for action was originally made by one or both parties, to impose a fine not exceeding 100 marks ($23.80) upon any person concerned in the dispute for failure to appear when summoned to give evidence. From such fine appeal may be taken to the civil courts, however. Fourth, and less important, one limitation is put upon the courts in that no application to them for action may be made except by joint action of the parties when all the employers in a dispute are members of a guild which has a conciliation board whose constitution and procedure conform to the requirements of the law. Finally, it may be noted that in addition to the changes above indicated, the amendment makes the establishment of courts compulsory in all cities with a population of more than 20,000. According to Das Gewerbegericht [a] this last provision made necessary the establishment of 54 new courts, that many out of 221 cities with over 20,000 inhabitants being without them in 1901.

SETTLEMENT OF DISPUTES UNDER THE AMENDMENT OF 1901.

The monthly Reichs-Arbeitsblatt, issued since April, 1902, by the imperial statistical bureau, publishes annually statistics of the work of the industrial courts, and affords the following with reference to intervention in collective disputes for the period since the amendments of 1901 went into effect.

STATISTICS OF INTERVENTION BY INDUSTRIAL COURTS IN COLLECTIVE DISPUTES, GERMANY, 1902 AND 1903.

[From Reichs-Arbeitsblatt, I Jahrgang, pp. 663–669; II Jahrgang, pp. 526–533.]

	1902.	1903.	Total.
Number of industrial courts at end of the year	373	400	----------
Total applications for intervention	144	174	318
Applications from one side only	119	135	254
Settlements by conciliation	35	54	89
Decisions rendered	10	13	23
Decisions accepted	4	7	11
Decisions rejected—			
By employers	12	10	22
By workers	1	4	5
By both parties	2	1	3
Total	15	15	30
Cases in which conciliation failed, but no decision was rendered	40	36	76

A comparison of these figures with those for preceding years given above shows clearly a continued growth of activity by the industrial

[a] Vol. 6, p. 230.

courts in the field of collective industrial disputes. Concerning the character of the work done these latest returns show, as did those for the earlier years, that most of the settlements are reached by conciliation; that after efforts along that line fail in a large number of cases no decision is rendered, and that of the comparatively few decisions rendered a large proportion fail to settle the dispute because of their rejection by one or other of the parties. The figures for 1902–3 bring out another fact not shown in the preceding table, namely, that rejections of decisions by employers occur far more frequently than those by the work people.(a) The fact that so large a proportion of the applications for action come from one party only, taken in connection with the fact that submission to proceedings before the courts is absolutely voluntary for both parties, would indicate that in a considerable number of cases the courts' presidents successfully persuade one of the parties to accept the procedure, which the amendment of 1901 made it their duty to attempt to do whenever one party only applies for intervention by the court.

An examination of the reports on strikes and lockouts for 1902 and 1903 shows an increase in number of settlements by industrial courts in both years, as follows:

TOTAL STRIKES AND LOCKOUTS AND NUMBER SETTLED BY INDUSTRIAL COURTS, GERMANY, 1902 AND 1903.

	1902.	1903.	Total.
Total strikes and lockouts	1,135	1,501	2,636
Number settled by industrial courts	43	55	98

It will be seen, however, that the total settlements of strikes and lockouts in 1902 does not exceed the total for 1900 in a preceding table, nor does the 1903 record surpass that of 1899. Proportionately to the total strikes and lockouts occurring, settlements by the industrial courts have not in any succeeding year surpassed the record of 1899, nor was there an increase in 1903 over 1902, the settlements per 100 strikes and lockouts having been for the five years 1899 to 1903, respectively, 4.0, 3.0, 2.9, 3.8, and 3.7.

The Berlin court continues to show far the largest amount of intervention in collective disputes, and its record in this field since the changes in the law made in 1901 is shown in the following table:

[a] No explanation appears in the reports for the fact that the total rejections of decisions is far larger than the total decisions rendered, minus those accepted. Since for some courts rejections of decisions are tabulated where no decisions were rendered, it may be that the total of rejections includes cases in which parties indicated unwillingness to accept a decision before it could be rendered.

STATISTICS OF INTERVENTION BY BERLIN INDUSTRIAL COURT IN COLLECTIVE DISPUTES, 1900–1901 TO 1903–4.

[From Statistisches Jahrbuch der Stadt Berlin, 28 Jahrgang, 1903, p. 187. The months making up each year are not indicated in the report, but they are nearly the calendar months of the first year in each case, i. e., 1900, 1901, 1902, 1903.]

	1900–1901.	1901–2.	1902–3.	1903–4.	Total.
Cases in which the court sought to intervene without application from either party	2	2	2	10	16
Applications from one party only	6	9	12	17	44
Cases in which both parties applied for intervention	15	5	13	10	43
Settlements effected by conciliation	14	1	9	9	33
Decisions rendered and accepted	----	----	2	[a]1	3
Decisions rendered, but not accepted by either party	1	3	1	----	5
No decision rendered	----	1	1	----	2

[a] This decision was accepted by the work people, but rejected by all but one of the employers.

LAW OF 1904 FOR MERCANTILE COURTS.

The latest development of the German industrial courts consists of an extension of the system to mercantile pursuits by an act of July 6, 1904.([a]) This law makes the same provisions for the establishment of courts generally upon the voluntary initiative of local authorities as are to be found in the law regulating the courts for factory industries, and requires, likewise, that a mercantile court must be established in every city with a population of over 20,000. With very little modification of details, to fit the different conditions in mercantile industries, the new law simply reenacts for the mercantile courts (*Kaufmannsgerichte*) the existing regulations of the law of 1890, as amended in 1901, governing the courts for factory industries (*Gewerbegerichte*). The new courts, like the old, may take cognizance of collective disputes, and for these all the regulations (Part III) of the old law are simply reenacted entire and without even verbal changes.

AUSTRIA.

No act dealing primarily with conciliation or arbitration for strikes or similar disputes has thus far been passed in Austria, but two laws now in force make provision therefor incidentally, and deserve brief notice.

MINING GUILDS LAW OF AUGUST 14, 1896.

Considering first the least notable of the two, an act of August 14, 1896,([b]) establishing guilds for the mining industry, declares the purpose of such guilds to be, among other things, the prevention or settlement of disputes between employers and employees. Provision is made for both individual and collective disputes. For the latter the "grand committee" of the guild is to act as a board of concilia-

[a] Given in full in Reichs-Arbeitsblatt, II Jahrgang (1904), No. 4, p. 326.

[b] Reichsgesetzblatt, No. 156. Summaries of the law may be found in the British Labor Gazette, 1897, p. 104, and in the Belgian Revue du Travail, 1896, p. 1159.

tion. Each guild is composed of two assemblies, the one including all the proprietors of mines in a district, the other their employees, represented by one delegate for each 100 miners. Each of these assemblies elects an executive committee of from five to nine members, and these two committees together constitute the "grand committee," representing the guild as a whole. In case of collective disputes, actual or threatened, the grand committee is to intervene as a board of conciliation at the request of either of the assemblies or of either of the parties, or in exceptional cases at the order of the district mining authorities. The parties are to appoint representatives in equal numbers, the hearing is to be oral, and witnesses and experts may be examined. If an agreement is reached, it is to be put in writing and signed by the members of the board and the parties' representatives and made public. Otherwise the board is to render a decision, and the parties must signify their acceptance or rejection of this within a specified time. At the end of this period the decision, with the parties' opinions thereon, is to be published by the board. From beginning to end the procedure is absolutely voluntary for the parties.

SETTLEMENT OF DISPUTES BY MINING GUILDS.

The above conciliation process for peaceably settling disputes is available for the entire mining industry in Austria, as by the terms of the act every mine owner and every miner must belong to a guild, and hence be represented on a grand committee; but when search is made for practical results it is found that very little has been accomplished by the provision. The Austrian bureau of labor statistics publishes annual reports on strikes and lockouts,[a] compiled from returns made out on schedules in which one inquiry calls for the mode of settlement, asking specifically for report thereunder of settlements by conciliation boards. But while 221 strikes were reported in the mining industry for the six years 1897 to 1902, in one only (in 1900) is a conciliation board credited with contributing to the settlement. The annual reports do not give any indication as to how many attempts at settlement may have been made. Quarterly returns of strikes in mines, published in the monthly Sociale Rundschau of the bureau, give for 1900,[b] however, more detailed statements than the annual report. These show attempts made by eight different boards, with all but the one above mentioned resulting in failure. In that one the dispute was settled by conciliation before the board. In six of the others hearings were held before boards, but in the remaining case

[a] Die Arbeitseinstellungen und Aussperrungen im Gewerbebetriebe in Oesterreich.

[b] The year 1900 was the first for which these quarterly returns were published, and for subsequent years the quarterly tables are more condensed in form and furnish fewer details. The returns for 1900 may be seen in Vol. I, part 1, p. 848; part 2, p. 518; Vol. II, part 1, p. 444.

proceedings were blocked at the start by the refusal of one party to appoint representatives for the hearing. Whether any formal decisions were rendered by boards the published returns do not show. Five of the total eight cases were in connection with the coal strike of 1900, the greatest industrial dispute in Austrian history, all five attempts being notably fruitless.

THE FACTORY-INSPECTION LAW OF JUNE 7, 1883.

A much less explicit, but, as the outcome has proved, a much more fruitful provision than that of the mining-guilds act, is a section of the Austrian factory-inspection law of June 7, 1883. Section 12 of that law directs that "in the fulfillment of their duties the factory inspectors shall endeavor, by kindly, authoritative action, not only to secure the benefits of the law to employees, but also tactfully to aid employers in the fulfillment of the requirements laid upon them by the law; to mediate impartially between the interests of employers and employees through the aid of their technical knowledge and official experience, and to gain such a position of confidence in relation to both classes as will put them in a position to maintain and foster friendly relations between them."

SETTLEMENT OF DISPUTES BY FACTORY INSPECTORS.

So well have the Austrian factory inspectors carried out this direction that no small part of their duties consists in the adjustment of differences between employers and employees; so much so, in fact, that the inspectors make it a practice to appoint regular consultation days for the hearing of such matters which are most frequently brought before them by working people. Most of the cases are of the nature of individual disputes, but not a few have to do with collective disputes, as shown by the amount of intervention by inspectors indicated in the annual reports on strikes and lockouts, as follows:

TOTAL STRIKES AND LOCKOUTS AND NUMBER OF INTERVENTIONS BY FACTORY INSPECTORS, AUSTRIA, 1894 TO 1902.

[Compiled from the annual reports on strikes and lockouts published by the Austrian bureau of labor statistics.]

Year.	Total strikes and lockouts.	Number in which inspectors intervened—		
		Alone.	With other authorities.	Total.
1894	172	36	16	52
1895	217	39	29	68
1896	315	45	35	80
1897	257	38	22	60
1898	255	28	31	59
1899	316	59	53	112
1900	313	26	25	51
1901	273	26	13	39
1902	272	35	17	52
Total	2,390	332	241	573

More complete for the years since 1898 are the following figures from the reports of the inspectors themselves:

INTERVENTIONS OF FACTORY INSPECTORS IN STRIKES AND LOCKOUTS, AUSTRIA, 1899 TO 1903.

[From the annual reviews of the factory inspection reports given in the monthly Sociale Rundschau of the Austrian bureau of labor statistics, to be found in the July number of 1901 and the August numbers of 1902, 1903, and 1904.]

Year.	Strikes and lockouts of which inspectors were cognizant.	Number in which they intervened.
1899	231	131
1900	161	53
1901	125	55
1902	141	68
1903	180	110
Total	838	417

The reports do not indicate in what proportion of these cases they could be credited with having effected settlements, and particulars of their interventions are not given, as a rule. It is stated, however, in the review of their work for 1903 that requests for their intervention came from work people, from employers, or from both together, and also from local political authorities. Two interesting cases are noted in the report of strikes and lockouts for 1902, in which a settlement was effected by formal arbitration before boards consisting of equal numbers of employers and workers, with a factory inspector as president.

SWITZERLAND.

Six of the Swiss Cantons have made some provision by legislation for the settlement of strikes and lockouts. In three—Geneva, Basel-Stadt, and St. Gallen—there are special acts dealing with the matter, while in the other three—Vaud, Lucerne, and Bern—the provision is in connection with the industrial courts for individual disputes, and such provision existed in Geneva also up to 1900.

LAWS CONCERNING INDUSTRIAL COURTS.

Considering first the laws for industrial courts which deal but incidentally with collective disputes, that of October 19, 1882, in Geneva was the earliest, and served in fact as model for those in the other Cantons. The Geneva system, however, was by no means original, being itself patterned after the French councils of prud-hommes. An amending law of February 1, 1890, further developed the system in Geneva, and a law of May 12, 1897, consolidated the

two earlier statutes.(a) It will be necessary here to trace only so much of the outlines of the general system as will indicate clearly the provision made for collective disputes, though the latter is in fact a quite subordinate feature of the system. All industries and trades in the jurisdiction of the court are divided into twelve groups, and for each group a branch of the court or "council" is established. This council is composed of 30 members, 15 chosen by employers and 15 by working people. The members elect their own officers from among themselves. Each council organizes within itself four distinct bodies: (1) A conciliation bureau, composed of 2 members; (2) an arbitration tribunal, with a president and 4 members; (3) a court of appeals, with a president and 6 members, and (4) a committee of 8 members. The first three bodies have to do with individual disputes, their functions being indicated by the terms used to designate them. The committee of eight is for the supervision of apprenticeship relations and factory hygiene. In all these bodies the membership is equally divided between representatives of employers and representatives of workmen.

In addition, now, to the above organization of the court there is a central committee composed of two delegates from each council's committee of eight, one representative each of employers and of workmen. One of the functions of this central committee is to act as a board of conciliation in case of threatened or existing strikes. The brief provision for such cases was part of article 74 of the law of 1897. This directed that whenever a strike was threatened, before its declaration the party intending to make it should inform the president of the department of commerce and industry, who should summon forthwith the central committee and delegates in equal numbers from the employers and workmen involved. The central committee, presided over by the president of the department of commerce and industry, was to endeavor then to arrange a settlement by conciliation, and a report of the proceedings was to be made to the council of state. The two brief paragraphs containing the above provisions were repealed by the special law of 1900; but, as will be seen in the account of that law (b), certain functions in collective disputes are still assigned to the central committee.

The Vaud law of November 26, 1888, amended by act of November 25, 1892, follows the Geneva law and makes the same provision for conciliation in collective disputes through the agency of the central committee.

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a This law may be found in the Annuaire de Législation Étrangère of the French Society of Comparative Legislation, vol. 27 (1897), p. 634.

b Infra, pp. 455, 456.

The laws concerning industrial courts of February 16, 1892, in Lucerne and of February 1, 1894, in Bern do not follow quite so closely the Geneva model, none of the German Cantons, in fact, having patterned so closely after the Geneva law as the French Cantons. In both Lucerne and Bern there is the same division of industries into groups with a council or branch for each as in the Geneva arrangement; but in neither is the body which is to act in case of strikes made up as in Geneva, there being in neither a permanently organized body therefor. In Lucerne the conciliation board for collective disputes is composed of all the "conciliation committees" of the various councils, the conciliation committee of each council consisting of two members and corresponding exactly to the conciliation bureau of the Geneva court.[a] For conciliation purposes the general president of the court, who also acts as president of each council, summons the committees when necessary. In Bern,[b] on the other hand, the conciliation board consists of a committee of from five to fifteen members, appointed from their own number by the general assembly of the court, which includes the members of all the councils, the assembly being called together for this purpose by the general president of the court as occasion requires.

Geneva has one industrial court, Vaud four, and Bern and Lucerne each one, which are authorized by the above provisions to intervene in collective industrial disputes. It does not appear, however, that any considerable activity in this field has been developed by any of them. In some cases courts have intervened. Thus the Bern court in 1896 mediated in four collective differences, arranging a settlement in three;[c] but, on the other hand, the Geneva court, the largest and most important of the seven, had not accomplished so much but that a special law upon the subject was passed in 1900, and the provision for its intervention (except as a court of appeal as noted below) was abolished.

SPECIAL LAWS FOR COLLECTIVE DISPUTES.

Much more important here than the incidental provisions above noted are the two laws in Basel-Stadt and Geneva and a decree in St. Gallen dealing exclusively with collective disputes.

BASEL-STADT.

When the Canton of Basel-Stadt established industrial courts in 1889 no provision was made for collective disputes, but this class

[a] Cf. supra, p. 449.

[b] The Bern law in French may be found in the Annuaire de Législation Étrangère, vol. 24 (1894), p. 595.

[c] According to an account in Der Grütlianer of September 30, 1897, as quoted in the British Labor Gazette, 1897, p. 297.

of differences was dealt with by a law of May 20, 1897.(a) This brief statute of six articles provides for conciliation only. It prescribes that in case of disputes which either have produced or threaten to produce a stoppage of work the council of state of the Canton, either upon the request of one of the parties, or in grave cases on its own motion, shall appoint a board of conciliation consisting of an equal number of employers and employees either from among those directly concerned or from others in the same line of industry, with a president who must be either a member of the council of state or a disinterested person. If the dispute concerns a single establishment, the council of state may direct one of its members or some other disinterested individual to act alone as conciliator. Requests for conciliation must be addressed to the president of the council, and that officer decides in what cases the Government shall intervene upon its own initiative. Upon receipt of a report of the negotiations from the president of the board of conciliation the Government shall publish a notice (*a*) when conciliation is refused by one or both parties, showing the principal reasons for refusal; (*b*) when the conciliation is successful, giving the essential points of the agreement; (*c*) when the agreement reached before the board is repudiated by one or both parties, showing the nature of the agreement and the chief reasons for its rejection. Everything in the procedure is entirely voluntary for the parties, except so far as the announcement by the Government of the course taken by them may bring the pressure of public sentiment to bear.

Down to the year 1902 the Basel-Stadt law of 1897 was applied in but a single instance, in 1899. Beginning with 1902, however, there has been more frequent resort to the law, as indicated by the following summary, which shows both the number of disputes in which resort was had to the act and the results of proceedings therein:

TOTAL DISPUTES ACTED UPON AND NUMBER SETTLED UNDER BASEL-STADT LAW, 1897–98 TO 1905.

Year.	Total cases (disputes).	Disputes settled.	Year.	Total cases (disputes).	Disputes settled.
1897–98			1904	6	3
1899	1	1	1905 (a)	6	2
1900–1901					
1902	3	3	Total	19	11
1903	3	2			

[a] January to May.

From the reports of the results of proceedings in the various cases, published by the council of state as required by the law, the following facts appear. For one of the 1905 cases a partial report only is at

[a] Published in the Bulletin de l'Office du Travail (France), 1897, p. 404.

hand, which accounts for the uncertainty in that case noted in one or two instances below.

In the case which occurred in 1899 the employers were petitioners for application of the law, but in all the others, save possibly the one in 1905, for which full report is not at hand, the work people applied for the appointment of conciliators under the law.

It is not clear from the reports in how many of the disputes stoppage of work occurred, but at least 11 out of the total 19 cases were strikes, and the request for application of the law in 7 of these was not made until after the suspension of work. In 3 cases the application was made before, but strikes followed, while in 1 case (the 1905 case, for which only partial report is at hand) whether application was before or after strike does not appear. The 11 settlements include 9 of the above strike cases.

The procedure followed was essentially the same in all the cases. In each instance the council of state, in response to the application received from one of the parties, appointed one of its own members to conduct the conciliation proceedings and be president of the board. This member then took the necessary steps for the formation of a conciliation board or conference. In three instances, in addition to a member of the council as president of the conciliation board, the council named one or two other members to act with the president on the board. It is not clear from the reports in just how many cases there was formal appointment of a board by the council of state or in how many the procedure was in the nature of a conference of the parties' representatives before the members of the state council as conciliator. It appears, however, that in either case the parties' representatives were designated in the first instance by the parties themselves, whether with or without formal appointment by the council afterwards.

Out of 18 cases for which full reports concerning the matter are at hand, in 15 cases conferences of representatives of the parties under the presidency of the members of the state council were held. In the other 3 cases no conferences were held because of the opposition of the employers, who in two instances refused to name representatives, while in the third case their representatives announced at the first meeting that the employers had decided to treat only with their own workers and not with the union, which was party to the proceedings. Of the 15 cases in which it is clear that conferences were held, in 8 the representatives of the parties came to an agreement which ended the dispute, while in 7 no agreement could be reached. In 3 of the cases in which a settlement was effected the first conferences resulted in failure and the council published the required report to that effect. Afterwards, second proceedings and conferences were instituted, twice at the instance of the council of state itself, and once

by joint agreement and request of the parties, who after the first procedure had come to an agreement on much the same terms as had been arranged by the representatives at the first conferences, but which had been rejected by the employers, and who wished for a conciliation board under the law to receive, record, and publish the agreement. All three of these second proceedings resulted in final settlements, though the last mentioned, reckoned as a settlement in the table above, should be regarded, perhaps, as only a partial settlement under the law.

In another case, however, the Government instituted a second procedure under the law, which resulted, like the first, in failure. This is the 1905 case above alluded to, for which report of the first proceedings is not at hand. In the second proceedings no conference of the representatives was held, but two members of the council of state, delegated for the purpose, held interviews with the parties' representatives separately, but could not secure from them sufficient concessions to make a settlement possible.

ST. GALLEN.

In 1902 the same method of conciliation as that just described for Basel-Stadt was adopted by the Canton of St. Gallen, in a decree issued by the council of state under date of February 25.[a] The only changes made in the Basel-Stadt plan touch no essential features, and consist in provision that the Government may intervene in the absence of application from the parties only upon request of local, municipal, or district authorities instead of directly upon its own motion, and in a provision that the president of the conciliation committee, named by the council of state, shall make up a list of members subject to the approval of the council, instead of all being named directly by the council. One or two minor details are added by the St. Gallen decree, specifying that in making up committees the wishes of the parties are to be considered so far as possible, that decisions are to be reached by majority vote, and that reports of proceedings are to be signed by all the members.

The annual reports of the council of state of St. Gallen show that under the above decree of 1902 there was intervention during that year in 4 strikes, during 1903 in 3 strikes, and during 1904 in 3, or a total of 10 for the three years. The reports do not show the details of procedure, save that in the 1902 cases intervention was requested three times by workingmen and once by employers. As to results, intervention under the decree brought about settlements twice in 1902

[a] Published in full in the Bulletin de l'Office International du Travail, Nos. 4–5, 1902, p. 175.

and once in 1904, or three times altogether, while 1 case in 1902 was settled by the parties before the representative appointed by the council could take action.

GENEVA.

A far broader and much more radical measure than the Basel-Stadt law was the act of February 10, 1900 ([a]), in Geneva, which went into effect on March 21 of that same year, and which has since been revised by act of March 26, 1904.([b]) The revision of last year, which went into effect on May 28, 1904, did not change the general features of the system laid down in the 1900 act, though adding or altering some details. So far as modifications of importance were made by the revision, they are noted in the following description of the system:

The Geneva law embodies a general method of negotiation between employers and employees, which, in the absence of any special agreement, may be followed both for the arrangement of the conditions of labor when there is no dispute and for the settlement of disputes when they arise. Three distinct stages in such negotiation are provided for, viz, (1) a conference of delegates representing the two parties, (2) in case of disagreement in such conference, mediation between the delegates for the purpose of conciliation by an outside agency, and (3) where such conciliation fails, arbitration.

The parties to a negotiation under the law are, where such exist, the employers' and employees' associations, which have been duly registered and whose rules have been approved by the council of state, which approval is to be granted only upon the condition (*a*) that an association's rules contain nothing contrary to law and especially nothing infringing the freedom of labor; (*b*) that all members of the trade shall have the right to become members of the organization, except that general conditions of admission or exclusion may be prescribed, provided they are not of an arbitrary character; (*c*) that its executive committee shall be elected by majority vote of the members; and (*d*) that its rules may at any time be amended upon the demand of a majority of the members. The original law of 1900 made no mention of any limitation upon the right of membership, the qualification above noted having been added in 1904. So far as trade organizations do not exist the parties to an agreement under the law shall be all employers and workmen who have been regularly engaged in the trade for more than three months within the Canton, and who respond to the call of the council of state for an assembly, as specified below.

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[a] May be found in the Belgian Revue du Travail, 1900, p. 615, or in the Annuaire de Législation du Travail, 1900, p. 837.

[b] May be seen in the Revue du Travail, 1904, p. 1099, or Bulletin de l'Office International du Travail, third year, p. 309.

For conferences to determine upon wages and labor conditions, where the parties are organized, the employers' associations and the trade unions shall elect delegates in separate assemblies convened for that purpose. In trades where either party is unorganized the council of state shall call these assemblies upon the written request of one-fifth of those members of either class who are entitled to vote for members of the industrial court of the Canton, or "in urgent cases" the council of state may call such assemblies upon its own initiative, this last provision for the initiation of proceedings by the Government itself in the case of unorganized trades being a feature added to the law in 1904. Each assembly is to elect 7 delegates, unless by agreement a smaller number be fixed, and alternates; which delegates must be persons who have been engaged in the trade in question for at least twelve (formerly eighteen, under the act of 1900) months within the Canton.

The delegates so chosen are to meet in conference "with as little delay as possible," as a clause of the 1904 act orders. They shall decide questions by a three-fourths vote of all the delegates, such decisions to be signed by those voting for them and embodied in a report, of which each party's delegates shall have a copy, and one copy each shall be filed with the industrial court and the department of commerce and industry.

Wage scales and conditions of employment thus determined are to remain in force for a stipulated period not to exceed five years, and are to continue in force from year to year thereafter until one party or the other withdraws from the agreement, in which case notice of withdrawal must be given at least one year in advance, as a rule. The delegates may, however, by mutual consent make the duration of the agreement and the notice required less than a year, but in any case, until a new agreement is made, the old one shall remain in force.

When a conference as above described does not result in an agreement, upon written request by either party the council of state shall appoint one or more of its own members as conciliators, who shall summon a meeting of the employers' and workmen's delegates and endeavor to bring them to the required agreement of three-fourths of their number. If these conciliators fail in their efforts they shall report the failure to the central committee([a]) of the industrial court. In addition to this duty of acting as conciliator upon appeal of parties whose delegates have failed to reach an agreement, the council of state is given power, whenever a dispute arises in any trade, to initiate conciliation proceedings itself, and in such cases it shall call upon the parties to name delegates in the same manner as above described for cases in which the parties initiate proceedings. If in

[a] Cf. supra, p. 449.

such a case of dispute either party refuses or is unable to choose the proper delegates, the council of state shall report failure of conciliation to the central committee of the industrial court in the same way as for failure upon appeal from the parties. Under the original act of 1900 this power to initiate conciliation proceedings with the council of state was limited to disputes involving unorganized workers, but the clause containing this restriction was dropped in 1904.

Upon the receipt of a report of failure of conciliation the central committee of the industrial court is within six days to summon the parties' delegates for arbitration, and if either party still refuses, or is unable, to appoint delegates the central committee shall name them. In case any members of the central committee belong to the trade affected by the difference, the committee is to replace them for the hearing with other members of the court from the same group of industries[a] as are represented by those displaced. The central committee and the delegates of the parties together constitute the board of arbitration. Each member is entitled to the same daily compensation for service on the board as is allowed members of the industrial court, and may not absent himself from the arbitration proceedings without just cause, under pain of a fine of 50 francs ($9.65), to be imposed by the central committee. Under a clause added to the law in 1904 the arbitration hearings must be public. Decisions of the board are to be reached by a majority vote of the members present. In case they are deciding the terms of employment in a trade for which no previous agreement exists, their award may not come into force until at least six months after it is rendered, except by mutual consent of the parties.

The act provides that the same procedure as above is to be followed whenever it is necessary to alter an agreement because of the introduction of new methods of production or whenever any dispute arises of a character likely to involve a general or partial suspension of work. In the case of a dispute of the last-mentioned character it is provided by a new clause in the act of 1904 that the central committee of the industrial court may declare itself incompetent to decide the issues and simply make a report as to whether conciliation has succeeded or failed.

The law forbids the declaration of "any general suspension of work," by employers or work people—that is, a strike or lockout—for the purpose of modifying a schedule arranged under the law or a decision rendered under it in settlement of a dispute, and makes any public appeal to a partial or general suspension of work during conciliation or arbitration proceedings or before an effort for such con-

[a] Cf. supra, p. 449.

ciliation or arbitration has been made, whether in case of amicable negotiation of general agreements or in case of disputes, punishable with police penalties or such other penalties as may be applicable under the general penal code or other laws, and it is expressly declared that editors or publishers are liable to these penalties. The changes made by the act of 1904 in regard to the prohibition of strike and lockout and the punishment of incitement thereto are of interest. Thus, the law of 1900 specified as forbidden only suspension of work for the purpose of modifying an existing schedule under the law, while the later statute specifies also suspension which contravenes any decision rendered in case of a dispute. Again, the earlier act prescribed penalties only for appeals for suspension of work "in violation of an existing schedule or in contravention of the provisions of this law," whereas under the 1904 law the penalties are applicable in practically any case of public appeal for suspension of work which occurs before an effort at settlement, whether of general schedule or dispute, shall have been made in the manner prescribed by the law, or which occurs after such a settlement has been made. Finally, the act of 1900 declared the penalties for every appeal for suspension of work, while the law of 1904 specifies them only for every *public* appeal, the law itself italicizing the word.

Four general features of this Geneva system are especially noteworthy. In the first place, its aim is prevention as well as cure of disputes; that is, it does not propose simply a mode of settlement for industrial disputes as they may arise, but seeks primarily to prevent their occurrence by means of regular periodic joint agreements between employers and workmen. In the second place, the law recognizes the principle of collective bargaining and aims to utilize the advantages to be derived from trade organization in the negotiation of the terms of employment. Thirdly, while the making of agreements by the method prescribed is entirely voluntary for the parties, it is possible, in the case of disputes, for the Government itself to initiate the procedure and require that it be carried out. But, in the fourth place, though the application of the law and an arbitration decision might thus be practically compelled, there is nothing to compel the acceptance of the decision when made, since no penalty whatever is specified for its nonobservance. There is a general prohibition of strike or lockout in contravention of such a decision, but no penalty is specified in connection therewith. The only penalty provided is for "public appeal" (*appel public*) to such strike or lockout, and though this rather notable but somewhat indefinite provision suggests some degree of compulsion in connection with decisions, it is still far from making the Geneva statute a compulsory arbitration law.

Reports published by the Geneva department of commerce and industry (a) show the following facts concerning the operation of the above-described Geneva statutes.

Down to 1905 neither law had been applied for the settlement of a strike or lockout, but there were seven cases of their application in other differences. Up to the 15th of October, 1903, the law of February 10, 1900, was invoked six times for the establishment of working schedules, namely, once in 1900, once in 1901, thrice in 1902, and once in 1903. In all of these intervention by the council of state occurred at the request of one of the parties, the application coming once from an employers' association and in the other cases from workers and, save in one, from workers' unions.

The full procedure laid down in the law for both conciliation and arbitration was carried out in all six cases. That is, in each instance the council of state designated one of its members as conciliator, who endeavored to bring the parties' representatives to an agreement, but without success. Thereupon the case went to the central committee of the industrial court for arbitration and a final decision was rendered, signed in each case by the representatives of the parties and the officers of the central committee. These decisions were put in the usual form of working schedules. In one the terms of employment were fixed for one year, in one for three years, in two for four, and in two for five years unless altered in accordance with the law's provisions.

The reports at hand do not indicate how many employers' or workers' unions had submitted their statutes to the council of state for approval, as provided in the arbitration law. But during the year 1904 there were 8 such—2 employers' associations and 6 workers' unions—all of whose rules, with modifications in some cases, were duly approved.

Only one case of the law's application in industrial differences is reported for 1904. In this, request for intervention came to the council of state from the workers. A member of the council was duly appointed as conciliator, and his efforts resulted in the unanimous adoption by the parties of terms formulated by the president of the department of commerce and industry. This case is notable as the first in which a settlement under the law was reached by conciliation.

ITALY.

LAW OF JUNE 15, 1893.

The only provision made by law for the settlement of strikes in Italy is in connection with the statute governing industrial courts

a Applications de la Loi du 10 Février, 1900, published in 1903, and general report of the department for 1904, pp. 242–245.

bearing date of June 15, 1893.(a) The general system closely resembles the French councils of prudhommes,(b) which have served as models for nearly all similar institutions in Europe. The courts are established by royal decree for a given district, and are composed of equal numbers of representatives elected by employers and workmen, respectively, with a president appointed by the Government. There are two divisions in each court—the one a board of conciliation and the other a court of arbitration—the principle of equal representation of the two industrial classes being preserved in both. The board of conciliation is ordinarily composed of the president and two members, and the court of arbitration of the president and four members, but in especially serious cases the president may designate two additional members to act on the board of conciliation.

The procedure in case of individual disputes includes, first, an effort by the conciliation board to bring about a voluntary agreement between the parties personally appearing for that purpose, but if this fails the case goes to the arbitration court where a compulsory decision is rendered. There is no special section of the law devoted to collective disputes. They are brought definitely under the jurisdiction of the courts, however, by the inclusion, in the list of subjects of which the board of conciliation may take cognizance, of questions concerning future wages and hours of work. But such questions are expressly excluded from the jurisdiction of the arbitration court, except as the parties may agree to refer them to that body. Arbitration, therefore, as well as conciliation is voluntary in such cases.

SETTLEMENT OF DISPUTES UNDER THE LAW.

Up to 1897 no court had acted in a collective dispute. For 1897, 1898, and 1899 the record was as follows:

TOTAL STRIKES AND NUMBER OF INTERVENTIONS BY INDUSTRIAL COURTS, ITALY, 1897 TO 1899.

[Compiled from an account of the Italian courts by Prof. C. F. Ferraris, in Das Gewerbegericht, August, 1901, Verhandlungs Beilage, p. 330. The figures for number of strikes are from the annual report on strikes for 1899 by the minister of agriculture, industry, and commerce, as summarized in Sociale Rundschau, Vol. II, part 2, p. 343.]

Year.	Number of courts in active existence.	Interventions in strikes.				Total strikes.
		Total number.	Successful.	Unsuccessful.	Settled by the parties.	
1897	28	1	----	----	1	217
1898	32	11	9	1	1	256
1899	39	4	4	----	----	259
Total	----	16	13	1	2	732

Five of the 13 settlements (3 in 1898 and 2 in 1899) were reached by conciliation, while in the remainder (6 in 1898 and 2 in 1899)

a Published in French in the Annuaire de Législation Étrangère, vol. 23 (1893), p. 300.

b The Italian title of the courts is precisely the same—"Collegi di probi viri."

arbitration decisions were rendered. In the one case of failure a decision was given but the workmen refused to abide by it and continued on strike. In the strikes settled by the parties, agreements were reached while the issues were before the court for decision.

The quarterly returns of the work of the Italian industrial courts given in the Bollettino dell' Ufficio del Lavoro (first published in 1904), show the records of the courts as to intervention in collective disputes for the year 1904. In each quarter from 32 to 42 courts (32 in the first quarter, 35 in the second, 42 in the third, and 37 in the fourth) sent in reports of their work, out of some 60 in existence (59 in the third quarter and 63 in the fourth). All, however, reported no cases of intervention in collective disputes, save one in the fourth quarter, which attempted to settle a strike by conciliation, but without success. Monthly statistics of industrial disputes published by the bulletin show a total of 377 strikes which occurred in the Kingdom during the same year. This record for 1904 would indicate, therefore, that the activity of the courts in connection with collective industrial disputes has not increased, and apparently has decreased since 1899. Certainly very meager results have been achieved under the provision of the Italian law for intervention in such cases.

DENMARK.

ACT OF APRIL 3, 1900.

Denmark has not provided by law any procedure for settling industrial disputes, but an act of April 3, 1900,[a] conferring certain powers upon private courts of arbitration deserves a brief notice. In the agreement between the employers' association and the trade unions, which terminated the lockout in the building trades of Denmark in 1899, a special provision was inserted whereby all questions as to infringement of the agreement were to be settled by the court of appeals of Copenhagen. But the decision of such questions was to lie with that court only—

until such time as there shall be established by law a permanent arbitration court (invested with the same authority as the ordinary courts of the country for deciding upon evidence causes brought before it), with power to determine finally matters of dispute between the employers and workmen represented by their respective central organizations.

This arbitration court shall consist of 7 members, of whom each of the parties will elect 3, who are not members of the committee of the organization in question; the chairman shall be elected by these 6, and must be one of the jurists of the country.

[a] Published in French in the Bulletin de l'Office du Travail (France), Vol. VII (1900), p. 725, and in the Annuaire de Législation du Travail, 1900, p. 427.

As soon as this arbitration court has been established, it will take the place of the court of appeals in all matters concerning the above agreement.(a)

The Danish Government did not see fit to set up the court contemplated in the above passage from the agreement, preferring to leave its establishment to the parties who founded such a court January 27, 1900. To this court, however, the Government lent its sanction and aid through the passage by the Folkething of a law bearing date of April 3, 1900, which was proposed by the minister of the interior.

The act, which is drawn in general terms, provides that power to summon witnesses may be conferred by royal decree upon any arbitration tribunal charged with settling questions concerning the fulfillment of agreements made between a general association of employers and a general organization of workingmen. In order to receive this power, however, it is required that the arbitration tribunal shall be located in Copenhagen, and that its president shall possess all the qualifications required by law of a permanent judge of an ordinary court, and before the president can act he must receive from the minister of justice a certificate that he possesses these qualifications. The rules as to the admission of witnesses and the obligation to testify are to be, in general, the ordinary rules in civil cases. The power conferred by the royal decree may be withdrawn whenever the organizations or the tribunal established by them undergo any essential modifications, or when the president of the tribunal no longer possesses the above-mentioned qualifications, or when the power conferred has given rise to abuses. The associations are required to give immediate notice to the minister of justice of any change in the terms of their agreement.

SETTLEMENT OF DISPUTES BY THE ARBITRATION COURT.

The following facts as to results in practice under this Danish court of arbitration are taken from an account published in the British Labor Gazette.(b) The law conferring power to summon witnesses was drawn in general terms, but contained such conditions as practically to limit it to the court already referred to, which grew out of the great lockout of 1899, and which was established jointly by the General Danish Employers' Association and the Danish Trade Union Federation. Certainly up to the end of 1903, at least, no other court of arbitration had acquired the power provided for by the law. The jurisdiction of the one court, which was particularly contem-

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a The agreement in full may be seen in the Bulletin of the New York State Bureau of Labor Statistics, Vol. I, p. 198.

b February, 1904, p. 38. The account is based on information compiled in the labor department of the British Board of Trade or on notes furnished by the British vice-consul at Copenhagen.

plated by the act, however, is very wide, as indicated by the fact that most of the local organizations of employers or work people of the Kingdom have become affiliated with one or the other of the two general organizations which set up the court. Thus, out of a total of 1,213 trade unions, with 88,098 members, in Denmark in 1903, no less than 989 unions with 64,621 members were affiliated with the Trade Union Federation. (a)

Up to the close of the year 1903 the court of arbitration had rendered 7 awards, 4 in 1900 and 1 each in 1901, 1902, and 1903. In 5 cases the employers were the plaintiffs, in 1 the trade unions, while in 1 case each party lodged a complaint against the other. The subject in dispute was in 4 cases strikes which had been illegally declared, in 1 case the refusal of the men to work with nonunionists, in 1 an illegal lockout, while in the remaining case dock laborers had struck in sympathy with firemen who were on strike and the employers had declared a lockout against all of the dock laborers. Four decisions were in favor of the employers, 2 in favor of the unions, while in the seventh case, in which both parties had complained, both complaints were declared to be without cause.

NEW ZEALAND.

LAW OF AUGUST 31, 1894, AND AMENDMENTS.

New Zealand holds the distinction of having first put compulsory arbitration to the full test of practical application. This she did in her first law dealing with the peaceable settlement of industrial disputes, the Industrial Conciliation and Arbitration Act, 1894, bearing date of August 31 of that year. This act, in both its framing and its passage through Parliament, was almost entirely the work of one man, Mr. W. P. Reeves, the then minister of labor for the colony. The measure was first introduced by him in 1892 and was the outcome of a study of the problems brought forcibly to view by the great maritime strike of 1890, which devastated New Zealand as well as the Australian colonies.

Before it became law in 1894 the bill twice passed the lower house of Parliament, only to be so amended by the upper chamber as to eliminate all compulsion and the arbitration court, and stood the test of a general election as part of the policy of the administration supporting it.

The debates upon the measure in Parliament turned almost entirely upon the question of compulsion, the policy of the opposition being to accept the voluntary features of the law, but to reject compulsion.

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a Cf. the German Reichs-Arbeitsblatt, September, 1904, p. 501.

This, however, was precisely the point which the author regarded as most vital and upon which he refused to make any concession, so that the law finally passed was essentially the same as the bill first introduced. Parliament passed it not so much through conviction that it would succeed as out of willingness to give the system a trial. The author frankly admitted that the law would be an experiment pure and simple, but maintained that it was well worth trying and urged Parliament to enact it and then, if it proved a failure, they could repeal it. "Very much in that temper," states the author, "Parliament allowed it to become a law."(a)

According to Mr. Reeves at no time during the contest for its passage did the measure "arouse the least enthusiasm or attract very much public attention." (b) The general public took no particular interest in it. Of the two industrial classes most directly concerned in such a law the employers opposed it throughout. The trade unions, however, took up the measure and gave it their support unwaveringly. This support of the work people seems to have been born of their hope of securing by legislative reforms what the crushing defeat suffered by organized labor in the maritime strike had left them powerless to gain by their own strength.

The original law of 1894 was amended by acts of October 18, 1895, October 17, 1896, and November 5, 1898. In 1900 all earlier laws were replaced by a consolidating statute, the Industrial Conciliation and Arbitration Act, 1900, approved October 27, which further amended the system, and this law has been amended by acts of November 7, 1901, September 4, 1903, September 24, 1903, November 20, 1903, and November 8, 1904. In the following summary the essential features of the system as it is at present are set forth, with notice of such important changes as have been made since the original law of 1894.

It may be noted in passing that numerous sections of the New Zealand law closely resemble similar provisions in the South Australian act of 1894 and in the New South Wales law of 1892, being in many cases the same, verbatim. The more important features which thus appear to have been borrowed from those statutes are provisions for the registration of unions and industrial agreements such as are found in the South Australian law and provisions for industrial districts and clerks of awards such as are found in the New South Wales law. But, passing by any comparison with those two colonies as to details, the prime features of the New Zealand system may be grouped under the following heads:

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a National Review, vol. 30, p. 366. b Ibid., p. 365.

ADMINISTRATION.

The general administration of the act is in the hands of the minister of labor. The machinery for conciliation and arbitration consists of local boards of conciliation and one general court of arbitration. The colony is divided by the governor into "industrial districts," for each of which he appoints a clerk of awards. In each district is a board of conciliation composed of three or five members. The chairman is chosen by the other members, one-half of whom are employers elected by the employers' associations in the district which have registered under the act, and one-half employees elected by the registered trade unions in the district, unregistered organizations having no voice in the matter whatever. The elections of members are under the direct supervision of the clerk of awards, and detailed directions therefor are prescribed in the act. The chairman must be "some impartial person." The term of office of both members and chairman is three years. In case the registered organizations neglect or refuse to elect members or the members fail to elect a chairman, such members or chairman may be appointed by the governor. The jurisdiction of these permanent boards in any district is not exclusive, as special boards may be appointed for special cases. Until 1901 such boards were to be appointed whenever all parties to a dispute applied therefor. But the amendment of that year requires their appointment upon the application of either party alone. A special board, when constituted and chosen in the same manner as a regular district board, possesses all the powers of the latter, but its term of office expires with the settlement of the dispute for which it was created.

The court of arbitration for the whole colony consists of three members appointed by the governor—one from nominations made by the registered trade unions in the colony, each union presenting one nominee; one from similar nominations made by the registered employers' associations; while the third, who is president of the court, is chosen directly by the governor from the judges of the supreme court of the colony. In case employers or workers fail to make nominations within a month after request therefor, or if persons duly nominated decline to act, the governor shall appoint members directly.

Amendments of the law made in 1903 provide for the appointment of "acting," or alternate, members in addition to the regular members, by requiring that each industrial union shall nominate two persons, and from such nominations made by the employers' and workers' unions, respectively, the governor shall appoint two persons, one as "member" and the other as "acting member." No provision is made for an alternate president. An acting member, representing employers or workers, as the case may be, takes the

place of the regular member for the same class whenever the latter, by reason of illness or otherwise, is unable to attend a sitting on the date fixed therefor and it appears that he will continue to be unable to attend for seven days thereafter. The acting member is summoned to duty by the president, when the latter is informed by the clerk of the regular member's inability to attend as above, and his duties cease when the regular member notifies the clerk of his ability to resume his duties, provided that if the acting member be at the time employed on the hearing of a case he shall continue as member until such hearing is completed. The amendment of 1904 extended the functions of acting members by providing that they shall act in place of the regular member for any case in which the latter is a party to the dispute or proceedings, and if in such a case there is no duly appointed acting member who can attend and act, then the governor may, on the recommendation of the president, appoint a fit person to act for that case in place of the regular member.

The term of members of the court is three years. Its officers are appointed by the governor. The compensation of members of boards and of the court and of the chairmen of boards consists of fees for time while sitting and traveling expenses. The president of the court, being salaried as supreme court judge, is allowed traveling expenses only, under the act.

PROCEDURE.

To refer a dispute for settlement under the act, application by either party to the clerk of awards is all that is necessary. Prior to the amendment of 1901 disputes ordinarily were required to go first to procedure before a board of conciliation, the only exceptions to this being cases where the parties had made an agreement to go direct to the court of arbitration or where the dispute was in a district in which no board had been established, in which cases it could be referred to the court. Now, however, a party to any dispute is able to carry it either to a conciliation board or to the arbitration court direct, as the 1901 amendment provides that at any time after reference to a board has occurred and before the hearing has begun either party may require that the case be transferred to the court of arbitration. As will be seen later, this change was made because in practice it was found that a majority of the cases went up to the court of arbitration in spite of proceedings before boards.

Once a dispute has been referred to a board or the court, pending the final settlement, anything by the parties in the nature of a strike or lockout or the discontinuance of the relation of employer and employed on account of the dispute is unlawful. The amendment of 1901 adds that the dismissal of any worker or discontinuance of work by a worker shall be deemed to be a misdemeanor under this sec-

tion, unless the one charged with the default shall satisfy the court that the dismissal or discontinuance was not on account of the dispute. Previous to 1900 no penalty was prescribed for infringement of this prohibition, but the consolidation act of that year makes any union or any person "committing or concerned in committing" such default liable to a penalty not exceeding £50 ($243.33), recoverable in a summary way before the court of arbitration.

Boards of conciliation are to investigate cases referred to them and make every effort to bring the parties to an amicable settlement. If they are successful in this, the terms are to be put in the form of an industrial agreement under the act, which agreement is compulsory to the extent and in the same manner as awards of the court of arbitration.[a]. If, however, the parties can not be brought to the execution of such an agreement, the board is to "make such recommendation for the settlement of the dispute, according to the merits and substantial justice of the case, as the board thinks fit."[b] This recommendation is to be filed with the clerk of awards within two months, as a rule, or at the most three months, of the time when the application for a hearing was filed. The decisions of boards are by majority vote, the chairman, however, having no vote except in case of a tie. A quorum consists of the chairman and one-half of the members, including one representative each of employers and work people.

At any time before a board's recommendation is filed any of the parties may by memorandum agree to accept it, whereupon the recommendation as soon as filed operates as a compulsory industrial agreement. At any time within a month after it is filed if any of the parties are willing to accept the same in whole or with modification, they may file an industrial agreement or memorandum of settlement to that effect, either of which carries full compulsion with it. Finally, at any time within the month the way is also open to any party, by application to the clerk of awards, to refer the case to the court of arbitration for settlement, but if no such application for reference to the court is made at the end of the month the board's recommendation operates as an industrial agreement with full compulsion. It will be seen thus that even settlements by conciliation before the boards must result in terms which are compulsory. This necessary result was made a part of the system by the consolidation act of 1900. Before that settlements by conciliation could be put into either voluntary or compulsory agreements at the option of the parties, and a board's recommendation was never binding of itself, though the parties could, of course, incorporate it in an industrial agreement if they chose.

[a] Such compulsory agreements under the law may be made at any time by direct negotiation of employers and employees.

[b] Act of 1900, sec. 53 (7).

When cases are taken to the court of arbitration, not less than three days' notice of hearing must be given to the parties, and within one month, as a rule, of the beginning of the hearing the court's final award must be made, which is then to be filed with the clerk of awards of the district wherein the case arose. A majority vote of the court is sufficient for an award. If one member fails to attend without good cause shown, the other member and the president are competent to act as a full court, the president's decision being final in case of a division of opinion. No award, or the proceedings of the court in making it, can be "challenged, appealed against, reviewed, quashed, or called in question by any court of judicature on any account whatever." (a)

Both the boards of conciliation and the court of arbitration are given full powers to compel the presence and testimony of witnesses and parties, and to enter and inspect premises and interrogate any persons therein. The court has power also to compel the production of books and papers, and may even allow their inspection by parties, but no information so gained may be made public. In cases involving technical questions each party may nominate an expert to sit as a member of a board or of the court. Parties may appear before either body in person or by representatives, though neither party may be heard by counsel except with the consent of the other. The failure of either party to attend except for good cause shown is, however, no hindrance to the proceedings. Hearings of board or court are to be public as a rule, but may be private if either body so decides.

A few fees, incidental to proceedings under the act, are required of parties, the law leaving their size to be fixed by the governor of the colony. The court of arbitration may in its award apportion the costs of proceedings before it between the parties or direct one to pay costs to the other, such costs not to include any counsel fees. The general expenses of administering the law are met by annual appropriations of Parliament.

ENFORCEMENT OF AWARDS AND AGREEMENTS.

As indicated above, proceedings under the New Zealand system to-day must end either in an industrial agreement or an award, both equally compulsory. Before the consolidation act of 1900 agreements or awards were to remain in force simply for the period specified in them, which should not exceed three years for agreements and two years for awards. (b) But the law of 1900 enacts that both agreements and awards shall continue in full force, notwithstanding the

a Act of 1900, sec. 90.

b The act of 1900 makes the term which may be specified in an award three years, the same as for agreements.

expiration of the period specified in them, until, in case of the former, a new agreement or an award, in case of the latter, a new award has been made.

Agreements are enforced in precisely the same manner as awards. Whenever a breach of an award is committed by any party to the award, the registrar of industrial unions or the factory inspector in the district affected by the award may apply to the court of arbitration for its enforcement. Since the first law of 1894 three important changes have been made in this matter. Originally it depended upon the parties alone to move for enforcement. In 1900 power to initiate proceedings therefor was given also to the registrar. In 1901 it was further provided that factory inspectors "might" institute proceedings for the enforcement of agreements, awards, or orders of the court. Finally, in 1903 (by the amendment of November 20), every factory inspector and every mining inspector in the colony was made an "inspector of awards" under the arbitration law and "charged with the duty of seeing that the provisions of any industrial agreement or award or order of the court are duly observed," and for this duty were given the power to require employers and employees to produce for their examination wages and overtime books and the same power to enter and examine premises and make inquiry of persons therein as inspectors of factories have under the factories act.

Upon application for enforcement the court may dismiss the case or may impose such fine, not exceeding £500 ($2,433.25), upon the offending party as it deems just. A certificate by the court specifying such fine may be filed in any civil court of competent jurisdiction, and shall thereupon operate as a final judgment of such court. In the execution of such a judgment the property of a party may be seized, and if that of a union is insufficient its members are individually liable for the difference up to but not exceeding £10 ($48.67) apiece. Before 1898 the determination of infringements and imposition of fines was not in the hands of the arbitration court, but was delegated to certain of the regular civil courts of the colony. By the amendment of that year, however, the court of arbitration, which has always been the sole authority in the making of awards, became the sole authority also for their enforcement.

In the November amendment of 1903 are two provisions designed to prevent the defeat of an award through combined action on the part of employers or workers, or through the dismissal of employees by employers. The one of these (sec. 5) provides that—

If during the currency of an award any employer, worker, industrial union or association, or any combination of either employers or workers, has taken proceedings with the intention to defeat any of the provisions of the award, such employer, worker, union, association, or

combination, and every member thereof, respectively, shall be deemed to have committed a breach of the award and shall be liable accordingly.

The other provision (sec. 6) specifies that—

Every employer who dismisses from his employment any worker by reason merely of the fact that the worker is a member of an industrial union, or who is conclusively proved to have dismissed such worker merely because he is entitled to the benefit of an award, order, or agreement, shall be deemed to have committed a breach of the award, order, or agreement, and shall be liable accordingly.

JURISDICTION.

The law enumerates the matters which may be the subject of disputes under it, but suffice it to say that no subject of industrial disputes outside of indictable offenses is beyond the law's jurisdiction. In 1900 an attempt was made to overthrow the arbitration court's authority to deal with the question of preference to unionists over nonunionists in employment.[a] The employers in a case made application to the supreme court of the colony to prevent the arbitration court from awarding preference in employment to the unions involved, on the ground that that question was beyond the jurisdiction of the arbitration court. The supreme court decided against the employers, who then carried the matter to the court of appeals, only to find the authority of the arbitration court again sustained. In the chief justice's opinion it was declared that "every kind of possible dispute that can arise between an employer and his workmen" was within the scope of the law.[b] Concerning the particular subject involved in this appeal, Parliament left no further room for question by mentioning it specifically in the consolidation act as under the jurisdiction of the law.

All industries are under the law. Previous to 1900, however, just what the term "industry" included was not clear. In 1899 and 1900 the arbitration court decided that a grocers' assistants' union and a tram drivers' union could not bring cases before it on the ground that the sale and distribution of merchandise and the transportation of passengers were not industries within the meaning of the law.[c] This decision, which turned entirely upon the definition of the word "industry," was criticised at the time, however, as being too narrow, and the act of 1900, together with the amendment of 1901, swept

[a] Cf. Report of the New Zealand Department of Labor, 1900, p. iii.

[b] Awards, Recommendations, Agreements, etc., made under the Industrial Conciliation and Arbitration Act, published by the New Zealand Department of Labor, Vol. I, p. 305.

[c] Awards, etc., Vol. I, pp. 275, 279.

away this restriction and put the broadest possible interpretation upon the term by specifying as included under it "any business, trade, manufacture, undertaking, calling, or employment in which workers are employed," and defining "workers" as "any person of any age or either sex employed by any employer to do any skilled or unskilled manual or clerical work for hire or reward."(a)

All government departments are specially exempted from the law, except that the government railways are under the jurisdiction of the court of arbitration in the same manner as private industries, but not within the jurisdiction of boards of conciliation. (b)

The law's jurisdiction extends not only to disputes within any given industry touching the conditions therein, but covers also disputes between employers and work people in "related industries." Industries are "related," according to the terms of the act, when they are "so connected that industrial matters relating to the one may affect the other. Thus, bricklaying, masonry, carpentering, and painting are related industries, being all branches of the building trade, or being so connected as that the conditions of employment or other industrial matters relating to one of them may affect the others."(c) The governor of the colony may from time to time declare industries to be thus related, or in the case of any particular dispute the court of arbitration has power to declare industries related. The inclusion of this class of disputes under the law is an extension of jurisdiction made by the act of 1900. Its effect is to enable employers or work people in one industry to demand of those in other industries such conditions as shall not injure the conditions secured in their own trade, and the statute expressly stipulates that even though such a dispute were between a labor organization and employers none of whose employees were members of the union it would be within the law's jurisdiction.

One limitation upon its jurisdiction is fundamental to the New Zealand system, namely, its restriction to disputes involving labor organizations registered under the arbitration law. Organization of labor is, in fact, the foundation of the system. The title of the original law of 1894 was "An act to encourage the formation of industrial unions and associations, and to facilitate the settlement of industrial disputes by conciliation and arbitration," and though the first half of that title was dropped by the amendment of 1898, the statute now, as formerly, begins with provisions for the registration

a Act of 1900, sec. 2.

b The original act of 1894 included governmnet railways, as now, but a change in their administration from commissioners to a minister took them out from under the law until the consolidation act of 1900 expressly included them again under the new form of administration.

c Act of 1900, sec. 23 (2).

of unions. These follow closely, as before indicated, similar provisions in the South Australian arbitration law,[a] and their purpose is the same, namely, to enable unions to put themselves under the jurisdiction of the law and to make them responsible bodies for the purposes of compulsory agreements and awards. Registration is absolutely voluntary, but a registered union becomes, for the purposes of the arbitration act, "a body corporate by the registered name, having perpetual succession and a common seal until the registration is canceled."[b] It may hold real estate, sue and be sued, and its officers may sue any member for fines and dues.

The above statement that the law applies only to disputes in which unions registered under it are concerned, is true now and has been since the act of 1900. Before that the law covered also disputes involving any union registered under the Trade-Union Act of 1878. Registration under this latter act, which is entirely voluntary, simply enables unions to hold real estate and makes the trustees of a union's funds responsible therefor to the organization, and, so far from increasing a union's responsibility, expressly exempts it from any legal liability under agreements and exempts its members from any liability for dues. As will be seen below, in connection with the subject of extension of awards, the New Zealand system does at present involve, under certain conditions, the enforcement of awards upon unions registered only under the Trade-Union Act of 1878 and not under the arbitration act. But since 1900 only the unions registered under the latter law may bring disputes before the boards or court, and it has always been true that only such may have a voice in naming the members of such boards or court. While the privileges of the system, so to speak, are thus limited to those work people who are organized and who register their unions under it, it is made easy for the unorganized to secure those privileges since any 7 of them may form a union and register under the law.[c]

The same provisions for organization and registration apply to employers as well as work people, any two persons,[d] even a single firm with two members, being sufficient to register under the act as an employers' union. The fact of registration, however, makes no difference whatever as to the jurisdiction of the law over employers, the unregistered being just as free to refer disputes for settlement and as

[a] Cf., pp. 536, 537. The only important variation from the South Australian provisions lies in the omission of fines, summarily recoverable before magistrates, for the infraction of a union's rules by its members.

[b] Act of 1900, sec. 7 (1).

[c] The law of 1894 made the number 7, which was changed to 5 by the amendment of 1895 but restored to 7 again by the act of 1900.

[d] The number was originally 7, but was reduced to 5 in 1895 and finally to 2 in the act of 1900.

subject to awards as the registered. The one difference in the status of the two under the law lies in the fact that only registered employers may vote for members of the boards and court.

EXTENSION OF AWARDS.

The parties to proceedings before the court of arbitration and those who are subject to its awards are not necessarily the same under the present law. Originally awards were compulsory simply upon such of the parties to proceedings as were named in it. But a most important extension was given to the jurisdiction of awards by the consolidation act of 1900 and the amendments of 1901 and November 20, 1903. The law of 1900 provided in the first place that awards "by force of this act shall be binding upon every registered union and every employer who, not being original party thereto, is at any time while the award is in force connected with or engaged in the industry to which the award applies within the industrial district to which the award relates."[a] Taken by itself, the language of this provision would seem to have but one possible meaning, namely, that an award always covers throughout its term the entire industry and industrial district in which it is rendered, no matter how many of those in the industry or district may have been parties to the proceeding before the court. But the secretary for labor, in his 1904 report,[b] states that opinions concerning this provision, even legal opinions, are decidedly at variance. "Some read this section," says the secretary, "as implying that only those employers cited in the award are under its provisions, holding that it is unfair to bind a person who has not received notice that he was pecuniarily interested in the case. Others hold that the section binds all employers in the district, whether cited or not, whether original parties or not, and that the unfairness lies on those who would bind certain employers and leave others free to pay what wages, etc., they choose."

The secretary stated also that there had even been cross-rulings in the court of arbitration on the subject, but a decision given by the court on May 27, 1904,[c] puts beyond question the later attitude of the court on the question, and shows that its position, which, so far as actual practice is concerned, is, of course, controlling, considerably modifies the apparent meaning above noted. The court holds that under the provision quoted an award does bind automatically any employer who, after the award has come into existence, enters upon business in the industry to which the award relates, but that in respect of those already engaged in the industry before the reference, an

[a] Act of 1900, sec. 86 (3).

[b] Report of the New Zealand Department of Labor, 1904, p. v.

[c] Awards, etc., V, p. 190.

award applies only to such as were cited as parties to the proceedings. Because of the importance of the question involved, the grounds for this decision of the court are worth noting. These were not found in the provision itself—the court conceding "that, looked at singly, it is widely enough worded to include in terms persons already engaged in the industry"—but in general considerations of justice and of the general scheme of the arbitration law. "If this subsection," said the court, "is to be read as binding a person who was not made a party to the proceedings, its operation is manifestly unfair and contrary to all our ideas of the proper mode of forming binding judgments. It is the first and most important rule insisted upon by all courts of justice that all persons who are to be bound by a judgment shall have an opportunity of being heard before it is pronounced."

Examining the statute, therefore, to discover whether such a palpably unfair provision must nevertheless be accepted, the court found on the contrary that all the necessary proceedings down to the actual rendering of an award are binding solely on the parties cited, and are "substantially the same as those to obtain a judgment of any court acting in personam;" that the award "when formed has the nature and characteristic of a judgment between the parties, resembling in this respect other classes of statutory awards with which our law is familiar;" and throughout the rest of the act "nothing is found to lead to a suggestion that an award is either in the nature of a judgment in rem binding all persons, whether parties or not, or of a law binding a particular industry and the parties engaged in it without naming them." Therefore, since the legislature could have made its meaning perfectly clear by a few words, if it had intended that parties should be bound without being named, it must be concluded that it purposely abstained from using these words. The court held that the position of the employer coming into a district to start business was quite different, declaring that "the language of the section aptly and without unfairness" applied to him, since "it is no hardship to enact that any person who enters into business shall be charged with the duty of ascertaining what awards are in existence affecting that business just as he finds himself obliged to inquire as to all acts of Parliament and all other incidents affecting it."

Interpreted in the light of this decision, the above-quoted provision for extension of awards to all the employers in the given district means that the court may, if it sees fit, cite all the employers of a district in a given industry as parties to any proceeding for an award in that industry.

In the second place, as to extension of awards, since the act of 1900 awards are to some extent binding upon unorganized working people through a provision that awards "by force of this act [act of 1900,

sec. 87, subsec. 3] shall also extend to and bind every worker who, not being a member of any individual union on which the award is binding, is at any time whilst it is in force employed by any employer on whom the award is binding," and any breach of an award by such a worker is punishable by a fine not exceeding £10 ($48.67) in the same manner as though he were a party to the award.

Finally, in the third place, under the consolidation act of 1900 and the amendment of November 20, 1903, awards may be extended so as to cover the whole of an industry throughout the colony. Such extension may be made only when an award "relates to a trade or manufacture the products of which enter into competition in any market with those manufactured in the industrial district where the award is in force." (a) The law of 1900 specified in addition, as necessary condition for such extension, that a majority of the employers and of the unions in the industry should be already bound by the award, but the 1903 amendment swept away this condition, leaving the court free to extend an award beyond an industrial district at its own discretion. Application may be made to the court to extend an award by any party bound thereby. Thirty days' notice of such application shall be given to all other parties who will be affected by the extension and objection may be made by any of the latter, which objection shall be heard by the court in the industrial district whence it comes.

In respect to extended awards the act of 1900 observed the general limitation of the law to labor organizations registered under it and permitted extension, as above indicated, only to such unions. The amendment of 1901 carries the matter much further by putting all trade unions registered under the Trade-Union Act of 1878 under the same provisions. So that now an award in a given industry necessarily binds all unions registered under either law which are within the district, and may be extended to all such within the colony. This, as well as the above-noted application of awards to unorganized employees, manifestly involves for the New Zealand system now, as before 1900, the enforcement of awards upon work people who have put themselves in no such position of responsibility as is involved in the quasi incorporation of those registered under the arbitration law. The same thing is also involved in another provision of the 1901 amendment, which permits trade unions under the 1878 act to make industrial agreements enforceable under the arbitration law, which was also true prior to 1900.

Two other additions to the power of the court in fixing the jurisdiction of awards were made in 1901. One of these permits an exception to the general rule that awards shall apply throughout an

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a Amendment of November 20, 1903, sec. 4.

industrial district by allowing the court to limit an award's operation to a city, town, or part of a district, but in such case the court may afterwards, on application from any employer or union registered under the arbitration act within the district, extend the award to any person, employer, or registered union in the district. The other addition provides that where workers engaged upon different trades are employed in the general business of one employer the court may make an award covering the whole or any part of the business, provided due notice has been given to all the registered unions engaged in any branch of it.

DEPENDENCE UPON ATTITUDE OF ORGANIZED LABOR.

This fact has been indicated already, perhaps, but will bear emphasis, as it is absolutely essential to a correct idea of what the New Zealand law attempts to do. There is nothing in the system requiring the settlement of disputes under it if neither employers nor work people so desire. One party at least must be favorably disposed and refer its disputes to it if it is to be operative at all. But more than this, the one party which must be favorable is the work people. Employers are within the law's jurisdiction whether they choose to be or no, and must, therefore, submit to proceedings under it if the workers so will. But the work people are subject to the system only as they are organized and their unions register under it, which is a purely voluntary matter for them. Manifestly, therefore, until organized labor chose to register, the system could never come into operation, however much employers or the Government might desire its use. But it is equally true that after labor organizations have once registered and the system is in operation its continuance in use is also dependent upon their will, for any union is free to cancel its registration at any time except during actual proceedings under the law in which it is concerned. Such cancellation would not, indeed, free it as a body or its members individually from the binding force of agreements or awards already made, as the law expressly declares; but it would free them from the possibility of future awards or proceedings and would limit the force of those already made to three years or less, as that part of the law making awards and agreements binding beyond the term specified in them reads that they shall so continue "except where * * * the registration of an industrial union of workers bound by such award (or agreement) has been canceled." [a] The New Zealand compulsory arbitration law is absolutely dependent for its operation, therefore, upon a favorable attitude toward it on the part of organized labor.

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[a] Act of 1900, sec. 24 (4), and 86 (1) (*d*).

OPERATION OF ARBITRATION SYSTEM.(a)

The law went into operation slowly. It was in force from January 1, 1895, but it was not till May, 1896, that a dispute was referred for settlement under it. Meanwhile, however, the colony had been divided into seven industrial districts, the arbitration court had been appointed, and conciliation boards formed. In case of the latter it was necessary in several instances for the governor of the colony to exercise the power conferred upon him by the act and fill vacancies by direct appointment, employers having failed to elect their members.

REGISTRATION OF UNIONS.

The table below shows the number of unions registered under the arbitration law for the alternate years since the law went into force:

MEMBERSHIP OF EMPLOYERS' AND WORKERS' UNIONS, NEW ZEALAND, 1896 TO 1904.

[Figures for 1896 to 1902 compiled by Dr. Victor S. Clark from returns to Parliament by the registrar (Bulletin of the United States Bureau of Labor, No. 49, p. 1226); for 1904, Annual Report of Department of Labor, 1904, p. viii.]

Year.	Number and membership of registered unions.					
	Employers' unions.		Workers' unions.		Total.	
	Number.	Membership.	Number.	Membership.	Number.	Membership.
January 1, 1896	1	15	75	8,230	76	8,245
January 1, 1898	12	849	103	12,515	115	13,364
January 1, 1900	33	b 11,586	133	14,481	166	b 26,067
January 1, 1902	68	1,824	219	23,768	287	25,592
March 31, 1904	106	3,080	266	27,640	372	30,720

a The following are the chief sources which have been used in the preparation of this part of the report, all of these being either official New Zealand documents or reports of official or private investigations made in New Zealand by investigators from other countries. The first six are the most important sources for the subject:

New Zealand Department of Labor, Awards, Recommendations, Agreements, etc., made under the Industrial Conciliation and Arbitration Act, published in annual volumes.

New Zealand Department of Labor, Annual Reports.

The Monthly Journal of the Department of Labor.

Judge Alfred P. Backhouse's Report of the Royal Commission of Inquiry into the Working of Compulsory Conciliation and Arbitration Laws, Sydney, New South Wales, 1901.

Report of the Royal Commission Appointed to Investigate and Report on the Operation of the Factories and Shops Law of Victoria, presented to the Parliament of Victoria, Australia, in 1903, pp. xiv–xxvi.

Victor S. Clark, Ph. D., Labor Conditions in New Zealand, in Bulletin No. 49 (November, 1903) of the United States Bureau of Labor, being the results of an official investigation for the Bureau made by the author in New Zealand.

W. P. Reeves, The Long White Cloud, pp. 386 et seq.

H. D. Lloyd, A Country Without Strikes (1900 ed.).

Sidney and Beatrice Webb, Industrial Democracy, Introduction to 1902 edition, pp. xliv et seq.

b Shareholders in companies included.

Labor organizations registered in considerable numbers very soon after the law went into effect. Sixty-one such unions registered during the first nine months under the law, and its author, Mr. W. P. Reeves, asserted in Parliament that they represented the "pick and flower of the labor of the colony."(a)

The increase in number of registered labor unions was about the same from 1898 to 1900 as it was from 1896 to 1898, but represented a much smaller gain in the total membership of registered unions. The large gain, both in number and membership of registered trade unions from 1900 to 1902, was due in part to a rush to register by those in transportation and mercantile trades as soon as the passage of the act of 1900 put beyond question the jurisdiction of the law over them. Taking into account this special reason for growth in registration by labor organizations from 1900 to 1902, it can not be said that the last two years, 1902 to 1904, show any weakening of the inclination of the laboring class to support the system, as indicated by their enrollment of themselves within its jurisdiction by registration, but rather the contrary, if comparison be made with the years prior to 1900.(b)

Employers, in contrast to work people, were slow to actively support the system by registration. But while only 12 employers' associations were registered three years after the law went into force, succeeding years have shown a wider tendency of this class to register, and the increase in the number of their registered unions was greater in the last two than in any preceding two years.

A few local or national federations of unions have been registered under the law. Thus, in 1904 there were 17 such, of which 14 represented workers and 3 employers.(c) Most, if not all, of their constituent unions, however, were registered individually.

The increase in number of registered unions shown in the table above is net, as there have been some withdrawals from registration. Dr. Victor S. Clark (d) gives figures based on the registrar's returns to Parliament, which show that for 1896 to 1902, 43 unions were dropped from the rolls, 26 by voluntary cancellation and 17 by allowing their registration to lapse.

Just what proportion of the work people and employers in the colony are now registered under the law it is impossible to say. Judge Backhouse, the New South Wales commissioner, who was in New Zealand in 1901 to investigate the working of the system, reported that then there was "still a large number of the workers" and

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a Lloyd, A Country Without Strikes, p. 32.

b A somewhat different opinion, expressed in the report of the Victoria commission (p. xxi), is erroneous, due to the incorrect figures there used.

c See list of unions registered up to September 30, 1904, in the October, 1904, Journal of the Department of Labor.

d Bulletin of the United States Bureau of Labor, No. 49, p. 1226.

"a very large percentage of employers" who were outside of any registered organization.(a) Doctor Clark,(b) notes that the New Zealand census of 1901 showed a total of 132,895 employees in industrial, commercial, and mining pursuits, and that there was less than one-sixth that many members of registered workers' unions in 1902 if 2,602 government railway employees therein be excluded. The 27,640 members of such unions in 1904, which include many seamen, railway employees, miners, and employees in commercial pursuits, it may be noted, amounted to less than half the total factory employees alone, the latter numbering 63,968, according to the Report of the Department of Labor for 1904. But whatever the proportion of all workers who have come under the law, from statements by Mr. Reeves, author of the law, and Mr. Henry D. Lloyd, both writing in 1900,(c) it appears that organized labor in the colony is nearly all registered under it and that such of the workers as are outside are entirely unorganized.

Thus far it has been almost solely the unions of work people who have referred disputes for settlement under the law. The published reports do not indicate in how many cases, if at all, employers have made the references, but any such have certainly been rare.(d). As already indicated in connection with the registration of unions, the law was early received with favor by work people, while employers held aloof from it. To this may be added that thus far the law has operated in a period of prosperity in the colony when the work people would naturally be the plaintiffs in disputes, and, as indicated later on, the results of references have thus far been, as a rule, sufficiently favorable to the workers to encourage them in further use of the law.

WORK OF CONCILIATION BOARDS.

The following table shows the amount and results of the work done by the conciliation boards up to the end of June, 1901, or approximately the period (prior to the amendment of 1901) in which the law required that disputes referred for settlement under the act must go first to the boards of conciliation. This is practically the record for five boards only, the other two having had but one case each during the six years.

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a Report of the New South Wales commission, p. 10.

b Bulletin of the United States Bureau of Labor, No. 49, p. 1226.

c Lloyd, A Country Without Strikes, pp. x, 157.

d Cf. Reeves and Lloyd in A Country Without Strikes, pp. x, 108. Of twenty cases described in the Report of the Department of Labor for the year ended March 31, 1898, with more detail than appears in later reports, in none was the dispute referred by employers. Judge Backhouse states that he heard of but one case in which employers appealed to boards or court.

STATISTICS OF WORK DONE BY CONCILIATION BOARDS, NEW ZEALAND, 1896 TO 1901.

[Compiled from an analysis of the cases as reported in Awards, etc., Vols. I, II.]

Year ended June 30—	Total cases before boards.	Settled by boards.	Settled in part.	Cases withdrawn or dismissed.	Sent to court.	Percentage of cases settled by boards.
1896	2	1			1	50.0
1897	10	3			7	30.0
1898	30	7			23	23.3
1899	33	9	2	2	20	27.3
1900	35	10		3	22	28.6
1901	46	13		2	31	28.3
Total	156	43	2	7	104	27.6

Cases settled by the boards mean those in which the formal recommendations were accepted by all the parties and embodied in industrial agreements under the law. In two instances the recommendation was accepted after some modification by the parties, and in one of these after the time limit for acceptance had expired. In the two disputes settled in part in 1899 some of the parties accepted the boards' findings, but the refusal of others necessitated a reference finally to the court. The seven cases withdrawn or dismissed include one (in 1899) in which the board recommended that no action be taken, one (in 1901) in which the board advised the withdrawal, two (in 1900) in which the parties withdrew of their own motion (once after a formal recommendation had been made by the board and once after the case had been sent to the court), and three (one in each of the three years) in which the dispute was sent to the court, but was terminated outside by an agreement of the parties, in one case the terms being arranged in an informal conference in the presence of the court of arbitration. Cases sent to court are those in which the boards failed entirely and which were carried to the court for formal award. To complete the above record of work by boards there should be mention of four decisions rendered by chairmen of boards, during 1901, upon points which existing awards or agreements directed should be referred to them.

Since the amendment of 1901 made it possible to pass by the boards entirely in references under the law, the number of cases referred to boards has rapidly decreased, so that for the year ended March 31, 1904, the conciliation boards had but 15 cases before them, and two of these were not original disputes, but cases of interpretation of existing awards or industrial agreements. "The result of the statutory amendment made in 1901," says the secretary for labor, [a] "has been to practically suspend the operations of the boards."

Two-thirds of the disputes referred to the boards have failed entirely of settlement and have been transferred to the court for an

[a] Report of the New Zealand Department of Labor, 1904, p. vii.

arbitration award. This is a far different result from that hoped for by the author of the law, who expressed the opinion in Parliament, when the bill for the original act was being debated, that ninety cases out of one hundred would be settled by the boards. (a) Comparing one year with another, the actual number of cases settled by the boards increased slowly throughout the period covered by the table above, but the proportion of settlements to total disputes referred shows no marked increase save that in the last three years it was considerably higher than in 1898, which, however, appears to have been an exceptional year. The percentage was but slightly higher for 1900 than for 1899, and for 1901 was no higher than the year before.

The proportion of settlements effected by the different boards varies considerably, as indicated by the following table given by Doctor Clark, which shows the number of disputes settled by the board and the number settled by the court in each district down to June 30, 1902:

DISPUTES SETTLED BY BOARDS OF CONCILIATION AND BY THE ARBITRATION COURT IN EACH DISTRICT, NEW ZEALAND, APRIL, 1896, TO JUNE 30, 1902.

[From Bulletin of the United States Bureau of Labor, No. 49, p. 1191.]

District.	Number of cases settled—		
	By board.	By court.	Total.
Auckland	19	17	36
Wellington	5	41	46
Canterbury	10	40	50
Otago and Southland	16	41	57
Westland	4	4	8
Total	54	143	197

Several causes have contributed to the failure of boards to settle a larger proportion of disputes. One connected with the constitution of the boards lies in the fact that being permanent and consisting of but five members they are frequently called upon to consider disputes in trades with which few or none of their members have any intimate acquaintance, and that the assistance of experts for such cases as provided in the law is costly and slow. As the secretary for labor put it:

Much time is now wasted when, say, a tailor, a baker, a butcher, and a carter, with a clergyman or lawyer in the chair, have to decide on technical points of dispute concerning, say, bootmakers, wharf laborers, or printers. (b)

It would seem that special boards appointed as disputes arose, for which the law has always provided, would have met such difficulties. But as a matter of fact no such special boards have ever been called in. The requirement (prior to the amendment of 1901) that both

a Cf. Lloyd, A Country Without Strikes, p. 30.

b Report of the New Zealand Department of Labor, 1900, p. iv.

parties must consent to the naming of such a board may have hindered their utilization and it is said [a] that the work people have objected to them for fear that those who served on them would be blacklisted by employers and that there has been opposition on the ground that after a dispute has developed the parties are likely to name for members strong partisans, so that no conciliation could be hoped for from such boards. Another reason given for the non-employment of special boards is that too much effort is required to put into motion the cumbersome machinery for constituting such boards. [b]

A second obstacle to the success of boards has to do with the character of the members elected to them. According to Judge Backhouse [c] the chairmen of some boards have lacked entirely the qualities of tact, impartiality, etc., requisite for the position, and some of the members have considered it proper to champion one side or the other in disputes in a partisan manner both within the board and outside. Still worse, it appears, according to the same authority, that disputes have even been fomented by members in some instances with a view to securing the fees allowed them for each sitting of the board. [d]

A third handicap upon the work of boards has been the style of procedure adopted by some of them. [e] Instead of informal conference there has been formal argument by each side after the manner of arbitration proceedings, which would seem to have been the result of attaching more influence to formal recommendation by the board than to facilitating conciliation between the parties themselves.

Fourth, the failure of employers, in large measure, to register under the law and elect members to the boards has been a source of weakness, pointed out by both Judge Backhouse [a] and Mr. Reeves. [f] In these cases members are named by the Government, but such would naturally have less influence with employers than members named by themselves. [g]

Finally, in the fifth place, many cases have been foredoomed to failure in the boards because one or other of the parties intended from the outset to carry the case to the court of arbitration, whatever the

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[a] Judge Backhouse, report of the New South Wales commission, p. 12.

[b] Clark, Bulletin of the United States Bureau of Labor, No. 49, p. 1195.

[c] Report of the New South Wales commission, p. 11.

[d] Cf. also Clark, Bulletin of the United States Bureau of Labor, No. 49, p. 1190.

[e] Cf. Judge Backhouse, report of the New South Wales commission, p. 12, and Reeves, The Long White Cloud, p. 390.

[f] The Long White Cloud, p. 389.

[g] Cf. also report of the Victoria commission, p. xiv.

boards' recommendations might be. The secretary of labor reported in 1898 that "much time is now wasted" before boards on just such cases, and again in 1900 pointed out the same difficulty.(a) So far as employers have taken this attitude, it would seem to have arisen from distrust of the boards, inspired by the causes above noted. The same consideration may also have influenced work people in this matter, but it would appear that the motive to such action with them has been to a considerable extent entirely different, and goes back to the fact previously noted that appeals to the law frequently occur when there is no special controversy on between employers and employees, and simply for the purpose of securing uniform regulations or "common rules" in a trade, or to try for some betterment of conditions by proceedings under the law. For either of these ends what would be sought would be an award of the court, for whatever that granted would necessarily be binding, while nothing could be gained before a board to which the other party did not agree, especially prior to 1900, when no recommendation of a board was of itself binding. It may be added that the large power to extend awards conferred on the court by the acts of 1900 and 1901 would seem to offer greater inducement than ever to use the law for the establishment of "common rules," and hence to aim solely at securing court awards.(b)

Over against the above unfavorable side of the boards' record it may be noted in their favor that in the period to 1901 they after all disposed successfully of more than one-fourth of the disputes referred for settlement under the law. Judge Backhouse, after his investigations, expressed the opinion that the boards, "as a whole, had done much good work," and found that some of them were "held in the highest repute." He points out that even in cases sent to the court the proceedings before the board were frequently far from useless, as they had involved a thorough threshing out of the facts, which proved of great assistance to the court later, in some cases the boards' recommendation being practically adopted in the award, and quotes the opinion of the president of the court in 1901 to the effect that the boards are a "very necessary" part of the system. To this may be added the statement of the secretary of labor, writing in 1902, that—

So carefully and well have conciliation boards in many cases worked in this colony, so many are the occasions in which they have wiped out dozens of disputed points (leaving a few only for the arbitration court), sifted evidence, and given recommendations only requiring adoption by the higher court, that very many, if not the

a Report of the New Zealand Department of Labor, 1898, p. v; 1900, p. iv.

b The proportion of cases carried to the court was, in fact, as previously noted, higher in the year ended June 30, 1901, than in any other year save 1898, and the law of 1900 went into force in October, 1900.

majority, of people who have really studied the subject would view the abolition of the boards with regret.[a]

Notwithstanding all that could be said for the boards, experience with them and their failure to settle more than one in three disputes early led to proposals to amend the law with reference to them, some of which advocated their total abolition. Out of these came the amendments already noted,[b] by which (1) in 1900 the recommendations of boards were made compulsory unless appealed from; (2) since 1901 special boards are to be appointed whenever one party so desires, and (3) since 1901, also, it is possible to pass the board entirely and begin the case in the court. The second of these, it will be seen, is aimed at the first of the difficulties in the work of boards above mentioned and is calculated simply to increase the chances of successful conciliation; but the other two are of very different significance, and so far from facilitating conciliation they are both designed solely to enlarge the arbitration possibilities of the statute, inasmuch as formal recommendation of a board unconditionally compulsory, unless appealed from, amounts practically to an arbitration award.

Doctor Clark [c] reports that opinion in New Zealand "as to the wisdom of practically superseding the boards is divided, and neither workingmen nor employers are agreed as a body on the subject," and cites a great many opinions from a variety of sources illustrating this diversity of view. He notes, however, the interesting fact [d] that it was the employers who were responsible for the amendment of 1901, permitting direct reference to the court without recourse to the boards, and that they insisted on its passage against the opposition of the labor politicians.

WORK OF COURT OF ARBITRATION.

Experience has revealed no such difficulties as to constitution and procedure in case of the court of arbitration as have been noted in the record of the conciliation boards. Judge Backhouse found "generally the greatest satisfaction expressed" with the composition and proceedings of the court. The later report of the Victoria commission put on record its opinion "of the high character of this arbitration court and of the care and thoroughness with which its varied duties are carried out." It will be recalled that a justice of the supreme court of the colony, as chairman, is always the final

[a] Report of the New Zealand Department of Labor, 1902, p. v.

[b] Supra, pp. 464–466.

[c] Bulletin of the United States Bureau of Labor, No. 49, p. 1192.

[d] Noted also in the report of the Victoria commission, p. xv.

authority in the court of arbitration, and the New South Wales commissioner found that all parties most emphatically approved of this, and that it was agreed that no other than an active member of the supreme court bench, the highest court of the colony—no judge appointed purely for the purposes of the arbitration law, from whatever class—could so acceptably fill the position of president of the court. This was the verdict after experience under five different justices in the position. Favorable testimony also concerning the two members chosen by employers and work people is given by the Victoria commission to the effect that "it is admitted on all sides that the two lay members have invariably exercised their functions with strict impartiality as well as ability, and have thus given the public confidence in the industrial law which they assist to interpret."

The law left the court entirely free to choose its own mode of procedure. In general it may be said that directness and simplicity have characterized it. Primarily, of course, the proceedings consist of hearings for the ascertainment of facts and the formulation of awards; but to this arbitration work the court has added much in the way of conciliation, its regular practice being to aim at an understanding between the parties as well as an equitable decision, for which purpose it is not unusual for the president of the court, at the request of parties, to confer with them outside of hearings. Judge Backhouse reports [a] that frequently the court's conciliatory efforts bring the parties to an understanding, in which cases manifestly the awards are practically accepted before they are rendered.

Counsel are permissible by the law only as both parties consent thereto. As a matter of fact such consent has been rare, the workers especially objecting, and as a rule the cases are conducted entirely by the parties' representatives directly concerned. The Victoria commission suggests as the reasons for this objection to counsel the tendency of their employment to prolong and increase the cost of proceedings before the court. To the general practice of excluding counsel the court has made an exception in proceedings for enforcement of awards, on the ground that the necessity of settling legal points in such cases makes hearing of counsel desirable, although the employees are opposed to it even in such cases.

The court's large powers as to the production of books and documents have been so exercised that Judge Backhouse could report that he found no serious objection to it on the part of any employer with whom he spoke. The point at which the gravest abuse of the court's power could occur, namely, allowance of inspection of books by parties, is closely guarded by the court, if one may judge by the defini-

[a] Report of the New South Wales commission, p. 14.

tion of its position in this matter given by the president in May, 1901, to the effect that—

A very strong case would have to be made by any party before the court would allow the books of an employer to be inspected by any other person. It is, of course, impossible to say that the court would in no case exercise its discretion, but the principle on which the court will act will be that no inspection of books produced to the court will be allowed to any of the parties unless the court is first satisfied that such inspection is absolutely essential in the interests of justice, and that it will be only in cases of the most extreme necessity that such power will be exercised.(a)

Doctor Clark reports that in practice the court visits the offices of employers when it is necessary to inspect a firm's books, and that information so obtained is in the confidence of the court. The same investigator notes also that the court customarily avails itself of its right to enter and take evidence in work places in order to ascertain the conditions of work in an industry. The provision for calling in expert assistants the Victoria commission reports is seldom availed of by the court, and the commission intimated that experience with them had not encouraged their use, instancing a case in 1902 in which the court, in announcing its decision in a bookbinders' dispute, said:

The court has experienced very considerable difficulty in reference to making its award in this dispute. It had to call in the help of experts; but, unfortunately, the experts have disagreed upon every item, instead of assisting the court to arrive at a decision.(b)

One serious practical difficulty in court proceedings has developed in later years through the growth of the court's business to such an extent as to cause much delay in the disposition of cases. Although the law (sec. 84, act of 1900) provides that the award shall be made within one month after the court begins a case "or within such extended time as in special circumstances the court thinks fit," instances were reported to the Victoria commission (1902) in which nine to twelve months had elapsed between the hearing of a dispute and the award. The Report of the Department of Labor for 1903 (p. iv) points out this congestion of the court's work, remarking that—

The court has made herculean efforts to overtake the large number of cases brought before it, and has been incessantly in motion from one end of the colony to the other; but the variety as well as the importance of the subjects engaging its attention have prevented the delivery of awards with the celerity which suitors awaiting decisions with anxiety naturally desire.

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a Quoted by Judge Backhouse, report of the New South Wales commission, p. 15.

b Report of the Victoria commission, p. xvii. Cf. also Report of the New Zealand Department of Labor, 1902, p. 5, and Awards, etc., III, p. 349.

And the report for 1904 (p. iv) states that—

There are continual complaints made as to the delays in hearing cases caused by the accumulation of work in the arbitration court.

Several causes have contributed to increase the amount of work to be done by the arbitration court. In the first place, besides the natural increase in number of references, which was to be expected as the law became known and more fully applied to the disputes naturally arising in the industrial world, it appears that, as noted more fully later on,[a] the very possibilities of the law itself have incited to the creation of issues simply for the purpose of securing a reference under the law and invoking its powers.

As already indicated in the table showing the work of conciliation boards up to 1901,[b] the number of formal disputes sent up from the boards to the court increased from 7 in the year ended June 30, 1897, to 31 in the year ended June 30, 1901. The summaries of work done by the court, published by the department of labor,[c] show still larger numbers for 1902 and 1903, since during the fourteen months from April 22, 1901, to June 13, 1902, the court gave hearings in 67 different disputes, and in the next ten months to April 25, 1903, heard 47 disputes, or, proportionately to the length of period, as many as in the preceding fourteen months. The report of the department of labor for 1904 gives a summary of the court's work for the year ended March 31, 1904, but in somewhat different form from that of the two earlier years, so that instead of figures for total disputes heard, comparable with those above, only the number of awards rendered by the court (25) is given.

Secondly, with the increase in number of existing awards and agreements under the law, the number of enforcement cases and cases of interpretation, amendment, or extension of awards or agreements has naturally increased. Enforcement cases have, in fact, increased very greatly in numbers, there having been 12 such before the court in the year ended June 30, 1900, 58 during the fourteen months from April 22, 1901, to June 13, 1902, and no less than 121 during the year ended March 31, 1904. Of interpretation and other cases under the arbitration law, there were 16 in the fourteen months from April 22, 1901, to June 13, 1902, 16 during the ten months June 13, 1902, to April 25, 1903, and 21 during the year ended March 31, 1904.

In the third place the amendment of 1901, which enabled parties to pass boards and refer direct to the court in the first instance, has increased the work of the court either by bringing to it the disputes which might formerly have been settled by the boards or depriving

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[a] See p. 487.

[b] Cf. supra, p. 479.

[c] Reports of the New Zealand Department of Labor, 1902, p. xxv; 1903, p. xxvi.

the court of the time gained by the preliminary sifting of cases in the boards.(a) This is the cause given most prominence by the secretary for labor in this connection, his report for 1903 (p. iv), remarking that—

> At present, either through the wish to win time and prevent change, * * * or through desire for economy in only appearing once in a case instead of twice, the power of initiating proceedings in the higher court is fully taken advantage of, the conciliation boards have little chance of exercising their functions, and the court has its hands overfull.

In the fourth place, the Workers' Compensation for Accidents Act of 1900 provided that any questions under that law which can not be settled by agreement shall be settled by the court of arbitration in the same way as an industrial dispute. The court heard 17 of these cases in the fourteen months—April 22, 1901, to June 13, 1902; 20 in the next ten months, to April 25, 1903, and 19 during the year ended March 31, 1904.

That the overburden of work in the arbitration court is generally recognized as a serious evil is evidenced by the remark of the secretary for labor in 1904 (b) that "many resolutions passed by societies and suggestions of private individuals have been sent to the department of labor in the direction of easing the work of the arbitration court by allowing stipendiary magistrates to adjudicate in minor cases of breach of award." Besides the remedy thus proposed the secretary suggests another through the "appointment of another judge of the supreme court, which would, by easing off the work of the court of appeals, sensibly assist the arbitration court," whose president has his share of work to do in the court of appeals as well as in the arbitration court.

The awards of the court are usually put in the form of a schedule, drawn in the same manner as any agreement between employers and employees, to which is prefixed the court's declaration of the parties to be bound by it, the date and length of its term, and the limit of penalties for its infraction. The schedule may include anything from a single item in the terms of employment to, as is frequently the case, all the conditions in detail for a trade.

Thus far nearly all of the court's decisions have been in some measure favorable to the employees. It is impossible, from the nature of the reports, to quote exact figures upon this point, but the secretary for labor is authority for the statement made in 1900 that the employees have gained some advantage in about nine out of ten cases.(c)

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a Cf. supra, p. 486.

b Report of the New Zealand Department of Labor, 1904, p. iv.

c Edward Tregear in letter to the Bricklayer and Mason, November, 1900, p. 3.

Mr. Lloyd affirms that where cases concerned increase of wages "the applications of the men for higher wages have been uniformly granted, at least in part."(a) Mr. Reeves testifies that "most of the decisions have granted concessions of more or less value" to the workmen.(b) Judge Backhouse's report in 1901 is to the same effect.(c)

It should be said at once that there is no reason to infer that this result in awards has been due in any degree to a priori prejudice in favor of labor as opposed to capital on the part of the court, or that the latter has been influenced by any other than disinterested considerations of justice and public policy. It must be remembered that the final arbiter of awards is always a member of the highest court of justice in the colony, whose social position and training would in no wise tend to predisposition in favor of the working classes. Further, as a matter of fact no charge of partisan prejudice has ever been laid against the court even by adverse critics, so far as the writer has been able to discover.

So far as decisions have dealt with wages or allied questions the fact that the work people have generally gained some portion of their demands is doubtless due to the fact that the decisions have been rendered in an era of good times, and concessions to the demands of labor have been but the natural result of an impartial consideration of the conditions of a rising market. As the wage question always holds the central place in industrial disputes, a large part of the favorable results secured to employees by awards may be thus explained. But prosperity can not be cited to explain such a result on one notable question of principle rather than remuneration, namely, preference in employment for union members. Yet this claim is constantly coming before the court and in the majority of cases has been conceded in awards. Thus such preference is to be found in 43 of the 67 awards made up to June, 1901, and it has been granted quite as frequently in later years for it was granted in 20 out of the 29 awards filed during the year 1904. This is, perhaps, the most radical position that has been taken by the court and two or three things should be noted in connection with it. In the first place, the court has discriminated between individual cases and has not hesitated to refuse preference where conditions did not seem to warrant it. It has been refused most often on the ground that the unionists asking it constituted a minority of the workers in the trade and Doctor Clark reports (d) that the guiding principle of the court seems to be that a union shall

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a Lloyd, A Country Without Strikes, p. 132.

b Lloyd, A Country Without Strikes, p. x.

c Report of the New South Wales commission, p. 25.

d Bulletin of the United States Bureau of Labor, No. 49, p. 1217.

have the right to preference only "when the members of the union form, if not a literal majority, at least a dominant element in the body of workers employed in the trade under consideration."

Other considerations have also led the court to disallow preference. Thus it was refused in the case of seamen as inimical to good discipline on shipboard; it was refused to a carters' union on the ground that so many different businesses were involved that the employers, who were generally opposed to it, would be unduly embarrassed by granting the preference; in another case it was refused on the ground that the employers affected were in competition with those in other places where the preference would not be in force; and it was denied timber workers and dredgemen, in two different cases, on the ground that it was impracticable because the sawmills or dredges were scattered over wide areas of country, and it would be too great a restriction upon the employers to require them to communicate with the union headquarters some distance away whenever new hands were to be hired. But while these examples illustrate the court's discrimination in this matter, nevertheless it must be said that they are the exceptions after all, and preference is the general rule to the extent of being granted in two-thirds of the awards.

In the second place, to the preference allowed by the court important conditions are attached which appear in certain set clauses regularly employed in awards covering this subject.[a] Thus the preference holds only "provided there are members of the union who are equally qualified with nonmembers to perform the particular work required to be done, and are ready and willing to undertake it." Then the unions must—

keep, in some convenient place * * * a book, to be called the "employment book," wherein shall be entered the names and exact addresses of all members of the union for the time being out of employment, with a description of the branch of the trade in which such member claims to be proficient, and the names, addresses, and occupations of every employer by whom such member shall have been employed during the preceding one year. Immediately upon such member obtaining employment, a note thereof shall be entered in such book. The executives of the union shall use their best endeavors to verify all the entries contained in such book, and the union shall be answerable as for a breach of this award in case any entry therein shall in any particular be willfully false to the knowledge of the executive of the union, or in case the executive of the union shall not have used reasonable endeavor to verify the same. Such book shall be open to every employer without fee or charge, at all hours between 8 a. m. and 5 p. m. on every working day except Saturday, and on that day between the hours of 8 a. m. and noon. If the union fail to keep an employment book in manner provided by this clause, then and in such case and so long as such failure shall continue any em-

[a] The quotations in this connection are taken directly from awards.

ployer may, if he so thinks fit, employ any person or persons, whether a member of the union or not, to perform the work required to be performed, notwithstanding the foregoing provision.

So much to protect the employer. For the sake of the workmen outside the union another regular condition permits the preference only—

if and so long as the rules of the union shall permit any person now employed in the trade in this industrial district and any person who may hereafter reside in this industrial district, and who is a competent journeyman, to become member of such union upon payment of an entrance fee not exceeding 5s. ($1.22), and of subsequent contributions, whether payable weekly or not, not exceeding 6d. (12 cents) per week, upon a written application of the person so desiring to join the union, without ballot or election, and shall give notice in writing of such amendment, with a copy thereof, to the employers.

Finally, it is the rule that preference, when granted, is not to interfere with nonmembers already employed. In several cases awards have put this in express terms, ordering that the preference clause "shall not interfere with engagements subsisting between employers and nonunionists," and the position of the court upon this point was clearly defined in a ruling by the president in 1900, thus:

Under no award was a man ever forced into a position whereby the employer was compelled to discharge him. Where the unionist got the advantage was when fresh hands were taken on. In a case of pressure, where an employer took on a nonunionist, he was not subsequently compelled in the face of the preference claims to discharge the man to make room for a unionist.[a]

Regularly included in awards, both those granting preference and others, is a clause directing that "when members of the union and nonmembers are employed together there shall be no distinction between members and nonmembers, and both shall work together in harmony, and shall receive equal pay for equal work." On the other hand, there is a set clause usually inserted in awards in which preference is not granted, providing that the "employer shall not in the engagement or dismissal of workers discriminate against members of the union, nor do anything for the purpose of injuring the union directly or indirectly."

There is one notable exception in the court's practice thus far to the rule that awards granting preference do not permit of the discharge of nonunionists to make way for union members. An award of May 4, 1901, in the boot trade, granted preference, and added:

When a nonunion workman is engaged by an employer in consequence of the union being unable to supply a workman of equal ability willing to undertake the work, at any time within twelve

[a] Quoted by Judge Backhouse, report of the New South Wales commission, p. 20.

weeks thereafter the union shall have the right to supply a man capable of performing the work, provided the workman first engaged declines to become a member of the union. This provision shall also apply to those nonunion workmen already employed.[a]

There is the same provision also in another award in the same industry given September 24, 1903. All the more notable is the exceptional form of preference in both these cases because of the fact that each of the awards applied to the whole colony, being the only colonial awards thus far issued. The only explanation which has been offered for this most radical form of preference is one noted by the secretary for labor in 1904, to the effect that "practically all of the members of the boot trade were unionists when the awards were given." The secretary states also that the 1903 award but ratified the terms of an agreement already settled between employers and employed in the industry. Except for ten nonassociated employers in the 1901 award, the parties named in both awards were simply the national associations, respectively, of employers and workers in the boot trade, and the preference section of the award contains also a clause providing that "on the part of the union preference of service shall be given to members of the employers' federation."

Thirdly, with respect to preference to unionists, it must be remembered that the New Zealand arbitration law was purposely made dependent upon organized labor for its operation and was expressly designed to encourage organization. So that preference to unionists conditioned as above is, after all, simply in line with the general policy of the system.

One apparently quite unexpected effect of the granting of preference to unionists by the court of arbitration has been a movement among New Zealand trade unions to secure a law making preference universally compulsory. The chief reason for the desire for preference by statute in place of that granted by the court of arbitration, as indicated by the secretary for labor,[b] are, first, that the clause in preference awards specifying that members of unions must be "equally qualified with nonmembers" to perform the work in question really tends to nullify the preference, since the employer is left the sole judge as to such equal competency, and, second, that since, under the arbitration law, it is the unionists who must bear all the responsibility and expense (including the danger of offending employers) of securing improved conditions of employment by bringing cases under the arbitration act, it is only fair that they should have some advantage over the nonunionist, who enjoys the improved conditions without sharing in the costs or risks involved in procuring them.

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[a] Awards, etc., II, p. 212.

[b] Reports of the New Zealand Department of Labor, 1902, p. v; 1903, p. iv.

The movement for compulsory preference for unionists by statute was influential enough in 1903 to secure a motion to that effect in the House of Representatives in the legislative session of 1903, but the motion was defeated, and the secretary for labor reports(a) that several members who were friendly to the unions voted against the motion on the ground that "the unions would be stronger composed of volunteers united in one cause, as at present, than if composed of conscripts forced to join the union by legal process," and that therefore preference left to the decision of the arbitration court as now was preferable. That the movement for statutory preference is strong among the unions, however, is indicated by a statement of the secretary in the same connection that "at meetings of trades and labor councils and by delegates at the labor conference there has been expressed an intention to work toward making preference for unionists compulsory."(a)

The chief question handled by the court in making its awards is, of course, that of wages. The fact that the rates it fixes are necessarily compulsory has not relieved the court of the two fundamental problems necessarily involved in determining wages for a given trade and locality—namely, (1) the necessity of allowing for the varying efficiency of individual workers, and (2) the necessity of protecting the employers involved from unequal competition with those not affected by the award. Indeed, the very fact that from the rates it declares there is no appeal tends to increase the responsibility of the court in both directions. How has it met these problems?

In respect of the former the court fixes general rates for a trade, of course, and not for particular individuals, but they are always, in the case of time wages, given as minimum rates. The schedules read that wages shall be "not less than" such and such per hour, week, or day. There is nothing in the law to prevent the court's fixing maximum wages also, but as a matter of fact it has from the first uniformly restricted awards to naming the minima. But while the court's rate for a given occupation reads as the minimum therefor this does not necessarily mean that it is fixed as for the least productive worker only. As a matter of fact the contrary is the case, for it is usual for the awards to specify that "any worker who considers himself incapable of earning" the minimum may be paid a lower wage, which, as a rule, is to be determined either by an agreement of the worker or the employer with the officers of the union concerned in the award, or, if they do not reach an agreement promptly, by the chairman of the local concilation board, and such lower rate is then permissible for only six months, or until the secretary of the union by fourteen days' notice shall require that his wage be again

a Report of the New Zealand Department of Labor, 1904, p. v.

fixed in the same manner. This practice of the court, though followed before 1900, received definite sanction in the act of that year by a clause ([a]) specifically authorizing the fixing of minimum wages, with such special provisions for lower rates attached.

But while the court's rates are not fixed as for the poorest workman, neither are they designed for the most productive workers. On the contrary, it is a "fair minimum wage," to borrow a term used repeatedly by the court, for workmen generally in the trade—that is, a rate as for the average worker, which the court fixes, with nothing to prevent those of exceptional efficiency from competing for a higher return for their more productive labor. The attitude of the court with respect to this point is clearly indicated in the following extract from remarks made by the court in connection with an award in 1902, in the case of grocery clerks, a trade in which differences in capacity between individual employees are especially marked. Said the court, apropos of its refusal to classify grocers' clerks and prescribe a rate for each grade:

> Merit and ability will always find, in such an occupation as the one we are now dealing with, its legitimate award, and it is not in the interests of either party that in a trade such as this is an automatic rate of payment for those who may have to take the more responsible positions in a grocer's shop should be prescribed by this court. Some reasonable latitude must be allowed for individuality. We have therefore provided a minimum rate of wages for assistants generally, and the rate of payment for those who may occupy positions of a higher responsibility than that of a general assistant we have left to the employer and the particular employee.([b])

What has been said above as to the court's mode of fixing wages refers to time rates. With piece rates there is, of course, no question of maximum and minimum, and the prices set by the court are the only ones to be paid. But the adjustment of earnings to efficiency is automatic with them, being higher or lower according to the worker's output. It may be noted in this connection that Doctor Clark ([c]) finds that "there appears to be a disposition on the part of the court to discourage this form of payment for services [piecework]," a view which seems to be corroborated by the frequent limitation or entire prohibition of that form of payment in recent awards.

Turning to the second problem mentioned as fundamental in determining wages, the court appears to have clearly recognized the necessity of preserving fair competition between capital in different localities or trades, whatever its notion of the interests of the workers in a particular case might be. Evidence of this is to be found in various opinions expressed by the court, of which the three following

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[a] Sec. 92.

[b] Awards, etc., III, p. 529.

[c] Bulletin of the United States Bureau of Labor, No. 49, p. 1215.

may be cited. In a letter to the London Times the first president of the court, Judge Williams, wrote as follows concerning the general point in hand:

It has been justly said that you can not compel a workman to work or an employer to carry on his business under conditions which are intolerable to either. But the duty of the arbitration court is to pronounce such an award as will enable the particular trade to be carried on, and not to impose such conditions as would make it better for an employer to close his works or for the workmen to cease working than to conform to them.(a)

A very explicit opinion appears in a memorandum filed by Judge Edwards with an award in the engineering trade in July, 1898. The court had declined to grant, among other things, a demand for an increase in wages, and the memorandum thus sets forth the grounds for the refusal:

It was not contested on the part of the union that if the concessions demanded by the union were made prices must be advanced. The evidence, however, satisfies me that it is impossible that there can be any advance in prices which would recoup the additional cost to the employers of conceding the demands of the union, or any substantial part of such cost. The employers are working in competition not only with each other, but with other similar establishments in other centers in the colony, and not only with these, but also with importations.

Quoting then the figures which had been given in evidence by an employer as to the additional cost which the union demands would entail, the judge continues:

No attempt was made to discredit these figures or other similar figures, and I see no reason to doubt that they are substantially correct. Nor was any attempt made to prove, either by cross-examination of the employers or otherwise, that these burdens could be borne by the employers out of their profits. On the other hand, each of the employers who gave evidence deposed that he could not carry on business under these conditions. The claims of the union would bear even more hardly upon the agricultural-implement manufacturers. The evidence showed, in my opinion, conclusively that these manufacturers have to cope with very keen competition from foreign importations, and that this competition is becoming more severe year by year. I am satisfied that the result of granting union demands would, so far as those manufacturers are concerned, result in the bulk of the goods now manufactured by them being imported from beyond the colony, and consequently in the throwing out of employment a large number of men who are now employed in the agricultural-machinery shops.(b)

Again, in a case in the iron-molding trade in 1899, wherein it had been shown that there was keen competition in the trade between different localities in the colony, Judge Edwards declared that in

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a Quoted by Lloyd, A Country Without Strikes, p. 166.

b Report of the New Zealand Department of Labor, 1899, p. 19.

fixing the wages for the locality concerned in the dispute the court "ought to be very careful not to cause an interference with trade and drive it from one part of the colony to the other, a possibility disastrous to employers and employees alike. * * * It was no doubt a misfortune that they could not take into consideration all parts of the colony and fix a wage for all; not necessarily the same wage, but one that would do justice to the workers while not inflicting injustice on employers; but all they could do in this case at present was to see that, while the men got a fair living wage, the masters were not injured."(a)

Other expressions of the same tenor might be added, but these are sufficient to indicate the spirit of the court with respect to the limitation referred to. It will be recalled that the desideratum mentioned in the last quotation is precisely what was granted by the consolidation act of 1900, which permits the court to extend awards over the whole of an industry throughout the colony, removing thereby the limitations upon the court's choice in fixing wages so far as competition between different localities within the colony is concerned. On five occasions up to the end of 1904 this power to extend awards had been invoked by the court. Two of these have already been alluded to, namely, the two colonial awards in the boot trade of 1901 and 1903. In both these cases, however, the award was made to apply to the entire industry at the time it was given, all employers in the trade being parties to the reference and the extension in the 1903 award being made "by the consent and express agreement" of both employers' and workers' organizations. Two of the other three cases of extended awards were in the same industry and were for the purpose of extending the two colonial awards just mentioned to the same boot firm in one of the lesser industrial districts. The original awards, it should be explained, read as applying to the four chief industrial districts only, though evidently covering thereby the entire boot and shoe industry of the colony at the time of the 1901 award and being regarded as colonial in character, that for 1903 being expressly referred to as such by the secretary for labor.(b) Apparently a new boot and shoe business had been started in another district, whereupon the workers' national union applied to the court to extend the award thereto, which, after due notice and hearing, the court did, April 17, 1903, subject to certain modifications in the award for the firm to be affected, to which the workers' union had agreed, and the same extension to the same firm was made in the case of the 1903 award without modification in April, 1904, this time at the request of both workers' union and employers.

The fifth case of extended award is, however, the most interesting,

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a Quoted by Lloyd, A Country Without Strikes, p. 134.

b Report of the New Zealand Department of Labor, 1904, p. v.

because it presents the spectacle of both employers and employees in one section of the colony demanding extension of an award in force upon them to another section, against the combined opposition of both employers and employed in the latter. In 1902 identical awards for the tailoring industry were given by the court in the three chief southern industrial districts of the colony. Competition existed, however, in the markets of these southern districts between the manufacturers there and those in the northern industrial district, where, owing apparently to superior processes of manufacture, piece rates of wages ruled lower than in the south, but employees were able to earn as high or even higher wages than those in the other districts. Both employers and employed in the southern districts, therefore, were anxious to have their awards extended to the northern district, in order to hold for themselves the trade in their own districts. But to this, as naturally threatening to curtail their existing business, employers and employed in the north strenuously objected, and the situation was complicated by the fact that two months before the awards for the southern districts were made the employers' and workers' unions in the tailoring trade in the northern district had filed an industrial agreement under the arbitration act which fixed the conditions of employment in that district. Extension of the awards to this district, therefore, would involve the abrogation to some extent of this perfectly valid agreement under the law. The question of whether under these circumstances the court had jurisdiction to extend the awards was taken up separately by the court, and after hearing arguments by counsel on each side was decided in the affirmative, though the court remarked that—

The question is one of considerable difficulty and importance and is by no means free from doubt, and if we are wrong in law in assuming jurisdiction, the right of the objectors to apply for prohibition exists, our decisions being conclusive only in cases within the jurisdiction conferred on us by the act.(a)

This judgment was rendered in December, 1902, and in June, 1903, the question of extension, after due hearing on its merits, was decided. The result was almost a complete victory for the northern district employers and employees. Upon the chief question of piece rates of wages the court declared:

The main question to be decided is whether the Auckland [northern] "log" [scale of wage rates] produces to the Auckland workers substantially the same rate of earnings as the southern "log" does to the southern workers. We have carefully examined the earnings of the Auckland workers and contrasted them with the material supplied to us by the employers bound by the award, and the result is

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aAwards, etc., III, p. 109.

that, in our opinion, the Auckland workers can, under their "log," earn substantially as good wages as the southern workers under their "log." We therefore can not extend the piecework "log" contained in the award to the Auckland manufacturers. The earnings being in each case substantially at equal rates, the Auckland manufacturers are not competing in this respect on unfair terms with the southern manufacturers.(a)

In the same manner the court found weekly wage rates in the two schedules essentially the same and declined to extend the awards. In the matter of preference to unionists, which was in the awards, but not in the agreement, the court also declined extension, on the ground that preference had been agreed to by the parties in the south for years, but was not an issue in the north. On two points only (save for one formal change of no significance) did the court grant extension, ordering the agreement changed accordingly, viz, the limitation of apprentices, which was in the awards, but not in the agreement, and the award rate of wages for pressers, a class not mentioned in the agreement. Otherwise the court ordered that the agreement should remain in force as it stood.

Finally, concerning the preservation of fair competition between employers, it is the practice of the court under the power to extend awards given it by the act of 1900, to require that a union making a reference shall cite as parties all the employers in the industry within the district who are likely to compete with each other. "It not infrequently happens," remarked the court in 1904, "that the court has to order others to be cited in order fully to protect those already before it, and in doing so the court has hitherto acted on the assumption that this course was not merely desirable, but necessary."(b)

It remains to note, in connection with the subject of the fixing of wages by the court, how the special provisions made for exceptions to award rates in the case of slow or incompetent workers have worked in actual practice and the effect of award rates upon previously existing higher rates.

Concerning the former point, it appears that the provisions made for incompetent workers have not always worked satisfactorily, and that some hardship has resulted for those workers who are not able to earn the minimum wages fixed by the court awards. This has come about either through the refusal of union officials to grant the necessary permits for lower wages or through the disinclination of employers to employ workers who can not earn the award minimum. As to the refusal of union officers to issue the permits, both the Victoria

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a Awards, etc., IV, p. 177.

b Awards, etc., V, p. 191.

commission and Doctor Clark found evidence that such refusals had occurred, the former noting that in 1902 the president of the arbitration court took occasion to severely criticize a union for such refusal.

Doctor Clark reports also that it was said that the chairmen of conciliation boards hesitated to override the decisions of union officers in such cases, which would obviously tend to make the appeal to such chairmen, usually provided in the awards, of little value. But Doctor Clark's conclusion, however, is that such refusals have been chiefly in the case of workmen coming as strangers into a locality and that in the case of local workmen "as a rule the unions seem to have been fairly liberal in granting special concessions to real incompetents."[a] It thus appears that it is the inclination of employers to hire only those able to earn the award rate, and so avoid the inconvenience and practical difficulties of the special proceedings necessary in case of poorer workmen, which has been the chief cause of whatever hardship the incompetents have suffered, and this attitude of employers is noted by both the investigators just mentioned. It is in order to note that the secretary for labor alluding to this question in 1902, inclined to a very optimistic view and, although admitting that it would be "only human nature, as well as good business" for employers to leave out the slow or poor worker, declared that "there has been no proof presented that during the last two or three years—during which most of the awards have been made—any suffering has been caused by the institution of a minimum wage."[b] Not so favorable as to this phase of the subject, however, is the evidence of Doctor Clark, who found that this "question of the wages of incompetent and slow workers has been one of the most vexatious that has arisen under the arbitration law," and still less optimistic is the opinion of the Victoria commission that—

> It is clear that the problem how to effectually protect and provide a livelihood for the slow and inferior worker without impairing or breaking down the principle of the minimum wage has not yet been properly solved in New Zealand.

Concerning the second question suggested above—whether there is any tendency for employers not to pay higher wages than those fixed by the court—the evidence is rather inconclusive. The secretary for labor, writing in 1902,[b] inclined strongly to a negative answer, asserting that "in practice * * * it is found that the best men leave the mimimum wage far behind," and that although it was "true * * * that when a workman leaves his old employer and gets new work he often has to start on a minimum wage," nevertheless, "if he is a valuable man he does not long remain at that rate."

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[a] Bulletin of the United States Bureau of Labor, No. 49, p. 1211.

[b] Report of the New Zealand Department of Labor, 1902, p. iv.

But Doctor Clark, who alone of outside investigators has given especial attention to this question,[a] points out that such a tendency was recognized by the court in 1902 in the case of two awards, at least, as shown by the court's remarks in one instance, and in another by a clause in the award forbidding employers to reduce the wages of any employee who at the date of the award was earning more than the minimum.[b] Doctor Clark notes, however, that the relation of maximum wages to award minima varies in different trades and localities, and that the opinions of persons familiar with the working of the law were generally based on knowledge of conditions in a single trade, and therefore differed very greatly upon this subject, as illustrated by a considerable number quoted by him. The results of his own effort at some comparison of award rates with actual rates in certain trades, by means of the wage statistics published in the annual reports of the department of labor, showed that out of 13 cases in which reasonably exact comparisons could be made in 4 the actual maximum paid was the same as the award rate, while in 9 cases the maximum rates exceeded award rates by from 49 cents to $2.43 per week.

On the question of hours of work the court's awards, though no doubt tending on the whole to shorten hours, appear not to have departed radically from general conditions in the colony prior to the passage of the arbitration law. In 1890 eight hours per day was the prevailing working time in the colony.[c] An examination of the 30 awards touching this subject in the two years from June, 1899, to June, 1901, shows weekly hours fixed at from 52 to 56 in 3 cases, from 44 to 48 in 25, and at 42 in 2. That is, the prevailing hours in awards were from 44 to 48. Of these, in 16 the hours were 47 or 48, and in 9 from 44 to 46½, but in all but 1 the awards really provided for an 8-hour day (in 3 for 8¼ or 8½), and the difference between the two grades is simply the result of the presence or absence of the Saturday half holiday. The 48-hour week prevailed in awards for factory trades and mining, while in the building trades, through the half day on Saturday, 44 hours prevailed. In this connection it may be noted that the hours of labor of women and minors in factories are by the factory acts limited to 48 per week. The awards of more than 48 hours were for bakers and butchers, trades which have never shared the 8-hour day generally prevalent in the colony. Very similar to the above for 1899 to 1901 are the hours found in the awards of 1904. Thus, of 24 awards in that year which fixed the working time, in one (for compositors) the weekly hours

[a] Cf. his account, Bulletin of the United States Bureau of Labor, No. 49, pp. 1207–1209.

[b] Cf. Awards, etc., III, pp. 41 and 82.

[c] British Royal Commission on Labor, Foreign Reports, Vol. II, pp. 25, 26.

were 42 (the same as in 2 awards in the same trade before 1902); in 5, all in the building trades, the hours were fixed at 44; in 12 awards (of which 8 were in factory trades), at 47 to 48; in 4 (bakers, carters, shearers, and street railway employees), at 48 to 54, and in 2 (livery employees and cooks and waiters), at 62 to 84. As to the Saturday half holiday it is found specified unconditionally in 10 of the 24 awards of 1904, and is left optional for each establishment in 1 other. It appears in all 6 of the building-trade awards of 1904, and in 5 factory trades the 1 optional case being among the latter. This is much the same general result as in the 30 awards of 1899 to 1901, when the half day on Saturday was granted in all the building-trade awards (8) and in 4 factory trades, or 12 times altogether. The half holiday in factory trades appears, however, relatively more often in 1904 than in 1899 to 1901, having been granted in 5 out of 9 awards in such trades in the former year as compared with 4 out of 13 in the earlier period. According to Doctor Clark, the unions are constantly pressing upon the court for Saturday half holiday, and a movement is afoot to make it compulsory by legislative enactment. Finally, concerning hours in awards, it should be said that while general results touching hours have been as above, the court has considered each case on its own merits, for different hours are found in different awards in the same trade. Thus, to cite a single example, of 5 awards for compositors in 1899 to 1901, in 2 hours were fixed at 42, in 1 at 44, and in 2 at 48.

The last remark, touching the fixing of hours of work, applies also to the question of apprentices and youths in awards. The court has often been called upon to fix their number, and in many cases, though not always, has done so and has frequently prescribed that they shall be indentured for a term of years. But there is no regularity in the limit set in different awards, the number being determined in each case according to its special circumstances. The attitude of the court on this whole question is very clearly and amply set forth in the following, from the court's remarks in connection with an award for grocers' assistants, rendered in May, 1902:

We have been asked to limit the number of youths to be employed in a grocer's shop. We know of no sufficient reason which can justify us in so doing. There are some occupations where it is advisable to limit youths in number. But there are other occupations where no such limit is either reasonable or necessary, and, as we have said on more than one previous occasion, it is our duty to see that the avenues for suitable work are not closed to the youth of this colony. We owe a duty to the boys and to the community, as well as to the adult workers of the colony, and that duty we must perform to the best of our ability. In practically every occupation the regulation of which has been submitted to this court we have been asked to exclude youths beyond a limited proportion to the adults employed. That propor-

tion is generally stated at either one youth to three or one youth to four adults employed. Thoughtful workingmen, we think, must recognize that if their boys are debarred from obtaining suitable employment in trades from which there is no natural right for their exclusion, a wrong is done to these boys, and the difficulties surrounding the bringing up of a family are very much increased. The interests of this colony demand that there must be no improper shutting out from a legitimate means of earning a livelihood the youth of this colony, and we think that we are amply justified, in the interests of the working classes themselves, in again emphasizing this principle. While, therefore, we do not in any way limit the employment of youths in this trade, we prescribe a scale of wages to be paid to them according to age, which we think will prevent any abuse.(a)

The fixing of a special scale of wages for youths according to age or years of service as in this case, it may be added, is the regular practice of the court in cases where their employment is permitted, and their employment without pay is always prohibited.

ENFORCEMENT OF AWARDS AND AGREEMENTS.

As already noted in another connection, no part of the work of the court of arbitration has grown so rapidly as that which has to do with the enforcement of awards and industrial agreements under the arbitration law. Thus from 12 actions for breach of awards or agreements brought before the court in the year ended June 30, 1900, the number had multiplied to 121, or tenfold, in the year ended March 31, 1904. This increase in enforcement cases, it may be noted, has been entirely in connection with enforcement of awards rather than agreements under the act. Thus the volumes of Awards, etc., show that of cases for enforcement of agreements disposed of by the court there were 6 in the year ended June 30, 1900, 7 in the year and a half ended December 31, 1902, and 1 in the year ended December 31, 1904.

During the period prior to 1898, when the enforcement of awards lay with the regular civil courts, 5 actions for enforcement were brought, 2 of which were dismissed on technical grounds, while in 3 the result was conviction and fines were imposed, but in 2 of these the employers appealed to higher courts.(b)

Subsequent to the transfer of all such actions to the arbitration court, the most important change in the procedure for enforcement cases was made by the amendments of 1901 and 1903, the first of which permitted and the second of which made it the duty of the factory inspectors to see that awards are enforced. Prior to these amendments the responsibility of moving for proceedings to secure

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a Awards, etc., III, p. 337.

b These cases were reported in the Annual Reports of the New Zealand Department of Labor. Later enforcement cases are reported in the volumes of Awards, etc.

enforcement of awards or agreements lay with the parties thereto, since the registrar of unions under the act, who was given power in 1900 to institute such proceedings, was obviously in no position to take extensive cognizance of infringements. The motive for the change in 1901 and 1903 appears to have been the fact that often trade union officials shrank from conducting proceedings against an employer for fear of being "blacklisted" therefor.(a)

The report of the secretary for labor in 1902 indicates the style of procedure which was adopted by inspectors under the 1901 amendment. The report (presented in March, 1902, five months after the amendment) noted that several breaches had been reported to inspectors. In such cases the inspectors, acting under instructions from the secretary, exercised discretionary powers. Instead of at once laying any complaint before the court, the local inspector first investigated the case, and if he found evidence that a breach had been committed made report to the chief inspector for the colony, and then, if so instructed, laid the case before the court. If he found the complaint without basis or trivial, or that evidence to prove the case could not be had, he took no action, leaving the complainants to act or not as they chose. This style of procedure was similar to that followed in cases of breach of the factory acts, but inspectors were not permitted by the amendment to use any of their powers of investigation under the latter in actions under the arbitration law. To this should be added that inspectors have frequently been able to bring about an amicable settlement between the parties of the matter complained of without recourse to the court. Thus, the inspector in Christchurch reported for the year ended March 31, 1904, that out of 40 cases of alleged breaches brought to his attention it was only necessary for the department of labor to proceed against 1 employer in the court; in 4 other cases the parties themselves went to the court by agreement to secure an interpretation of the award in respect of the claims made, while in all the other cases where a bona fide breach of award had occurred the inspector was himself able to effect a settlement agreeable to both parties.(b)

While it appears that the amendment of 1901 entailed considerable work for some of the inspectors, that of 1903 brought a far larger amount of work, so that the secretary for labor remarked in 1904 that the inspectors "have had their hands full in some districts." The chief deputy inspector reported that during the year ended March 31, 1904, inspectors brought a total of 110 enforcement cases before the arbitration court. The secretary for labor in his 1904

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a Cf. Report of the New Zealand Department of Labor, 1904, p. iv, and Judge Backhouse in report of the New South Wales commission, p. 22.

b Report of the New Zealand Department of Labor, 1903, p. xiv.

report (p. vi) expressed satisfaction with the working of the 1903 amendment, declaring:

The result of appointing inspectors [factory inspectors as inspectors of awards] fully justifies such appointment, as the operatives have been greatly benefited and protected, not only by the cases actually taken to the court, but by the existence of officers whose duty it is to see that the law is not evaded or abrogated.

The secretary notes that the power given inspectors by the 1903 amendment to examine wages, books, etc., had been of great service, since—

Formerly, even when it was known by documentary evidence to an inspector of factories that the awarded wages were not being paid, he was powerless to use that knowledge for the purpose of the arbitration act, while now, as an inspector of awards, he can do so.

The same style of procedure by inspectors was continued under the larger powers and duties of the 1903 amendment as under the earlier provision, the chief deputy inspector reporting in 1904 that—

Not the least important part of the work in connection with this act [the arbitration act] is the number of personal interviews between the inspectors, employers, secretaries, and members of unions, and these interviews in many cases save endless trouble and annoyance, owing to the advice and assistance given in settling minor disputes and giving clear interpretations on points in question.(a)

Certain remarks made by the president of the arbitration court on two occasions in 1904 throw considerable light on the condition of things relative to enforcement cases in that year. (b) They indicate, for one thing, that the laying of the responsibility for enforcing awards and agreements upon the factory inspectors was no small factor in the increase of enforcement cases in recent years, which has been already noted. In the second place, it appears that the increase was not in cases of serious breach of awards and agreements, but rather in less serious or even trivial cases. "Many of the cases," said the court in one district, "which we have heard during the last few months appeared to be small cases, and a great amount of the court's time has been taken up in investigating matters which appeared to be small matters." And commenting on the large number of cases in another district the court remarked incidentally that "none of the cases here was serious; indeed, some of the breaches were small ones." In the third place, the court's opinion was that on the whole the inspectors were carrying out their new duties in praiseworthy fashion. Apropos of the number of cases being brought by the inspectors, the court had taken occasion to call their attention to the necessity of using their own judgment and not carrying up to

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a Report of the New Zealand Department of Labor, 1904, p. viii.

b Cf. Awards, etc., V, pp. 221, 383.

the court complaints by unions unless there was good ground for them, and when one of the inspectors called the court's attention to the fact that its remarks had been interpreted as adverse criticism upon the manner in which the inspectors were performing their duties, the court said emphatically that its remarks were never intended as unfavorable criticism of the inspectors and that "they had sat in several places * * * since the system of inspection came into existence, and in every place they had found, so far as they could see, that the inspectors were doing their duty efficiently and in a perfectly reasonable way." In the fourth place, the cause of the breaches which were coming up in such large numbers appears to have been chiefly careless ignorance of awards by employers, rather than willful disregard. Thus, in closing its hearings in one district, in December, 1904, the court took the employers therein to task for the large number of breaches of which the court had been compelled to take cognizance, in the following terms:

Last February we * * * found that employers constantly raised their own ignorance of the awards or the agreements under which they worked as excuses and as grounds either for the dismissal of charges or for mitigated penalties. Over and over again we spoke to them on the subject. Our remarks became public, and ought to have been noticed by employers, but what we said on that occasion and the leniency we showed seems to have had little or no effect. * * * Under the circumstances it seems to us that employers have been, to say the least, inattentive to the terms of the awards and agreements. We hope this will be the last of that sort of thing. * * * We expect employers to take the trouble to ascertain the terms of the awards and agreements by which they are bound, and we wish them to understand that the leniency we have shown on this occasion will not be shown on future occasions.

While these are the most emphatic remarks of the court on this point, others of the same significance and even more general in their application might be quoted from the statement on the other occasion which has been referred to. Finally, the court's idea of the whole situation in 1904 was that it represented after all a natural and necessary but probably a temporary stage in the process of securing obedience to awards and agreements. The court compared the situation with experience under the shop-hours act thus:

Everyone here will remember that time. The magistrate's court was filled with prosecutions under the shop-hours act. When once the employers came into touch with the inspectors and all the little points of difference were discussed between them, the friction gradually died out, and we find this act is observed now. We expect to see the same in regard to these awards. There is no great difficulty in the matter if the people take the trouble to master the awards, and there ought to be in the near future a great reduction in the number of these cases. At present there appears to be a considerable increase,

but, I take it, that is largely due to the fact that proceedings are instigated by the inspectors really in the nature of a caution, so as to induce people to study their awards and obey them.

Corroborating the opinion expressed in the last sentence are the remarks of the Auckland factory inspector in his report for the year ended March 31, 1904, apropos of his having cited before the court 20 employers charged with 40 breaches of awards, thus:

I trust this will have the desired effect of acting as a deterrent, and I am sanguine that, now that employers are aware that responsible officers, with power to acquire information, are enforcing conformity to awards, breaches in future will be greatly lessened and the provisions of this act will be adhered to with as small a degree of friction as in the case of other acts controlled by this department.(a)

The kinds of breaches of awards and agreements have been almost as various as the different items covered in such instruments, but the great majority of the cases have very naturally concerned the alleged payment of lower than the prescribed rates of wages. In this latter class of cases, when an employer has been convicted of paying less than the prescribed rate it is customary for the court to require him to pay to the workers in question all back wages at the award or agreement rate, this either as sole penalty, aside from costs, or it may be in addition to fine. In his 1904 report(b) the secretary for labor raises the question whether a limit should not be set to the time for which back wages should be paid, instancing two cases, in one of which £73 ($355.25) and in another £88 ($428.25) of back pay were allowed by the court. The secretary points out the possibility that "unless there has been proof of continued remonstrance as to wages [by the worker] a policy more characterized by cunning than honesty may dictate silent acceptance of less pay than the award prescribed, while there is concealed the purpose of claiming the difference as a lump sum in the arbitration court." This matter the secretary evidently brought up as a possible evil only, for he adds:

I do not infer or suggest that such has hitherto been the case in any action for breach of award, but the weak place is there and should be exposed.

Another mode of procedure in cases of conviction, however, seems to have given rise to some actual practice of an evil sort. When penalties are inflicted the law directs (c) that the court "shall specify the parties liable to pay the same and the parties or persons to whom the same are payable." When fines have been imposed upon employers it has been the practice to order the fines to be paid to the worker's union interested. Apparently as an outgrowth of this prac-

a Report of the New Zealand Department of Labor, 1904, p. x.
b Report of the New Zealand Department of Labor, 1904, p. v.
c Sec. 94 (4) of the act of 1900.

tice, or suggested by it, there have been cases in which union officials have collected "fines" from employers directly in lieu of enforcement proceedings in the court of arbitration. Doctor Clark[a] notes that as a result of such practices by the secretary of one union "a large deputation of sawmillers from various parts of the colony" called upon the premier to ask for remedial legislation to prevent any union official from "receiving anything but a fixed salary, to prevent fines being awarded to unions, and to prevent the private settlement of breaches of award." In the same year, also, the president of the court took occasion, in Wellington, to express condemnation of the practice of "compromising in enforcement cases," declaring that "the practice of taking a lump sum in lieu of penalties before proceedings are commenced is a dangerous one," and noting that "cases of compromises of the several kinds to which the court objects have been in evidence before us."[b] It thus appears that, although there is no evidence that such practices have been at all general, there have been enough of them to emphasize the possibilities of this sort of evil under the system.

Down to the year 1904 enforcements were almost solely against employers, as indicated by the following summary from a return to the legislative council of the colony.

NUMBER OF BREACHES BY EMPLOYERS AND BY WORKERS CHARGED AND CONVICTED, NEW ZEALAND, 1901 TO 1903, AND TOTAL 1896 TO 1903.

[Quoted in the British Labor Gazette, December, 1904, p. 381.]

Year.	Number of breaches.			
	By employers.		By workers.	
	Charged.	Convicted.	Charged.	Convicted.
1901	19	14	----	----
1902	63	52	3	----
1903	74	57	1	----
1896-1903	213	[a]171	4	[b]3

[a] Thirty-five others dismissed and 7 withdrawn. Total fines in the 171 convictions £512 ($2,491.65).
[b] One other dismissed. Total fines in the 3 convictions, £32 ($155.73).

In 1904 there appears to have been some change in policy and a disposition to treat the employee who accepts wages lower than awards or agreements allowed as guilty with the employer who pays such lower rates. This question was brought up by the secretary for labor in his 1904 report, presented in the forepart of that year. Thus, he remarks:

All men in a union are not its whole-hearted supporters, and some of them either willfully or inadvertently accept wages or earnings not permitted by the award. If there is a case proved against an

[a] Bulletin of the United States Bureau of Labor, No. 49, p. 1243.
[b] Awards, etc., IV, p. 336.

employer who breaks an award by paying less than specified wages, the recipient of such wages is also a defaulter and should be prosecuted. Although in a few cases this has been done in order to make an example, still, in the large majority of cases, the employer alone is prosecuted, as it is considered that there is probably pressure from several directions before a man will accept less for his work than that to which he is properly entitled.

During the year 1904 the cases such as the "examples" to which the secretary refers greatly multiplied, for in the volume of Awards, etc., for the calendar year 1904, no less than 27 enforcement cases against employees appear. All but one of these were against individual employees. Two were actions for leaving an employer without the prescribed notice (conviction in both), one for working at longer than the prescribed hours (convicted), one case against a union in which the character of the charge is not reported, and which was dismissed, while 23 were for accepting less than the prescribed wage, and all but 5 of these resulted in convictions.

The cases against workers just referred to really represent, of course, actions in the interest of the unions or workers as a whole, and do not, therefore, throw any light upon the problem of enforcement as against workers generally if awards were unfavorable to them. In fact, the test of the system as to enforcement against work people has not yet been made. But there have been one or two incidents which have a bearing upon the possibilities in that direction. In the first place, the New South Wales commissioner found two instances in which it was certain and a third in which it was probable that workmen who were dissatisfied with the wages awarded by the court had deliberately limited their output to the amount they deemed proper for the wages fixed.[a] These three cases were in different trades and under three different awards. In one instance such action by compositors greatly hampered a newspaper in getting out its issues.[b] In the second place Judge Backhouse reports an instance in which a union applied for cancellation of its registration under the arbitration act upon the rendition of an unfavorable award in its trade. Cancellation could have no effect, of course, upon the binding force of the award already made, but it would put the union beyond the law for the future. An occurrence in connection with the award in 1901 in the boot and shoe industry, which applied to the entire colony, is significant in this connection. The decision was adverse to the union's demands, and the trades and labor council of Christchurch, the chief seat of the industry, gave free expression to

[a] Report of the New South Wales commission, pp. 24, 26.

[b] In this particular instance Judge Backhouse reports that the men had special provocation, as the award put wages actually lower than those which had been offered by the employers, and they were later raised by agreement of the parties, but this does not alter the significance of the action.

its disapprobation by passing a motion finding fault with it. The Victoria commission(a) reports a case in June, 1902, in which a Wellington union, incensed at an interpretation given an award by the court, passed a resolution "that the time has arrived when the workers of the colony should consider methods other than the use of the court to obtain justice," and declared that if it were true that the court's decision had been unanimous "the representative of the union on the court has forfeited all right to the confidence of the workers," Doctor Clark reports:

Employees have shown in a number of instances a disposition to criticise the court, and to try to secure control over the court through the ministry when dissatisfied with awards. Unions at times meet and pass resolutions condemning the court. They have sent delegations to the premier with complaints as to the awards of the court, even asking for the removal of the judge. A labor member introduced a resolution into the upper house of Parliament calling for an investigation of the court because a few unions were dissatisfied with some recent awards and decisions.(b)

It must be said that such cases as the above have been altogether exceptional. The Victoria commission declares they are the acts of the extremists only, and that unionists "as a body, we believe, loyally accept and carry out the awards of the court when they are in favor of employers," and cites a case in which, when the president of a union had demanded of the minister of justice the dismissal of the judge of the arbitration court because an important award had given the union but a small portion of what they asked for, the members, who, though disappointed, had quietly accepted the award, immediately called for and received the president's resignation. But it must be remembered that the significance of the unfavorable incidents above alluded to is considerably heightened by the fact that awards unfavorable to the work people have thus far been relatively few. They at least emphasize the uncertainties of the future and indicate grave possibilities if awards shall ever become to a considerable extent unfavorable to employees. And Doctor Clark indicates that doubts as to the future under such circumstances are prevalent in New Zealand itself by the fact that he met "the frequent statement from both laboring men and employers that the arbitration act may fail in a time of depression, when the awards must be revised so as to lower wages or restrict the other advantages previously gained by the workers."(b)

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a Report of the Victoria commission, p. xxv.

b Bulletin of the United States Bureau of Labor, No. 49, p. 1254.

DEGREE OF INDUSTRIAL PEACE SECURED.

The purpose of the New Zealand system was to eliminate the costly warfare of strikes and lockouts from industrial life. This it can be said to have accomplished for the most part. There have been some strikes since the law went into force. Judge Backhouse in 1901 reported eight that to his knowledge had occurred since 1894,(a) and Doctor Clark(b) reports that there have been some small difficulties since 1901. So long as any work people shall be unorganized, or if organized, shall prefer not to register under the arbitration act, strikes and lockouts beyond the jurisdiction of the court or boards will always be possible. Nevertheless, it is certainly true that under the arbitration system strikes have thus far been comparatively rare, and none have been of large dimensions. Doctor Clark sums up the matter thus:

> The true statement of the case is that, while there have been difficulties of this character, they have been as a rule exceedingly unimportant; they have not occurred among workers directly subject to the act, and with the extension of the jurisdiction of the court through amendments to the law to cover allied industries, and the increasing number of awards and the growth of organization among the workers, such troubles as have occurred are becoming more and more rare.(b)

Doctor Clark adds, however, that in weighing these facts it must be borne in mind that the years just prior to the passage of the arbitration law in 1896 were also comparatively free from industrial disputes, the record of strikes begun by the department of labor in 1894 showing but five unimportant cases in the two years 1894 and 1895. So that, although the rapid industrial expansion in the colony which has gone on ever since the arbitration system was established creates the probability that strikes and lockouts might have greatly multiplied without the system, nevertheless the contrast between the years since 1896 and those before is not, as a matter of fact, so great as might at first thought be inferred.

Doctor Clark points out that the entire absence of strikes by the unions subject to the arbitration act, although they have frequently been dissatisfied with awards, is all the more notable by reason of the fact that up to 1903 it was generally held by them that nothing in the law prevented their striking after an award had been rendered. It is true, as indicated in the analysis of the law,(c) that the statute prohibits strikes or lockouts or the discontinuance of the relation of employer

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a Report of the New South Wales commission, p. 420.

b Bulletin of the United States Bureau of Labor, No. 49, p. 1228.

c Cf. supra, p. 465.

and employed only during the period while proceedings under the act are pending. A very few cases are reported in which actions have been brought against employers for dismissing workmen while disputes were pending before a board of conciliation or the court. The volumes of Awards, etc., show one such in 1898 (apparently dismissed), one in 1900 (convicted), one in 1902 (convicted), and one in 1904 (dismissed). These cases were all evidently within the plain meaning of the statute. But in 1903 occurred a notable case, in which the question of the legality of such action after an award had been rendered came up. In February, 1903, the court rendered an award in the Auckland furniture trade, which raised the wages of certain workers 4 cents per hour over those in an industrial agreement which had previously regulated conditions and which expired when the award went into effect. Thereupon two firms, employing about 175 out of the 250 to 300 workers affected by the award, discharged or suspended 17 men on the ground that they were unable to earn the higher award rate of 30 cents per hour; but the firms were willing to reemploy them at the former agreement rate of 26 cents which they had been receiving, if they would secure permits for such lower rate as incompetents, in the manner specified in the award. The union secretary, however, to whom one or two appealed for the permits, refused to consider as incompetents men who had been earning the minimum wages under the agreement up to the time the award went into force, and the union maintained that the action of the employers amounted to a breach of the award. Efforts were made by the government to induce the employers to reinstate the men, but unsuccessfully, and finally the registrar of industrial unions, who is also the secretary of the department of labor, brought an action against the two employers for breach of the award, and against the employers' association of which the two firms were members, it being alleged that, since the employers' association had expressly approved the action of the two firms and promised to support them therein, there had been a combined effort to defeat the award.

The case had attracted wide attention, both in New Zealand and abroad, through its interpretation in the public press as a "lockout" by the employers to defeat the award. For this reason the court went into the case at length in its decision,[a] but dismissed the complaint, holding that—

The dismissal or suspension of these 13 men under the circumstances disclosed in the evidence adduced before the court can in no reasonable sense be called a lockout or be held to be a contravention of the provisions of the award.

[a] Cf. Awards, etc., IV, p. 135.

Apropos of the notoriety which had been given the case and the significance which had been popularly attached to it, the court took occasion to say in its decision that—

These applications have been clothed with an importance and with proportions which they do not merit. * * * I entirely disagree with the suggestion made by the counsel for the applicants that in these proceedings the efficacy of the industrial conciliation and arbitration act is on its trial, or that an adverse decision to the applicants emasculates the court's award and destroys the efficiency of our present system of labor disputes. I entertain no doubt as to the power and jurisdiction of the court to effectively enforce its awards and to carry out in all matters within its jurisdiction the true intent, meaning, and spirit of the statute.

In the decision itself nothing was said about the question of the legality of strikes or lockouts after awards have been rendered, but in remarks made in the course of the case the president of the court took occasion to affirm that, to quote the statement as given by the secretary for labor—

If a combined and concerted action, such as a strike, took place, he would consider such action a breach of award and punish it severely; * * * he should act in the spirit and not in the letter of the law; and that as the spirit of the act was in the direction of preventing industrial strife, he had power to punish organized infractions of award.

The secretary concluded from this that the law "appears to be that, although an individual employer is competent to dismiss his workman, or an individual workman is free to leave his employer's service, there must be no concerted action on either side in this direction, or, if so, such action will constitute a strike or lockout and be punishable under the arbitration act."[a] This inference of the secretary, it may be noted, was specifically incorporated into the law by one of the 1903 amendments, which makes any action, including specifically combined action, by employers or workers, for the purpose of defeating awards or agreements at any time during their currency, equivalent to breaches of the awards or agreements and punishable accordingly, and which also makes dismissal of a worker because he is entitled to the benefit of an award or agreement equivalent to breach of the award or agreement.

While the elimination of strikes and lockouts, for which the New Zealand system was established, has been practically attained, it is to be noted that this attainment has been accompanied by a quite unexpected amount of interference by the system itself in industrial relations. The secretary for labor, in his report of 1898, remarked

[a] Report of the New Zealand Department of Labor, 1903, p. v.

that the principal argument used against the law was that it seemed "to stir up rather than settle strife, by enabling every petty misunderstanding to be dragged into the full light of day and become serious; that the boards and court foment enmity between employer and employed by binding employers under harassing restrictions and wasting the time of both parties in litigious proceedings." This statement of the case, it is safe to say, is overdrawn. Nevertheless it does appear that to a considerable extent references under the arbitration act have been made in the absence of any previously developed dispute between employers and employees, and that the very possibilities of the law itself have inspired the making of issues for reference under it. To this effect is the testimony of Judge Backhouse,[a] the New South Wales commissioner, and of Sidney and Beatrice Webb,[b] and the fact has been recognized by both the author of the law, Mr. Reeves,[c] and the colonial secretary of labor.[d] The original aim of the law was to eliminate the industrial warfare of strike or lockout; but, says Judge Backhouse:

It goes far beyond settling disputes in which, but for its provisions, there would have been strikes. It is used as a means of fixing the wages and general conditions of labor in many industries, and without doubt will eventually be so used in all.

According to the Webbs, such use of the system was the natural result of the discovery by the labor organizations that it was possible by proceedings under the law to secure uniform conditions of employment in a trade and thereby realize the trade-union principle of the "common rule." But it is also true that in industries which have once come under the law references have to some extent been multiplied simply in the hope of better terms by renewed proceedings. Judge Backhouse states that—

Generally, when an accepted recommendation or an award expires there is a tendency on the part of the men to immediately make a reference, and demand more than they expect to get, in the hope that some improvement will be made in their condition.[a]

As pointed out by Doctor Clark,[e] who also notes the fact of the unexpected multiplication of cases under the law, the effect of this condition of things has been, especially in later years, when the crush of business in the arbitration court has greatly delayed awards, to render uncertain the future conditions of production and to that extent to hamper employers. "There is no more finality," says he, "in the

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[a] Report of the New South Wales commission, p. 23.

[b] Industrial Democracy (1902 ed.), p. xlv.

[c] The Long White Cloud, p. 389.

[d] Report of the New Zealand Department of Labor, 1898, p. v.

[e] Bulletin of the United States Bureau of Labor, No. 49, pp. 1241, 1242.

labor situation under the existing awards than there was when the law went into operation. Quite the reverse."

In connection with this matter of multiplication of cases, one extreme abuse of the law has occurred which grows out of the fact that any seven men may form a union and register, and then a majority of the seven, or but four, may secure a reference of a case, which will affect the entire industry. Judge Backhouse reports that there have been instances, though apparently rare, in which a handful of men have by this means caused great annoyance where before no friction between employers and employees existed, and that labor "agitators" have made use of such possibilities to stir up trouble.

On the other side of the record, with reference to strife created by the arbitration system, is the number of cases in which employers and employees have by themselves come to agreements concerning terms of employment and of their own motion put these agreements under the compulsion of the system as to enforcement by registering them as industrial agreements under the arbitration act. Thus up to the close of 1904 a total of 124 such voluntary agreements under the law are recorded in the volumes of Awards, etc., including, by years ended June 30, 2 in 1897, 2 in 1898, 6 in 1899, 16 in 1900, 28 in 1901; for the eighteen months July, 1901, to December, 1902, 35; and by calendar years, 16 in 1903 and 19 in 1904. Besides the above, four cases are reported in 1904 in which additional employers registered their concurrence in already existing agreements. The great majority of these industrial agreements, it may be noted, were for the renewal with or without modification of expired awards or agreements made before boards, or for the making of terms in one district on the basis of an award or recommendation in another.

EFFECT ON INDUSTRIAL PROSPERITY.

Perhaps the most serious general charge made by adverse critics of the New Zealand system is that, even though it has practically done away with strikes and lockouts, it has been a serious drag upon the industrial development of the colony. The charge, however, does not appear, upon examination, to have any substantial basis in fact. In the first place it is certainly true that the period of the law's operation has been one of prosperity and marked expansion of industry. The secretary of the department of labor reported in 1895 that signs of a revival after the depression of 1893–94 were then visible, and in 1896 that the upward tendency had been sustained, and annually thereafter repeats his report of a year of pronounced prosperity. The growth in manufacturing industries is indicated by the

following figures, showing the number of employees in factories registered under the factory law:

EMPLOYEES IN FACTORIES REGISTERED UNDER THE FACTORY LAW, NEW ZEALAND, 1895 TO 1904.

[From the Report of the New Zealand Department of Labor, 1904, for number of employees, and report for each year for number of factories.]

Year.	Number of factories.	Number of employees.	Increase in employees.	Year.	Number of factories.	Number of employees.	Increase in employees.
1895	(a)	29,879	(a)	1900	6,438	48,938	3,633
1896	4,647	32,387	2,508	1901	6,744	53,460	4,522
1897	5,177	36,918	4,531	1902	7,203	55,395	1,935
1898	5,601	39,672	2,754	1903	7,675	59,047	3,652
1899	6,286	45,305	5,633	1904	8,373	63,968	4,921

[a] Not reported.

This shows an increase of 114.1 per cent in number of employees during the ten years under the law. By means of the quinquennial census figures a comparison of 1901 with the year 1891—a prosperous year before the crisis of 1893—may be made, which shows for 1901, with 23.3 per cent greater population, 40.3 per cent more establishments and 62.8 per cent more employees, nearly all of this increase having occurred under the arbitration system in the last half of the decade.

EMPLOYEES IN FACTORIES AT EACH QUINQUENNIAL PERIOD, NEW ZEALAND, 1891 TO 1901.

[The figures in this table are from the census of 1901 and differ from those in the preceding table because the definition of a factory as used by the census officials includes less than that adopted by the labor department.]

Year.	Number of factories.	Number of employees.	Increase in employees.	Population of the colony.
1891	2,254	25,633	(a)	626,658
1896	2,459	27,389	1,756	(a)
1901	3,163	41,726	14,337	772,719

[a] Not reported.

To indicate how general among the different industries the growth has been the table below is given, which shows the increase in employees between 1895 and 1904 for the manufacturing industries which employed 1,000 or more persons in the latter year. The reports of the secretary of labor, it may be added, show that other lines besides manufacturing—notably the building trades—have shared in the growth.

EMPLOYEES IN NEW ZEALAND MANUFACTURING INDUSTRIES EMPLOYING 1,000 PERSONS OR OVER IN 1904, COMPARED WITH TOTAL EMPLOYEES IN 1895.

[From figures in the Report of the New Zealand Department of Labor, 1904, chart opposite p. 94.]

Industry.	Total employees.		Industry.	Total employees.	
	1895.	1904.		1895.	1904.
Bread and confectionery	1,380	3,187	Plumbing, tinsmithing, and gas fitting	709	1,643
Butter and cheese	231	1,233	Printing and publishing	2,289	2,990
Boots and shoes	2,568	3,081	Saddlery	486	1,093
Cabinetmaking and upholstering	718	1,975	Sawmilling, joinery, sash, and cooperage	2,627	6,434
Coach building and blacksmithing	1,739	3,570	Tanning, currying, fellmongering, and wool scouring	1,091	2,147
Dressmaking	2,563	5,282	Tailoring and clothing	3,214	5,966
Engineering	1,222	3,047	Woolen milling	1,039	1,692
Flax milling	261	2,639			
Laundries	209	1,245			
Meat, fish, and bacon preserving	1,661	3,060			

The above figures certainly indicate general prosperity in the colony. They do not, of course, prove that the prosperity might not have been even greater if there had been no arbitration law. But bearing upon this there is the testimony of the impartial investigators upon the ground, which is very positive. Thus Sidney and Beatrice Webb say:

We can only add our personal testimony to that given by every careful investigator into the circumstances of New Zealand, that there is so far no evidence of injury to its industrial prosperity.(a)

Judge Backhouse, speaking generally, says:

I should say that my investigation showed that, with possibly one exception, industries have not been hampered by the provisions of the act.(b)

The New South Wales commissioner took pains to collect as much evidence as possible upon this question. He made it a point to look up cases in which it was alleged that capital had stayed out of an enterprise because of awards of the court, and he reports that he "found it more than difficult to get specific instances," and that "any cases which were mentioned, on investigation, hardly bore out the view put forward" and cites specific examples of that kind. Further, he examined especially as to the condition of the principal industries which have been affected by awards (mentioning specifically in his report building, coal mining, shipping, clothing manufacture, and the iron trades), but could find no evidence that any of them, with perhaps one exception, "had been crippled or hampered seriously by the introduction of compulsory arbitration."(c) The Victoria commission(d) reports that "We obtained no definite evi-

a Industrial Democracy (1902 ed.), p. xlvii.

b Report of the New South Wales commission, p. 15.

c Report of the New South Wales commission, pp. 15, 17.

d Report of the Victoria commission, p. xxii.

dence that the fixing of wages under the law has impeded or prevented the expansion of commercial undertakings in the colony," with one exception. Finally, Doctor Clark,[a] in a discriminating consideration of the question, finds the general facts thus:

It would seem to an observer coming from outside the colony that the effect of the arbitration law upon industrial development and general business prosperity had been very greatly exaggerated by both its advocates and its opponents. There is no more occasion to attribute the expanding commerce and manufactures of the colony to labor legislation than there is to ascribe the rise and fall of the tides on our Atlantic coast to the river and harbor bill. * * * On the other hand, there is no evidence to show that the labor laws of New Zealand have seriously hampered industry as a whole, or have prevented the investment of capital sufficient to maintain her industrial growth, even during the period of abnormal expansion that has just preceded. * * * There is no evidence to prove that the general flow of capital to and from the colony has been materially affected by the passage of that act [the arbitration law] or by its subsequent operation. * * * There are probably special instances where investors have hesitated to put money into enterprises and where new undertakings have been discouraged by the fear that they might be hampered by the regulations of the court. * * * But cases of this sort reported were not numerous nor important, and they were greatly outweighed by the instances where new factories had been started and old ones extended since arbitration had been legally enforced.

The one notable exception in the colony's general prosperity, several times alluded to above, is the boot and shoe industry, which all, including the colony's secretary for labor, agree has not prospered in recent years. This fact does not appear so distinctly in the above table, comparing number of employees in 1904 and 1895, as in the following comparison of number of employees in the industry in the years 1898 to 1904, the figures being as given in the annual reports of the department of labor:

EMPLOYEES IN BOOT AND SHOE INDUSTRY, NEW ZEALAND, 1898 TO 1904.

Year.	Total employees.	Year.	Total employees.
1898	3,158	1902	(a)
1899	3,230	1903	3,050
1900	3,136	1904	3,081
1901	3,087		

[a] Not reported.

Judge Backhouse, the Victoria commission, and Doctor Clark all gave special consideration to the condition of the boot and shoe industry, and all agree that the evidence shows that under the conditions fixed by the court's awards this industry has been unable to hold its own against the keen competition of the foreign, especially

[a] Bulletin of the United States Bureau of Labor, No. 49, p. 1235, et seq.

American, made goods with which the industry has had to contend. That wage conditions alone, as fixed by the court, have been the sole factor in producing this situation does not seem a warrantable conclusion, however. Another important factor has been the more highly specialized processes of manufacture on a large scale, which characterize the industry in the United States and Europe. This the secretary for labor, discussing this subject in 1902,(a) was inclined to give as the chief explanation of the situation in the boot and shoe industry of the colony, and the Victoria commission reports(b) that importers and manufacturers in New Zealand admitted that—

The decline in home manufactures is largely attributable to specialization of work in the processes of bootmaking and diminished cost of production by the use of the finest machinery at places like Boston and Northampton.

Aside from the boot trade, Doctor Clark states(c) that "a number of minor instances were reported where, after an award had been granted, the price of articles produced under the awards was increased to an extent that discouraged home production," but that specific instances of this kind were not important in themselves, and Doctor Clark remarks in this connection that "the court takes trade conditions into account in making awards (as heretofore indicated) and it is only when inexperience with the details of a case or deficient information as to real trade conditions leads to an error in an award" that such cases as the above occur.

Such cases as that in the boot trade and the others just alluded to, it will be seen, represent a class in which the power of the court to impose at will what it may consider fair conditions for labor is strictly limited by foreign competition, and there is no remedy available by any provision for extension of awards which has preserved the court's freedom in this direction so far as any competition within the colony is concerned.

It is generally conceded that there has been an increase in the cost of living in New Zealand as a result of the higher wages awarded by the court. Doctor Clark remarks in this connection that the United States "has experienced perhaps an equal relative rise in prices within the last eight years," and the secretary for labor in his 1902 report urged that the rise in wages really carried little disadvantage since its effect was to increase the workman's capacity as a buyer in the colony's markets, and so contributed to general prosperity. Doctor Clark, however, points out that there may be a problem ahead in these rising prices, since the New Zealand farmers sell their goods in a foreign market in competition with goods pro-

a Report of the New Zealand Department of Labor, 1902, p. ii.

b Report of the Victoria commission, p. xxiii.

c Bulletin of the United States Bureau of Labor, No. 49, p. 1238.

duced by nonaward protected wage-earners, and what the farmers, who thus have the prices of their commodities fixed by foreign markets, might think of rising prices of other commodities at home under award wages in case the foreign prices of theirs should fall is problematical and all the more serious a question because the farmer holds the dominant vote in the colony. At present, however, this seems to be mainly a possible problem for the future, since now the New Zealand farmers are enjoying a high degree of prosperity, although the Victoria commission reported[a] that complaints were heard from farmers over their position, as above indicated.

ATTITUDE OF PUBLIC OPINION.

In conclusion, it remains to notice the attitude of public opinion in New Zealand toward the arbitration system. On this, Doctor Clark's testimony,[b] as being the latest and, on the whole, most complete and discriminating, is perhaps most authoritative and, it may be added, is not controverted in any important respect by other outside observers. His general conclusion is that opinion is divided, that "workingmen as a class are in favor of, and employers as a class are opposed to, the present arbitration law." He says, however:

It is doubtful if there is an employer of importance in New Zealand who would return voluntarily to the system of strikes. They would amend and modify, probably entirely remodel, the present legislation, but they would retain in some form or other its essential principle. Public opinion in the colony has been cultivated into a position where it would hardly tolerate again a free fight between employers and employees.

AUSTRALIA.

Four Australian colonies and the Commonwealth of Australia have enacted laws with a view to the peaceable settlement of collective disputes between employers and workmen. The first to pass such a law was Victoria in 1891, followed by New South Wales in 1892, South Australia in 1894, while the fourth, Western Australia, passed its first act in 1900, and the Commonwealth passed an arbitration law in 1904. The inspiration to such legislation in the first three mentioned came from the great maritime strike of 1890, which seriously affected all Australia and ranks as the greatest industrial dispute ever known in that country.

VICTORIA.

In Victoria as early as 1887 a royal commission on employees in shops recommended the establishment of courts of conciliation for all

[a] Report of the Victoria commission, p. xxvi.

[b] Bulletin of the United States Bureau of Labor, No 49, pp. 1248, 1249.

disputes, patterned after the French councils of prudhommes.(a) Nothing came of this recommendation of the commission, but in 1890 a bill was introduced in the legislative assembly and after failing of passage that year and being reintroduced the following year, became the law of December 22, 1891.

ACT OF 1891.

This act is an adaptation of the English Councils of Conciliation Act, 1867, much of it being taken verbatim from that law. The fundamental difference between the English and the Victorian acts lies in the fact that while the former was so drawn as to be confined mainly to individual disputes for which compulsory arbitration was provided, the latter is designed solely for collective disputes and the voluntary principle is preserved throughout.

Though involving some repetition of the description of the English act, for the sake of clearness the Victorian law in full is here summarized. Any number of employers and employees of a locality may agree to form a council of conciliation and jointly petition the governor in council for a license to be issued at the discretion of the governor. Every licensed council must be composed of equal numbers of employers and workmen, not less than two nor more than ten of each, the number of members and the trade or trades for which the council is established to be inserted in the license. Within thirty days of the granting of the license the petitioners shall elect the members of the council at a time and place specified by the governor. Each council shall elect its own chairman and clerk and such other officers as it chooses. The chairman, who may take part in deliberations but has no vote, is not to be chosen from the members of the council. In case there is failure to elect members or chairman, the governor in council may appoint them.

After the formation of a council there shall be annual elections of members, employers and workmen electing their members in separate assemblies. For the purpose of elections the clerk of each council shall keep a register of employers and employees in separate lists, whereon he must register, under pain of fine, all qualified voters. All persons may register who have been occupied in the trade within the district for six months previous to the election, except uncertificated insolvents and convicted criminals. Anyone entitled to vote may be elected to membership in the council. The clerk of the council shall be the returning officer of elections.

Whenever any dispute arises between employers and workmen, either party or both may bring the matter before a council by written

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(a) The final report of the Victoria commission is reproduced in the Report of the New South Wales Royal Commission on Strikes, 1891, pp. 78, 79.

complaint to the chairman. When so submitted the case shall first be referred to a committee of conciliation, consisting of one employer and one workman, appointed by the council, who shall endeavor to bring the parties to an agreement. If this effort fails, the matter shall be laid before the council sitting with at least one-half the members and with equal numbers of employers and workmen present. At hearings before the council evidence may be taken on oath and books and papers called for, " and every means used to show to the parties in difference what ought to be done in the matter in dispute,"[a] and the council may make written suggestions or recommendations thereon. Counsel or agents shall not be allowed at hearings except by consent of both parties.

If the dispute remains still unsettled, the council may, at a subsequent meeting, called for the purpose by a three-fourths vote of the members present at the first hearing, submit the case for arbitration to " some indifferent person " appointed by the council and approved by the parties. The arbitrator may take evidence on oath, and shall deliver his award to the clerk of the council, by whom it is to be laid before the council, and the council shall inform the parties of its purport. It is expressly declared that " no such award shall be taken into or enforced by any court of law."

The Victoria act of 1891 went into effect on January 1, 1892, but with a view of its provisions its history is complete, as, like the English law, which it copied, it was never anything but a dead letter, since, according to a statement by the undersecretary of the colony in 1896, no resort to the law had been made up to that time, and none has occurred since.

PROPOSED COMPULSORY ARBITRATION.

In connection with the colony of Victoria it remains to note the recommendation of a compulsory arbitration system made by that colony's royal commission on its Factories and Shops Acts, to whose report frequent reference has already been made in the chapter on New Zealand. The special subject of investigation before this commission was the minimum wage boards established in Victoria by the Factories and Shops Act of 1896. By an amending act of 1900 it was provided that the act of 1896 and subsequent amendments should remain in force for two years and thereafter to the close of the next ensuing session of Parliament, and also that within twelve months of the commencement of the act of 1900 a royal commission should be appointed to investigate and report at pleasure upon the working of the law. Such a commission was appointed in June, 1900, and presented its report in February, 1903.

[a] Sec. 12 of the law.

Besides examining into the working of the minimum wages boards of Victoria the commission made a study of the compulsory arbitration systems of New Zealand and New South Wales, visiting the former colony at least, for this purpose. This attention was not given to the New Zealand and New South Wales systems, because these corresponded in purpose with the system of minimum wage boards in Victoria. On the contrary, the former were designed to eliminate the industrial warfare of strike and lockout, while the latter was set up to abolish sweating conditions in various industries by providing a method for fixing minimum wages, with the way perfectly open for labor disputes and strikes and lockouts over questions of higher wages or other conditions.

But while differing thus fundamentally in purpose, both systems involved, especially in their practical operation, the essential principle of State regulation of the labor contracts, the one as respects any of the terms of employment, the other as respects wages. As already indicated the most conspicuous feature in the practical operation of the New Zealand arbitration system (recognized as its logical outcome by New South Wales, as noted below) was the constant development of the compulsory features of the system, with the State regulation necessarily involved therein, to the exclusion of the voluntary, and as a matter of fact the Victoria minimum wage boards, established originally to deal only with those industries where sweating was a conspicuous evil, have in practice developed beyond this original antisweating purpose and more and more in the direction of the regulation of wages generally.[a]

The results of the commission's comparison of systems led them to recommend the adoption of compulsory arbitration in place of the existing minimum wage-board system, and they presented a detailed plan for proposed arbitration tribunals. This was an adaptation of the New Zealand and New South Wales systems, and the following summary by the commission[b] reveals the important changes which it was proposed to make in those systems:

In deciding to recommend the establishment of conciliation and arbitration tribunals in this State to deal with industrial disputes and other matters which, at the present time, are only partially dealt with by wage boards, we have taken great pains to adapt to the requirements of our local conditions the best features of the New Zealand and New South Wales acts. One of the most important changes in the constitution of the lower tribunals is the proposed creation of these bodies as courts and not as boards, with power to deal in the first instance with all industrial disputes referred to them,

[a] Cf. Doctor Clark's report on "Labor conditions in Australia" in Bulletin of the United States Bureau of Labor, No. 56 (January, 1905), pp. 61, 62.

[b] Report of the Victoria commission, p. lxvi.

and to either confirm an industrial agreement between the parties when such can be arrived at, or, failing such agreement, after an interval of fourteen days, to make an award for a period of six months. This proposal commends itself to reason and common sense, as one of the chief defects of the New Zealand law is the want of power of the boards to make awards even for the shortest term. This causes many appeals to the arbitration court which should be quite unnecessary. In dealing with the important position of chairmen of the conciliation courts we provide that they shall be in each case police magistrates, nominated for appointment by the chief justice of the supreme court. Under procedure we propose to exclude lawyers from practicing in the courts in order that the proceedings may be as plain and simple as possible and free from undue delays or postponements. The court of arbitration is to be a court of appeal only, reviewing the conciliation courts' awards, and is to consist of a supreme court judge and two lay members. In providing for the choice of members of both tribunals we recommend the double-election system, viz, first, the employers and employers' [employees'] unions are respectively to elect delegates, and then the delegates on each side elect persons to be nominated as members of the courts. All references of disputes to the courts, we propose, shall be made by an employer, a two-thirds majority of the members of an industrial union, or by the registrar of the arbitration court. In the matter of registration of industrial unions of employees, to enable them to come under the provisions of the act, we provide that not less than 15 must register when there are 30 or more bona fide workers in an industry. When there are less than 30, not less than one-half of the total number must register. Two or more employers, or any employer, company, corporation, or association who, or which, during the previous six months has had not less than 50 employees, may also register. Trade unions are to be parties to industrial agreements, and to be bound by awards of the courts. The stringent provisions of the New South Wales law fixing heavy penalties for strikes or lockouts, or breaches of awards, are embodied, and, under the definition of terms, it is proposed to exclude rural industries and domestic service from the operation of the act.

The Victoria Parliament has not seen fit so far to adopt the recommendation of the commission in favor of compulsory arbitration. Instead the Factories and Shops Act (providing for the wage boards), which expired by limitation on October 31, 1903, was replaced the same year by a new act continuing the same system, amended in some points (chiefly by a provision for a court of appeals to which appeals from board decisions as to wage rates may be taken), but without change of its essential character.

NEW SOUTH WALES.

The earliest proposal of legislation on the subject of industrial arbitration and conciliation in New South Wales was in 1887, when a bill was introduced for permanent councils of conciliation and for

voluntary arbitration, but with compulsory awards where the parties should agree to be bound thereby.[a] This bill got little beyond introduction, however, and no further measure was proposed until the maritime strike of 1890 forcibly directed attention to the subject.

That conflict led to the appointment in New South Wales of a royal commission on strikes in November, 1890, to investigate the whole subject of the causes of strikes and the means of avoiding or settling such disputes. This commission reported in May, 1891, and a bill based upon its recommendations was introduced in August of the same year. Owing to a change of administration this bill failed of passage, but in 1892 another measure, embodying much that was in the former bill, though by no means identical with it, was introduced and, being speedily passed with very little opposition, became the law of March 31, 1892, known as the Trade Disputes Conciliation and Arbitration Act, 1892.

THE TRADE DISPUTES CONCILIATION AND ARBITRATION ACT, 1892.

This act provided that the colony should either be divided by the governor into industrial districts, not more than five in number, or the governor might decide that the whole colony should be treated as one district, and in each district a council of conciliation should be established, and for each the governor should appoint a clerk of awards. If the colony should be divided into districts, each council of conciliation was to be composed of four members appointed by the governor, two upon recommendation of a majority of the employers' organizations and two upon similar recommendation by the employees' unions of the district. In case the colony was treated as one district, the one council of conciliation was to be composed of not less than 12 nor more than 18 members, appointed in the same manner as above. Recommendation of members could be made only by such employers' and workmen's organizations as were registered under the Trade Union Act of 1881. Members of councils were to hold office for two years. For the entire colony one council of arbitration was provided, consisting of three members appointed by the governor for two-year terms. Two of these members were to be appointed in the same manner as members of councils of conciliation—that is, one each on recommendation of the employers' and the workmen's organizations. The third member, who was to be president of the council, was to be an "impartial person" appointed either upon recommendation of the other two or, failing such recommendation, independently by the governor. The president must not be engaged in any employment outside the duties of his office.

[a] This bill may be found in the Report of the New South Wales Royal Commission on Strikes, p. 68.

The act contemplated the reference of disputes first to the council of conciliation, and then, if no settlement could be reached before that body, to the council of arbitration. The parties might, however, by mutual agreement, refer the case directly to the council of arbitration in the first instance. Reference of a dispute to the council of conciliation was to be made by either (1) a joint agreement of the parties to so refer it or (2) an application for reference by one party, the application in either case being made to the clerk of awards and by him laid before the council summoned by him for the purpose. The above is all that was specified in the statute as to the mode of reference. But under subsequent regulations, issued by the governor with approval of Parliament, as authorized by the law,[a] it was provided that where but one party applied for reference to conciliation the clerk of awards was to notify the opposite party, specifying a limit of fourteen days within which a "reply" agreeing to the reference might be made. It is to be noted that the other party was perfectly free to make no reply and refuse assent to the reference and that in such a case the reference was blocked. Practically, therefore, cases could be brought before councils of conciliation only by consent of both parties.

For the hearing of a case when referred to it, the council of conciliation was always to consist of four members. In case the colony were treated as one district the parties to the dispute were each to designate two members from the one standing council for the colony or any two persons from outside that body, the latter to be approved by the governor of the colony. The duty of the conciliation council was to seek to bring the parties to an amicable agreement. If it failed in this, its powers and duties were to end and the result was to be reported to the clerk of awards. The case could then be carried to the council of arbitration by an application from one party to the clerk of awards. For the hearing of cases referred for arbitration the four members of the council of conciliation might sit with the council of arbitration, but only for the purpose of informing the latter when called upon and were to have no voice in the decision. Within one month after the completion of a hearing the council of arbitration was to render its award, signed by a majority of its members, and this was to be made public. The award was to have no compulsory force except as the parties had previously agreed in writing to be bound by it. If both parties had so agreed, the award might be made a rule of the supreme court upon application by either party.

At hearings no counsel or attorneys were to appear, but parties might each appoint not more than three persons to conduct their

[a] Two such regulations were issued, one of June 23 and the other of September 6, 1892.

cases, and these representatives might be paid agents if they themselves were directly interested in the dispute. Hearings before a council of conciliation might be either public or private, but those before the council of arbitration were always to be public. To both councils full power was given to compel the attendance and testimony of witnesses, and they might enter and inspect premises for the purpose of securing evidence. Members of councils of conciliation were to receive remuneration for each sitting while engaged in hearings, but members of the council of arbitration were to receive salaries as well as fees for sittings. The expenses under the act, except those of the parties and witnesses, which were to be borne by the parties, were to be met by appropriations of Parliament.

Finally, as to the disputes within the jurisdiction of the act, the only limitation set was in the exclusion of all those in which fewer than 10 employees were concerned. One section of the law enumerated the subjects of dispute within its scope, but the classes therein mentioned covered essentially all subjects of collective disputes.

By the terms of the act it was to continue in force for four years from March 31, 1892, the date upon which it became law. It went into practical operation with the issuance of the regulations of June 23 following. It was decided to treat the whole colony as one district, and one clerk of awards was appointed therefor. It was further decided that the standing council of conciliation should number 16 members. All the trades of the colony were grouped in 8 classes, and two members of the council, one representing employers and the other employees, were appointed from each class. The organizations registered under the Trade Union Act up to June 30, and which were, therefore, entitled to make recommendation of members, comprised 124 employees' unions and 7 employers' associations. Of these, however, but 55 of the former and 4 of the latter made recommendation within the required time limit.[a] The proportion of workmen's unions making recommendations is not, however, correctly represented by the above figures, for the reason that 124 was the number of unions on the books of the registrar of trade unions and friendly societies, and included many lapsed organizations which had failed to withdraw their names. The registrar reported at the time that "it was certain that nearly all the organizations which have failed to vote are defunct."[b] A considerable majority, at least, of the unions actually in existence made recommendations.

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[a] Eight other employees' unions sent in recommendations after the expiration of the time limit.

[b] Manual of the Trade Disputes Conciliation and Arbitration Act, 1892 (published by the clerk of awards in 1892), p. 52. In 1893 the clerk estimated, on the basis of returns to inquiries addressed by him to the unions, that the number then in existence was not over, and probably under, 92, although there were 134 on the books of the registrar of trade unions at that time.

The clerk of awards and members of both councils having been duly appointed and offices established, the system was fully organized on October 13, 1892, when the president of the council of arbitration delivered an inaugural address before the members of both councils. Within the next few weeks systematic efforts were made to bring employers and employees generally to the support of the system, but with scant success. In November a meeting of employers' representatives was held, to which 14 associations of employers had been invited to send delegates. Only 4, however, responded, the rest sending either refusals or apologies. A week later a more successful meeting of trade unions was held, 44 organizations being represented. The president of the council of arbitration laid before this meeting a proposal that the unions should make it a rule to refer all disputes likely to lead to strikes to one or other of the councils, and copies of such a rule suggested for incorporation into the laws of each organization were distributed to those present. Subsequently copies were sent to all the trade unions in the colony with request for a report as to the result of its consideration. Out of 102 unions to whom copies were addressed acknowledgments were received from but 28, and of these only 5 adopted the rule. Five others said they already had provision in their rules for reference of disputes to conciliation, 10 declined to adopt the rule, and 8 reported that the number of their members employed by any one firm was less than 10, and hence they did not come under the act.

This inauspicious beginning proved to be but the forerunner of a record of almost complete failure of the law, as appears in a report by the clerk of awards made October 1, 1893.[a] Up to that date—that is, one year from the time that the machinery for procedure under the act had been fully established—attempts to apply the law had been made in 16 disputes. In only 2 of the 16 was a settlement effected. In one of these an agreement was brought about before a council of conciliation and in the other by an award of the council of arbitration to which the case had by mutual agreement been submitted in the first instance.

In the other 14 cases not only was no settlement effected under the act, but in none of them did proceedings get as far as a hearing before either council. In 8 cases a formal application for conciliation or arbitration was made by the employees, but in every case was refused by the employers, while in the other 6 the proceedings got no further than informal negotiation by the clerk of awards with a view to inducing parties to resort to the act, which they declined to do, however, as being either unacceptable or unnecessary. This informal negotiation by the clerk of awards was not authorized by the law,

[a] Report on Industrial Disputes and Claims, 1893.

but was nevertheless undertaken as being very desirable and not prohibited by the act. Finally, it is to be noted that out of the 14 cases for which details are given in the report, in none did employers of their own motion turn to the act, while in 8 the workmen resorted to it upon their own initiative. In the other cases the clerk of awards took the first steps to bring the act into play. Further, aside from the two disputes which were settled, in no case did workmen decline to resort to the act, their readiness therefor being reported in all but two, in fact, while in every one the employers did so decline.

The above facts indicate the chief cause of the failure of the act, namely, an unfavorable attitude toward it on the part of employers. As either party to a dispute was free at all times to refuse proceedings, such opposition was necessarily fatal to the law.

The explanation of this attitude on the part of employers, as suggested by the clerk of awards in his report, is to be found in the fact that at the time the act went into effect circumstances in the colony were such as to place the employers, as compared with the working people, in an altogether dominant position. This was the result of two chief factors. In the first place, the great maritime strike in 1890 ended with victory for the employers, and gave a great impetus to the principle of association among them in the next succeeding years, while the trade unions came out of that struggle defeated and impoverished. Second, the years after 1890 were years of general commercial depression, culminating in the crisis of 1893, which put the unions at the further disadvantage of having to face a falling labor market. So decisively superior was the strength of employers under these circumstances that, according to the statement of the clerk of awards, during the years 1891 to 1893, a period notable for the number and bitterness of its industrial disputes, "every strike that could be regarded as significant had failed to attain its purpose."[a] The employers, being thus in a position to enforce their own terms, and with the prevailing hard times furnishing either sound reason or ready excuse for refusing concessions to employees, were little inclined to adopt methods of conciliation and arbitration, and the fact that previous to 1890 conditions had been just the reverse with the unions dominant was by no means calculated to soften that attitude.

The Trade Disputes Conciliation and Arbitration Act of 1892 having proved so unfruitful, Parliament refused to appropriate further funds for its expenses after 1894, and the councils of conciliation and arbitration went out of existence with the close of that year. The system, therefore, failed to survive the four experimental years for which it was passed. Early in 1895 an effort was made to amend the

[a] Report on Industrial Disputes and Claims, 1893, p. 3.

act so as to give the council of arbitration power to compel parties to a dispute to come before it for the purposes of public investigation into the causes of the controversy. This attempt to open the way for positive interference by the council, instead of leaving all initiative to the parties, was unsuccessful, however, and the act expired by limitation on March 31, 1896.

THE CONCILIATION AND ARBITRATION ACT, 1899.

Four years and one month later another law went into effect, namely, the Conciliation and Arbitration Act of 1899, assented to April 22 of that year and in force on May 1 following. This act confers upon the minister of public instruction, labor, and industry in New South Wales the same powers with reference to conciliation and arbitration proceedings[a] as are conferred upon the board of trade in England by the act of 1896, the corresponding sections being taken verbatim from the English act.[b] That is, whenever a difference between an employer and his workmen "exists or is apprehended" the minister may (1) direct inquiry into the causes and circumstances of the difference; (2) take any steps he deems expedient to bring the parties together for amicable negotiation; (3) on the application of either party appoint one or more conciliators; and (4) on the application of both parties appoint an arbitrator. The colonial act adds to the above, however, one very important provision by providing that where efforts for an amicable settlement of a dispute fail the minister may direct a public inquiry into the causes and circumstances of the difference upon the application of either party, such inquiry to be conducted by a judge of the supreme or district courts or the president of the land court. The original bill made this inquiry obligatory upon the conditions named, but Parliament, after devoting most of its discussion of the measure to this point, amended it so as to leave the inquiry to the discretion of the minister. The only other important provision of the act confers upon "any arbitrator or person authorized by the minister to conduct a public inquiry" the right to enter and inspect premises, and full power to compel witnesses, including the parties, to appear and testify. This latter provision was copied from the old act of 1892, as were also one or two others dealing with minor details.

Compared with the law of 1892 this act of 1899 is notable on the one hand for its simplicity, on the other for the larger possibility of its utilization. The old law set up elaborate machinery, but made its operation contingent upon the acquiescence of both parties to a dis-

[a] The English provisions for registration of conciliation and arbitration boards and for Government aid in their establishment are omitted in New South Wales.

[b] Cf. supra, pp. 402, 403.

pute. The later statute creates no machinery, but opens the way for government mediation without application from contestants and for public investigation upon the desire of either one of the parties.

The law of 1899 went into operation in May of that year and is still in force. Up to the close of the year 1900 there had been but four cases under it, three in 1899 and one in 1900, although the annual report of the department of labor and industry for 1899 states that the department record of a dozen or more of strikes and disputes probably did not by any means exhaust the list of controversies which occurred in that year alone.(a) In all four cases under the act there had been stoppage of work, three being strikes, the fourth a lockout. In one the minister of labor and industry intervened upon his own motion and arranged a conference of the parties, which did not result in a settlement, however. In another a request for intervention was made by the work people, but an attempt by the minister to bring about a conference failed because of the refusal of the employers to participate in it. Thereupon, by request of the employees, a public investigation was held. But the report made failed to settle the dispute, because the employers refused to take back the strikers in a body, which the latter insisted upon, although willing to accept the report, which was adverse to their demand for higher wages. In the third and fourth cases settlements were effected by arbitration. In the one the parties agreed to submit the dispute to arbitration and at their request the minister appointed an umpire to preside over a board named by the parties, who had agreed to abide by the award. In the other the minister took the initiative and arranged a conference presided over by a conciliator agreed upon by the parties. No settlement was reached at the conference, but subsequently, through the mediation of the conciliator, an agreement was made to refer the case for arbitration to a district court judge. Work in this case was not resumed pending the decision. When the award was given the men returned to work, but on their next pay day did not receive the wages to which they considered the award entitled them. They therefore took police-court proceedings to recover the additional sum which they regarded as due them and secured a finding in their favor. Thereupon the employer attempted to secure a writ of prohibition from the supreme court, but without success, the court holding that the men's claim was in accordance with the award.(b)

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a Report on the Working of the Factories and Shops Act, Conciliation and Arbitration Act, etc., 1899, p. 10.

b These facts as to results under the law of 1899 are from a statement by the clerk in charge of the New South Wales department of labor and industry in 1900 and the annual reports of the department for 1899 and 1900.

No more favorable results under the act of 1899 appear for the year 1901 than for the year and a half preceding. The annual report of the department of labor and industry for 1901 could record but three interventions under the act during that year. Apparently the department itself took the initiative in all three cases. In one case (a strike) its efforts were blocked by the refusal of the employers to accept either conciliation efforts or arbitration; in another case (apparently not a strike or lockout) the department opened communication with the parties, but the latter came to a settlement by themselves; in the third instance (a strike) a conference of the parties was arranged by the department under the presidency of the minister of public instruction, labor, and industry, at which a settlement of the dispute was effected.

Although the New South Wales law of 1899 still remains on the statute book, it is altogether likely, as remarked in the report of the labor department for 1901, that its record in practical operation will not extend beyond the above seven cases, owing to the establishment at the close of 1901 of a compulsory-arbitration system, as described below.

THE COMPULSORY ARBITRATION LAW OF 1901.

Having essayed voluntary conciliation and arbitration under two different laws, one of which had issued in complete failure, while the other had produced but very meager results, New South Wales turned her attention to compulsory arbitration, the inspiration thereto coming from the experience of her neighboring colony, New Zealand. In 1900 a bill for a compulsory system passed the legislative assembly, but was defeated in the council.[a] Its discussion, however, led to the appointment in February, 1901, of a special government commissioner to investigate and report upon the working of the New Zealand arbitration law in particular and of the laws of such other colonies as he considered necessary. Judge Alfred P. Backhouse, of the district court of the colony, was named for this mission. Several weeks were spent by him in New Zealand in a study of that colony's arbitration system, and Victoria was also visited for an examination of its minimum-wage boards, and the commissioner's report was presented to the lieutenant-governor in July. This report[b] makes a printed document of 31 quarto pages, 20 of which are devoted to New Zealand and 8 to Victoria. It is marked throughout by an exceedingly judicial tone and the utmost impartiality.

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[a] Cf. Annual Report of the Department of Labor and Industry, 1900, p. 9.

[b] Report of Royal Commission of Inquiry into the Working of Compulsory Conciliation and Arbitration Laws, Sydney, 1901. Cf. in this connection the chapter on New Zealand, where extensive use has been made of the report. That portion of it dealing with New Zealand may be found in full in the Fifteenth Annual Report of the New York State Board of Mediation and Arbitration (1901), p. 381.

Judge Backhouse confined himself solely to the determination and presentation of facts as to the working of the laws studied, without any attempt at criticism or discussion of principles, and made no recommendation whatever as to legislation in his own colony. In the light of his report, however, the New South Wales Parliament voted for a compulsory-arbitration bill introduced by the attorney-general of the colony, Hon. B. R. Wise, who had framed the bill introduced a year earlier, the result being the Industrial Arbitration Act, 1901, assented to December 10 of that year. Although amendments have been proposed, this law of 1901 stood unamended as late at least as the opening of the session of Parliament which began in August, 1904.

The author of the law states that it was carried through Parliament without material alteration, so that it embodies his ideas with logical completeness.(a) It is based on the New Zealand system, but with important alterations, calculated, in the opinion of its framer, to avoid the "defects in method and errors of principle" which experience had revealed in that system. The most fundamental of these changes consists in the elimination of conciliation entirely, leaving compulsory arbitration, pure and simple, as the one method for all disputes. This represents, in principle, a radical departure from the New Zealand system, but is by no means so wide a departure from the developments of actual practice in that colony, as may be seen by reference to the chapter on New Zealand. As there noted, New Zealand experience has revealed a constant tendency toward arbitration as the chief function of its system, a tendency so strong as to compel concessions in that direction in amendments to the law. The logic of this has been interpreted in New South Wales as pointing to the complete elimination of conciliation features from a compulsory arbitration system.

While abandoning the conciliation boards, New South Wales has retained the same sort of provision as in New Zealand for industrial agreements under the law, to be made voluntarily by the parties, but enforceable like an award of the court.

As respects arbitration, no such radical departure from the New Zealand system appears as that with reference to conciliation, but a number of important differences appear in the development of details. In the constitution of the court of arbitration no change of any account was made save in the mode of nomination of members by the unions of employers or work people. Instead of each union making a nomination independently, each sends delegates to a convention by which the nomination is made. While each convention may nominate more than one person, it may name but one, so that this arrangement makes it possible for the representatives of each

a B. R. Wise, The Industrial Arbitration Act of New South Wales, in National Review, 39: 880 (August, 1902).

class actually to choose their own member upon the board, and is evidently designed to secure in any case more general agreement upon nominees.

Concerning procedure[a] in cases referred to the court, but two changes of moment were made. In the first place no limitation is put upon the employment of counsel in New South Wales, whereas New Zealand prohibits their appearance on behalf of any party without the consent of all the others. In the second place, and more important, a provision is added in New South Wales for preliminary hearings before the court's president to prepare the case for its formal hearing by the court. It is provided that any party to a reference may at any time take out a summons returnable before the president, at the hearing of which the president may issue such order as he deems just with respect to all "interlocutory proceedings to be taken before the hearing by the court—the issues to be submitted, the persons to be served with notice of the proceedings, particulars of the claims of the parties, admissions, discovery, interrogatories, inspection of documents, inspection of real or personal property, commissions, examination of witnesses, and the place and mode of hearing."[b] In connection with this New South Wales provision it may be noted that in New Zealand some threshing out of cases before they reached the court was necessarily involved in the hearings before conciliation boards, which, prior to the amendment of 1901, were required in every case.

It is in the jurisdiction and powers[c] of the court that the most numerous variations from the New Zealand law occur. As respects jurisdiction there is, in the first place, no specific provision, as in New Zealand, for disputes in related trades; secondly, not only the government railways, as in New Zealand, but also the government tramways and certain government harbor, water-supply, and sewerage undertakings are under the law's jurisdiction; third, not only must work people be organized and incorporated by registration under the law in order to refer disputes to the court, as in New Zealand, but employers must likewise be registered in order to enjoy the right of reference, whereas in New Zealand that privilege is open to all employers whether registered or not; further, the right of registration for employers is in New South Wales restricted to individuals, firms, or associations employing in the aggregate at least 50 work people; finally, in the fourth place, while the right of reference to the court is thus strictly limited to those who have registered under the law, disputes involving those who have not registered, whether employers or employees, may be at any time referred to the court by the regis-

[a] Cf., supra, p. 467.

[b] Sec. 30 (1) of the Industrial Arbitration Act, 1901.

[c] Cf., supra, pp. 470–475.

trar, the parties having no option as to the reference. This jurisdiction over cases involving unregistered work people and the power of the government to compel a settlement independently of the parties are both new to the New Zealand system.

Turning to the powers of the court, the following, which are peculiar to New South Wales as compared with New Zealand, appear: First, and most important, the court may "declare that any practice, regulation, rule, custom, term of agreement, condition of employment, or dealing whatsoever in relation to an industrial matter shall be a common rule of an industry affected by the proceedings," and "direct within what limits of area and subject to what conditions and exceptions such common rule shall be binding upon persons engaged in the said industry, whether as employer or as employee, and whether members of an industrial union (that is, a registered union) or not," and "fix penalties for any breach or nonobservance of such common rule * * * and specify to whom the same shall be paid."(a) The author of the law states(b) that this device of the "common rule" was suggested to him by Sidney and Beatrice Webb in their Industrial Democracy.(c) It takes the place of all the New Zealand provisions for the extension of awards, but goes much further, giving the court the fullest powers for the general regulation of the conditions of employment. Such general regulation the author deemed to be the normal development toward which New Zealand experience pointed and the logical necessity of a compulsory arbitration system to enable the court to do justice to the demands of labor without doing injustice between employers. He therefore boldly adopted it, anticipating that "it will be the method of compulsion most usually adopted—that the court will become a sort of elastic and self-acting factory act, which will assimilate the conditions of employment in each trade to those which prevail in the best conducted establishments." (b)

In this provision for the declaration of common rules it will be seen that the New South Wales court possesses much broader powers than the New Zealand court with respect to those who have not put themselves under its authority by registration. It may be added that this is especially true in the case of unorganized work people, inasmuch as the New Zealand law applies in a very limited degree to them.(d) But the New South Wales court possesses very much larger authority also over those who are organized and registered under the law, whether work people or employers. Thus, for the purpose of securing obedience to its award or direction the court may order

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a Sec. 37, Industrial Arbitration Act, 1901.

b B. R. Wise, in National Review, 39: 880.

c Cf. Industrial Democracy (ed. 1902), Part III, Chap. III.

d Cf. supra, p. 471.

the suspension of any member from a registered union for any specified period, or it may order the union's registration to be canceled. Further, it is made the duty of the registrar to apply to the court for cancellation of a union's registration whenever he considers there is good reason therefor or finds that the provisions of its rules which are required by the law are not lived up to, or that dues or fines are not being collected, or that the union's accounts are not being properly kept, and the court may order the cancellation. This power to cancel a union's registration independent of its will does not exist in New Zealand, where cancellation is provided for only upon application of the union. Another provision not found in New Zealand gives the president of the New South Wales court power to order the payment by any member of a registered union of any subscription or fine not exceeding £10 ($48.67), due under the union's rules, when applied to by the proper officials of the union.

New South Wales has gone much further than New Zealand in prohibition of strike or lockout. The latter colony simply forbids any such action or the discontinuance of employment or service while proceedings under the law are pending. New South Wales applies the prohibition not only during the pendency of proceedings but forbids any such course or the instigation of or aiding in it "before a reasonable time has elapsed for a reference to the court of the matter in dispute." Infringement of this prohibition is punishable by fine up to £1,000 ($4,866.50) or imprisonment up to two months in New South Wales, as compared with a fine not exceeding £50 ($243.33) in New Zealand.

Finally, New South Wales has added a provision to prevent evasion of awards by employers, which makes it illegal for any employer to dismiss an employee because he is a member of a registered union or because he is entitled to the benefit of an award, and such employer is liable to a penalty not exceeding £20 ($97.33) for each employee so dismissed.

The New South Wales statute is more concisely drawn than that of New Zealand, and many points of minor detail covered in the latter do not appear in the former. The above, however, include all the important differences between the two statutes, and they mark that of New South Wales as the most radical arbitration law in existence. How radical is perhaps nowhere more clearly indicated than in the following declaration of the basic principle of the law and its functions in the industrial world made by the court of arbitration, which was established under it, in connection with its first decision in case of a dispute between employer and employees as to terms of employment:

The attitude assumed by the company was, we understand, the outcome of its belief, and no doubt an honest one, that this court could

not take cognizance of the dispute, and that as a matter of contract, inasmuch as the union laborers were not bound to work when called upon, the company was under no obligation to employ them. As a matter of contract, apart from the industrial arbitration act, it may be conceded the view of the company was right, but the absolute freedom of contract that existed prior to the passage of that act has been considerably modified by its provisions. Freedom of contract remains unimpaired in this sense, that parties may still make their voluntary agreements and may mutually agree to vary or cancel them; but so far as employer and employed who come within the scope of the act are concerned, existing terms and conditions of employment can not be disturbed at the will of one party only. The basic principle of the act is continuity of industrial employment and operation, with a prohibition of industrial warfare, and of anything in the nature of a strike or a lockout, which experience has proved to be a method of attempting to remedy grievances disastrous to those immediately concerned and most inimical to the general welfare. This court is the sole statutory arbiter of the fairness or justice of any proposed alterations in existing terms and conditions of employment, as applied to persons within the purview of the act, and to it resort must be had if no agreement as to those alterations can be arrived at, subject, however, to the rights of the court to dismiss any matter if it thinks the dispute too trivial, or that an amicable settlement can and should be come to.[a]

The New South Wales act went into effect on December 10, 1901, and by its terms was to continue in force until June 30, 1908, or six and one-half years. From reports published by the New South Wales labor commissioners[b] it appears that by March 3, 1902, 50 unions of work people and a considerable number of employers' unions had registered or applied for registration under the law, and by the 20th of that month the total numbered 104 for employers and 75 for work people. Delegates from these unions, in separate convention, on March 24 made nominations for members of the court. In each convention but three names were presented for the nomination, and in the balloting there were in the case of the employers 183 votes cast out of a total of 197 delegates, while in the workers' convention 132 out of 136 delegates voted. The nominee receiving the highest number of votes was in each case reported as recommended for the court, and on April 1 was duly appointed. These two members were, respectively, a civil engineer and the secretary of the National Seaman's Union, the latter being also a member of the legislative assembly of the colony. A judge of the supreme court having been named as president, the court of arbitration organized at once, proceeded to the formulation of its rules of procedure, and since April, 1902, the

[a] Newcastle and Hunter River Steamship Co. *v.* Newcastle Wharf Laborers' Union, reported in New South Wales Labor Bulletin, No. 5 (July, 1902), p. 311.

[b] In the Labor Bulletin, published monthly by the commissioners from March to August, 1902, and thereafter discontinued.

New South Wales system of compulsory arbitration has been in full operation, with a continued growth in the court's business.(a)

SOUTH AUSTRALIA.

The first proposal of arbitration legislation in South Australia was in 1890, consequent upon the great maritime strike. A bill was introduced in the legislature on December 12 of that year, designed, according to its title, "To encourage the formation of industrial unions and associations and to facilitate the settlement of industrial disputes."(b) Four years later, after the bill had formed part of the policy of four different governments and, with some amendments, been twice passed by the house of assembly, only to fail of passage in the legislative council, this measure became the South Australian Conciliation Act, 1894, assented to December 31 of that year. The author of this measure was Mr. C. C. Kingston, ex-attorney-general and afterwards chief secretary and minister of labor of the colony, and it was chiefly to his efforts that the ultimate passage of the act was due.

The provisions of this elaborate South Australian law, containing 10 parts and 86 sections, may be summarized under the following 6 heads:

1. *Registration of trade unions and employers' associations.*—The act provides for an industrial registrar, appointed by the governor, with whom any single organization may register as an "industrial union," or several affiliated organizations may register as an "industrial association." The effect of registration is threefold: (*a*) It gives the union power to enter into legally enforceable agreements; (*b*) it makes the rules of the organization legally enforceable upon its members, and (*c*) it renders the union subject to compulsory arbitration, and makes strikes or lockouts by it or its members illegal. The manner in which this third result is secured will appear later. In

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a For an account of the practical operation of the New South Wales compulsory arbitration system, it has been deemed best to simply refer the reader to the very recent and authoritative report by Dr. Victor S. Clark on "Labor conditions in Australia," in Bulletin of the United States Bureau of Labor, No. 56 (January, 1905) (pp. 93–153 especially for New South Wales). This is done both because Doctor Clark's account is practically complete to date, so far as evidence available in this country at this writing is concerned, and because his report is equally accessible with any summary of it which might be presented here, such summary being, in fact, of somewhat doubtful desirability as compared with the detailed account, since, as emphasized by Doctor Clark, experience under compulsory arbitration in Australia has as yet been too short to warrant any very general conclusions as to results.

b A copy of this bill is printed in the report of the New South Wales Royal Commission on Strikes, 1891, p. 71.

regard to the first two it is necessary to note that the South Australian Trade Union Act of 1876(a) prevented unions from exercising any legal rights over members and from making legally enforceable contracts with employers. To clear away this restriction and enable unions to undertake responsible negotiations with employers is the design of the registration provisions of the Conciliation Act. Unions or associations registered under the act may sue and be sued, and any member, whether an individual or a union, making default in compliance with their rules, is punishable by a fine not exceeding £5 ($24.33) in case of an individual, or £10 ($48.67) in case of a union, enforceable by summary proceedings before magistrates or justices of the peace.

2. *Industrial agreements.*—Agreements under the act may be drawn up between registered organizations, between such organizations and individuals, or between individuals, in relation to any industrial matters or for the prevention and settlement of industrial disputes. Such agreements must be made for a term not exceeding three years. They may be altered, renewed, or canceled by the parties bound thereby, but while they are in force they are binding "on the parties thereto and on every person at any time during the term of such agreement a member of any organization party thereto, and on every person who in manner prescribed above shall signify to the registrar concurrence therein," all such being likewise entitled to the benefit of agreements. Compulsion is given to agreements by making any infringement of them an offense punishable by fines either in sums specified by the agreement or, where not so fixed, of not more than £500 ($2,433.25) for an organization and not more than £50 ($243.33) for an individual.

3. *Boards of conciliation.*—The act provides for two classes of boards, private and public. The former are those constituted by industrial agreement with such jurisdiction over the parties making the agreement as is specified therein, and within the limits set thereby exercising the same powers as public boards.

Public boards of conciliation are of two kinds, local boards and the state board. Local boards are to be set up voluntarily by employers and employees for particular localities and industries. Petition for such a board must be made to the minister of industry and a license issued by the governor, such license to be granted, however, only after proof to the registrar that the board is desired by at least one-half, respectively, of the employers and employees of the locality and industry concerned. The members of the board, except the chairman, are to be elected annually, one-half each by employers and employees,

a The South Australian law on the point here considered follows the English Trade Union Act of 1871.

voting separately, and the members are to choose a chairman outside of their own number for a term of two years. To vote for members registration as a voter is necessary. Such registration, which is entirely voluntary, is open, upon written application, to all employers and employees who have been engaged in the industry and locality for the two months preceding the time of registration.

The state board of conciliation is composed of seven members appointed by the governor. Three of these may be recommended to the governor by the registered employers' organizations and three by the registered employees' organizations, these six holding office for two years. But the seventh, who is president of the board, is to be appointed independently by the governor for five years. Provision is made for the temporary appointment for any particular case of members other than the regular members, either in addition to or in place of the latter.

A local board may take cognizance of any dispute within the trade and locality for which it was established, upon the application of one party,(a) or any dispute referred to it by an industrial agreement or any dispute referred to it by what the act terms "compulsory conciliation." The state board has jurisdiction over all disputes referred to it by the industrial agreement or by compulsory conciliation and of cases transferred to it from local boards. The transfer of cases which would otherwise go before a local board may be made by the president of the state board at the request of the local board, when it appears to the president that the case can be more satisfactorily disposed of before the state board. The reference of cases by compulsory conciliation applies only to registered unions or associations. In case of any dispute involving such organizations the president of the state board may at any time after investigation certify to the governor of the colony that the dispute "is one which should be settled by compulsory conciliation," whereupon the governor may by proclamation refer the case to the state board.

In cases before them all boards are to "carefully and expeditiously" investigate the dispute, "make all such suggestions and do all such things as shall appear to them as right and proper" to bring about an amicable agreement of the parties, and that failing, shall, "by an award, decide the question according to the merits and substantial justice of the case." Cases may be temporarily referred by a board to a committee of its members, composed of equal numbers of employers' and employees' representatives, for purposes of conciliation. Decisions of boards are by majority vote of members, five constituting a quorum, the chairman or president not voting except

a The law itself does not definitely state that application by one party alone is sufficient, but regulations issued by the governor under date of January 30, 1895, do so specify.

in case of a tie. Boards are given full power to compel the attendance and examination of witnesses. No counsel or agent shall appear before a board unless he is personally interested in the dispute in hand.

4. *Enforcement of awards.*—All awards under the act are compulsory. They must specify the organization or persons upon whom they are to be binding and a period not exceeding two years during which they shall be enforceable. In cases decided by local boards or by the state board upon transfer to it from a local board, awards, unless they otherwise specify, are binding upon all persons enrolled as voters for the local board at the time the award is made. The members of a registered organization named in an award can not escape from it by withdrawing from registration. It is expressly provided that any such withdrawal, which may occur in any case only upon the desire of two-thirds of the members and after two months' public notice, shall not relieve any union or association or any of its members "from the obligation of any industrial agreement or industrial award."

Duplicates of awards are to be filed with the registrar, who is to take the necessary steps for their enforcement whenever called upon by parties interested, and all courts and officers of the province are to aid him therein. To enforce an award, process may be issued for the payment by an organization or person of not more than £1,000 ($4,866.50), or by an individual on account of membership in an organization of not more than £10 ($48.67). Further, any person willfully defaulting in compliance with an award, unless the award specifies to the contrary, is guilty of an offense punishable by fine of not over £20 ($97.33), or by imprisonment for not more than three months. All these provisions for enforcing awards apply to industrial agreements as well, except as expressly limited by the latter.

5. *Reports on industrial disputes.*—All of the above provisions have to do with methods of conciliation and arbitration in the strict sense. One further process is provided for. In the case of any industrial dispute the president of the state board may, after investigation, certify to the governor that the case is one which should be "investigated and reported upon" by the state board, whereupon the governor may by proclamation refer the case to that board for such purpose. Thereupon the state board is to make investigation and, in place of an award, embody its decision on "the merits and substantial justice of the case" in a report to be filed with the registrar, but which is in no wise compulsory upon the parties. Also, any public board in any case where an award might be issued may, if it seems preferable, make and publish a report in place of the award.

6. *Penalties upon strike or lockout.*—In the case of any dispute for the settlement of which any board of conciliation has jurisdic-

tion the act makes it an offense for any registered organization or member thereof to "take part in, support, or assist directly or indirectly" any lockout or strike. Such an offense is punishable by a fine of not more than £500 ($2,433.25) against an organization or not over £20 ($97.33) against an individual. For this, as for all offenses against the act, proceedings may be had before any special magistrate or two justices of the peace, with appeal to the local court of Adelaide of full jurisdiction.

Put in a word, this South Australian system may be described as permissive compulsory arbitration. That is, while it provides for arbitration compulsory both as to award and reference even to the extent of compelling reference independent of the desire of either party to a dispute, nevertheless the whole plan can be operated only as employers and employees choose to put themselves under it either by entering into agreements so to do, by enrolling as voters for a local board, or by registering as unions. To those choosing to submit to it, the act offers compulsory arbitration. For all others the possibilities of the law are limited to the friendly mediation of a government official in the person of the president of the state board, or a public investigation of disputes by that board at the instance of the government.

The South Australian law of 1894 went into force on January 30, 1895, and has never been repealed. It proved a complete failure from the first, however, for the reason that neither employers nor work people chose to accept what it offered them. No union ever registered under it, no local board was ever established, and no formal agreement under the act was ever made. The state board was appointed by the governor and organized, but its record is limited to a single case of investigation, which was of no service toward a settlement of the dispute. In this instance, which occurred during March and April, 1895, the parties were under formal agreement as to wages. This agreement had been reached by arbitration following a strike in 1890, and bound the employees' union to support no strikes and to submit disputes to arbitration. When, however, the employer in March, 1895, suddenly reduced wages a strike followed. Thereupon, in the interests of the public and without formal application from either party an investigation was undertaken by the state board. When the board called upon the employer to appear and testify, the latter promptly refused, challenged the jurisdiction of the board to inquire into the dispute, and demanded that his counsel be heard on the latter point. The board declined to consider the question of its authority, nor did it deem it advisable to attempt compulsion in the case, but proceeded to investigate without the employer's testimony and made a report with unanimous recommendation as to each point at issue, which report was made public.

This had no effect upon the parties, however, and the strike was continued and new hands were hired by the employer.(a)

The testimony of those who have investigated the matter on the ground is to the effect that the unfavorable reception accorded the law was inspired, in the case of employers, by a general opposition to anything like government investigation into, or interference with, their business affairs, while the working people were afraid of curtailing their liberty of action, not being certain as to what submission to the act might ultimately involve. One of the latter has explained the support given the measure in Parliament by the representatives of the workingmen as due to their personal respect for the author of the law rather than to any faith in it as a practical measure.(b)

WESTERN AUSTRALIA.

This colony first legislated with reference to the settlement of industrial disputes in 1900, in which year the New Zealand compulsory arbitration system was adopted by act of December 5. This was replaced by a second law, assented to February 19, 1902, which stood unamended down to the year 1905. Each of these statutes is so nearly identical, section for section, with the New Zealand laws in force at the time of their passage that no account of Western Australian legislation is necessary beyond mention of the changes introduced in copying the New Zealand acts.

Comparing the systems of the two countries as they are at present, it is found that the differences, aside from matters of altogether minor detail, lie chiefly in the omission by Western Australia of the following New Zealand features:(c) (1) Cognizance by the boards and court of disputes in related trades; (2) extension of awards to the entire colony; (3) extension of awards to unions not registered under the arbitration law; (4) extension of awards to apply to the whole of a firm's business where different trades would be involved; (5) continuance of awards in force beyond the period stated therein, and (6) enforcement of awards at the instance of the state factory inspectors. All of these, it may be noted, are features added to the New Zealand system after its establishment(d) and enlarging its

a The facts as to the one case under the law are set forth in the Adelaide Advertiser of April 19, 1895. For other information as to the law's failure reference may be made to a report published by the French bureau of labor in 1901, entitled "Législation Ouvrière et Sociale en Australie et Nouvelle Zélande," which contains the results of a special mission by Prof. Albert Métin, pp. 105 et seq.

b Cf. Métin, op. cit., p. 110, and article "Quelque Expériences de Conciliation par l'Etat en Australie," in the Revue d'Economie Politique, XI: 539, by M. Antonie Bertram, who wrote from personal knowledge of conditions in the colonies.

c Cf. supra, pp. 467, 468, 470, 473–475.

d By the amendments of 1900 or 1901.

scope. To the extent indicated by their omission, therefore, the Western Australian system is less radical. All these omissions, save the first mentioned, it will be seen, have to do with arbitration.

But while the Western Australian statute is narrower than the New Zealand, as above indicated, in two directions it goes much farther. In the first place, Western Australia not only puts her railway servants within the jurisdiction of the court of arbitration,[a] which is as far as New Zealand has gone, but puts all government employees in the same position, so far as they are members of unions registered under the law. In the second place, and this constitutes the most important departure from the New Zealand model, Western Australia undertakes to prohibit strikes and lockouts entirely. New Zealand simply prohibits such action after a reference to board or court has been made, but Western Australia has enacted that "any person who takes part in or is concerned" in a strike or lockout, or, before a reasonable time has elapsed for reference of a dispute to a board or the court or during the pendency of proceedings after a reference, suspends or discontinues employment or work on account of that dispute, or instigates to or aids in any of the above acts, is guilty of an offense and, upon summary conviction, on the information or complaint of the registrar, or of any registered union, is liable to a penalty not exceeding £50 ($243.33).[b] In support of this prohibition the Western Australian law requires that the rules of every registered union shall provide that no part of its property or funds shall be applied to aid or assist any person engaged in a strike or lockout and that all disputes in which its members are concerned which can not be settled by mutual consent shall be referred for settlement under the arbitration law.[c]

The above include all the differences of any importance between the present laws of the two countries.[d] In addition to these, three features in the Western Australian law of 1900, likewise new to the New Zealand laws which were copied, may be noted, though all three were dropped in 1902. One of these required that before any union of workers could commence proceedings in the arbitration court it must deposit with the registrar of the supreme court of the colony £25 ($121.66) if its members numbered 50 or less, £50 ($243.33) if its members numbered from 50 to 100, and £100 ($486.65) for a member-

[a] But not of boards of conciliation.

[b] Act of 1902, sec. 98. This prohibition of strikes and lockouts apparently follows the New South Wales act of 1901.

[c] Act of 1902, sec. 4.

[d] Of other variations suffice it to say that the most notable one consists in a limitation of the privilege of registration and consequent use of the system in the case of labor unions to organizations with at least 15 members in Western Australia as compared with 7 in New Zealand.

ship above 100, or give security in those sums, and any employers' union must deposit or find security for £100 ($486.65). By this means the union's ability to meet any order of the court as to cost of the procedure or enforcement of awards was to be assured. Another provision in the 1900 act prohibited any union which had not satisfied a judgment of the court as to costs of an award or penalty from again moving the court under any circumstances until such judgment should be satisfied. The third provision of the earlier law, above alluded to, gave the court of arbitration power to grant injunctions and prohibitions and issue writs of mandamus. While this provision, like the other two, does not appear in the later law, it should be said that its omission scarcely indicates any curtailment of the court's power for the purposes of the act.

The Western Australian act of 1900 became law on December 5 of that year. According to the Annual Report of Proceedings under the Industrial Conciliation and Arbitration Act, by the registrar of friendly societies for the year ended June 30, 1903, the work of organizing the boards and court was completed about seven months after the law went into force. On the 1st of February, 1901, the colony was by proclamation divided into four industrial districts and a clerk of awards was appointed in each district. On the same date the regulations for procedure were published also.[a] The four boards of conciliation were organized, respectively, on April 19, June 21, July 5, and September 19, and the court of arbitration on June 28. Since the middle of 1901, therefore, the Western Australian compulsory arbitration system has been actively, and, it may be added, in constantly increasing measure, in operation.[b]

COMMONWEALTH OF AUSTRALIA.

The latest development of legislation for the settlement of industrial disputes in Australia is to be found in the Commonwealth Conciliation and Arbitration Act, which was assented to December 15, 1904.[c] This law was passed under specific authority for such

[a] The regulations of February 1, 1901, were amended on March 15 and November 8 of the same year. Regulations under the act of 1902 were issued May 6 of that year, and these received amendment on October 10, 1902, February 13, May 1, and September 11, 1903.

[b] For information as to the operation of the Western Australian system the author can not do better than simply refer the reader to the very recent and full account given by Dr. Victor S. Clark in his report on "Labor conditions in Australia," in Bulletin of the United States Bureau of Labor, No. 56 (January, 1905), pages 78–153. This is done here for precisely the same reasons given for a similar reference in the case of New South Wales.

[c] Acts of 1904, No. 13.

legislation given by a clause of the Commonwealth constitution which conferred upon the Parliament power to pass laws for "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one state."(a) Doctor Clark(b) notes that the act was passed only after two years' parliamentary debate and after it had caused the fall of two ministries.

The Commonwealth statute is almost entirely made up of features taken with more or less modification from one or another of the arbitration laws of New Zealand, New South Wales, Western Australia, or South Australia, which have been described in preceding pages. The main features of the Federal system are outlined in the following summary under four heads.

ADMINISTRATION.

Only one permanent tribunal is set up—a court of conciliation and arbitration—composed of a single member, styled the president, who is appointed directly by the governor-general from among the justices of the high court (the supreme court) of the Commonwealth, without any nomination by employers or employees. The president may appoint any justice of the high court or judge of the supreme court of any state to act as his deputy for such functions as the president may assign to him in any part of the Commonwealth. Besides the court, there is provision for a permanent industrial registrar and, if necessary, deputy registrars in charge of registry districts, for the purpose of registering organizations under the act as in the state laws. There may be appointed also temporary local industrial boards as noted below.

JURISDICTION.

In accordance with the constitutional limitation above quoted, the jurisdiction is limited to disputes extending beyond the limits of any one state, including disputes affecting any industry carried on by or under the control of the Commonwealth or any state government. As to subject-matter the court's jurisdiction is all-inclusive of industrial disputes of any kind between employer and employed.

In connection with the question of preferences to unionists it is specified that the union must be nonpolitical and that preference shall not be granted unless "the application for such preference is, in the opinion of the court, approved by a majority of those affected by the award who have interests in common with the applicants."

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a Constitution of 1900, Part V, sec. 51–xxxv.

b Bulletin of the United States Bureau of Labor, No. 56, p. 155.

As to parties, the court's jurisdiction extends to disputes between individual employers, or organizations of employers registered under the law, and organizations of employees registered under the law, or to any dispute "certified by the registrar as proper in the public interest to be dealt with by the court." Under this latter provision it appears that disputes involving only unorganized workers might be referred to the court. In order to register under the Commonwealth act it is required that an association of employers must have employed for six months prior to application for registration an average of not less than 100 employees, and that a workers' union must have not less than 100 members, and registered organizations must be nonpolitical in character.

In this matter of registration the Commonwealth has adopted one new feature in a provision whereby the governor-general may, on the recommendation of the president of the court, by proclamation declare the act to apply to any trade union or employers' association, which shall thereupon become a registered organization under the act, for the purposes of the act generally or as specified in the proclamation, until such time as such proclamation may be revoked by the governor at the president's recommendation. It is thus possible for the government upon its own motion to put any unregistered organization under the jurisdiction of the law. The right of referring disputes to the court, so far as the parties are concerned, is specified only for registered organizations, so that unless a single employer with 100 or more employees should be deemed eligible for registration as an organization, it appears that individual employers have no power to make a reference. As to extension of awards, the "common-rule" provision of New South Wales has been incorporated in the Commonwealth system, so that the court, after notice and, if desired, hearing of the parties to be affected, and with "due regard to the extent to which the industries or the persons affected enter or are likely to enter into competition with one another" may declare that "any practice, regulation, rule, custom, term of agreement, condition of employment, or dealing whatsoever determined by an award in relation to any industrial matter" (sec. 38) shall be a common rule of the industry, subject to such conditions or exceptions as the court may see fit to impose out of regard for local circumstances.

Finally, with reference to jurisdiction, one of the purposes of the act is declared to be "to enable states to refer industrial disputes to the court and to permit of the working of the court and of state industrial authorities in aid of each other." Under the definitions contained in the act the state industrial authorities mentioned mean industrial conciliation or arbitration boards, or wage boards like those in Victoria. In accordance with the above provision, it is not

only possible for any such state industrial authority, or the governor in council in any state having no such agency, to refer any dispute cognizable by the Commonwealth court to that court, but the said court, if it considers that any state industrial authority is dealing or about to deal with an industrial dispute cognizable by itself, may direct the transfer of the case to the Commonwealth court, and the case shall be so transferred to the exclusive jurisdiction of that court. It is also provided that if any state law or an award or order of a state industrial authority is inconsistent with an order or award of the Commonwealth court, then the latter shall supersede the former to the extent of the inconsistency. The jurisdiction of the Commonwealth court is thus made exclusive on matters of which it may take cognizance.

PROCEDURE.

As already indicated, disputes come before the court either on reference by registered organizations of employers or workers, party thereto, on reference by the registrar, or by transfer from a state board or court. The court's functions embrace both conciliation and arbitration. Thus section 16 of the act charges the president of the court with the duty "of endeavoring at all times, by all lawful ways and means, to reconcile the parties to industrial disputes, and to prevent and settle industrial disputes, whether or not the court has cognizance of them, in all cases in which it appears to him that his mediation is desirable in the public interest." Section 23 further directs that in the course of hearings on cases which have been referred to it, "the court shall make all such suggestions and do all such things as appear to it to be right and proper for reconciling the parties and for inducing the settlement of the dispute by amicable agreement." It is also provided that the court may temporarily refer any dispute before it to a conciliation committee composed of equal numbers of representatives of the two parties who shall endeavor to reconcile the two sides. If the court's conciliation efforts result in an agreement the latter shall be put in writing and when certified by the president and filed with the registrar, unless otherwise ordered by the court, "shall, as between the parties to the dispute, have the same effect as, and be deemed to be, an award." Similar enforceable agreements may also be made by parties in cases aside from those referred to the court.

If no settlement by conciliation be effected, the court shall proceed to render an award, from which there is no appeal. The court may, either with or without application from parties, appoint two assessors, one nominated by each side, or without such nomination, if necessary, to assist by advice. The court may refer any dispute for investigation and report to any state industrial authority

willing to act or to a special local board, composed of equal numbers of representatives of employers and employed, with a justice of the high court of the Commonwealth or of a state supreme court as chairman. The court may delegate to such a board any of its powers, including authority to effect a settlement by conciliation; and upon the board's report the court may render its decision with or without hearing further evidence or argument. The Commonwealth court, like the state courts, is fully endowed with authority to compel the presence and testimony of witnesses, the production of documents, and for securing evidence by inspection of premises.

ENFORCEMENT OF AWARDS.

Strikes and lockouts are absolutely prohibited by the Commonwealth law under penalty of £1,000 ($4,866.50). Ceasing to work or dismissal of an employee by an individual worker or employer because of an award is punishable by fine of £20 ($97.33). The court is given power to fix penalties for breaches of its orders or awards up to £1,000 ($4,866.50) in the case of an organization or individual employer, or £10 ($48.67) for a member of an organization. A penalty of £20 ($97.33) is prescribed for willful breach of an order or award by any person. At any time during the hearing of a case referred by an organization the court may require the latter to furnish security not exceeding £200 ($973.30) for the performance of the award. The court has authority, on the application of any party to an award, to issue an injunction to compel observance of the award under pain of a fine of £100 ($486.65) or imprisonment for three months. For all offenses under the law for which a pecuniary penalty is specified there is a general provision under which a second offense is punishable by imprisonment not exceeding three months in addition to the pecuniary penalty.

Penalties for the breach of an order or award of the arbitration court may be imposed either by that court or by any court of summary jurisdiction, and such penalties may be sued for and recovered by either the registrar, any registered organization affected by the breach, or by any member of such an organization. The penalties are recoverable in any Federal or state court of competent jurisdiction by filing the registrar's certificate specifying the penalty, which thereupon becomes enforceable as any final judgment of such a court. The property of an organization, or, if necessary, that of members to the extent of £10 ($48.67) each, is liable for the payment of penalties.

Finally, in addition to the above penalties, the Commonwealth law provides that any person guilty of any of the offenses specified as to strike or lockout, severance of the relation of employer or em-

ployed, or willful default in compliance with an order or award of the court, is liable also, at the discretion of the court and for such time as the court thinks fit, to the loss of (*a*) any benefits or privileges accruing under the Conciliation or Arbitration Act, (*b*) membership in any registered organization, or (*c*) rights to any payment out of the funds of any registered organization; and any or all of these disabilities may be incurred at once, and a penalty of £20 ($97.33) is specified for the infringement of any such disability.

This Commonwealth compulsory arbitration law is too recent to afford as yet any evidence as to results in practice.

CANADA.

Four of the Canadian Provinces—Ontario, Nova Scotia, British Columbia, and Quebec—together with the Dominion government, have legislated with a view to the peaceable settlement of industrial disputes.

THE DOMINION GOVERNMENT.

In 1886 the Dominion government of Canada appointed a royal commission on labor, and one subject upon which this commission was directed to report was the "practical operations of courts of arbitration and conciliation in the settlement of disputes between employers and employees, and on the best mode of settling such disputes."(*a*)

The result of the commission's investigations in this field was a recommendation in favor of local boards, combined with one central board. It was proposed that the local boards should be appointed by the government in all the larger trade centers, to be composed of three members—one employer, one workingman, and a third chosen by these two. On the central board there should also be three members, one of whom should be a member of a labor organization. Both local and central boards should have power to summon and examine witnesses on oath and to compel the production of books and papers. In case of dispute the central board should send immediately one of their number to the locality to endeavor to settle the case by mediation. Should he fail in this, he should urge the parties to submit the case to either the local or the central board. If one party refused to submit the case to either board, the arbitrator, who should have power to summon and examine witnesses under oath, should make report to the central board setting forth the facts and stating which party was responsible or blameworthy for the dispute. It was also recommended that parties should be free to refer cases to temporary boards of their own choosing. In case either party should be dis-

[a] Report of the commission, 1889, p. 3.

satisfied with the decision of such a board or one of the local boards, there should be an appeal to the central board. Decisions of the central board, either on cases in the first instance or on appeal, should be "final and conclusive and to have the same effect as a decision given by any court of record."

The recommendations of the commission of 1886, though elaborated with considerable detail, bore no fruit in legislation, and apparently no bill based on those recommendations was ever introduced in Parliament.[a] In 1892 and 1893 numerous petitions from trade unions to the House of Commons prayed for legislation upon the subject, but these also were fruitless, and no such legislation occurred until the Conciliation Act of July 18, 1900, the bill for which was introduced on June 27, passed July 6, and received the royal assent July 18.[b]

THE CONCILIATION ACT OF 1900.

This law created a department of labor for the collection and publication of labor statistics, but assigns to it also the same functions with reference to conciliation and arbitration as are conferred upon the board of trade in England by the English law of 1896.[c] All the provisions of the English statute are copied without change, save in some of the wording, and three new sections are added. Two of the latter are of little importance, one simply declaring that conciliators, in endeavoring to effect amicable settlements, may invite others to assist them, and the other setting forth the general duty of conciliators to be "to promote conditions favorable to a settlement by endeavoring to allay distrust, to remove causes of friction, to promote good feeling, to restore confidence, and to encourage the parties to come together and themselves effect a settlement, and also to promote agreements between employers and employees with a view to the submission of differences to conciliation or arbitration before resorting to strikes or lockouts."[d] The third new section provides that in any proceeding for conciliation under the act, the conciliator (either individual or a board), before a settlement has been reached, may request of the minister of labor, who is the head of the labor department, an inquiry under oath into the causes and circumstances of the dispute with a view to removing misunderstanding or disagreement concerning facts. If both parties consent thereto, the governor in council may, upon recommendation of the minister, appoint the

[a] No such bill is mentioned in either the Journal of the House of Commons or the Senate debates of the period.

[b] 63–64 Vict., chap. 24. The law in full is reprinted in the Seventeenth Annual Report of the New York State Board of Mediation and Arbitration, 1903, p. 357.

[c] Cf. supra, pp. 402–405.

[d] Sec. 5.

conciliator for the purposes of such inquiry a commissioner under the general law respecting inquiries concerning public matters.[a] which would give the conciliator the same powers to compel witnesses to attend and testify and produce documents as are exercised by civil courts of record.

The annual reports of the Canadian department of labor set forth each year the work accomplished under the Conciliation Act of 1900. The law permits the department to intervene in disputes, either upon its own initiative or upon request from the parties to disputes, but from the first it has followed the principle of intervening only upon application.

Thus the first report states that—

The department has proceeded on the assumption that an opportunity being afforded for either party to a dispute to make application for its friendly intervention to aid in effecting a settlement, it would be inexpedient for the department itself to take the initiative.[b]

And the latest report[c] reiterates:

The attitude of the department of labor toward industrial disputes has been from the outset to intervene only when requested by one of the parties or some responsible person or persons on their behalf, or on behalf of the community, and in all cases only where it appears that the parties immediately concerned, or one of them, are desirous of the department's intervention.

A summary of intervention, and general results by years shows the following totals:

RESULTS OF INTERVENTIONS BY THE DEPARTMENT OF LABOR IN STRIKES AND LOCKOUTS, CANADA, 1901 TO 1904.

Year ended June 30—	Requests for intervention.	Complete settlements by department's intervention.	Settlements aided by department's intervention.	No settlement effected by department.	Total strikes and lockouts (a) in Dominion.
1901	5	5	----	----	104
1902	11	6	1	4	123
1903	13	4	6	3	160
1904	4	2	----	2	103
Total	33	17	7	9	490

[a] That is, the number reported to the department during the calendar year.

Requests for intervention have come to the department chiefly from the work people, the reports showing definitely that 27 of the 33 requests were made by them, and presumably three others (in 1901–2),

[a] Cf. Revised Statutes of Canada, 1886, chap. 114.

[b] Report of the Canadian Department of Labor for the year ending June 30, 1901, p. 31.

[c] Id., year ending June 30, 1904, p. 46.

whose source is not definitely stated, were from them also. In one instance (in 1901–2) application came from employers, and in two cases (in 1902–3) third parties—members of Parliament in each instance—requested the department to intervene.

In all but three cases (one in 1901–2 and two in 1902–3) the application for intervention was made after strike or lockout had occurred. The department's intervention in the three cases before suspension resulted twice in complete settlement and in the third instance (one of those in 1902–3) aided to a settlement, and so, according to the reports, averted or helped to avert threatened strikes.

Of the nine strikes or lockouts in which neither complete nor partial settlement was effected by the department, in one (1902–3) a settlement was effected by the mayor of the town and a member of Parliament (the latter of whom had requested the intervention), while the deputy minister of labor was on his way to the scene of the dispute, and in another (1903–4) request for intervention from a trade union was withdrawn before the deputy minister could reach the scene, and in accordance with the department's policy of non-intervention without desire of at least one side no intervention occurred. In the other seven cases negotiations under the law failed to effect any settlement in whole or in part. In all of these the reports state that the employers claimed either to have filled the places of the strikers or to be no longer embarrassed by their absence, so that negotiations with a view to conciliation were either impossible or useless.

All of the work thus far done under the Canadian Conciliation Act of 1900 has been in the nature of conciliation pure and simple, no request for the appointment of an arbitrator under the law ever having been received and no formal commission of inquiry as provided for in the act ever having been asked for or issued. In the cases of intervention above noted the work of conciliation was done in a few instances by the minister of labor, who is the head of the department of labor, but in all the others, constituting the great majority of the cases, by the deputy minister as conciliator under the act, so that no conciliator from outside the department was appointed.

The methods followed by the minister or his deputy in their interventions have been in most instances the usual ones in such work, consisting of efforts either to bring the parties together in conference or to formulate terms acceptable to both. Three cases appear in the reports of the four years' work here reviewed in which, after such procedure was found to offer no prospect of settlement, the deputy minister of labor made a careful investigation into the causes and status of the dispute, the results being in each case published in the department's monthly Labor Gazette. One of these special inquiries (in 1901–2) does not appear to have contributed to the termination

of the strike, which did not end until a month later; but the report of the department's intervention in this case asserts that "there can be no doubt that an important service was rendered to the mining interests of British Columbia (where the dispute was) and to the workingmen of that Province by the investigation."[a] The other two such investigations (in 1902–3) were of service toward settling the disputes. In one, made in connection with a railway dispute over nonpayment of wages, the investigation was made the basis for further correspondence of the department with the railway company, and this correspondence was finally laid before Parliament by order of the latter, and the department's report[b] of this case asserts:

There is no doubt that the publicity given to the facts in this way, as well as in the statement published in the numbers of the Labor Gazette, * * * together with the investigation made by the department under the Conciliation Act, had a great deal to do with hastening the settlement of the claims in question and bringing about a resumption of operations by the road.

In the other case the report states that the facts ascertained by the investigation "were set forth at length in an official report to the honorable the minister of labor, which report, being published in the Labor Gazette and circulated in the local press, became one of the features which subsequently assisted in effecting a termination of the dispute."[c] Interesting in this connection is a point noted in the report of the first year's work under the law to the effect that the element of publicity was found to be a valuable adjunct in all of the conciliator's work. The report says:

It is to be noted that the power of the conciliator, though the acceptance of his services be voluntary, is not as dependent upon the willingness of each of the parties to avail itself of his good offices as may at first sight appear. The strength of his position, as the experience of the past year has shown, lies in the provision made by another clause of the act, that the conciliator must present to the minister of labor a report of his proceedings, which report, as contemplated though not expressed in the act, is published in the Labor Gazette, the official journal of the department. The knowledge by each of the parties to a dispute that its case, in so far as the position can be learned by the conciliator, must appear in an official record of the government, which serves as a focus of public opinion, has a tendency to cause each party to submit a fair statement of its case at the outset, and to refrain from any delay in granting reasonable concessions or from holding out for excessive demands, once this statement has been made and an effort toward a settlement is under way.[d]

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[a] Report of the Canadian Department of Labor, 1902, p. 39.
[b] Id., 1903, p. 41.
[c] Id., 1903, p. 48.
[d] Id., 1901, p. 32.

THE RAILWAY LABOR DISPUTES ACT, 1903.

A more original and significant contribution to legislation for the settlement of industrial disputes than the Conciliation Act of 1900 has been made by Canada in a law of 1903, known as the Railway Labor Disputes Act. An account of the framing and passage of this act, given by the department of labor in its report for 1903,[a] shows that that department was primarily responsible for the measure. A protracted strike on the Canadian Pacific Railway in the summer of 1902 having called attention to the need of legislation to prevent such interruption of the means of transportation and communication, and compulsory arbitration having for some time been advocated by a considerable number of organizations, both of capital and of labor, the minister of labor introduced in the next session of Parliament (1902) a compulsory-arbitration bill[b] for railway disputes. The minister, however, stated expressly that he did not intend to press the bill, and that its introduction was mainly for the purpose of calling forth an expression of opinion from interested parties and the public generally, which might serve as a guide to further legislation. In fulfillment of this purpose, therefore, the department of labor proceeded to give the largest possible publicity to the bill by extensive distribution of copies and to secure as many expressions of opinion concerning it as possible, especially from the railway companies and the various brotherhoods of railway employees. Responses from the railway companies were few, but numerous expressions of opinion were received from the labor organizations, and most of the latter were strongly opposed to the bill. By special attention to press opinions the department endeavored to ascertain the attitude of the general public toward the measure, finding in this direction a less general opposition to compulsory arbitration than among the trade unions, but finding at the same time considerable doubt expressed as to the advisability of adopting the principle on account of the serious practical difficulties involved, especially in the matter of enforcing awards and securing just decisions on questions which must ultimately be determined by economic forces.

But while this investigation of public opinion and the sentiment of interested parties tended to discourage the idea of compulsory arbitration, experience under the Conciliation Act of 1900 had shown the department that in some disputes the power to compel testimony and the production of documents was necessary to a correct understanding of the situation and therefore a necessary preliminary to any settlement, and that such power in order to be effective must be

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[a] Pages 58–60.

[b] Published in full as an appendix to the June (1902) Labor Gazette.

available independently of the will of the parties. Consideration of public sentiment and experience together, therefore, led the minister of labor to introduce at the next session of Parliament a new measure "carrying as far as was possible the principle of voluntary conciliation, but substituting for compulsory arbitration, with its coercive penalties, the principle of compulsory investigation, and its recognition of the influence of an informed public opinion upon matters of vital concern to the public itself."[a] The bill was introduced March 17, passed May 6, and received the royal assent July 10, 1903.[b]

The Railway Labor Disputes Act, 1903, applies only to railways; but to all such, whether operated by steam, electricity, or other motive power, and whether private or government roads, the law is applicable in any "dispute, disagreement, or dissension" between any railway and any of its employees "which, in the opinion of the minister [of labor], may have caused or may cause a lockout or strike, * * * or which has interfered or may interfere with the proper and efficient transportation of mails, passengers, or freight, or the safety of persons employed upon any car or train."

The agency through which the machinery provided for in the law is to be set in motion is the minister of labor, and whenever, in his opinion, such a dispute as above described exists he may start proceedings under the act either upon application of any party to the difference or upon application from the corporation of any municipality directly affected by the dispute, or of his own motion. The first step in the procedure is the establishment, under the hand and seal of the minister, of a "committee of conciliation, mediation, and investigation," composed of three persons, one each named by the railway employers and the employees who are parties to the dispute and the third by the other two or by the parties, if they can agree upon some one. If either party fails to appoint its member within the time set by the minister of labor, which may not be over five days, then the minister, or, in case of the two government railways, the lieutenant-governor in council of one of the Provinces, may appoint such member, and the same provision applies in case of failure of the parties' members to name a third.

It is the duty of the conciliation committee "to endeavor by conciliation and mediation to assist in bringing about an amicable settlement of the difference to the satisfaction of both parties, and to report its proceedings to the minister." If they fail in this effort,

[a] Report of the Canadian Department of Labor, 1903, p. 59.

[b] 3 Edward VII, chap. 55. The act is printed in full in the Seventeenth Annual Report of the New York State Board of Mediation and Arbitration, 1903, p. 359.

the minister may then refer the case to arbitration under the act before a "board of arbitrators," to be established, like the conciliation committee, under the hand and seal of the minister. If both parties agree thereto the conciliation committee may act as the board of arbitrators, but if either party objects to its representative, or the third member on the committee acting on the board, then these shall be replaced by new members, named in precisely the same manner as the original members of the committee. The constitution of the board of arbitrators is, therefore, exactly the same as that of the conciliation committee, but the members may be the same or different persons. The law specifies that the third member shall be chairman of the board. It is the duty of the board of arbitrators to "promptly convene * * * and * * * in such manner as it thinks advisable make thorough, careful, and expeditious inquiry into all the facts and circumstances connected with the difference and the cause thereof, and shall consider what would be reasonable and proper to be done by both or either of the parties with a view to putting an end to the difference, and to preventing its recurrence," and shall with all reasonable speed make a report of its procedure, findings of fact, and recommendations to the minister of labor. The decision of a majority of the members shall be the decision of the board. The minister of labor is forthwith upon its receipt to cause the report of the board to be filed in the department of labor and a copy to be sent free of charge to each party to the dispute, to any municipal corporation which may have applied for action under the law, and to any newspaper in Canada which may apply for a copy, and copies shall be furnished at cost to any others who desire them. The report shall also be published without delay in the Labor Gazette, and shall be included in the annual report of the department of labor. The findings of the board of arbitrators carry only such force as public opinion may give them, and it is expressly stipulated in the law that no court may "recognize, enforce, or receive in evidence" any report of the board of arbitrators or committee of conciliation against any person for any purpose, except in case of prosecution for perjury.

For the purposes of its inquiry a board of arbitrators under the law has the same power to summon witnesses and require them to give evidence on oath or produce documents as any Canadian court of record in civil cases. The board may conduct its proceedings in public or in private, as it chooses; it may decline to allow counsel for parties to appear before it, though otherwise such counsel may appear if both parties agree thereto, and in all cases a class of employees may be represented before board or committee by a limited number, chosen by a majority, or by agents other than counsel, and

the board may place any person guilty of any unlawful contempt in the face of the board in custody until the board rises.

The department of labor is to pay the expenses of proceedings under the act, including, for either committee of conciliation or board of arbitrators, traveling expenses of members, compensation of $10 per day for members other than chairman, and for the latter such compensation as the governor in council deems reasonable, and the expense of a stenographer, secretary, and any other clerical assistance which may seem to the minister of labor to be necessary.

The first case of practical application of the Railway Labor Disputes Act occurred in 1904 in connection with a dispute between the Grand Trunk Railway Company and the telegraphers in its employ.(a) In 1903 the telegraphers had sought and finally, in the autumn, secured conferences with the railway management with a view to securing better terms of employment, but these conferences ended on November 10 without any agreement being reached. On April 25, 1904, the telegraphers appealed to the minister of labor to refer the dispute for settlement under the Railway Labor Disputes Act. Before making such reference, however, the minister arranged for another conference between the parties in the hope that they might yet come to agreement by themselves. This conference, which began June 1 and extended over six days, resulted in an agreement on 19 points in the schedule, but on three points—overtime pay for Sunday work, allowance of an annual vacation with pay, and increase in minimum salaries—the company would make no concessions, and the conference ended in disagreement. An appeal to the general manager of the road having failed to alter the situation, the telegraphers again applied for reference under the law, asserting that a strike would occur unless such a reference were made. On July 21, therefore, the minister of labor served notice on the parties to name members for a conciliation committee under the act. Within five days the parties appointed their representatives for the conciliation committee, and a fortnight later these two chose a civil court judge as third member and chairman. On August 22 and 23 the committee endeavored in private conferences to arrange an amicable settlement, but on the 24th reported to the minister of labor that they were unable to come to an agreement. Thereupon the minister decided to refer the dispute to arbitration under the act, and the parties having expressed approval of their representatives on the conciliation committee and its chairman to act as arbitrators, the minister on August 27 established the board, composed of the same persons as the committee.

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a Details of this first case under the act are given in the Canadian Labor Gazette, numbers from August, 1904, to March, 1905.

Owing to engagements of the chairman, the first meeting of the board did not occur until September 19. On that day and on the 23d and 24th sessions were held, at which it was decided by the chairman that, as the telegraphers' representatives had objected thereto, no counsel should appear for the parties before the board, and that the hearings should be public. After the presentation of a statement of the claims of the telegraphers, in the form of 25 proposed rules, an adjournment was taken to October 13. At a meeting on October 14 it was decided by a majority of the board to reverse the earlier ruling as to public hearings and to hold them in private, for the reason that it appeared that much of the inquiry would involve the use of books, papers, and documents, and that the section of the law giving the board power to require the production of such evidence at the same time prohibited making any of it public, and the protection of such information from publicity could best be insured by making all hearings private. At the same meeting it was also decided that only the three points above noted (overtime pay for Sunday work, vacation with pay, and increase in minimum salaries), on which the parties had been unable to agree, should be considered, with a reservation by the telegraphers of the right to present later an argument on their claims as a whole. The taking of evidence began on October 15, was continued in sessions on two other days in October, on three days in November, and in daily sessions, both morning and afternoon, from December 28 to January 6, except that no sessions were held on January 1 and 2 and only one was held on January 3. On December 28 the chairman of the board notified the parties that the current and following weeks had been set aside by the arbitrators for daily sittings to complete the case; that "the parties must be ready," and that "no excuse for postponement on either side will prevail unless occasioned by unavoidable accident." Witnesses were heard first on behalf of the telegraphers (14 in all), then on behalf of the company (11 in all), then on behalf of the employees in rebuttal. On January 7, each side having presented its final argument, the case was closed, and six weeks later (February 20, 1905), or ten months after the first application for reference under the act, the board made public its award.

The award was signed by only two members of the board, the chairman and the telegraphers' representative. It covered only the three points on which the parties had failed to agree before the reference and decided entirely in favor of the telegraphers on two points and wholly against them on the third. In other words, it recommended in favor of extra pay for Sunday work and increase in minimum salaries exactly as the telegraphers had demanded, but against any leave of absence with pay. With the award was filed a minority

report by the company's representative, who dissented from the majority decision on the two points in which the latter favored the contention of the telegraphers, declaring that the evidence presented to the board failed to justify any increase of salaries, and that, while for certain cases the evidence showed the claim for extra pay for Sunday work to be justified, in other cases it was not well founded, and therefore the majority decision on this point went too far in awarding such extra compensation for all cases.

Whether the award of the board of arbitrators was adopted by the railway company is not stated in any of the official reports of this case up to April, 1905, but apparently it was. Inasmuch as work continued as usual during the proceedings under the law and has continued since, and since the telegraphers themselves asserted at the outset that a strike was imminent unless the law should be invoked, it seems certain that this first practical application of the Railway Labor Disputes Act of 1903 served to avert what would otherwise in all probability have been a very serious strike both for the parties and for the general public. Down to the middle of 1905 no other case under this law had arisen.

ONTARIO.

THE TRADES ARBITRATION ACT, 1873.

By law of March 29, 1873, the Province of Ontario adopted the English Councils of Conciliation Act, 1867,[a] copying the law of the mother country for the most part verbatim and with no changes of any significance. Like the English act, however, the Ontario Trades Arbitration Act, 1873, as it was officially styled, was a total failure. The royal commission on labor, appointed in 1886 by the Dominion government, reported that the law "had never been used, and that even its very existence seems to have been forgotten."[b] In the opinion of the commission the cause of its failure was the clause declaring that the act in no way authorized a board "to establish a rate of wages or price of labor or workmanship at which the workmen shall be paid." "Inasmuch," says the commission, "as ninety-five one-hundredths of the disputes which arise between the employer and employee relate to the rate of remuneration, it is difficult to see what object it was hoped to achieve by an arbitration act containing such a section."

To remedy the defect pointed out by the commission the act was amended in 1890 so as to permit employers and workmen, who had drawn up the agreement to form a board under the act, to authorize the board "to establish a rate of wages or price of labor or workman-

[a] Cf. supra, pp. 391–395.

[b] Report of the commission, 1889, p. 95.

ship at which the workmen shall in future be paid." The amendment also provided penalties for failure to abide by such agreements. This change was, however, of no avail and the act remained a dead letter.

THE TRADE DISPUTES ACT, 1894.

In 1894 another law was passed by Ontario, known as the Trade Disputes Act, 1894. Like the earlier law, however, this act was not original with Ontario, and this time the Province turned to the New South Wales law of 1892 for a model. The Ontario act is so nearly identical with the New South Wales law already described (for the most part verbatim), that reference to the latter, with an indication of the few differences of moment between the two, will be sufficient for an understanding of the Ontario law.

In the matter of the machinery for conciliation and arbitration the only important alteration made in the New South Wales system consisted in the omission of industrial districts and a permanent council of conciliation from which parties might choose a board for any particular case, thus leaving it to the parties to name any persons they choose for a board. Inasmuch as the New South Wales law permitted the omission of industrial districts (as was actually done in practice) and also gave the parties in any case the alternative of selecting a council outside the standing general council, it will be seen that the difference between the statutes on this point lies in the adoption by Ontario of but one of two courses offered in New South Wales rather than in any new features.

In the matter of procedure, however, one entirely new and important provision appears in the Ontario law in that where one party to a difference has applied for conciliation and named its conciliators and the other party has not after a reasonable time named them, then, provided the party applying has not resorted to strike or lockout, the council of arbitration may proceed to a hearing and render a decision as to the proper mode of settlement, and, if they think fit, add a statement as to the origin and causes of the dispute, with an opinion as to what parties are mainly responsible for it. A minor point in procedure which is new in the Ontario law is a requirement that in conciliation the parties shall before the hearing make a written statement of the case jointly, if possible, otherwise separately. But one other point of difference between the two laws need be mentioned, namely, that Ontario provides for two councils of arbitration—one to deal with all cases except those in railroad construction or service, the other for disputes in the latter industry.

A short amendment to the Ontario act was made in 1897 in no wise modifying the original act, but making additions thereto, as follows: (1) The lieutenant-governor of the Province may appoint

members of the council of arbitration directly whenever either employers or employees fail to make recommendations therefor; (2) whenever the mayor of a city or town is notified that a strike or lockout is threatened or has occurred in the municipality he shall at once notify the registrar[a] thereof, giving, if possible, the name of the employer, nature of the dispute, and number of employees involved; (3) whenever the council of arbitration is informed in any way, whether by a mayor or otherwise, of a threatened or actual strike or lockout, the amendment makes it the council's duty to place itself in communication with the parties and endeavor by mediation to effect an amicable settlement, and if it seems in the council's judgment best it shall inquire into the causes of the dispute, proceeding as in case of an ordinary reference; (4) finally, any two members of the council of arbitration are to be a quorum, and the council may order that an examination or investigation shall be made before a single member, though any decision of his shall not hold until approved by the council.

This amendment opens the way for a system quite different from that contemplated by the principal act. Under the latter, conciliation was to be had only before councils named by parties in dispute and the permanent arbitration council could be established only as members were nominated by employers and employees, and was for arbitration alone. Under the amendment the government can appoint a permanent council independently, which can act for both arbitration and conciliation, and for the latter purpose is not only permitted to act without any application from parties, but it is made its duty to intervene upon knowledge of a dispute. The Ontario arbitration council becomes thus much the same sort of an agency as the State boards of arbitration in the United States.[b]

In practical results the Ontario act of 1894 barely escapes the category of total failure. Down to 1902 action under it had occurred but three times and all of these were prior to March, 1900. The first case occurred in 1896 and constitutes the only instance in which either of the arbitration councils, which were duly appointed, was ever formally applied to by parties in dispute. In that year, during a strike in the tailoring trade of Toronto, the tailors' union called upon the council for action. But the employers, deeming this a sign of weakness on the part of the strikers, refused to join in the reference or appear before the council. So that, although the council investigated and reported, successful arbitration was out of the question. It will be observed that this one experience revealed the same difficulty with the system as was found in New South

[a] The registrar in Ontario corresponds to the clerk of awards in New South Wales.

[b] Cf. infra, pp. 591–606.

Wales, namely, that opposition on the part of either of the parties in dispute blocked all procedure. Just this, apparently, inspired the amendment of 1897 and the other two cases of action above referred to were precisely of the kind contemplated by that amendment. In each of these, upon the registrar's receiving informal notice of anticipated trouble, a member of the council promptly and successfully intervened in the capacity of mediator and thereby prevented a strike.(a)

Further amendment of the Ontario law was made by an act bearing date of March 21, 1902. This added two sections to the act of 1894, the important one reading as follows:

> If any difference shall arise between any corporation or person, employing ten or more employees, and such employees, threatening to result, or resulting in a strike or lockout, * * * it shall be the duty of the registrar, when requested in writing to do so by five or more of said employees, or by the employers, or by the mayor or reeve of the municipality in which the industry is situated, to visit the place of such disturbance and diligently seek to mediate between such employer and employees.(b)

This, like the amendment of 1897, has to do with conciliation as distinguished from arbitration. The earlier amendment opened the way for such procedure by the arbitration councils. Here the registrar alone, as well as the arbitration councils, is enabled to intervene for conciliation purposes. The second section of the amendment, which simply directs the registrar in a general way to endeavor to allay distrust, promote good feeling, etc., when he intervenes in disputes, is copied verbatim from section 5 of the Dominion Conciliation Act.(c)

This amendment has proved far more fruitful of results than that of 1897. The Ontario bureau of labor was established in 1900, and since 1901 the secretary in charge thereof has held also the office of registrar under the Trades Disputes Act. His report for 1902(d) states that during the year he had officially intervened as conciliator in 12 disputes, and the report for 1903(e) shows similar intervention during that year in 11 disputes. Most, if not all, of these were strikes or lockouts of which the same reports show that there were in Ontario a total of 75 in 1902, and 82 in 1903. The reports simply enumerate the cases in which intervention occurred, with no details to show the manner of intervention or results. In each of the reports

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a These facts as to results under the Ontario law of 1894 are as set forth in a statement by the registrar under the act in 1900, and in the Dominion Labor Gazette, Vol. II, p. 611.

b Sec. 4. The amendment in full is in the Labor Gazette, Vol. II, p. 610.

c Cf. supra, p. 549. d Pages 88, 89. e Page 113.

the secretary remarks that besides the above official cases he informally "assisted in the prevention and adjustment of a number of other disputes" (1902) or "acted in the capacity of adviser in a number of other cases in which disputes have been averted and adjusted" (1903). In both years, however, his experience led him to note that the existence of a provincial conciliator was unknown to many.

NOVA SCOTIA.

THE MINES ARBITRATION ACTS.

In 1888 Nova Scotia enacted a law, bearing date of April 16, dealing with collective disputes, but applying only to coal mines owned or leased from the Crown. This statute declared that "whenever any dispute shall arise between employers and employed of such mines in regard to wages the employer shall not dismiss or lock out the employed, nor shall the employed strike or abandon work, until after complaint in writing to the commissioner [of works and mines] and adjudication."[a] Disputes are to be brought before the commissioner either on complaint of one party (the employer or a majority of the employees) or by a joint application of both. In the former case the commissioner may summon both parties to come before him and present evidence, upon which he shall determine whether the dispute shall be submitted to arbitration. If he decides in the affirmative, the commissioner shall forthwith refer the dispute for arbitration.

Cases referred in either of the above ways go to a board of arbitrators composed of five members, two appointed permanently by the governor in council, the other three being chosen for each case as it arises, one by each of the parties, and these two naming a third. If either fails to appoint an arbitrator the two permanent members may act as a board, and if there is a failure to name a fifth arbitrator in the regular way he may be appointed by a judge of the supreme court or the commissioner of works and mines.

Every employer within the jurisdiction of the law must register with the commissioner the name of a recognized manager or agent, and employees when applying for arbitration must name a representative, and in any procedure these two act for the parties, and service of notices or processes upon them is service upon the parties. The books and accounts of employers are to be open to the inspection of the board through any person delegated for the purpose, who, together with the members of the board, must take an oath of secrecy as to the employer's affairs. Every award of the board is to be signed by at least three members and filed with the commissioner,

[a] Sec. 7.

who is to notify both parties of its nature, and a copy is to be filed with the prothonotary of the county. The board may refer any case for decision to a committee of three of their number, including the two appointees of the parties, but their award must be unanimous. Records of all proceedings are to be kept, and an annual report made by the chairman to the commissioner, who is to lay it before the legislature. All records are to be open to the commissioner's inspection. A unique form of money forfeit is provided for failure to abide by an award. Section 15 of the act prescribes that the employer "on receiving notice that arbitration is asked for by the employed may retain the wages of all the employed for the fourteen days preceding." If the award when made is not at once submitted to by the employed, the sum retained, minus the costs of the arbitration (covering practically all the expenses of the act, including members' per diem compensation), is forfeited to the employer. If, on the other hand, the employer does not submit to the award, he must pay the retained wages and forfeit an equal sum in addition, which, minus the costs, goes to the employed. The same forfeiture is also to occur for any breach of the prohibition of strike and lockout. Besides such forfeits, awards may, upon motion of either party, be made a rule of the supreme court, which may enforce them by ordinary legal process, directing a judgment to be entered or execution to issue for the amount thereof, and awards against an employer act as an attachment against his property. Appeal from decisions of arbitrators to the supreme court is allowed.

Providing, as it does, for reference of disputes upon the complaint of one party to be followed by enforceable awards, it will be seen that this is a compulsory arbitration system, and the act is notable as the earliest one providing that method for collective disputes. As indicated, however, it applied only to a limited field, namely, questions of wages in the coal mines under the direct control of the government.

With an analysis of its provisions the history of the Nova Scotia law of 1888 is complete, inasmuch as it was never put to practical use nor was the board of arbitration ever appointed. After two years that act was replaced by another with the same title and nearly identical with it, this second act and a short amendment to it bearing the same date, April 15, 1890.

The only noteworthy changes or additions introduced by the law of 1890 were as follows: First, the employees at each mine are to be divided into two classes, those working above ground and those employed below, and either class alone may apply for arbitration; further, a certificate signed by the chairman and secretary of a meeting called for the purpose by at least five of the employed, and notice of which shall have been for three days posted in three public places

about the mine, is declared to be sufficient notice to the commissioner of a desire for arbitration; thirdly, in deciding whether a case shall be submitted to arbitration the commissioner under the new act need summon only the party making complaint to appear and submit evidence, instead of both parties, as under the former law; fourth, a fine of $100 is imposed upon employers for refusal to register a manager and an additional $100 for every succeeding refusal upon request of the commissioner; finally, the provision for forfeit is changed so that instead of the employer retaining the fourteen days' wages of the employed, he is to deposit the amount, together with an equal sum in addition, in a chartered bank of the Province, all subject to the order of the commissioner and to be applied by him in accordance with the same provisions as before.

In 1901 two brief amendments to the law of 1890, bearing date of April 4, were passed. The only important change made thereby consisted in an alteration of the forfeit plan, so that employers are to retain wages equal to not more than $3 for each employee instead of fourteen days' pay for each as before, to be deposited together with an equal sum from the employers, as formerly.

The record made by the law of 1890, which is still in force, is scarcely better than that of the earlier act, for up to the middle of 1905 it had been put in force in only two cases.[a] The only one of these for which details are at hand was in the early part of 1901 and was proceeding just at the time the amendments of that year were passed. In January a demand for an advance in wages had been made by all the coal miners of the Province. In many collieries the increase was readily granted, but in some it was refused. After deliberation, the employees at one of the latter applied to the commissioner of public works and mines for arbitration under the act of 1890. The commissioner having approved the application, the board of arbitrators was appointed and its award, rendered April 25, settled the dispute and averted a threatened strike. In connection with this case it should be observed that in the same general dispute the miners of another company in the same locality appealed to the Dominion Conciliation Act[b] for the appointment of a conciliator, preferring that to arbitration.[c]

THE CONCILIATION ACT, 1903.

In 1903 the Province of Nova Scotia made provision for peaceable settlement of industrial disputes in any industry by a law which re-

[a] According to a statement by the commissioner of public works and mines in 1905.

[b] Cf. supra, pp. 549, 550.

[c] This case is described in the Canadian Labor Gazette, Vol. I, p. 507, and Vol. II, p. 21.

ceived the royal assent on April 11 and which is known as the Conciliation Act, 1903. For this statute the British Conciliation Act of 1896(a) was copied practically entire and without alteration, save for the substitution of the provincial secretary for the British Board of Trade as government administrator of the act. To the law of the mother country, however, the provincial statute adds certain specifications with reference to the district or trade boards of conciliation whose establishment both laws make it the duty of the government to assist.

Under the Nova Scotia act such a board is to consist of six members, three named by the employers and three by the employees. In the first week in January of each year each of those classes is to send to the other the names of six persons for representatives on the board, three of whom shall be designated as members for the current year, the other three being available for appointment in case of death or resignation of any of the first three. Boards shall have jurisdiction for "all questions arising between the employer and the workmen, including any question between one trade and another" (sec. 6); but for disputes affecting more than one trade a joint conciliation board must be formed, composed of the three employees' representatives from each trade and an equal number of representatives of the employers. Conciliation boards are left free to establish their own rules of procedure. Section 5 of the act directs that a board of conciliation, "if unable to agree, shall make application to the provincial secretary for the appointment of a person to act as arbitrator." Finally, the law makes no provision for any compulsion in connection with either reference of disputes or acceptance of decisions; but it declares that "upon any difference arising between an employer and any of his workmen, or upon the works of an employer, from any cause whatever, the subject-matter of dispute shall be referred to the board of conciliation, which shall be summoned within seven days, and if practicable shall give its decision within the next six working days," and also declares that the decision of a board or of an arbitrator "shall be final and binding on both parties."

The provincial secretary of Nova Scotia states that up to June, 1905, the provisions of the Conciliation Act of 1903 had not been invoked in any dispute.

BRITISH COLUMBIA.

By a law of April 12, 1893, the Province of British Columbia provided for a bureau of labor statistics and at the same time for conciliation and arbitration in labor disputes. So far as concerns the latter subject, the act simply copies the New South Wales law of 1892 entire, being for the most part word for word identical with it.

(a) Cf. supra, pp. 402, 403.

Such variations from the New South Wales act as do appear concern matters of insignificant detail only and need not therefore be mentioned in particular save to note that the functions delegated to the clerk of awards in the New South Wales law were to be performed by the commissioner of labor statistics or his deputy in British Columbia.

The measure in British Columbia was from the first naught but a dead letter, as the councils for which it provided were never even established. The year after it became law it was repealed by the Labor Conciliation and Arbitration Act, 1894. Abandoning the permanent councils of the former law, this act provides for conciliation and arbitration before councils appointed for each case as it arises, thus:

Reference of disputes is entirely voluntary, and may be accomplished either by a joint agreement of the parties or by an application made by one and assented to by the other. Reference may be made either to conciliation, to be followed by arbitration if necessary, or to arbitration direct. Applications are to be made to the commissioner of councils of labor conciliation and arbitration, which office is to be filled by the secretary of the Province upon designation thereto by the governor.

Members of conciliation councils are to be appointed by the governor upon nomination of the parties. If the reference is by joint agreement, each party is to appoint two members, four making up the council. If one party alone takes the initiative, it is to name its two members at the time of application, whereupon the commissioner shall request the other party to name two, and if the other two be not nominated within ten days the reference is voided; but either party may again apply for a reference. If the conciliation council fails to arrange an amicable agreement it must so report to the commissioner, who shall notify each party of the result, whereupon the two may jointly require him to refer the case to an arbitration council with which all records shall then be filed.

Councils of arbitration consist of three members appointed by the governor, two (one for each party) being nominated by the conciliation council before considering a case, and the third being chosen by the other two, within four days of their appointment, from the judges of the supreme court of British Columbia, or if he be not agreed upon by the other two, to be designated directly by the governor. If disputes are referred to arbitration in the first instance, the parties are to name the two arbitrators. Members of the conciliation council may sit with the council of arbitration, but only in an advisory capacity. No counsel or paid agents may appear. Decisions are to be by majority vote, to be rendered within seven days after

hearings close, and to be filed with the commissioner and made public. If both parties agree beforehand to be bound by it the award may be made a rule of the supreme court on the application of either party.

Members of either council may request the commissioner to summon witnesses and anyone refusing to attend and testify may be fined not over $20 by any justice of the peace. The compensation of members of councils and all other expenses, except those of the parties and their witnesses, are to be paid by the government. Finally, one limitation is put upon the jurisdiction of the act in that no dispute affecting less than 15 employees may be the subject of conciliation or arbitration under it.

As to practical results no more can be said for this law of 1894 than for its predecessor. No proceedings for conciliation or arbitration under it had been taken down to 1901, according to a statement by the deputy provincial secretary in that year, and none have occurred since.

QUEBEC.

A law of March 28, 1901, comprises Quebec's legislation concerning conciliation and arbitration. It is unnecessary to more than mention the statute, however, as it is simply a copy of the unsuccessful Ontario law of 1894 without the subsequent amendments. Beyond slight variations in phraseology but four changes were made in the copying, and these touch no points of any consequence.

By act of April 25, 1903,[a] the Quebec law of 1901 was amended in much the same manner as was the Ontario law in 1902,[b] the Ontario amendment manifestly having served as model for Quebec legislation just as the principal Ontario act had. By the amendment in Quebec, as in Ontario, provision was made for intervention by the registrar alone, that official being directed to intervene and endeavor to effect a settlement by conciliation in any dispute in which a strike or lockout has occurred or is threatened whenever he is requested so to do by five or more employees, or by the employers, or by the mayor of the municipality in which the dispute exists. In one important respect, however, the Quebec amendment goes further than that of Ontario by making it the duty of the registrar, whenever such a dispute as above described comes to his knowledge, "either from the newspapers or otherwise," to visit the locality for purposes of intervention "without awaiting for a request in writing to be made to him." The remainder of the Quebec amendment simply gives general directions as to what the registrar is to do when intervening either by request or on his own motion, these being somewhat more specific but to practically the same intent as those laid down in the Ontario

[a] Edward VII, chap. 25. [b] Cf. supra, p. 561.

amendment, the registrar being directed to "inquire into the causes and circumstances of the dispute, take such steps as to him seem expedient for prevailing upon the parties to meet and settle their disputes themselves, and promote agreements between employers and workmen with a view of inducing them to submit their disputes to a council of conciliation or arbitration before having recourse to strikes or lockouts."

Under the Quebec act of 1901 a registrar, under the title of "clerk of the councils of conciliation and arbitration," was duly appointed, and his annual reports to the minister of colonization and public works reveal the facts as to the operation of the law.

By public notice and circulars the clerk called upon the various organizations or persons entitled to vote for nominees to the arbitration councils to put themselves in communication with him for the purpose of such nomination. For the councils for disputes outside of railways, 28 persons or associations representing employers, and 52 labor organizations claimed the right to vote, but of these only 12 of the former and 28 of the latter actually made nominations from which appointments were made, and the council of arbitration for other than railway disputes was duly organized March 8, 1902. The council of arbitration for railway disputes was never organized, as no employers or employees in that industry made any reply to the clerk's communication. In view of the results as to the formation of the arbitration councils, the clerk in his first annual report, made in June, 1902, remarked that the act "has not, therefore, at the start yielded all the results that we had a right to expect from it."

Even more discouraging, if anything, was the first report as to the conciliation provisions of the law. The clerk reported that "since the putting in force of this law several conflicts have arisen in which, I regret to say, the employers have refused to have recourse to it," and cited specifically five such cases in which he had called the employers' attention to the law, and proposed the formation of a council of conciliation thereunder, thrice upon his own motion and twice upon request of the workers, only to be met in every case by the employers' refusal. The clerk therefore urged the need of an amendment "to provide for less complicated means of execution in order to attain the object aimed at by the law," and suggested that the clerk should be empowered to proceed to the locality of disputes and act as conciliator upon his own initiative. As already noted, the recommendation of the clerk was carried out in the amendment of April 25, 1903.

For the year ended June 30, 1903, five cases under the law are reported by the clerk. One of these, which occurred before the amendment of 1903, is the only instance in which the conciliation method provided by the original law of 1901 was ever carried out.

In this instance a strike was threatened, but the men appealed to the clerk, whose proposal to the employer of a council of conciliation under the law was accepted, the council was duly formed, and the dispute settled therein without any strike intervening. The other four cases in 1902–3 occurred subsequent to the 1903 amendment. In one (a strike) the men asked for a conciliation council under the act, but the employer refused; in two the clerk intervened of his own motion and reported, "I have reason to believe that my intervention contributed to the final settlement of these two strikes," since in each the mode of settlement suggested by him was ultimately followed, though his efforts at the time of intervention were unavailing; and in the remaining case (a strike) the clerk proposed to intervene, but found the dispute already on the way to a settlement.

For the year ended June 30, 1904, nine specific cases of proposed or actual intervention under the law are reported. To judge by a somewhat indefinite allusion, there may have been some other cases in this year in which the clerk offered his services, but it is stated that "in none of those cases would the parties have recourse to conciliation." Five of the above nine cases were strikes. The action taken in all nine cases was by the clerk alone, and upon his own initiative, save in one instance (not a strike), when the workers requested his intervention, and in all of the strike cases action was not taken until after the stoppage of work. In one case (a strike) the clerk succeeded in effecting a settlement by conciliation; in one case (not a strike) he found that the dispute was already settled; in one case he found the strike virtually terminated by the hiring of new hands; while of the remaining six cases in which the clerk intervened, in five his efforts failed to effect a settlement and in the remaining case the result is not indicated by the report.

SOUTH AMERICA.

ARGENTINA.

Notable chiefly as being the first legislation of the kind in South America is a recent decree[a] of Argentina, bearing date of October 20, 1904, which provides for conciliation and arbitration in certain cases of collective industrial disputes, namely, disputes over questions of Sunday rest or the maximum day's work.

When such differences arise it is made the duty of the chief of police of Buenos Ayres, the capital, to intervene and offer his services as mediator to the parties. In such intervention that official is directed to inquire into the causes of the dispute, and then request

[a] The present account of this decree follows that in the British Labor Gazette, December, 1904, p. 361, which was based on information furnished by the British minister at Buenos Ayres.

of the parties or their representatives an interview in which each side may state its view of the motive and origin of the controversy. If the offer of mediation by the chief of police is accepted, he shall endeavor to bring the parties to an amicable agreement, and if such a settlement be effected a written agreement shall be drawn up which shall contain both the terms of settlement and the obligation of either side of complying therewith.

If the offer of mediation by the chief of police be not accepted, or if his conciliation efforts fail, he is authorized to offer his services as arbitrator or for the purpose of forming an arbitration tribunal composed of one or more persons agreed upon by the parties. If either mode of arbitration be accepted, a written submission of the case shall be drawn up setting forth the issues and the obligation of both parties to abide by the award. The arbitration tribunal (chief of police or board) is to receive the claims of each party and consider those which it thinks necessary, in order to render a decision within the period stated by written submission. The award, when given, must be signed by both parties, or their representatives. If the chief of police acts as arbitrator he may request the services, if necessary, of the procurator fiscal to the federal courts as assessor.

It is worthy of note that the designation of a police officer to fulfill the functions of conciliator or arbitrator in industrial disputes is unique in legislation upon the subject. All the proceedings specified by the Argentine decree, however, are entirely voluntary for the parties.

THE UNITED STATES.

FEDERAL LAWS.

In 1885 the number of strikes in the United States, which previous to that year had been under 500 per annum, involving less than 155,000 work people, rose to 645, and threw 242,705 employees out of work, and in 1886 the number of strikes leaped up to 1,432, involving 508,044 workers.[a] On April 22, 1886, President Cleveland sent a special message to Congress, calling attention to this "problem which recent events and a present condition have thrust upon us," and recommending legislation by Congress to provide for the adjustment of labor controversies. Such legislation, it was pointed out, was entirely proper for disputes touching interstate commerce, and in the President's opinion should proceed along the lines of voluntary arbitration. A commission of three, composed of the United States Commissioner of Labor, with two other arbitrators to be attached to the Commissioner's Department as a permanent arbitration body,

[a] See Sixteenth Annual Report of United States Commissioner of Labor, p. 16.

was suggested. It was also recommended that this commission should be given power "to investigate the causes of all disputes as they occur, whether submitted for arbitration or not, so that information may always be at hand to aid legislation on the subject when necessary and desirable."[a]

Several bills dealing with the settlement of industrial disputes had been introduced in Congress in March, previous to the transmission of this message, and one of these passed the House before the close of the session. In the succeeding session this bill also passed the Senate (February, 1887), but failed to receive the President's signature. This defeat led to the introduction of the bill once more in the House, but altered, according to its introducer, "to conform to the views of the President" by the addition of a provision for independent initiative by the Government for either arbitration or investigation of disputes. With some amendment this measure finally passed both Houses, and was approved by President Cleveland October 1, 1888.

THE LAW OF 1888.

The law of 1888 applied only to disputes between "railroad or other transportation companies" engaged in interstate traffic or commerce within the Territories or the District of Columbia and their employees, whenever such disputes "may hinder, impede, obstruct, interrupt, or affect transportation of property or passengers." It provided two distinct lines of action, the one voluntary arbitration to be instituted by the parties, the other public investigation of disputes and mediation upon the initiative of the Government.

For arbitration purposes it was provided that upon the written proposition of one party to a dispute, if the other agreed, a board of arbitration might be formed, the railroad to appoint one member, the employees another, and these two members to choose a third, as chairman, all three to be "citizens of the United States and wholly impartial and disinterested in respect to such differences or controversies." Such a board was to "possess the same power as to subpœnaing witnesses, compelling their attendance, administering oaths, preserving order during sittings, and compelling production of papers and writings relating to disputes, as are possessed by United States commissioners appointed by a United States circuit court." Its duties were to organize at once at the nearest practicable point to the place of origin of the controversy and "to hear and determine the matters of difference which may be submitted to them in writing by all the parties," giving all parties full opportunity to be heard in person or by witnesses, and, if so desired, repre-

[a] Senate Ex. Doc. No. 130, 49th Cong., 1st sess.

sented by counsel. The board's decision, a majority vote being sufficient therefor, was to be publicly announced and transmitted, together with the testimony taken, to the United States Commissioner of Labor and be immediately published by him. With the rendition of the decision the board's duties were to cease, and the acceptance of the award was left entirely to the will of the parties.

So much of the act of 1888, it will be seen, was simply permissive in character, and save for the power it granted with reference to witnesses and the production of evidence and the publication of decisions by the Commissioner of Labor did no more than lend Government sanction to a procedure which parties in dispute could have carried out without the law. As a matter of fact, in no dispute did employers or employees ever attempt to make use of these provisions.

The remainder of the statute provided for more positive action by the Government and gave the President power, in case of any dispute affecting interstate or territorial commerce, to appoint two commissioners, one at least from the State or Territory in which the controversy arose, who, with the Commissioner of Labor as chairman, should constitute a "temporary commission for the purpose of examining the causes of the controversy, the conditions accompanying and the best means for adjusting it, the result of which examination shall be immediately reported to the President and Congress, and on the rendering of such report the services of the two commisioners shall cease." Such a commission was to have the same powers as the above described arbitration boards appointed by the parties. Further defining the commission's duties, it was prescribed, in precisely the same terms as are used in directions for arbitration in several State laws,(a) that "upon the direction of the President * * * the commission is to visit the locality of the pending dispute, * * * make careful inquiry into the cause thereof, hear all persons interested therein who may come before it, advise the respective parties what, if anything, ought to be done or submitted to by either or both to adjust such dispute, and make a written decision thereof," such decision to be made public and to be recorded by the Commissioner of Labor. The services of such a commission might be tendered by the President either upon his own motion, upon request from one of the parties, or upon request from the executive of a State.

In this second portion of the law of 1888 the way was opened for Government intervention independent of the parties for the purpose of authoritative investigation and publication of the facts regarding disputes, together with some measure of conciliation. Only once did such intervention occur. The great railroad strike at Chicago in 1894 in sympathy with the workmen at Pullman began on June 26

a Cf. infra, pp. 588–591.

and was virtually ended by July 13. On July 26 President Cleveland issued a commission appointing United States Commissioner of Labor Carroll D. Wright, John D. Kernan, of New York, and Nicholas E. Worthington, of Illinois, as commissioners, under section 6 of the law of 1888, and directing them to proceed to Chicago to carry out the duties prescribed by that section, viz, to examine "the causes of the controversy, the conditions accompanying, and the best means for adjusting it; the result of which examination shall be immediately reported to the President and Congress."[a] Manifestly this commission, appointed two weeks after the close of the strike, could be of no service toward settling that dispute. It could, however, carry out the terms of the statute to the extent of examining as to the facts in the controversy and the best means of settling such disputes in general.

The commission convened in Washington on July 31 and adopted a resolution fixing August 15 as the date for assembling at Chicago. Sessions were held in Chicago for thirteen days, August 15 to 30, with a subsequent session in Washington on September 26. Witnesses to the number of 109 were examined, 28 of whom were called by the commission, the others being presented by the parties to the dispute, save one who volunteered his testimony. November 14 the commission made its report to the President, who laid the same before Congress on December 10.

Printed in an octavo volume, the document contains the general report of the commission in 42 pages, 651 pages of testimony given before the commission in Appendix A, and a second appendix of 25 pages containing a summary of remedies for and methods of settling industrial disputes, suggested in various communications received by the commission. The general report presented an extensive review of the strike and the commission's conclusions and recommendations. The former was not simply historical, but critical as well, with frequent criticism by the commission of the acts or attitude of the parties in various stages of the dispute. The recommendations of the commission were addressed in three directions, viz, to Congress, to the States, and to employers. Of those along the latter two lines suffice it to say that the commission urged the States generally to adopt some system of conciliation and arbitration like that of the State board in Massachusetts, and to make illegal all contracts requiring employees, as a condition of employment, to agree to leave or not to join labor organizations, and urged employers to recognize labor organizations and the reciprocal relations of employer and employed and to voluntarily consider the interests of labor as well as those of capital.

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[a] Sec. 6 of the law.

It was through its recommendations to Congress that the commission's work was most likely to produce tangible results. In these the commission urged in general that there should be a permanent tribunal always ready to deal with railroad disputes; that such a tribunal should have the power to intervene upon its own motion as well as upon request from parties in dispute; that it should aim first at conciliation, but where that failed should investigate and fix responsibility for the dispute in a published report for the guidance of public sentiment. Specifically, it was proposed:

(1) That a permanent strike commission be established, consisting of three members, with duties and powers of investigation and recommendation in case of disputes similar to those of the Interstate Commerce Commission in respect to rates, etc.; that the United States courts should be given power to compel railroads to obey the decisions of the commission; that railroads and incorporated trade unions engaged in any controversy should each have the right to appoint a representative to serve as temporary member of the commission for that dispute; that during the pendency of a proceeding before the commission strike or lockout should be unlawful, and for six months after a decision had been rendered it should be unlawful for the railroad to discharge workmen in whose places others were to be employed, except for inefficiency, violation of law, or neglect of duty, or for said employees to quit the service without thirty days' notice, or for a union to order or counsel otherwise.

(2) The commission recommended that existing statutes be so amended as to require that national trade unions should provide in their articles of incorporation and in their constitutions, rules, and by-laws that a member should forfeit all his rights and privileges as such for participating in or instigating force or violence against persons or property during strikes or boycotts, or for seeking to prevent others from working by violence, threats, or intimidation, but that at the same time the members of such incorporated unions should be no more liable personally for corporate acts than are stockholders in corporations.

Eight days after the report of the Chicago commission had been laid before Congress, a bill for an act to replace the law of 1888, drafted by two members of the commission at the request of the House Committee on Labor, was introduced in the House of Representatives. In every session for the next three years this or similar bills were before Congress, but not until 1898 was a law passed. There does not appear to have been any serious opposition in either House to these measures, committee reports were favorable, and twice bills were passed by the House. Both the national political parties in 1896 inserted planks in their platforms in favor of legislation to provide for the settlement of railroad disputes. The long delay in

securing such legislation was apparently simply the result of the crowding out of the subject by other matters. In 1898, however, a bill was finally gotten through both Houses, and received the President's approval on June 1.

THE LAW OF 1898.

The act of 1898 superseded that of 1888, and is the law now in force. Compared with the earlier statute, the law of 1898 is much more precise and detailed in its provisions. Comparison of the main features of the two measures shows that while the act of 1888 provided for (1) arbitration, (2) authoritative investigation, and, more or less incidentally to the second, (3) conciliation, that of 1898 provides only for (1) conciliation and (2) arbitration.

Section 1 of the law of 1898 defines carefully its jurisdiction, which is, however, essentially the same as was that of the law of 1888, extending to all railroads engaged in interstate commerce and such of their employees as are engaged in train service.

The provisions for conciliation are contained in section 2 and simply direct that in case of disputes concerning wages, hours of labor, or conditions of employment which seriously interrupt or threaten to seriously interrupt the business of a railroad the chairman of the Interstate Commerce Commission and the Commissioner of Labor shall, upon request from either party, promptly endeavor to settle the controversy by mediation and conciliation, and if such efforts prove unsuccessful they shall endeavor to secure an arbitration as provided for in the law. It will be observed that in place of a temporary body for each dispute, as in the law of 1888, there is here a permanent agency always ready to act; but that, on the other hand, while under the old law the Government could intervene independently of the parties, under the present law the Government may intervene only upon request from at least one of the parties.

All but three of the remaining twelve sections of the act are devoted to arbitration. As in the act of 1888, so here, arbitration under the law is absolutely voluntary as to submission thereto and can occur only by agreement of both parties. The arbitrating body remains essentially the same as before, consisting of three persons, one each named by the parties and the third chosen by these two. The later law adds, however, that when the employees are members of a labor organization that organization shall name their member, and that in case the two members fail to choose a third within five days after their first meeting the odd member shall be appointed by the chairman of the Interstate Commerce Commission and the Commissioner of Labor. Again, as in the old law, the board of arbitration is given full power to secure testimony and documentary evidence.

But when it comes to the procedure for arbitration, and the matter of enforcement especially, the law of 1898 departs widely from the earlier act. Whereas the old law specified simply that the case should be submitted in writing, that all parties should be heard and a written decision published, with nothing said of enforcement, the present statute requires that the parties shall bind themselves under pain of liability for damages to refrain from strike or lockout pending the arbitration, not to evade the award for a month at least by ceasing to hire or be employed, and, if work and employment are continued, to fulfill its terms for a year, and the award is made enforceable as the judgment of a United States court.

Examining further these arbitration features peculiar to the law of 1898, it is found that the parties in their signed submission, besides stating the questions at issue and the time and place of hearing, must stipulate five things, namely: (1) That pending the arbitration the status immediately prior to the dispute shall not be changed, with the proviso that the hearing of the case shall begin within ten days and the award shall be filed within thirty days after the third arbitrator is chosen; (2) that the award, when filed in the clerk's office of the United States circuit court of the district, shall be final and conclusive upon the parties, unless set aside for error of law apparent on the record; (3) that the parties will faithfully execute the award, and that it may be enforced in equity so far as the powers of a court of equity permit; (4) that for three months after the award is rendered employers and workpeople who may be dissatisfied therewith shall not, on account of such dissatisfaction, sever the relation of employer and employed without thirty days' written notice; and (5) that the award shall continue in force for one year and no new arbitration on the same subject between the same parties shall be had during the year unless the award be set aside on appeal. This strong agreement is to be acknowledged by the parties before a notary and a copy filed with the chairman of the Interstate Commerce Commission. It is to be signed for the employees by their labor organization or by them individually if unorganized. In the latter case upon receipt of the agreement the chairman of the Interstate Commerce Commission is to notify the arbitrators of the time and place of the hearing, but he shall do so only when he is satisfied that the signers represent a majority of all the employees in the same grade and class in the service of the same employer, and that an award can justly be regarded as binding upon all such employees.

For the enforcement of the first and fourth stipulations of the agreement it is made unlawful during the arbitration proceedings for the employer to discharge his employees except for inefficiency, violation of law, or neglect of duty, or for the organization of the

employees to order a strike, or for such employees individually to unite in, aid, or abet a strike; and for a period of three months after the rendering of an award it is illegal for an employee to leave his employer or for the employer to discharge an employee without thirty days' notice, or for an employees' organization to order or counsel otherwise, except that this restriction applies only to leaving employment "without just cause" and to discharges for reasons other than "inefficiency, violation of law, or neglect of duty." The penalty for violation of the above prohibitions is liability for damages, provided, however, that nothing in them shall be construed to prevent an employer from reducing his force of employees "whenever, in his judgment, business necessities require."

For the enforcement of the awards it is provided that they shall become operative as soon as filed in the clerk's office of the United States circuit court, and judgment shall be entered upon them accordingly within ten days. During these ten days either party may file exceptions for matters of law apparent on the record, which shall be decided by the circuit court, subject, however, to appeal to the circuit court of appeals, whose decision on the exceptions shall be final. If exceptions are sustained judgment setting aside the award shall be entered, but in such case the parties may, if they choose, agree upon a judgment to be entered, which shall have the same force as an award. It is expressly provided in connection with the enforcement of awards that "no injunction or other legal process shall be issued which shall compel the performance by any laborer against his will of a contract for personal labor or service."

The above covers that portion of the act of 1898 dealing with conciliation and arbitration. It remains to note three special provisions of the law. By one it is directed that where a receiver appointed by a Federal court is in control of a railway the employees of the road shall have the right to be heard by such court upon all questions affecting the terms and conditions of their employment, and such receiver shall not reduce wages without the authority of the court given after due notice to the employees. Again, it is enacted that in every incorporation of a national trade union under the Federal law therefor,[a] the articles of incorporation and the constitution, rules, and by-laws of the union must provide that a member shall cease to be such by participating in or instigating force or violence against persons or property during a strike, lockout, or boycott, or by seeking to prevent others from working through violence, threats, or intimidations. At the same time members of such incorporated unions are relieved of all personal responsibility

[a] Laws of 1885–86, chap. 567.

for the acts, debts, or obligations of the organization, and the organization may not be held liable for illegal acts of members. Finally, it is made a misdemeanor punishable in United States courts by a fine of from $100 to $1,000 for a railroad subject to the act to require of an employee an agreement not to join a labor organization, or to threaten him with loss of employment or unjustly discriminate against him for such membership, or to require of employees contributions to any fund for charitable, social, or beneficial purposes, or to require employees to release the employer from legal liability for injuries because of contributions to such a fund, or to "blacklist" discharged employees.

Recapitulating, so far as concerns the settlement of industrial disputes the Federal law of 1898 provides for (1) conciliation by a permanent Government agency with power to intervene upon request from one party, and (2) arbitration, by a board to be appointed for each dispute by the parties, the arbitration after the case has been submitted being compulsory in character but the submission thereto being entirely voluntary for both parties. One general characteristic of the act may here be emphasized also in that it not only recognizes but encourages organization of railway employees, as affording better opportunity for successfully dealing with disputes.

Compared with the recommendations of the Chicago commission of 1894, the law of 1898 is found to follow many of them quite closely, and to contain practically all of them with three important exceptions. In the first place, the law of 1898 contains no provision for authoritative investigation and report as to the causes of disputes, which was considered important by the commission for the sake of enlisting public sentiment as a force toward settlement. In the second place, the law permits no independent initiative on the part of the Government for conciliation purposes, whereas the commission emphasized the need of an independent agency to promptly intervene without waiting for a request from one of the parties. Thirdly, and most important of all, the commission was in favor of a permanent Government commission for purposes of arbitration, with powers similar to those of the Interstate Commerce Commission—that is, able to intervene upon the complaint of one party and render a decision enforceable in the courts (against the employer), whereas the law provides no permanent or Government arbitrating body at all, and its temporary arbitration board can act only upon consent of both parties. The difference here is fundamental and amounts essentially to the difference between compulsory arbitration before a Government tribunal and voluntary arbitration before a private tribunal. The difference as to the compulsory character of the arbitration hangs upon the submission which in the law is absolutely voluntary, but which the com-

mission evidently intended should be compulsory upon the complaint of one party.[a]

The United States Industrial Commission in 1901 reported that in one or two instances the chairman of the Interstate Commerce Commission and the Commissioner of Labor, acting under the law of 1898, had put themselves in communication with the parties to a dispute, but that in all such cases the railway companies had refused to arbitrate.[b] Aside from this the present law has never been put in use for the settlement of disputes.

STATE LAWS.

At the beginning of the year 1905, 24 States had passed laws for industrial arbitration or conciliation, and 1 other State by its constitution directed such legislation. The earliest law upon the subject was passed in Maryland in 1878, and the second by New Jersey in 1880. In 1883 Pennsylvania passed her first arbitration act, and the first Ohio statute was enacted in 1885. New York, Massachusetts, Kansas, and Iowa all legislated upon the subject in 1886, followed by Montana and Colorado in 1887, Missouri and Michigan in 1889, North Dakota in 1890, California in 1892, and Louisiana in 1894. In 1895 Wisconsin, Texas, Minnesota, Connecticut, and Illinois were added to the list, with Utah in 1896, Indiana and Idaho in 1897, and Washington in 1903. In Wyoming the constitution of 1890 directs such legislation, which has not as yet been enacted, however. The laws of Utah and Idaho, it may be noted, accord with express provisions in the constitutions of those States.[c]

A very little comparison of the State laws reveals marked similarities in many cases, so that they may all be grouped in four classes, as follows, the States whose laws are included and the years in which their earliest acts providing for the system in question were passed being given in each case:

1. Laws providing for local arbitration, with no permanent agency therefor: Maryland,[d] 1878; New Jersey,[e] 1880; Pennsylvania,[f] 1893; Texas, 1895.

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[a] The commission was not entirely specific as to this matter of submission, but its language in the discussion of recommendations and its use of the Interstate Commerce Commission as a model for the proposed strike commission scarcely leave any other interpretation possible.

[b] Report of United States Industrial Commission, Vol. XVII, p. 424.

[c] Compilations of American laws may be found in the reports of several of the State boards of arbitration. These include only those statutes remaining in force at the time of publication. The most complete, perhaps, may be found in the Massachusetts and New York reports.

[d] See also under 3. [e] See also under 4. [f] See also under 2.

2. Laws providing for permanent district or county boards established by private parties: Pennsylvania, 1883; Ohio,[a] 1885; Iowa and Kansas, 1886.

3. Laws providing for arbitration or conciliation through the agency of State commissioners of labor: Colorado,[a] 1887; Missouri,[a] 1889; North Dakota, 1890; Washington, 1903; Maryland, 1904.

4. Laws providing for a special State board or commission for the settlement of industrial disputes: New York, 1886; Massachusetts, 1886; Montana, 1887; Michigan, 1889; California, 1891; New Jersey, 1892; Ohio, 1893; Louisiana, 1894; Connecticut, Illinois, Minnesota, and Wisconsin, 1895; Utah, 1896; Colorado, Idaho, and Indiana, 1897; Missouri, 1901.

In the following pages these groups are taken up in the order named above for an analysis of the various State laws. The quotations used in the course of the analysis are from the laws under consideration.

Local Arbitration with No Permanent Agency.

This was the earliest system tried in the United States, having been established in Maryland by act of April 1, 1878.[b] This law, which is still in force, provides three modes of procedure for arbitration in industrial disputes: First, the parties may by agreement refer the dispute to a judge or justice of the peace, whereupon the judge or justice may "hear and finally determine in a summary manner" said dispute; second, the parties may agree to submit the case to arbitration, whereupon any judge or justice of the peace, upon application, is to appoint two or four persons, one half employers and the other half employees, who, with the judge or justice, "shall have full power finally to hear and determine such dispute;" third, the parties may by agreement adopt any other mode of arbitration, and the award "shall be final and conclusive between the parties." In case of the first two methods provision is made for enforcing awards in that, after four days for opportunity to show fraud or malpractice or failure to give the parties due notice in the arbitration, the decisions are to be entered as judgments of the judge or justice rendering them or appointing the arbitrators, and "execution thereon shall be awarded as upon verdict, confession, or nonsuit." The costs of any arbitration are to be borne equally by the parties.

The Maryland law makes special provision for disputes to which any corporation incorporated by the State and in which the State is interested as a stockholder or creditor is a party. In such a case the State board of public works has power, if it considers that the dispute

[a] See also under 4.

[b] Code of Public Laws, art. 7.

will tend to "impair the usefulness or prosperity of such corporation," to demand and receive a statement of the case from the parties, to propose arbitration to them if it thinks fit, and provide for the carrying out of the same if accepted. In case either party declines such a proposal, it is the duty of the board to "examine into and ascertain the cause" of the dispute and report to the next general assembly.(a)

The New Jersey law of March 10, 1880,(b) provides that if a majority of the employees in any manufacturing establishment give notice to the employer that they are dissatisfied with existing or proposed conditions of labor and that they propose to submit the matter to arbitration and have appointed an arbitrator to represent them, "it shall be the duty" of the employer, in case he can not adjust the dispute and if he "chooses to accept" arbitration, to name another arbitrator. These two are then to select a third, and the three are to hear and examine the case, for which purpose they may administer oaths, and render a written decision, which shall be "deemed to be binding upon both parties submitting the matters in dispute to arbitration." Parties may be represented by counsel at hearings. Costs are to be apportioned as the parties agree or the arbitrators decide.

In 1886 the above was supplemented by another law dated April 23.(c) Thereby it was provided that any dispute between employers and employees engaged in manufacturing may "by mutual consent of the parties" be submitted in writing to a board of five arbitrators, two named by the employer and two by a majority of the employees at a special meeting held for the purpose, these four selecting a fifth, who shall be chairman. These arbitrators shall take an oath to faithfully and impartially discharge their duties. They are given power to compel the attendance of witnesses and the production of books and papers by means of subpœnas issued by local courts. Proceedings "shall be, as far as possible, voluntary," and counsel are not permitted to appear under the act of 1886, and the costs of arbitration under that law are to be met by "voluntary subscription." Within five days after the completion of hearings the board is to render a written decision, which the law declares "shall be a final settlement" and "binding and conclusive between the parties."

The laws of 1880 and 1886 still stand on the New Jersey statute books. Besides these there is also provision for local arbitration in the act of 1892, which established a State board of arbitration. The local arbitration features of this law of 1892 are considered below in connection with similar provisions in several other States.

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a See also, infra, p. 590, for law providing for intervention of the chief of the bureau of industrial statistics.

b Public laws of 1880, chap. 138.

c Laws of 1886, p. 315.

The State of Pennsylvania had in 1883 established the second of the four systems indicated in the above classification of laws, but in 1893 provided also for local arbitration without permanent agency in an act bearing date of May 18.(a) This law is still in force. Though by no means identical with either, it resembles the Maryland statute much more than that of New Jersey. It provides for but one mode of arbitration, but prescribes for that with considerable detail. Whenever a difference arises either party, or both parties jointly, may apply to the local court of common pleas to constitute a board of arbitration. When this application is made jointly the court may at its discretion "grant a rule on each of the parties * * * to select three citizens of the county of good character and familiar with all matters in dispute" as members of the board, and when these have been appointed the court is to name three more "of well-known character for probity and general intelligence, and not directly connected with the interests of either party to the dispute," the board thus consisting of nine members. The chairman is to be named by the court and to be one of the three members appointed by it. If but one party applies to the court, the latter is to "give notice by order of court to both parties," requiring each of them within ten days to appoint the three members as above, and if either party then refuses or neglects to make the appointments, the court is to name the six persons necessary to make up the board. The law prescribes the fullest possible hearing of cases, the board having power to compel attendance of witnesses and the production of evidence. Parties are allowed counsel if they so desire. The decision of the board, reached by a majority vote of the members, is to be filed in the court where the application was made, and, as the law declares, "shall be final and conclusive of all matters brought before them for adjustment." Costs, including compensation to the members of the board, are to be paid by the county.(b)

The fourth State in the first group of laws as here classified is Texas, whose one statute dealing with arbitration of disputes bears date of April 24, 1895,(c) and is still in force. This provides for arbitration "upon mutual consent of all parties" before a board of five persons, two each chosen by employers and employees, these four to select a fifth as chairman. The appointment of the two arbitrators by employees is to be made so far as possible through the medium of labor organizations. Where the employees belong to a union which is a member of a federation, the central body is to make the appointment. In case their union is not a member of any such central body

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a Laws of 1893, No. 55.

b See also, infra, p. 586, for law providing for district boards.

c Laws of 1894–95, chap. 379.

the union itself is to make the appointment, and in case they are not organized a majority of them, at a meeting held for the purpose, shall make the selection, provision being also made for representation of nonunion men as well as union where such are involved. When the four arbitrators can not agree upon the fifth, the latter, upon application by the four, may be named by the judge of the judicial district.

When the board has been duly appointed it may apply to the district judge of the county for a license, whereupon the judge, if all the provisions of the law have been complied with, shall "make an order establishing such a board of arbitration and referring the matters in dispute to it for hearing, adjudication, and determination." The submission of the dispute must be in writing, and the law requires that in the agreement for submission the parties shall bind themselves to five conditions: (1) That pending the arbitration the status existing prior to the dispute shall be maintained; (2) that the award, properly filed in the district court, shall be final, except for "error of law apparent on the record;" (3) that they will execute the award, and that the same may be "specifically enforced in equity so far as the powers of a court of equity permit;" (4) that the employees will not leave the employment of the employer on account of dissatisfaction with the award without thirty days' written notice to him; and (5) that the award shall stand in force for one year, with no new arbitration upon the same subject during that time.

The members of a board must sign a consent to act and take oath to act faithfully and impartially. Full powers for the summoning of witnesses and compelling the production of evidence are conferred upon the chairman. The costs of the arbitration, including per diem compensation and traveling expenses of members of the board and witnesses, are to be taxed upon the parties, either or both, as the board may decide, and before the arbitration the parties must give bond for the payment of the same.

The award, filed with the district court, shall go into effect, and judgment be entered upon it accordingly, ten days after the date of filing, during which time the parties may file exceptions "for matter of law apparent on the record," which exceptions shall be decided by the district court, or, on appeal therefrom, by the court of civil appeals. Finally, it is declared unlawful for the employer to discharge the employees during the pendency of arbitration, "except for inefficiency, violation of law, or neglect of duty, or where reduction of force is necessary," or for the employees "to unite in, aid, or abet strikes or boycotts" against the employer.

The provisions of this Texas law, so far as concerns the mode of appointing members of the board, its licensing by a local court, and its powers to secure the presence of witnesses and the production of

evidence, are taken direct from the New Jersey law of 1892 or the New York statute of 1886, these provisions being original with the latter act. But the conditions to which parties must bind themselves in their submission, the taxing of costs upon the parties, the compulsory force of awards, and the prohibition of interruption of employment or work pending the arbitration are peculiar to the Texas statute.

Maryland, New Jersey, Pennsylvania, and Texas are the only States which have passed laws providing for the local arbitration system here considered. A number of other States, however, have made similar provision, but as supplementary to a State board, and while their statutes are therefore classified in the fourth group above, their provisions for local arbitration may properly be considered here. The States referred to, with the dates of their earliest acts containing local arbitration features, are New York, 1886; Massachusetts, 1886; Montana, 1887; California, 1891; Ohio, 1893; Wisconsin, 1895; Minnesota, 1895; Idaho, 1897, and Colorado, 1897. The similar law of 1892 in New Jersey has already been referred to. (a) The provisions in six of these States—Massachusetts, Montana, Ohio, Wisconsin, Idaho, and Colorado—are precisely alike, the Massachusetts law manifestly having served as model for the others. They provide that any dispute may be referred to a board whose members may be mutually agreed upon by the parties to the difference, or each side may choose one and these two appoint a third. This board is to have, in respect to matters referred to it, all the powers which the State board might exercise, and their decision has whatever binding effect the parties may agree upon in the submission. Such a board may ask and receive the advice and assistance of the State board, and a copy of its decision is to be filed with the latter, but its jurisdiction on matters referred to it is exclusive. The members of such local boards are entitled to compensation from the city or town in which the dispute occurs on approval by the mayor or board of selectmen. The board's decision must be rendered within ten days of the close of the hearing. The Minnesota law contains the same provisions, but requires a consent to act and an oath of office of the arbitrators. It also adds a clause making it the duty of the State board to aid in the formation of such local boards before a strike or lockout has occurred if the appointment of such a board will tend to prevent a cessation of work.

The provisions for local arbitration in the New Jersey law of 1892 are identical with those of the earlier New York law of 1886. These have already been described as copied in the Texas act of 1895. Briefly summarized here, they legalize the submission of disputes to a

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a Supra, p. 581.

board of arbitration consisting of five members, two each appointed by the employer and the employees, these four choosing the fifth. If the employees are members of a labor organization represented in a central body, this central body is to appoint their representatives; if their union be not so affiliated, then the union is to select them; and if the employees are unorganized their representatives are to be chosen at a meeting of a majority of them held for the purpose. When thus constituted a majority of the board may ask and receive from the county judge of the county an order establishing and approving the board and referring the dispute to it. The members are to sign a consent to act and take oath, and the board is given summary power to compel the attendance of witnesses and the production of evidence. The decision of the board it is declared shall be a settlement of the matters referred to it, except that an appeal may be taken to the State board of arbitration, in which case the latter shall promptly hear the case and render a final decision thereon.

The New York act of 1886 was replaced in the following year by another law, but the same local arbitration features appear in the latter act and are still in force except for the omission of the licensing of the local board by a county judge and the reduction of the number of members on the board from five to three.

The provision for local arbitration in California is very brief, specifying simply that if parties do not wish to submit a dispute to the State board, each may choose an arbitrator and these two a third, and the three shall constitute a board for the case and may exercise the same powers as the State board.

A comparison of the above-described laws in 13 States, which constitute the first group in the classification here made, shows the following general features common to all of them. First, the action contemplated by them is arbitration as distinguished from conciliation; second, such arbitration is voluntary in character in that either the reference of disputes to it or the acceptance of decisions is entirely voluntary for the parties; third, the arbitrating body specified is a temporary board constituted for each dispute as it arises and composed of equal numbers of members named (except in Maryland) by the parties, with an odd member (in Pennsylvania three other members) chosen (except in Maryland and Pennsylvania) by the others; fourth, (save in California) the law confers upon such boards power to compel the presence of witnesses and the production of evidence.

District or County Boards Established by Private Parties.

The four statutes falling in the group of laws under this heading are so nearly alike, being in large part exactly the same, that the earliest one, the so-called Wallace Act of 1883 in Pennsylvania,

plainly served as model for the others. A description of this, with notation of the variation of the others from it, will suffice for all, therefore.

The Pennsylvania law of April 26, 1883,[a] which still stands on the statute books, provides for "voluntary tribunals" in each of the State's judicial districts. For the establishment of such a tribunal a license is to be obtained from the local court of common pleas by joint petition from at least 50 work people and either 5 employers, each employing not less than 10 work people, or 1 employer with 75 or more employees. Such a petition may be presented by either party, but in that case the license can not be issued unless the other party assents thereto within sixty days. The petition must contain the names of not less than 4 persons to compose the tribunal, one-half from each side, with an umpire chosen by these members. Upon receipt of the petition the court is to issue a license authorizing the tribunal and fixing a date for its first meeting. If at the time a petition is received a dispute exists which has already caused, or threatens to cause, a suspension of work, the court shall verify the representative character of the petitioners, and if it is found that they do not represent a majority, or at least one-half, of each party to the dispute, the petition may in such case be denied.

The law requires that members of such a tribunal shall be United States citizens, shall have resided in the district for a year, and shall have been engaged in the industry for two years if work people, and one year if employers, and the latter must have at least 10 employees. Members are to receive no compensation for their services. The expenses of tribunals, except for offices, which are to be paid by the city or county where located, are to be met by "voluntary subscription." The tribunal is to choose its own officers, and has full power under the law to compel the presence of witnesses and the production of evidence. It is to continue in existence for one year and take cognizance of all disputes between the parties represented in the petition, or any others who shall submit their disputes to it in writing.

The procedure before a tribunal may consist in (*a*) hearing and decision by the tribunal (without the umpire); or (*b*) reference of the case to a committee of the tribunal's members equally representing both parties, whose decision, if unanimous, is final, but who otherwise shall refer the case back to the tribunal; or (*c*) reference of the case to the umpire for final decision, which shall occur only when the tribunal, after three meetings and full discussion, can not agree. No counsel or paid agents may appear at any of the hearings. When a case goes to the umpire the submission must be in writing signed by the members of the tribunal or the parties, and shall contain a

[a] Laws of Pennsylvania, 1883, p. 15.

provision that the umpire's award, "after hearing, shall be final." The umpire is to be sworn to impartiality and to render his award within ten days after the submission. Provision is made for the enforcement of umpires' awards, but in this matter a slight inconsistency appears in the statute. One section provides that the award signed by the umpire "may be made a matter of record, by producing the same within thirty days, with the submission in writing, to the proper judge. If he approves the same, he shall indorse his approval thereon, and direct the same to be entered of record. When so entered of record it shall be final and conclusive, and the proper court may, on motion of anyone interested, enter judgment thereon, and when the award is for a specific sum of money may issue final and other process to enforce the same." In another section, however, it is expressly stipulated that the award "shall in no case be binding upon either employer or workmen, save as they may acquiesce or agree therein after such award." Whence it would appear that for enforcement not only joint submission, but acquiescence in the award by both parties as well, would be necessary.(a)

Two years after Pennsylvania, Ohio adopted the same system of local tribunals in the so-called Ryan Act of February 10, 1885.(b) This law was in force until 1893, when it was repealed by an act creating a State board of arbitration. It copied the Pennsylvania statute with but slight modifications in details, as follows: The Ohio law specified all "manufacturing, mechanical, or mining industries" as within its jurisdiction, required as signers of the petition for a license 40 work people and 4 employers, with not less than 10 employees each, or one with at least 40, and omitted the Pennsylvania provision for petition by one party, directed verification of the character of the petitioners, in case suspension of work existed or threatened, simply "on motion," stipulated no qualifications for members of tribunals, and, finally, made provision for the enforcement of awards by record in local courts, as in Pennsylvania, only when the award was for a specific sum of money, and no acquiescence by the parties after the award was made was required.

In 1886 Iowa adopted the Ohio statute in toto with the variation of but a few words, the only change made in the system being a reduction of the number of petitioners required for license to 20 workers and 4 employers, with not less than 5 employees, or one with 20 or over. The Iowa law was approved March 6, 1886,(c) and is still in force.

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a See also, supra, p. 582, for law providing for local arbitration with no permanent agency.

b Laws of Ohio, vol. 82, p. 45.

c Acts of 1886, chap. 20.

In the same year as Iowa, Kansas adopted the local tribunal system by the act of February 25, 1886,(a) which is the present law, and which is somewhat condensed as compared with the statutes of the other States in this group. It follows in general the Ohio and Iowa statutes, but with these points of difference, viz., the number of petitioners required is reduced to 5 workmen and 2 employers; the umpire, instead of being appointed by the members of the tribunal, is to be appointed by the court issuing the license; members are allowed compensation per diem of actual service, to be paid by the county; counsel are not prohibited at hearings; there is no provision for the settlement of cases by special committee of the tribunal; the award of the umpire must be made within five days of the submission instead of ten; and, finally, the awards of the tribunal are enforceable in the same way as those of the umpire.

The characteristic features common to all in this second group of laws are : (1) Provision for permanent tribunals; (2) the establishment of such tribunals by employers and employees acting jointly; (3) licensing of tribunals by local civil courts, and endowment of them with power to compel the presence of witnesses and the production of evidence; (4) procedure of the nature of arbitration voluntary in character inasmuch as reference of disputes is always voluntary for both parties, even though provision is made for the enforcement of awards in certain cases.

Intervention of State Labor Commissioners.

Five States have at some time provided for the settlement of industrial disputes through the intervention of commissioners of bureaus of labor statistics.

When Colorado established her bureau of labor statistics in 1887, section 9 of the law provided that in case of any industrial dispute involving an employer with 25 or more employees, involving or threatening to involve a strike or lockout, the commissioner of the bureau, when requested by the employer or 15 or more of the workpeople, should at once proceed to the place "and diligently seek to mediate between such employer and employees."(b) In 1890 North Dakota, in creating the office of commissioner of agriculture and labor, copied the law of the Colorado bureau, including the above section 9, which became section 7 in the North Dakota act.(c)

In Missouri somewhat more elaborate provision for action by the commissioner of labor statistics was made by a special act of April

a Laws of 1886, chap. 28.

b Acts of 1887, p. 62. This law was superseded, however, by the establishment of a State board in 1897 (Laws of 1897, chap. 2, amended by Laws of 1903, chap. 136).

c Acts of 1890, chap. 46. This law was repealed by the Revised Code of 1895.

11, 1889.(a) Upon reliable information of a dispute which "may result in a strike or lockout" the commissioner was to at once visit the place and seek to mediate between the parties, "if, in his discretion, it was necessary so to do." If the mediation of the commissioner proved fruitless he might then "direct the formation of a board of arbitration," composed of 2 employers and 2 employees engaged in the same line of industry, but not parties to the dispute, with the commissioner as president. This board, the law declared, should have power to summon and examine witnesses, was to investigate the case and within three days thereafter render a decision, which was to be made public. This decision, the act declared, "should be final, unless objections were made by either party within five days thereafter; provided that the only effect of the investigation * * * shall be to give the facts leading to such dispute to the public through an unbiased channel." The law expressly stipulated that no board of arbitration should be formed after suspension of work had occurred, except in case a strike or lockout had begun before the commissioner could be notified when he "might order the formation of a board of arbitration upon resumption of work."

Under the Washington law of 1903(b) the State labor commissioner has authority to intervene only upon application from an employer or employee, party to the dispute, but when requested it becomes his duty to promptly visit the locality, inquire into the causes of the controversy, and advise the parties what ought to be done by each to settle their differences. If such mediation fails to effect a settlement the commissioner is to endeavor to persuade the parties to submit the case to arbitration before a board composed of three members, one named by the employers, one by the workers, and a third chosen by these two, with the commissioner as chairman without the privilege of voting. The board, through the commissioner as chairman, may issue subpœnas and administer oaths to witnesses, and the law directs that any notice or process issued by the board shall be served by any sheriff, coroner, or constable to whom it may be directed. Under the terms of the statute the board's award is to "be final."

If the labor commissioner can not bring the parties to submit to arbitration as above provided, it is his duty "to request a sworn statement" from each party as to the facts in the case and their reasons for refusing arbitration, which statements are to be "for public use and shall be given publicity in such newspapers as desire to use it."

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a Revised Statutes of 1899, chap. 121, art. 2. This law was repealed and a State board established in 1901 (Laws of 1901, p. 195, amended by Laws of 1903, p. 218).

b Laws of 1903, chap. 58.

Somewhat similar to the Washington law, but more extensive in its provisions, is the recent act of 1904 in Maryland.[a] This directs that "upon information furnished by an employer * * * or by a committee of employees, or from any other reliable source," that a difference exists which involves ten or more persons and which threatens to result in a strike or lockout, the chief of the bureau of industrial statistics, or one of his subordinates deputized by him, shall, if he consider it necessary, at once visit the scene of the dispute and seek to mediate between the parties.

If such mediation proves unsuccessful, the chief, or his deputy, may at his discretion endeavor to secure the consent of the parties to arbitration before a board of three persons, employers and employees each to choose one member, who shall be from the same industry or trade affected but no parties to the dispute, and these two to name the third, who shall be president. If the two can not agree upon the other member, then the chief, or his deputy, as the case may be, shall act as the third arbitrator. With reference to the powers and procedure of the board the statute prescribes only that "the president of said board * * * shall have power to summon witnesses, enforce their attendance, and administer oaths and hear and determine the matter in dispute, and within three days after the investigation render a decision thereon," a copy of which shall be furnished each party and shall be final. While specifying thus a mode of arbitration, the law stipulates that the parties may agree upon some other method if they choose, and the latter shall also be valid.

Whenever the chief or his deputy is unable to effect a settlement by mediation and the parties will not submit to arbitration, then the chief or his deputy is directed "to thoroughly investigate the cause of the dispute," for which purpose he "shall have the authority to summon both parties to appear before him and take their statements in writing and under oath, and having ascertained which party is, in his judgment, mainly responsible and blameworthy for the continuance of the controversy or dispute, shall publish a report, in some daily newspaper, assigning such responsibility or blame over his official signature." To secure the necessary evidence in such an investigation the chief (or deputy) is given "power to administer oaths, to issue subpœnas for the attendance of witnesses, and to enforce the attendance of witnesses, production of papers and books to the same extent that power is possessed by courts of record or judges in the State," but it is directed that all information of a personal character or pertaining to the private business of any party must be treated as confidential.[b]

[a] Laws of 1904, chap. 671.

[b] See also, supra, p. 581, for law providing for local arbitration.

Comparing the five statutes in this group it will be seen that the field of action opened to the commissioner in Colorado and North Dakota is much narrower than in the other three States, being limited to intervention at the request of at least one party and mediation being the only purpose mentioned. The Washington law also specifies intervention only upon application from a party to the controversy, but both that law and those of Missouri and Maryland, which permit the commissioner to intervene upon his own initiative as well as upon request, make provision both for mediation and for arbitration and, most notable of all, the two latest laws (Washington and Maryland) go still further and provide for an authoritative investigation of the dispute and public report by the commissioner in every case in which his mediation has proved fruitless and the parties refuse arbitration. The Maryland law, in fact, gives the commissioner of labor in that State essentially the same powers and possible courses of action with reference to intervention in labor disputes as are possessed by any of the State boards of conciliation and arbitration considered below.

Intervention by commissioners of labor statistics as a means of settling labor disputes has been actually or virtually abandoned by three (the three earliest) of the five States which have made trial of it. North Dakota repealed her provision in 1895, Missouri substituted for hers a State board of arbitration in 1901, and Colorado, though the provision still stands on her statute books, practically displaced it by the establishment of a State board in 1897.

State Boards of Conciliation and Arbitration.

The distinguishing characteristic of the laws in this fourth group is provision for a permanent board created and maintained by the State for intervention in industrial disputes. This is the most common form of provision for the settlement of such controversies in the United States, no less than 17 States having adopted it.[a] All of the 17, it may be added, still retain the system, at least in law.

The first States to adopt this system were New York and Massachusetts in 1886, the former by an act approved May 18, the latter by a law of June 2. These two States are the sources from which the other 15, except Indiana, and Idaho in her latest act, have drawn nearly all the material for their laws. In fact, in every one of the latter are to be found verbatim transcriptions from the New York and Massachusetts acts, made either directly or by the copying of each other's statutes, entire laws in some cases having been so con-

[a] While provision for local arbitration is to be found in nearly as many States, 13 in all, that feature is in 10 of these secondary to a State board system. (Cf. supra, p. 584.)

structed. With so many features common, therefore, to several or all of the States, the plan adopted for the following account of the laws in this group consists of a description of all features[a] to be found in them, with notation under each of the States in which it exists. The only exception to this method are the Indiana law, which varies considerably from the others, and the present Idaho law,[b] which follows the Indiana statute, these two being described separately. The original laws have in several States been amended, and where changes of consequence have been made they are noted. Otherwise reference is always to the statutes as in force on January 1, 1905.[c]

The name used to designate the board is in California, Louisiana, Massachusetts, Minnesota, Montana, Ohio, and Wisconsin the board of arbitration and conciliation; in Connecticut, Missouri, and New York it is the board of mediation and arbitration; in Michigan, the

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[a] Except those providing for local arbitration, which have already been noted. (Supra, p. 584.)

[b] The present Idaho law of 1901 superseded one of 1897. Of this earlier law, which is in the same class with those included in the general description below, suffice it to say that it is precisely the same as the Massachusetts statute without the provisions for expert assistants and the amendments of 1902 and 1904.

[c] The list of acts and amendments in the several States, except Idaho and Indiana, arranged chronologically, is as follows:

New York: Laws of 1886, chap. 410 (May 18); amended by Laws of 1887, chap. 63; became Art. X of the labor law, Laws of 1897, chap. 415; amended by Laws of 1901, chap. 9.

Massachusetts: Acts of 1886, chap. 263 (June 2); amended by Statutes of 1887, chap. 269; Statutes of 1888, chap. 261; Statutes of 1890, chap. 385; Statutes of 1892, chap. 382; became chap. 106 of Revised Laws of 1901; amended by Statutes of 1902, chap. 446, and Statutes of 1904, chaps. 313, 399.

Montana: Statutes of 1887, p. 614; became Chap. XIX of Title VI of Pt. III of the Political Code of 1895.

Michigan: Public Acts of 1889, No. 238, being secs. 559–568 of the Compiled Laws of 1897, as amended by Acts of 1903, No. 69.

California: Laws of 1891, chap. 51.

New Jersey: Public Laws of 1892, chap. 137; amended by Public Laws of 1895, chap. 341.

Ohio: Laws of 1893, p. 83; amended by Laws of 1894, p. 373, and Laws of 1896, p. 324; Statutes of 1902, sec. 4364–90.

Louisiana: Laws of 1894, No. 139.

Wisconsin: Laws of 1895, chap. 364 (April 19); amended by Laws of 1897, chap. 258.

Minnesota: Laws of 1895, chap. 170 (April 25).

Connecticut: Laws of 1895, chap. 239 (June 28).

Illinois: Laws of 1895, special session, p. 5; Statutes of 1896, chap. 48, sec. 8; amended by Laws of 1899, p. 75, 1901, p. 90, and 1903, p. 84.

Utah: Laws of 1896, chap. 62; superseded by Laws of 1901, chap. 68.

Colorado: Laws of 1897, chap. 2; amended by Laws of 1903, chap. 136.

Missouri: Laws of 1901, p. 195, as amended by Laws of 1903, p. 218.

court of mediation and arbitration; in Colorado, Illinois, and New Jersey, simply the board of arbitration; while Utah uses the longer title of board of labor, conciliation, and arbitration.

Except in New York, the members of the board are appointed by the governor in all the States, and must be confirmed by the senate in all save California, Colorado, and Wisconsin. Similar appointment and confirmation were true for New York until 1901, when the law consolidating the former bureau of labor statistics, State factory inspector's office, and board of mediation and arbitration into the department of labor delegated the powers and duties of the old board to the commissioner of labor (the head of the department, appointed by the governor) and his two deputies (appointed by the commissioner) as a board, whereby it results that one member of the board is appointed by the governor and the other two by the first.(a)

The number of members on the board is three in all the States except Louisiana, where it is five, with terms of one year in California, two years in Colorado, Connecticut, Minnesota, Montana, and Wisconsin, three years in Illinois, Massachusetts, Michigan, Missouri, New Jersey, and Ohio, and four years in Louisiana, New York, and Utah.(b)

In the composition of boards many of the States lay down certain restrictions. California, Colorado, Illinois, Louisiana, Massachusetts, Minnesota, Missouri, Montana, Ohio, Utah, and Wisconsin require that the employing class and the labor class shall each be represented by one member (in Louisiana two members) upon the board, and California, Colorado, Louisiana, Minnesota, Montana, Utah, and Wisconsin further specify that the odd member shall be a "disinterested" person as regards the two industrial classes. Illinois and Utah prohibit the appointment of more than two members from the same political party. Connecticut requires that one member each shall be chosen from the two largest political parties in the State and the third from a labor organization, this being identical with the requirement in New York prior to the merging of the board in the new department of labor in 1901, which practically annulled the restric-

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a The consolidation law created one department with three bureaus, corresponding to the three offices absorbed, the entire department being under the general direction of the commissioner of labor, with the first deputy in special charge of the bureau of factory inspection, the second deputy in special charge of the bureau of labor statistics, and the commissioner himself in special charge of the bureau of mediation and arbitration, the three officials together to be a board for the purposes of the old board of mediation and arbitration.

b The first New Jersey law made the term five years and the original laws of Massachusetts and New York made it one year. From 1887 to 1901 the term was three years in New York, but was virtually changed to four by the consolidation of 1901.

tion as to politics and representation of organized labor on the board. New Jersey requires only that one member of the board shall be from a labor organization, while no limitation as to the make-up of the board appears in Michigan.

In Colorado, Louisiana, Massachusetts, Minnesota, Ohio, and Wisconsin the odd member of the board is to be recommended by the other two, though if no recommendations be made within a specified time the appointment shall be made directly by the governor. In Louisiana it is also provided that the two members representing employers are to be recommended by "some association or board representing employers" and the two labor representatives are to be recommended by "the various labor organizations," though here again, failing such nomination, the appointments are to be made direct.

At present Colorado, Illinois, Massachusetts, New Jersey, and New York provide annual salaries for the members. All the others (and the same was true of the first laws in Massachusetts, New Jersey, and New York) pay only a per diem compensation for actual and necessary services. Traveling and other necessary expenses, in addition to compensation of members, are allowed in all the States except Michigan and Minnesota. The entire cost of the boards is everywhere borne by the State save in Utah, where the per diem pay of members is to be paid in each case by the parties in dispute in such proportion as the board shall decide, other expenses being paid out of the State treasury.[a]

All of the States except Minnesota require an oath of office of members of the board. All boards must make report of their work to the governor or State legislature—biennially in Louisiana, Missouri, and Wisconsin, annually in the other States.

With the single exception of California, whose statute says nothing upon the subject, all the States confer some authority upon their boards for the purpose of securing evidence. In Colorado, Connecticut, Illinois, Michigan, Missouri, New Jersey, New York, and Utah the boards have authority to issue subpœnas, administer oaths, and call for books and papers generally. In Louisiana, Massachusetts, Montana, and Wisconsin the power to summon is limited to operatives in the department of business affected by the dispute and persons who keep the records of wages paid, and only such wage records in the way of documents may be called for. In Minnesota only the persons keeping records of wages may be summoned and only such records may be called for, while in Ohio any person may be subpœnaed, but only wage records may be called for. In eight States only do the laws go any further than a simple declaration that the boards shall have such authority. The Louisiana statute adds a

[a] Before the revision of 1901 in Utah, traveling expenses were also to be paid by the parties.

clause affirming that the board "shall have the right to compel the attendance of witnesses or the production of papers," but by what means is not specified. Michigan and New Jersey stipulate that their boards shall have the same authority to compel the attendance of witnesses and the production of documents "as is possessed by the courts of record or judges" in the State.(a)

In Ohio sheriffs, constables, or police officers are to serve subpœnas and notices for the board. But the most specific powers for securing evidence appear in Colorado, Illinois, Missouri, and Utah, whose provisions therefor are all very similar, that of Utah dating from its first law of 1896, that of Illinois from an amendment of 1899, and those of Colorado and Missouri from amendments of 1903. These provisions permit the boards to invoke the aid of the civil courts (district or county courts in Colorado, circuit or county courts in Illinois, circuit courts in Missouri, and district courts in Utah) in case of refusal of witnesses to obey the board's subpœnas, and such courts "shall, upon application by the board," in Colorado, Illinois, and Missouri, "may" in Utah, issue orders requiring witnesses to appear before the board and give testimony or produce books and papers, and the court may punish for contempt in such cases as in case of refusal to obey its own processes.(b) In addition to this, the Missouri provision goes a step further, and makes it a misdemeanor for any person to willfully neglect or refuse to obey the process or subpœna of the board, for which such person is liable to arraignment in any court of competent jurisdiction, and on conviction shall be punished by fine of not less than $20 nor more than $500, or by imprisonment not exceeding thirty days, or both. The Missouri provision for enabling the board to compel the presence and testimony of witnesses through the power of the courts to punish for contempt has, however, been declared unconstitutional by the supreme court of that State in a decision rendered June 2, 1904.(c) Certain employers had declined to obey a subpœna of the board, whereupon the latter obtained an attachment from a circuit judge to compel their presence. When brought before the board they made certain objections when the evidence of the trade unions involved in the dispute was being heard, and when the board ruled against them they withdrew, alleging violation of their constitutional rights. The board then secured from the circuit court the issuance of citation to the said employers to show cause why they should not be punished for contempt, whereupon the employers in question applied to the supreme court for a

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a Such was the provision also in Colorado and Missouri until the amendments of 1903.

b Cf. similar provisions in Indiana and Idaho, infra, pp. 604, 605.

c In the case of State ex rel Haughey et al *v.* Ryan et al. (81 S. W., 425, or 182 Mo., 349).

writ against the circuit judge and the board to prohibit the contempt proceedings. The supreme court unanimously granted the writ, holding that the amendment of 1903, "in so far as it attempts to require the circuit court to use its power to punish for contempt, to compel witnesses to attend and testify before the board, is an unwarranted invasion of the judicial power conferred exclusively on the courts in section 1, article 6, of the constitution of Missouri." The grounds for this decision may be summarized by the following extracts from it:

The power to punish for contempt is essentially a judicial power, and except in the limited degree in which it inheres in legislative bodies it can be exercised only by a tribunal exercising judicial functions. * * * All the judicial power in this State is by our constitution vested in certain courts therein named. The general assembly has no authority to create any other tribunal and invest it with judicial power. * * * This board of mediation and arbitration is not a court; it can not exercise any power that is purely judicial in its character. * * * The power to punish for contempt is not given to the circuit court for the purpose of maintaining the authority of any tribunal but itself, especially not to maintain the authority of a board upon whom it would be unconstitutional to confer such a power. * * * The power to punish for contempt is not a power conferred on the court by the legislature, but is inherent in the court for one purpose only—that is, to maintain its own authority.

This decision refers only to the amendment of 1903, but as expressly intimated in it the same grounds of unconstitutionality applied to the earlier provision, which simply declared that the board itself should have power to punish for contempt. This Missouri decision is, therefore, especially interesting, as it throws out both the provisions for enabling the board to enforce its summons which the Missouri law has had in common with several other States, as above noted. It is to be observed, however, that the decision does not nullify the special provision in the Missouri statute which makes a misdemeanor of refusal to obey the board's processes, for it distinctly says:

It is not disputed that in a case where a board or a committee of a legislative body has the lawful authority to summons witnesses the legislature may enact that the refusal of a witness to appear and testify shall be a misdemeanor, and that upon conviction thereof in a court of competent jurisdiction he may be punished by fine and imprisonment.

Aside from the exclusion from arbitration by the board of questions which may be the subject of a civil action[a] in Illinois, Louisiana, Massachusetts, Montana, Ohio, and Wisconsin the only general limitations upon the jurisdiction of boards consist in restrictions

[a] The same exclusion held in Utah until the amendment of 1901.

to disputes involving establishments with not less than 25 employees in Massachusetts and Wisconsin, not less than 20 in Louisiana and Montana, and not less than 10 in Minnesota and Utah; to disputes involving 25 employees or more in Illinois, 10 or more work people in Missouri, and to disputes "which, if not arbitrated, would involve a strike or lockout" in California.

Three kinds of action may be taken by State boards when intervening in industrial disputes: (*a*) Mediation or conciliation; (*b*) arbitration, and (*c*) investigation for the purpose of public report as to the causes of disputes or responsibility for them. The last-mentioned may be conveniently referred to as "authoritative" or "public" investigation. The California law provides for arbitration and authoritative investigation only, the law of Utah for conciliation and arbitration, but in all the other States all three courses are provided for.[a]

All the statutes which provide for mediation and conciliation specify such action only for cases of strike or lockout, either actual or threatened,[b] but for such cases it is made the duty of the board to intervene upon knowledge of the disputes. Wisconsin directs mediation only when the strike or lockout "threatens to or does involve the business interests of a city, village, or town." Two general directions as to procedure for mediation and conciliation appear in the statutes. In Colorado, Connecticut, Michigan, Missouri, New Jersey, and New York the board is directed to visit the locality of the dispute and endeavor to bring the parties to an amicable agreement. In the other States (Illinois, Louisiana, Massachusetts, Minnesota, Montana, Ohio, Utah, and Wisconsin) the board is simply "to put itself in communication with" the parties, and is to endeavor either to arrange an amicable settlement or to induce the parties to submit to arbitration before a local or the State board. In Massachusetts, Montana, and Wisconsin the effort to persuade the parties to adopt arbitration is directed as an alternative only on the express condition that a strike or lockout has not actually occurred or is not continuing.

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[a] This is true of the statutes now in force. The first Massachusetts, Montana, and New York laws provided for arbitration only. The first amendments in Massachusetts and New York (1887) incorporated the other two courses. Montana adopted them in 1895. In Illinois conciliation and arbitration only were specified until an amendment of 1901 added authoritative investigation.

[b] Mediation is directed in Illinois, Missouri, and Utah simply when strike or lockout is "seriously threatened;" in the other States when strike or lockout threatens or occurs. By an amendment in the Wisconsin law in 1897 it was intended to empower the board to mediate in any dispute between employer and employed. As the amendment stands in the law, however, such authority is given only in connection with the procedure for arbitration. (Cf. infra, p. 599.)

With the duty of initiating proceedings for mediation and conciliation laid upon the boards, prompt information of the existence of industrial disputes becomes a matter of importance. As a means thereto the statutes of Illinois,[a] Louisiana, Massachusetts,[b] Michigan,[c] Montana,[d] Ohio, Utah,[e] and Wisconsin require certain local authorities to immediately notify the board of any strike or lockout, threatened or existing, which comes to their knowledge. Such duty is laid upon mayors of cities in all of these States. It devolves also upon presidents of towns in Illinois, town or village boards in Massachusetts and Wisconsin, supervisors of townships and village presidents in Michigan, county commissioners in Montana, sheriffs of counties in Utah, probate judges in Ohio, and district court judges in Louisiana. Illinois also has a unique provision requiring that similar notice shall be given to the board by presidents of labor organizations in case of strike or lockout involving any of their members. In none of these States does the board's duty of intervention depend upon notice from such sources. In all the States that duty exists simply upon knowledge of a dispute without condition as to its source save in Colorado, where the law directs mediation only upon written notice to the board from one of the parties to the dispute, from the mayor or clerk of a city or town, or from the local justice of the peace, although the law does not require any such notice from any of them. The Massachusetts law by amendment of 1902 expressly gives the employer or employees concerned in a strike or lockout the privilege of notifying the board of the dispute, and thereby laying the duty of intervention upon the board.

Provision for the arbitration of disputes by the board is a feature common to all the laws governing State boards. For such arbitration the statutes of Colorado, Connecticut, Michigan, Missouri, New Jersey, New York, and Utah[f] prescribe simply a full hearing and the rendering of a decision upon the question in dispute. Utah also directs that the decision shall be published. In the other States (California, Illinois, Louisiana, Massachusetts, Minnesota, Montana, Ohio, and Wisconsin) it is directed that the board shall hear the case, advise the parties what ought to be done by each to effect a settlement, and render a decision, which decision shall be made public. In Louisiana and Ohio it is expressly stipulated that the decision is to be rendered only where the board's advice as to an adjustment has not

[a] By amendment of 1899.

[b] By amendment of 1887.

[c] By amendment of 1903.

[d] By amendment of 1895.

[e] By amendment of 1901.

[f] This is true for Utah since 1901. Prior to that year the Utah law was like that of Massachusetts.

been accepted. All the laws direct that the boards shall visit the locality of a dispute in arbitration proceedings, except in California, where such visit shall be made "if necessary," and in New York and Utah, whose laws since 1897 and 1901, respectively, say nothing on this point, though before those years they directed visitation. Arbitration decisions may be rendered by either unanimous or majority vote of the board in Colorado, Connecticut, Michigan, Missouri, New Jersey, and New York. The laws of other States say only that the decision shall be by "the board."

When properly applied to it is in all the States made the duty of the board to act as arbitrator. In Colorado, Connecticut, Michigan, New Jersey, New York,[a] and (since 1901) Utah application by both the parties in dispute is required. In all the other States the board is directed to carry out the procedure for arbitration upon application by one party only, and the Wisconsin law as amended in 1897 really provides that the board may so act "without any application therefor."[b] Except in Minnesota and Missouri, it is the evident intent of all the laws that arbitration by the State board shall be had only before a strike or lockout has occurred or if afterwards only upon resumption of work. Since its amendment in 1901 the Utah law is most specific on this point, definitely requiring that application to the board must precede any lockout or strike or that work must be resumed if the board is to arbitrate. In all the other States, outside of Minnesota and Missouri, it is required that the written application for arbitration shall contain a promise to continue in business or at work until the board's decision is rendered. California, Louisiana, Massachusetts, Montana, Ohio, and Wisconsin further stipulate that if this promise be broken by either party the arbitration shall not proceed except upon consent of the other party—a provision which, although permitting exceptions thereto, emphasizes the general principle of nonsuspension of work during arbitration before the boards. In Minnesota and Missouri there is nothing in the laws to hinder arbitration as well during as before or after strike or lockout.

In the matter of arbitration Massachusetts made a noteworthy addition to her law by two amendments, of 1890 and 1892. The earlier one provided that each party to the dispute might nominate a person whom the board might appoint as an "expert assistant," who "shall be skilled in and conversant with the business or trade concerning which the dispute has arisen," and whose duty it is, at the direction

[a] During its first year the New York law provided arbitration by the State board only for cases appealed from local arbitration boards. This limitation was removed by the amendment of 1887, however.

[b] This amendment of the Wisconsin law was made with intent to enlarge the board's authority to intervene in disputes without application from the parties, but the clause was actually added to the section dealing with arbitration.

of the board, "to obtain and report to the board information concerning the wages paid and the methods and grades of work prevailing in manufacturing establishments in the Commonwealth of a character similar to that in which the matters in dispute have arisen." The assistants are to be sworn and to be paid for their services, and the board may appoint others in addition to those nominated by the parties if it thinks fit. The amendment of 1892 went still further and provided that the board "shall" appoint such assistants when nominated by the parties, and that they may submit to the board at any time before the decision "any facts, advice, argument, or suggestions which they may deem applicable to the case." It was further specified that where such an assistant has acted in a case no decision of the board is to be announced until after he has been given an opportunity for final conference with the board concerning the case. A further change as to the appointment of such assistants was made by a 1904 amendment, so that now it is directed that each party "may" nominate "fit persons" for the purpose and the board "may" appoint one from those so nominated by each party. The only other States to follow this plan are Montana, which in 1895 copied the Massachusetts amendment of 1890, and Wisconsin, which simply provides that the board may appoint two expert assistants, one to be nominated by each side, or a larger number if the board thinks fit, who shall be sworn to a faithful discharge of their duties.

Concerning means for making the decision of boards effective, the statutes of Connecticut, Louisiana, and Minnesota are silent. The laws of Michigan, New Jersey, New York, and Utah[a] contain nothing except a requirement that the application for arbitration, which in those States must be joint, shall include an agreement to abide by the decision.[b] California, Massachusetts, Montana, and Wisconsin simply declare that decisions shall be binding upon the parties who join in the application for six months or until the expiration of sixty[c] days' notice by either party of intention to be no longer bound. Four States only—Colorado, Illinois, Missouri, and Ohio—make provision for the enforcement of awards. By amendment of 1894 Ohio provided that when the application for arbitration is made jointly by the parties this application may stipulate to what extent the decision is to be binding, whereupon "such decision to such extent may be made and enforced as a rule of court in the court

[a] Before 1901 such promise was not required in Utah, but decisions were declared binding until the end of ninety days' notice to the contrary by either party.

[b] This was also true of the Illinois law prior to the amendment of 1899, and of the Colorado law before the 1903 amendment.

[c] California adds "or any time agreed upon by the parties."

of common pleas of the county from which such joint application comes, as upon a statutory award." In Illinois, under an amendment of 1899,[a] where both parties join in an application for arbitration any person who was a party thereto may present a petition to the circuit court of the county where the hearing was had showing that the decision has been violated and by whom and in what respect. The court is thereupon to grant a rule against the party so charged to show cause why the decision has not been obeyed. Upon return to this rule the court is to hear and determine the questions presented and make such order, directed to the parties before him in personam, as shall give effect to the award. Disobedience to such order is to be deemed contempt of court and may be punished accordingly, except that in no case may imprisonment be resorted to. The Missouri law provides that when application for arbitration is mutual, or both parties have agreed to submit to the decision, the board's award shall be final and binding. It shall also be binding upon both parties even when one refuses to accept arbitration, unless exceptions are filed with the board's clerk within five days after the award is rendered. When the award is binding under the above conditions any "employer, employer's agent, employee, or authorized committee of employees" who shall violate its conditions "shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine of not less than fifty nor more than one hundred dollars, or by imprisonment in jail not exceeding six months, or by both such fine and imprisonment." Colorado in her amendment of 1903 copied verbatim the above Illinois provision for enforcement, with the single change of qualifying the prohibition of imprisonment for disobedience to the court's order, so that such punishment is forbidden "except in cases of willful and contumacious disobedience."[b] The Colorado amendment also makes the period during which decisions shall be binding on the parties who joined in the application for arbitration one year unconditionally instead of six months, with provision for notice of termination as in Illinois.

It is to be observed that none of these provisions relative to the enforcement of awards amounts to compulsory arbitration. For in all four States the compulsion provided either can be applied only when both parties have voluntarily agreed to the arbitration or (in Missouri) it can be applied upon a party who did not accept the arbitration only when that party has voluntarily acquiesced in the award.

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[a] This Illinois provision for enforcement is the same as that in Indiana. (Cf. infra, p. 604.)

[b] On this point the Colorado amendment follows the Indiana law.

It may also be noted that in those States without enforcement provisions all of the laws which declare that awards shall be binding limit such declaration to those parties who voluntarily accept the arbitration by joining in the application therefor.

Investigation of disputes, as distinct from conciliation or arbitration proceedings, is provided for in all of the States except Utah. The laws of Colorado, Connecticut, Michigan, Missouri, New Jersey, and New York specify for such an authoritative investigation simply an inquiry into the causes of the dispute, but the statutes of California, Louisiana, Massachusetts, Minnesota, Montana, Ohio, and Wisconsin mention both the determination of causes and the fixing of responsibility for disputes as the object of the examination. In Illinois, whose provision for investigation was added in 1901, "all facts bearing upon" the dispute are to be investigated. In Colorado, Connecticut, New Jersey, and Michigan nothing is said concerning a report of the board's investigations, but in all of the other States[a] there is provision for a report of the board's findings and, except in New York, for publication of the same. In Illinois, Missouri, and New York such report is to contain both findings of fact and recommendations by the board for a settlement of the questions in dispute between the parties. In all the other States the laws simply call for the board's findings as to the causes of the dispute and, where it is mentioned as within the scope of the investigation, responsibility for the dispute's existence.

Authority to conduct investigation of disputes is limited to cases of actual or threatened strike or lockout in all of the States save California, where it extends to any "complaints of grievances" submitted to the board by employers or employees. In Wisconsin it is further restricted to probable or existing strike or lockout "which threatens to or does involve the business interests of a city, village, or town." In Illinois the authority is even more limited, extending only to cases of existing strike or lockout "wherein, in the judgment of a majority of said board, the general public shall appear likely to suffer injury or inconvenience with respect to food, fuel, or light, or the means of communication or transportation, or in any other respect," and in which conciliation efforts have failed and the parties refuse to submit to arbitration before the State board. In connection with this last-mentioned restriction in Illinois, it may be noted that the laws of all the other States except California, although containing no definite limitation to that effect, manifestly assume that investigations will be undertaken only after conciliation efforts have failed, the provision for investigation always appearing in the same section with and immediately following the directions for conciliation.

[a] In New York only since 1897.

The making of investigations and publication of reports thereon are both entirely optional with the boards in all of the States except California, Louisiana, Massachusetts, Missouri, and Ohio. In California investigation is provided for only upon request from employers or employees, but such an application makes it obligatory upon the board, and a report must be published. In Louisiana both investigation and report are required in all cases where the board intervenes for conciliation purposes, the failure of the latter being implied. In Massachusetts, by an amendment of 1902, the investigation became obligatory as in Louisiana, but the report is optional. A further amendment of 1904 in Massachusetts provides that the board "shall, upon the request of the governor, investigate and report upon a controversy if in his opinion it seriously affects or threatens seriously to affect the public welfare." In Missouri the investigation and report are both obligatory, but are expressly conditioned upon failure of conciliation efforts. In Ohio the report is always optional and the investigation also, except that when both conciliation and arbitration have failed because of the opposition of one party, an investigation must be made if the other party requests it.

The State agency for intervention in labor disputes in Indiana differs considerably from the State boards above described. It is styled a labor commission and was established by a law of March 4, 1897,[a] since amended by act of February 28, 1899.[b] It may be said of the Indiana statute in general that it is more detailed in its provisions than similar laws in other States. The commission consists of two members appointed for terms of four[c] years by the governor, with confirmation by the senate. One must have been for at least ten years an employer, the other for an equal period an employee; both must be not less than forty years old, and they must not be members of the same political party. The commisioners receive annual salaries under the present law, a change from per diem compensation for time of actual service having been made in 1899.

Provision is made for conciliation, arbitration, and authoritative investigation by the commission. For the first the commission acts alone, and is directed whenever any "strike, lockout, boycott, or other labor complication"[d] comes to its knowledge, to proceed at once to the place and offer its services as mediator. If no settlement is thus reached, they shall seek to induce the parties to submit to arbitration. It is also expressly provided that "any employer and his

[a] Laws of 1897, chap. 88.

[b] Laws of 1899, chap. 228.

[c] Formerly two years under the law of 1897.

[d] In the 1897 law this direction applied only to disputes affecting 50 or more employees, but this limitation was dropped in 1899.

employees, between whom differences exist which have not resulted in any open rupture or strike, may of their own motion apply to the labor commission for arbitration."(a)

For arbitration under the law there must be an agreement signed by both parties, or their duly authorized representatives, and this agreement has the effect of an agreement to abide by the award. The arbitrating body is composed of the two labor commissioners and the judge of the circuit court of the county in which the dispute is, to whom may be added, at the desire of the parties, two others—one appointed by each party. All the arbitrators must take an oath to act impartially and render a just award. The circuit judge is the presiding member of the board and as such may "issue subpœnas for witnesses who do not appear voluntarily, directed to the sheriff of the county, whose duty it shall be to serve the same without delay." The arbitration proceeding is to be informal in character, and a majority vote of the board is sufficient for a decision, which shall be served upon each party and filed, together with the agreement for arbitration, with the clerk of the circuit court of the county. When so filed the award may be enforced precisely as has been described for Illinois,(b) i. e., upon application from any party to the arbitration the court may grant a rule against any person charged with infringement of the award to show cause for such disobedience, and upon return thereto may make such order as shall give effect to the award and may punish disobedience to such order as for contempt of court, which punishment may in Indiana, though not in Illinois, extend to imprisonment in case of "willful and contumacious disobedience." This provision for enforcement, it should be noted, does not make arbitration under the Indiana law compulsory in character, since submission to it in the first instance is always voluntary for both parties.

Whenever the parties to a dispute fail to come to an amicable agreement or to submit their differences to arbitration, within five days after the first communication of the labor commission with them, it becomes the commission's duty to investigate immediately the facts of the case. In such investigation the commission, if it so desires, shall receive the assistance of the State's attorney-general, either in person or by deputy. The powers of the commission to secure evidence are larger for public investigations than for arbitration proceedings. In case of disobedience to its subpœna or refusal of a witness to testify in an investigation the circuit court of the county, on application from the commission, may grant a rule against the offending witness to show cause for his disobedience or be judged in contempt, and the

a In 1897 this provision was limited to employers with not less than 25 employees, but the act of 1899 dropped this restriction.

b Cf. supra, p. 601.

court may exercise the same power in such a case as in the case of its own subpœna or testimony before itself.[a] The law permits any employer called upon for evidence in an investigation to submit in writing facts whose publication might be injurious to his business, and such must be held by the commission as confidential. Upon the completion of an investigation the commission must immediately present a condensed report of "the facts disclosed thereby affecting the merits of the controversy" to the governor of the State, who shall at once authorize its publication unless he sees good reason to the contrary.

Idaho has passed two entirely different laws for State intervention in labor disputes, but neither was original with her. Her first statute was the act of March 20, 1897,[b] which simply copied verbatim the Massachusetts statute then in force without that portion providing for expert assistants in arbitration cases. In 1901 another system was substituted for that of Massachusetts, and this time Indiana furnished the model to be copied. The Idaho act[c] is almost in toto the same, word for word, as the Indiana law of 1897. Of the few variations from the original but two demand mention, viz: First, while the first Indiana law contained directions for conciliation proceedings only for disputes involving 50 or more employees, the Idaho law provides in addition that the commission may, if it thinks fit, intervene in smaller disputes also; and, second, there is no provision in Idaho requiring the governor, except for good reason to the contrary, to make public the results of authoritative investigations by the commission.

A statute which contained provision for the termination of railroad strikes, but which can scarcely be called legislation for industrial arbitration or conciliation in the usual sense, was that which created the Kansas Court of Visitation, and which, for the sake of completeness in the present review, may here be mentioned. This law was passed in 1898 (chapter 28 of the laws of that year) and created a court of record, called the "court of visitation," composed of a chief judge and two associate judges. The function of this court was the regulation of railroad rates and operation in the interests of the general public. In order to protect the latter against interruption of traffic by strikes, section 48 of the law provided in substance as follows:

In case of a strike of railroad employees which was obstructing commerce or threatening the public tranquillity, upon affidavit thereof the court was to cite the railroad company to appear and set forth

[a] Cf. similar provisions in Colorado, Illinois, Missouri, and Utah, supra, p. 595.

[b] The 1897 act became law without the approval of the governor. It was repassed and approved by the executive February 18, 1899.

[c] Approved March 12, 1901.

the strike's "extent, the cause or causes thereof, what conduct, if any, of such corporation or its officers led to such strike, and the precise point or points of dispute between said corporation and its striking employees." After hearing the matter upon evidence if the court found the company "free from fault in the premises and the strike unreasonable, the court shall so find, and the said proceedings shall be dismissed; and thereupon, and upon public notice as ordered by the court given of such decision, it shall be unlawful for said strikers, or any of them, to interfere in any manner whatever, by word or deed, with any other employees said corporation may employ and set to work. But if the court shall find that the said corporation has failed in its duty toward its employees, or any of them, or has been unreasonable, tyrannical, oppressive, or unjust, and the strike resulted therefrom, the court shall so find specifically, and shall enter a decree commanding such corporation to proceed forthwith to perform its usual functions for the public convenience, and to the usual extent and with the usual facilities, as before said strike occurred; and if said decree shall not be implicitly obeyed, in full and in good faith, the court may take charge of said corporation's property and operate the same through a receiver or receivers appointed by said court until the court shall be satisfied that said corporation is prepared to fully resume its functions; all costs to be paid by said corporation."

This peculiar provision for the termination of railroad strikes was never put in use. In 1900 the entire statute was declared unconstitutional by the supreme court of Kansas on the ground that "in the powers conferred on that tribunal, legislative, judicial, and administrative functions are commingled and interwoven in a manner violative of the constitutional requirement that the three great departments of government be kept separate and the powers and duties of each exercised independently of the others." (The State *v.* Johnson, 61 Kansas Reports, p. 803.)

RESULTS UNDER STATE LAWS.

Local Arbitration with no Permanent Agency.

The laws in this group have all turned out to be practically dead letters. The Maryland law of 1878, according to the chief of the Maryland bureau of industrial statistics, in 1900 had "never been availed of." The New Jersey acts of 1880 and 1886 were never put to practical use[a], and were repealed in 1892. In 1900 the chief

[a] Cf. Second Report Wisconsin Bureau of Labor and Industrial Statistics, 1885–86, p. 392, and First Report Colorado Bureau of Labor Statistics, 1887–88, p. 174.

of the Pennsylvania bureau of industrial statistics had "no knowledge of any effort to make use of the act of 1893" in that State. The nearest and, so far as appears, the only approach to practical application of the Pennsylvania law is reported by a former president of the Amalgamated Association of Iron and Steel Workers, who stated before the United States Industrial Commission that his organization had on one occasion desired to invoke the law, but the employers had refused to join in that course.(a) In Texas, five years after the law of 1895 was passed, neither the commissioner of agriculture nor the State's attorney-general had any knowledge that the statute had ever been used.

Of the 10 States(b) with laws for State boards which provide also for local arbitration, in none of the reports of such boards is any trace to be found that the latter provision was ever made use of except in Massachusetts and Ohio. In the former State in 1887 two decisions by local arbitration boards were filed with the State board, as required by law, and one was filed in 1904, the dispute having been settled by the award in each case.(c) Beyond these three cases, however, such provision has been a dead letter in Massachusetts. In Ohio the only indication of practical use made of the provision for local boards is to be found in the report of the State board for 1902(d), in which that board complains that it had happened that local boards organized on its advice had not been able to secure any pay from city or county authorities under the provision for payment of members of local boards formed under the authority of the law, and the State board recommended that the law should be amended so that members of local boards would be assured of payment by county authorities upon proper certification by the State board. It is not entirely clear, however, that the local boards referred to in this Ohio report were boards formed specifically under the provision of law therefor, and there is no reference elsewhere in the reports of the Ohio State board to any local boards having been formed under the law, nor is there any mention of any decision of a local board having been filed with the State board, as required by the law.

District or County Boards Established by Private Parties.

Much the same verdict of failure as above must be pronounced upon the second group of laws. In Pennsylvania alone was anything accomplished under this system. Under the Wallace Act of

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a Report of United States Industrial Commission, Vol. XII, Testimony, p. 87.

b Cf. supra, p. 584.

c Cf. Second Report of Massachusetts Board of Arbitration, 1887, pp. 74, 75, and Nineteenth Report, 1904, p. 166.

d Page 6

1883 a tribunal for the coal trade in the fifth judicial district was licensed on May 19, 1883, composed of 5 representatives of the miners, 5 representatives of the operators, and an umpire chosen by unanimous vote of the 10 members. This tribunal was established during a strike and at once set about settling the dispute. Work was resumed immediately, on the understanding that the price for mining to be fixed by the tribunal should date from the resumption of work. In order to secure a decision it was found necessary to refer to the umpire, who fixed a price to be in force until October 1, 1883. This award was "apparently a disappointment to both sides," but was nevertheless accepted by both. In September the tribunal undertook to set the price for the next six months and again the umpire was called upon. His decision, as in the first instance, was a compromise between the demands of the two parties, though involving some advance for the miners. It "did not appear to be satisfactory to all, but was accepted." In March, 1884, the rate for the half year to October 1, 1884, was to be set, and the tribunal, without the aid of the umpire this time, decided upon a rate which was a reduction from the two previous rates which it had fixed. "To many miners this action was unsatisfactory, although the price was generally accepted." Under the law a new tribunal was to be established every year, but although the first ceased to exist in May, 1884, a new one was not licensed until October of that year. To this the operators returned four of their former representatives, but the miners, apparently as a result of the third award of the first tribunal, chose new men for all five places. This second tribunal decided that the price last fixed by the first tribunal should continue in force indefinitely, but that they would meet for the purpose of considering changes in the price whenever three of nine members so desired.(a) In January, 1885, the services of the tribunal were invoked for the fourth time, this time to decide upon a permanent sliding scale of wages for coal mining. The question was finally referred to the umpire, who made his award on February 11, 1885.(b) In this award it is remarked that the tribunal had secured industrial peace for the trade in that district since its establishment. Similar evidence of the success of this tribunal up to 1885 is to be found in a statement by one of the miners' representatives on the tribunal, made in December, 1884, that the tribunal had "done more good during the last twenty months for

a The above facts concerning the coal-trade tribunal to 1884 are given in a letter by a member of the tribunal (an employer), written in 1884, and published by the New South Wales commission on strikes (Report, 1891, Conciliation Appendix D (4), p. 60), whence it was quoted by the British royal commission on labor (Foreign Reports, Vol. I, p. 44).

b A copy of this award is to be found in the Third Report of the New York State Bureau of Labor Statistics, 1885, p. 422.

the railroad miners and operators than it gets credit for doing. There have been no strikes where there used to be every summer, lasting from two to five months. There have been no 'exiles' made by being 'victimized' for taking active part in strikes to keep wages up. The trade, though dull this year, has suffered none through uncertainty, and contracts have been kept that properly belong to the district."(a) One valuable piece of testimony concerning a detail of the system is given by the employing member of the tribunal already quoted concerning its work up to 1885, who said:

Having been connected with all efforts here to settle differences between employers and employees in the coal trade by arbitration, I would call your attention to one very valuable provision of the Wallace Act, one which I regard as essential to success, viz, the provision that the umpire shall be chosen before any other steps are taken except the choosing of the members of the tribunal proper. In all previous attempts at arbitration in the coal trade the plan has been to choose the representatives of the two sides, who, if they could not agree regarding the point at issue, were to choose the umpire to decide. The result has been in every case that the arbitrators failed to agree, and such a spirit of distrust was engendered that they would not agree upon an umpire; hence failure.

This two years' successful work by the coal-trade tribunal for the fifth, or Pittsburg, district appears to constitute the history of the Wallace Act so far as practical results are concerned. No evidence has been found that anything further was ever done by that tribunal, or that any other tribunal under the law was ever established.

A year after the Ryan Act of 1885 in Ohio was passed, the bureau of labor statistics of that State reported that "no effort was made to put its provisions into practical use, largely for the reason that compulsory arbitration is generally regarded as impracticable."(b) No use was ever made of it subsequently, and the act was repealed in 1893 upon the creation of a State board of arbitration. The acts of Iowa and Kansas (1886) present the same record of total failure, neither having been put into practice.(c) The Kansas commissioner of labor in 1900 expressed the opinion that the complicated machinery of the law nullified it.

Intervention by State Labor Commissioners.

Of the five States in this group, North Dakota may be dismissed with a word, since the provision of law authorizing intervention by the commissioner was in force there but a year (1890–91) and during

a Statement made in letter published by the New South Wales commission on strikes, loc. cit., p. 61, and quoted by British royal commission on labor, loc. cit.

b Ninth Report of the Ohio Bureau of Labor Statistics, 1886, p. 241.

c According to the commissioner of labor in each of these States in 1900.

that time there was no occasion for the commissioner to mediate.(a) In Colorado the provision has never been stricken from the statute book, but was naturally superseded by the act of 1897 creating a State board of arbitration. Examining the reports of the commissioner of labor for evidence of action taken by him in industrial disputes the statement is found for the years 1895–96 that "wherever difficulties of any kind have occurred between employers and employees your commissioner has invariably been called upon as a mediator, and in nearly all instances his efforts have resulted in a speedy and satisfactory adjustment of all difficulties."(b) The "difficulties" referred to in this general statement, however, must be other than strikes or lockouts, inasmuch as the same report contains accounts of twelve strikes, in but one of which is interposition by the commissioner mentioned, and in that case his mediation was unsuccessful. For the entire ten years from 1887, when the bureau was created, to 1897, the reports give account of 71 strikes in the State, and in three only of these is intervention by the commissioner reported. In one case he interposed at the request of the governor of the State, in one upon his own motion, and in the third "by request," presumably of one of the parties. In none of the three disputes, however, did he succeed in effecting a settlement.

In Missouri considerably more appears to have been accomplished under the provision for intervention by the commissioner of labor than in Colorado. It may be noted in passing that before the provision of 1889 gave him special authority therefor, the Missouri commissioner of labor statistics had on occasion intervened in labor disputes, his ninth report for 1887 referring to "active labor in the attempt to settle disputes and differences peaceably between employers and employees."(c) A summary made up from the reports of the commissioner for the eleven years, 1890 to 1900, gives the following record of results under the Missouri provision of 1889:

In 1890, in accounts of 9 strikes, in one only is action by the commissioner noted, that consisting of an investigation at the request of employees, which did not, however, settle the controversy. In 1891 20 strikes and 2 other disputes are described, but no notice of action by the commissioner appears. In 1892 15 strikes are noted, the commissioner having intervened in one unsuccessfully. In 1893 19 disputes (17 strikes) are noticed, in 4 of which there was intervention by the commissioner, twice before and twice after suspension of work had occurred, resulting in a settlement in all 4 cases. In 1894 no action is mentioned, though 6 strikes are reported. In 1895, 1896,

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a Statement by the commissioner of labor in 1900.

b Biennial Report of Colorado Bureau of Labor Statistics, 1895–96, p. iv.

c Ninth Report, Missouri Bureau of Labor Statistics and Inspection, 1887, p. 9.

and 1897 no disputes or interventions are reported. In 1898 no action is reported for 6 strikes noted, but in 2 other disputes the commissioner intervened and settled 1 controversy. In 1899 no action is mentioned, though 31 strikes are summarized in tabular form in the report. In 1900 the only dispute described is the St. Louis street-car strike, in which the commissioner endeavored to mediate, but with no success. In recounting his experience in the last-mentioned dispute the commissioner alludes to "our most inefficient law regarding arbitration."[a] Altogether, therefore, in the 11 reports out of 105 strikes and 6 other controversies noted, action by the commissioner is recorded in case of 6 of the former and 3 of the latter, and was successful in 6 out of the 9 cases. It would appear from the accounts that the commissioner intervened in 4 cases of his own motion, acting in the other 5 upon request or complaint of the workingmen. Seven of the 9 disputes were in the mining industry, and in 4 of these the controversy concerned alleged violation of labor laws. Finally, it may be noted that in all cases the action consisted of mediation only, and the provision of the law for the appointment of boards of arbitration by the commissioner [b] was never put to use.

In addition to the above there should be noted a statement made by the commissioner in 1900 that "A great many lesser labor troubles, such as disputes about wages, hours of labor, union rules, etc., in the city of St. Louis, also in Kansas City, have been amicably adjusted by this bureau during the past four years." Nevertheless, the same commissioner, speaking of the law of 1889 in general, declared it to be "very indefinite, incomplete, and unsatisfactory, but is a little better than none—is about all we can say for it." So that notwithstanding some substantial results attained through intervention by the commissioner it is not surprising to find the 1889 provision abandoned for a State board in 1901.

The provision in the State of Washington for intervention by the labor commissioner went into effect March 9, 1903, and the Fourth Biennial Report of the Bureau of Labor[c] sets forth in full the action taken by the commissioner in this field for the period to January 1, 1905, or a year and ten months from the time the act took effect. The commissioner intervened in 12 disputes during the entire period, or in 6 each in the ten months of 1903 and the year 1904. Twice in each year employers requested the commissioner's intervention, the work people being the applicants in the other cases. One case in each of the two years was a dispute in which intervention occurred before stoppage of work, and the commissioner effected a settlement in both cases, so that no strike occurred. The other 10 cases were strikes or lockouts, and application for intervention was

[a] Report for 1900, p. 432. [b] Cf. supra, p. 589. [c] Pages 67–111.

made after the suspension of work in all but 1. In 4 of the strikes or lockouts the commissioner's intervention resulted in a settlement, while in 6 (including the case of intervention before stoppage of work) his efforts were unsuccessful.

One of the strikes was terminated by arbitration under the law at the instance of the commissioner, each side naming one member and these two the third for an arbitration board of three persons. In all the other cases the intervention was in the nature of conciliation. One case is reported in which the commissioner endeavored to persuade the employers to agree to the arbitration proposed by the work people, and on the employers refusing he demanded and received for publication a sworn statement of their reasons for the refusal, as directed by the law.

Summing up the two years' record under the Washington provision, there were 12 cases of intervention by the commissioner, resulting in 6 settlements (2 disputes without strike or lockout) and 6 failures.

The Maryland law of 1904 for intervention by the commissioner of labor is as yet too recent to afford evidence as to its results in practice, the annual report of the bureau of industrial statistics for the year 1904 stating that up to the time the report was presented (February 28, 1905) the arbitration law "had not been tested."

State Boards of Conciliation and Arbitration.[a]

Judged by results in practice, the 17 State boards provided for by the laws in this group may be divided into two classes, the one including those which have been active relatively little or not at all; the

[a] Information as to the work of the State boards, so far as such have been active, is to be found in their official reports. At the same time it must be said that these reports are almost without exception in such form as to necessitate very laborious analysis and compilation in order to arrive at any general results concerning the work of boards. The plan universally followed in the reports has been to present an account of each controversy by itself in simple narrative form, and, save in one Indiana report (1897–98), two Massachusetts reports (1901 and 1902), one Ohio report (1898), and the New York reports after 1900, no attempt has been made to summarize results or tabulate the essential facts common to the individual cases. Further, in the accounts as given there is frequently lack of precise statement as to the details of action taken and results, so that much is left to inference and interpretation in any attempt to analyze cases for statistical purposes. The figures with reference to the work of the State boards in the following pages, therefore, can be taken as only approximate. Even if but roughly approximate, however, they are believed to be of value as the only means whereby a comprehensive general view of the work of boards may be presented. It should be added that for the sake of a uniform interpretation throughout the author has used everywhere only his own analysis of the individual cases as described in the reports, except for the New York board since 1900.

other those with records of some considerable activity ever since their establishment. The former class includes the following 9 States: California, Colorado, Connecticut, Idaho, Louisiana, Michigan, Minnesota, Montana, and Utah.

CALIFORNIA.

A board was appointed under the California law of 1891, three months after the act was passed, but continued in existence for only a year and never had a successor.[a] The Tenth Biennial Report of the California Bureau of Labor Statistics,[b] referring to the short-lived board of 1901, states that "there is no record of any work ever having been done by the board, or any report having been published by it as to its work."

COLORADO.

A board of arbitration has been maintained in Colorado ever since the passage of the law of 1897. Just how much has been accomplished by this board can not be stated from the information available,[c] but results have certainly been meager.

The United States Industrial Commission in 1900 referred[d] only to the second annual report of the board for the year ended November 11, 1898, and notes the board's statement that practically no labor difficulties had arisen in Colorado during that year, except in the coal fields in the northern part of the State, and in a more or less general strike in that industry in January, 1898, the board actively intervened, this being the one case mentioned by the commission in its reference to the board's work, and apparently the only important action of the board that year. In this case the miners' union requested the State board to investigate the controversy, and the employers having at about the same time expressed a willingness to submit to arbitration the parties entered into a formal agreement for arbitration by the State board, pending which the miners resumed work. The board completed its investigation on February 11, and rendered a decision granting practically all the miners' demands for an increase of wages. The board's report, as quoted by the industrial commission would indicate that the dispute was thus settled by the board's arbitration. Later information, however, shows that the board's decision was subsequently repudiated by the employers. This is, in fact, the statement of a legislative committee appointed in 1901 to investigate another serious strike in the same region and industry in 1900, which reported[e] that when the board's

[a] Statement of the California commissioner of labor in 1905.

[b] Page 134.

[c] Repeated requests for the board's reports, addressed to the secretary, have met with no response.

[d] Report of United States Industrial Commission, Vol. XVII, p. 427.

[e] Cf. Report of Colorado Bureau of Labor Statistics for 1901–2, p. 138.

decision in 1898 was found to be entirely in favor of the work people the employers refused to abide by it, and though the miners were forced by an importation of foreign labor to accept the terms offered by the employers, this action laid the foundation for the dissatisfaction which later culminated in the strike of 1900.

The Biennial Report of the Colorado Bureau of Labor Statistics for 1899–1900 throws considerable light on the work of the board of arbitration in those years. The report[a] in reviewing the industrial disputes of these years gives account of 67 strikes, in but 2 of which is any action by the arbitration board noted. In both cases the board intervened upon request of the striking workmen. In one the board settled the controversy by arbitration; in the other, the great smelter strike of 1899, the board held an investigation of the controversy and published a decision on the points at issue. The workingmen, who had announced a similar intention before the investigation, reaffirmed their willingness to abide by the board's findings, but the employers, in accordance also with previously expressed intention, declined to accept them, and no settlement was effected. One other dispute, not involving stoppage of work, is reported, in which, by joint agreement of the parties, the board settled the difference by arbitration. This record led the commissioner of labor to express the opinion that in practical application the Colorado law providing for the board of arbitration "has been almost a dead letter so far," and that "as for the moral effect, it would be difficult to show in what way it has been good."

The Sixth Annual Report of the State Board of Arbitration of Colorado,[b] for the year ended November 15, 1902, reports that but four disputes came before the board in that year. The report states that the work of the board was seriously hampered during the year by an opinion of the attorney-general, given in October, 1901, that the board had "no power to enforce obedience to its subpœnas or to punish a refusal to testify, and, furthermore, had no power to enforce its decisions." The board therefore recommended that the law be amended so as to remedy these defects in its powers, and this, as previously noted[c] in the analysis of State laws, was done in 1903.

Still later evidence as to the work of the Colorado board is found in the Ninth Biennial Report of the Colorado Bureau of Labor Statistics for the two years ended November 15, 1904. In that report[d] the commissioner of labor cited the great conflict of 1903 in the Cripple Creek mining district (recounted at length in a chapter on strikes and lockouts) as ample evidence of need of better provision

[a] Page 170 et seq.

[b] Cf. notice thereof in Bulletin of the United States Bureau of Labor No. 50, January, 1904, p. 158.

[c] Cf. supra, p. 595.

[d] Pages 8 and 297.

for intervention in disputes by the bureau of labor statistics, and recommended that the law creating the State board of arbitration should be so amended as to provide that the deputy commissioner of labor should be secretary of the board and that the employees of the office of the deputy commissioner should be members of the arbitration board, and, to quote the recommendation, "thus secure the services paid for and at the present time very seldom availed of."

CONNECTICUT.

In accordance with the act of 1895, the Connecticut board of arbitration was organized on September 18 of that year. The first and only annual report of this board, a brief document of two pages, presented September 30, 1895, and appended to the Eleventh Report of the Bureau of Labor Statistics, recounts one case of action as the record for the first two weeks' work of the board. In this instance the board intervened in a strike at the request of the employees and brought about an amicable agreement of the parties. The Report of the Bureau of Labor Statistics for the next year (1896) announced that the board of arbitration presented no report because it had acted in but one case during the year, and then unsuccessfully.(a) For the year following likewise the bureau announced no report from the board, and this time because there was no action of any kind to be reported; and in no subsequent year was anything ever done by this first board, although it appears to have been nominally in existence as late as 1900.(b)

The chief explanation of the inactivity of the first Connecticut board is to be found in its decision to take no action except as one or other of the parties to a dispute requested it. Section 4 of the law made it the board's duty to intervene for the purpose of mediation "whenever a strike or lockout shall occur, or is seriously threatened, in any part of the State and shall come to knowledge of the board." In their first report the board stated that the word "knowledge," above, was interpreted as meaning "a notification from one or both of the parties concerned in a strike or lockout." Why this interpretation was adopted it is difficult to understand, unless it was suggested by the fact that in preceding sections a notice from the parties was required for cases of arbitration. In this connection it is proper to note the statement of the secretary of the board to the United States Industrial Commission to the effect that the courts had so interpreted the law as to deprive the board of all important powers.(b)

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a Twelfth Report of the Bureau of Labor Statistics, 1896, p. 14.

b Report of United States Industrial Commission, Vol. XVII, p. 427.

In 1903 the Connecticut board of mediation and arbitration was revived by the appointment of a new board in May of that year. This board has made two annual reports, one covering the six months June to November, 1903, the other the year ended November 30, 1904. The 1903 report gives account of 7 strikes in which intervention by the board, or one of its members, occurred. Mention is made also of 8 other cases in which correspondence occurred with a view to intervention, only to find that the disputes were trivial or in a way to be settled by the parties. The 1904 report recounts only 6 cases of active intervention, five times in strikes and once in a difference in which no stoppage of work occurred.

Of the 13 cases for the year and a half covered by the two reports, in 2 the work people asked for the board's intervention; in 1 both parties applied, but in the other the board took the initiative. In 4 of the 13 cases (2 in each year) the board's intervention led directly to a settlement of the disputes, or (in 1 case) was "materially influential" in bringing about a settlement. These 4 settlements include the 1 case of intervention before strike or lockout; 3 were effected by conciliation, while in 1 the parties submitted to arbitration by the board. In this last case the arbitration decision was finally accepted, although it was necessary for the board, after its decision was given, to settle by conciliation a difference which arose almost immediately over the interpretation of one clause of the award.

IDAHO.

Although the law providing for a board in Idaho was passed in 1897 no board was ever appointed under that act, or the one identical with it passed in 1899. Under the more recent law of 1901, however, a commission as thereby provided was appointed,[a] but as late as August, 1903, no report had been made by it, and at that time the governor of Idaho stated that the board was rather perfunctory than otherwise.

LOUISIANA.

In Louisiana a board was appointed under the act of 1894, but after a short period in which apparently the board was active to some extent, it lapsed into inactivity. This is to be inferred from a statement by the former president of the board made in 1900 that he had resigned his office "several years ago," and that the board had "had no meeting for several years," and that "the last meeting was in reference to a threatened strike of the street railroad employees of New Orleans, which was adjusted satisfactorily to both employers

[a] Statement of commissioner of the bureau of immigration, statistics, and labor in 1901.

and employees." So far as can be ascertained there has never been any revival of the Louisiana board.

MICHIGAN.

Although the Michigan law was passed in 1889 no court under it was appointed until May, 1897, but ever since that time such a court has been maintained. A complete account of such action as the court may have taken in the years prior to 1901 is not possible, however, as no reports were published by the court down to that year. The evidence available indicates, however, but meager results accomplished in that period. In December of 1897, a half year after its appointment, all the court had to say of its work was that "while its opportunities have been limited, it has gradually succeeded in impressing upon employers and employees alike that it is thoroughly impartial and anxious to do justice, heal dissatisfaction, and help to bring about a better understanding between the men who pay wages and those who receive them."(a) In the reports of the Michigan bureau of labor and industrial statistics (b) are to be found accounts of 57 strikes which occurred in the State during 1899, and of 33 others in 1900. But of these 90 disputes in but 2, both in 1899, is any mention made of action by the court of arbitration. In one case the court settled the controversy; in the other the dispute was still before the board at the time the report was made.

For the years 1901 to 1904 the record of the Michigan court of mediation and arbitration may be seen in its first annual report covering the year ended June 1, 1902, and its first biennial report for the calendar years 1903 and 1904.(c) For the year ended June 1, 1902, the court reported that 13 strikes had come to its notice. Except for one of these, which was settled by the court, as noted below, there is, however, no information in the report as to the action taken by the court in connection with them, except a statement in one that the court offered its services, but they were refused, and a general statement that "in several instances the efforts of the court were ineffectual, as the disputants could not be induced to confer with each other. In other cases the parties settled their grievances among themselves, a method of solution highly commendable." Apparently, therefore, one settlement out of the 13 cases was the record for the year. The case settled was characterized by the court as the most important dispute of the year, being a strike of bituminous coal miners. The court succeeded in bringing about a conference

a See letter of the court published in the Fifteenth Annual Report of the Michigan Bureau of Labor and Industrial Statistics, p. 273.

b Seventeenth report, 1900, p. 251; Eighteenth report, 1901, p. 241.

c The first biennial report is published as Chap. XI of the Twenty-second Annual Report of the Michigan Bureau of Labor and Industrial Statistics.

of the parties, at which an agreement was reached which terminated the dispute.

The report for 1903 and 1904 describes 15 disputes (13 strikes) in the former year and 8 (6 strikes) in the latter. In the case of 5 out of the 23 cases, however, no action by the court is mentioned. In 3 others the only action indicated is informal investigation of the situation, and in 5 more cases it is stated only that the court offered its services, but they were declined by one or other of the parties, once by the workers and four times by the employers. In the other cases (7 in 1903, 3 in 1904) definite conciliation or arbitration action is stated. In 4 cases only was such action successful, all of these being in 1903. In 2 instances the court effected a settlement by conciliation and in 2 by arbitration. In one of the latter the parties to the dispute applied jointly to the board, having agreed to the arbitration and the men having resumed work pending the decision. In the other arbitration case the parties had agreed on local arbitration, and the two arbitrators chose a member of the State court as third member and chairman. In this last case no stoppage of work had occurred.

MINNESOTA.

Under the act of 1895 Minnesota had a board appointed in May of that year. This board's term of office expired in 1897, and no successor to it was appointed until 1901. The only dispute which ever came before the first board was one between the printers and publishers of daily newspapers in St. Paul and Minneapolis. A joint request for arbitration was accepted by the board and a decision rendered, but, according to the recollection of the former president of the board, the award was unsatisfactory to both parties and is said to have been disregarded in part by the employers.[a]

Very little different has been the record of the board which has been maintained since 1901. Its secretary stated in August, 1903, that up to that time the board had accomplished nothing, although it had offered its services in several instances, and the secretary of state of Minnesota reported in 1905 that the board had never made a report to the State, and that, according to his information, the board did very little work.

MONTANA.

In Montana under the laws of 1887 and 1895 a board of arbitration was in existence up to the later nineties. The commissioner of the Montana bureau of agriculture, labor, and industry in 1895 reported that " so far as known the Montana board from 1887 to 1895 was never

[a] Statement of former member of first board and statement of the secretary of the later board, in Report of United States Industrial Commission, Vol. XVII, p. 447.

called on but once, and then the parties declined to arbitrate. The law was to all intents and purposes a dead letter, because it could only intervene when called upon by the employer or a majority of his employees, and then only after tedious delays and circumlocution."[a] At the commissioner's suggestion, therefore, the revised law of 1895 was enacted, whereunder the board could intervene of its own motion for purposes of mediation, the older law having provided only for arbitration on request of one party.[b] The change, however, had no effect in practical results, for in 1900 the commissioner of the bureau stated that the law was "a dead letter * * * and no case ever came before the board." Further, at the latter date the board was incomplete, existing vacancies not having been filled by the governor. The commissioner of agriculture, labor, and industry in 1905 states that the 1895 law has always been inoperative because no appropriation for the board has ever been made by the State.

UTAH.

Under the act of 1896 a board was organized in 1897. The president of the board, writing to the United States Industrial Commission in July, 1901, stated that as to its work there was "nothing of any consequence to report," that the only important dispute which had occurred during the life of the board was a coal-miners' strike in 1901, in which the miners applied to the board for arbitration, but that as they refused to resume work pending a decision, as required by the law, unless the employers would first agree to join in the application, and not to discriminate against individual strikers, which the company declined to do, the procedure before the board could not be carried out. The president added that conciliation in differences before a rupture had occurred had been the chief function of the board, and asserted that "in this direction it had been gratifyingly successful."[c] The secretary of state of Utah reported, in August, 1903, that the arbitration board had never been called upon to act and had never made any report. So far as ascertained there has been no more action by the Utah board since 1903 than before.

The remaining eight State boards not only have been more active than the nine above considered, but also, fortunately, have all published regular reports, as required by their laws, whence something like comprehensive accounts of their work may be gleaned. The eight are here considered in order according to the length of time they have been in existence, beginning with the oldest, and are as follows: New York, Massachusetts, New Jersey, Ohio, Wisconsin, Illinois, Indiana, and Missouri.

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[a] Third Annual Report of the Montana Bureau of Agriculture, Labor, and Industry, 1895, p. 17.

[b] Cf. supra, p. 598.

[c] Report of United States Industrial Commission, Vol. XVII, p. 462.

NEW YORK.

The first State board of arbitration in the United States was appointed in New York June 2, 1886. The law of 1886, under which this board was created, as already noted,[a] contemplated action in the first instance by local boards appointed by the parties to each dispute and made the State board simply a court of appeal to which arbitration cases might be carried from such local boards. The State board's experience during the six months of 1886 is chiefly noteworthy as demonstrating the error of so limiting its jurisdiction. No local board was ever appointed under the law, neither in these first six months nor at any subsequent time, wherefore the board's history would have forever remained a blank if it had confined itself to the action contemplated by the law. As a matter of fact, it did not so limit itself, the pressure of public opinion having led it at the very outset to intervene in disputes upon its own motion. At the time the board was appointed a serious strike, involving some 10,000 work people, was in existence in the city of Troy, 6 miles from the capital, and the public press and private citizens, with little heed to the reading of the law, at once called upon the board to intervene. Upon request the State's attorney-general expressed the opinion that such action by the board on its own initiative could not find even "a semblance of authority" in the law. In spite of this, however, the board, taking its sanction from the generally expressed desire, proceeded to Troy and offered its services as mediator, the outcome being a joint conference of the parties and the settlement of the strike. Similarly, the board took action in six other cases before the end of 1886 and in all but two of these acted upon its own motion.

The necessity of a change in the law having been thus demonstrated, upon recommendation of the board the legislature of 1887, by act of March 10 of that year, amended the law so as to give the board jurisdiction without reference to local boards, not only for arbitration but for mediation and authoritative investigation also, and made it its duty to intervene as mediator upon knowledge of threatened or existing strike or lockout, and so the law has remained ever since.

The fact has already been noted in connection with the analysis of State laws (b) that with the year 1901 the New York board of mediation and arbitration became a subordinate division of the department of labor then created and underwent a radical change in organization. Partly on this account, but more especially because the authoritative summaries of its work given in the board's reports since 1900 include only cases of aggressive intervention, while completeness in the analyses and tabulations which have had to be made

[a] Cf. supra, p. 584.

[b] Cf. supra, p. 593.

for earlier years has required the inclusion of some other cases (cases of preliminary action, as noted below, so that some of the resultant figures, in particular those in the first three of the following tables, are not fairly comparable with those of the board's later summaries, it has seemed best to consider separately the board's work for the period prior to 1901, during which it existed as an independent State office, and its work since 1900, when it has been one of three bureaus in the State department of labor.

The table below shows, by years, the total number of disputes in which action with a view to intervention was taken by the New York board, as shown by its annual reports down to 1901:

DISPUTES ACTED UPON BY THE NEW YORK BOARD OF MEDIATION AND ARBITRATION, 1886 TO 1900.

Year.	Disputes acted upon.	Year.	Disputes acted upon.
1886 (a)	7	1895	30
1887 (b)	14	1896	22
1888	20	1897	47
1889	26	1898	30
1890	33	1899(c)	46
1891	27	1900	46
1892	18		
1893	18	Total	409
1894	25		

[a] Seven months, June to December.
[b] Ten months, the official year closing October 31, from 1887 to 1898.
[c] Fourteen months, November, 1898, to December, 1899, official year being changed to correspond with calendar year in 1899 and 1900.

In the thirteen years, 1888 to 1900, an average of 30 cases a year is reported. The figures indicate larger activity in later as compared with earlier years, averaging 35 in the last seven years, as against 21 in the first six, while the numbers in each of the last four years except one are considerably larger than in any previous year. In the next table may be seen whence the initiative for the board's action came.

INITIATIVE IN CASES ACTED UPON BY THE NEW YORK BOARD OF MEDIATION AND ARBITRATION, 1886 TO 1900.

Year.	Number of cases in which the board acted—					
	Of its own motion.	Upon request—				Grand total.
		From employers.	From work people.	From both parties.	Total.	
1886	5		1	1	2	7
1887	7	4	3		7	14
1888	16	2	2		4	20
1889	21	2	2	1	5	26
1890	26	1	5	1	7	33
1891	24	1	2		3	27
1892	14	1	3		4	18
1893	17		1		1	18
1894	22		1	2	3	25
1895	25	2	1	2	5	30
1896	21	1			1	22
1897	43		3	1	4	47
1898	29		1		1	30
1899	40	1	5		6	46
1900	41	1	4		5	46
Total	351	16	34	8	58	409

As was found for the first year, so thereafter, the board's intervention was almost entirely upon its own initiative, action having been taken by request of the parties in only one in seven cases for the entire period, and the proportion shows no upward tendency during the fifteen years. So far as the board was called in by parties in dispute, requests came more frequently from work people than from employers, and the cases where the parties applied to the board by mutual agreement are rare.

Nearly always intervention by the board has not occurred until disputes have reached the acute stage of strike or lockout, as appears from the following figures:

STRIKES AND LOCKOUTS ACTED UPON BY THE NEW YORK BOARD OF MEDIATION AND ARBITRATION, BEFORE AND AFTER SUSPENSION OF WORK, 1886 TO 1900.

Year.	Cases of intervention.			Total interventions in strikes and lockouts.	Total strikes and lockouts in State (calendar year).[a]	Interventions per 100 strikes and lockouts.
	Before suspension of work.		After strike or lockout.			
	Total.	Followed by strike or lockout.				
1886	1		6	6	350	1.7
1887	1	1	13	14	520	2.7
1888	2	1	18	19	283	6.7
1889	5	3	21	24	437	5.5
1890			33	33	822	4.0
1891			27	27	769	3.5
1892			18	18	465	3.9
1893	2	2	16	18	387	4.7
1894	2		23	23	424	5.4
1895	3	1	27	28	362	7.7
1896	2	1	20	21	216	9.7
1897	4		43	43	248	17.3
1898	1		29	29	280	10.4
1899	6	2	40	42	299	14.0
1900	3	2	43	45	327	13.8
Total	32	13	377	390	6,189	6.3

Intervention before suspension of work occurred in but 32 out of the 409 cases, and the strike or lockout stage had practically been reached in 13 of that number, as shown by stoppage of work very soon after the board's intervention. The difficulty of securing prompt information of disputes, as a means to its early intervention, has been the subject of frequent complaints by the New York board. Since,

[a] See Sixteenth Annual Report of United States Commissioner of Labor, pp. 92, 626. Since 1888 the New York board has presented in its reports brief accounts of all disputes in the State of which it could learn, whether intervention occurred or not. The total of strikes and lockouts in the State, given in the reports for 1894 to 1900, varies considerably from the figures given by the United States Commissioner of Labor. The board's figures for total strikes and lockouts would show the following:

Year.	Total strikes and lockouts.	Interventions per 100 strikes and lockouts.	Year.	Total strikes and lockouts.	Interventions per 100 strikes and lockouts.
1894	425	5.4	1898	271	10.7
1895	417	6.7	1899	455	9.2
1896	246	8.5	1900	547	8.2
1897	245	17.6			

as already noted, the parties to disputes have shown very little inclination to call upon the board, the latter has had to depend for its knowledge of the existence of disputes upon newspaper reports, which ordinarily chronicle them only when open hostilities occur and frequently, even in such cases, so tardily that the board has failed to hear of strikes until several days after they had occurred. This difficulty has led the board to urge the incorporation in the New York law of a provision, found in several other States,(a) requiring local public authorities to notify the board of existing or threatened strikes and lockouts. Thus far, however, the legislature has not acted upon this recommendation.

In the table above comparison is made of the total number of interventions by the board in strikes and lockouts with the total number of the latter occurring in the State. The last four years, it will be seen, show higher percentages than any earlier years, but no general upward tendency appears after 1897, when the highest proportion was reached.

The nature of the action taken by the board in the cases above enumerated varied all the way from mere request to the parties for information concerning the controversy to formal arbitration or public investigation. They may, therefore, be divided into two classes: First, those in which no more than action preliminary to actual intervention was taken, and second, those wherein there was positive intervention by the board. The former class includes all instances of mere inquiry for information, simple tender of services without other effort to induce its acceptance, action taken after a dispute was ended, proposed intervention where the controversy was settled before the board reached the locality, etc. Such a division, with a further division of the second class according to the board's success or failure in each case, gives the following results:

DISPUTES ACTED UPON BY THE NEW YORK BOARD OF MEDIATION AND ARBITRATION, BY RESULTS, 1886 TO 1900.

Year.	Total cases acted upon.	Preliminary action only.	Positive intervention resulting in—			Disputes settled without strike or lockout.
			Failure.	Settlement.	Total.	
1886	7	----------	----------	7	7	1
1887	14	----------	10	4	14	----------
1888	20	3	9	8	17	1
1889	26	10	11	5	16	2
1890	33	16	10	7	17	----------
1891	27	20	6	1	7	----------
1892	18	7	7	4	11	----------
1893	18	8	6	4	10	----------
1894	25	7	6	12	18	2
1895	30	3	20	7	27	2
1896	22	5	13	4	17	1
1897	47	17	14	16	30	4
1898	30	11	8	11	19	1
1899	46	15	14	17	31	4
1900	46	13	21	12	33	1
Total	409	135	155	119	274	19

(a) Cf. supra, p. 598.

It should be borne in mind that the cases here classed as showing preliminary action only are as a rule the least important disputes coming to the board's notice, also that while these cases can not add anything to the board's record in actually adjusting differences, no more can many of them be classed as positive failures on the part of the board. In several the board found controversies already so near to a settlement that intervention was not needed, and in a majority of them the dispute was found to be already terminated by the time the board secured information of it or could reach the scene.

Likewise concerning the number of cases settled, it may be said at once that the above figures scarcely represent all that the board has accomplished. A numerical measurement of the moral influence a State board may have exerted, even where its efforts failed utterly, by bringing to the attention of industrial classes and the public the subject of conciliatory methods, and by its very existence as well as active operations suggesting such methods—in short, the educational effect of its activities—is, of course, impossible. At the same time, the chief end of such a board being the settlement of disputes a statement of the number actually settled does properly measure its most important work, and to a considerable degree its educational influence is proportionate to its success in interventions.

In fifteen years the New York board aggressively intervened in 274 disputes, and of these settled 119, or 43.4 per cent. The average number of such interventions and settlements per year was 19 and 8, respectively.(a) It will be observed that the absolute numbers in respect of both these items are considerably larger in later as compared with earlier years, the total number for the last five years being 130 cases of intervention and 60 disputes settled, against 144 interventions and 59 settlements for the entire ten years previous to 1896. In 19 cases the board actively intervened in disputes before any strike or lockout had occurred, and in every case adjusted the difference without any suspension of work.

To properly indicate how far the board has met the need for such work as it is designed to perform it is necessary to compare the amount of its aggressive action and the number of times its intervention was successful with the total disputes occurring in the State. Leaving out the 19 cases of intervention in which no suspension of work occurred, the number of aggressive interventions and settlements per 100 strikes and lockouts are found to be as follows:

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a Disregarding 1886–87, which were not full years.

AGGRESSIVE INTERVENTIONS AND SETTLEMENTS BY THE NEW YORK BOARD OF MEDIATION AND ARBITRATION PER 100 STRIKES AND LOCKOUTS, 1886 TO 1900.[a]

Year.	Aggressive interventions per 100 strikes and lockouts.	Settlements per 100 strikes and lockouts.	Year.	Aggressive interventions per 100 strikes and lockouts.	Settlements per 100 strikes and lockouts.
1886	2.0	2.0	1895	7.5	1.9
1887	2.7	.8	1896	7.9	1.9
1888	6.0	2.8	1897	12.1	6.5
1889	3.7	1.1	1898	6.8	3.9
1890	2.1	.9	1899	10.4	5.7
1891	.9	.1	1900	10.1	3.7
1892	2.4	.9			
1893	2.6	1.0	Total	4.4	1.9
1894	4.2	2.8			

It is seen that in the fifteen years the board intervened aggressively in 4.4 per cent of the strikes and lockouts in the State and succeeded in terminating 2 per cent. The proportions are higher for the last four years than for earlier years, but are highest for 1897, in which year the largest number of interventions but two and the lowest number but one of strikes and lockouts occurred. Prior to 1897 the proportion of settlements remained constantly below 3 per cent.

So far as the board has settled disputes it has done so in the great majority of cases by conciliation as distinguished from arbitration, as indicated in the following table:

DISPUTES SETTLED BY THE NEW YORK BOARD OF MEDIATION AND ARBITRATION, BY METHOD OF SETTLEMENT, 1886 TO 1900.

Year.	Number of disputes settled by—			
	Conciliation.	Arbitration.	Public investigation.	Total.
1886	3	4		7
1887	2	2		4
1888	6	2		8
1889	1	4		5
1890	6	1		7
1891	1			1
1892	3	1		4
1893	4			4
1894	10	2		12
1895	5	2		7
1896	4			4
1897	13	3		16
1898	11			11
1899	16		1	17
1900	12			12
Total	97	21	1	119

[a] If the number of strikes and lockouts reported by the board be taken for comparison instead of the number reported by the United States Commissioner of Labor as above, the results for 1894–1900 are as follows:

Year.	Aggressive interventions per 100 strikes and lockouts.	Settlements per 100 strikes and lockouts.	Year.	Aggressive interventions per 100 strikes and lockouts.	Settlements per 100 strikes and lockouts.
1894	4.2	2.8	1899	6.8	3.7
1895	6.4	1.7	1900	6.0	2.6
1896	6.9	1.6			
1897	12.2	6.5	Total	6.7	3.0
1898	7.0	4.1			

Arbitration was the means used in not quite 1 in 5 of the cases settled, that method appearing oftener in earlier than in later years. In 7 of the 21 instances the arbitration was by a local board arranged with the assistance of the State board, and in case of 4 of these, with a member of the latter as chairman or umpire, so that regular arbitration by the State board occurred but 14 times. In 3 of these 1 member of the board alone was the arbitrator, while the full board acted in 11 cases. In this connection it may be noted that in cases of conciliation 1 member of the board or its secretary frequently acted alone, though the full board was convened, as a rule, for all the more serious disputes.

In 5 of the arbitration cases there was no suspension of work (1 before a local board with member of the State board as chairman, 1 before a single member of the board, and 3 before the full board), in 11 cases strike or lockout had occurred, but work was resumed pending the decision, while in 5 work was not resumed until after the decision was rendered[a] (once before the board as a whole, once before 1 member, and twice before a local board on which a member of the State board sat as chairman or umpire). In every case where arbitration was submitted to by the parties the dispute was settled by the decision, and only one instance appears in which an award was subsequently broken, that occurring in 1887, when an award of the year before was repudiated by the work people.

When conciliation efforts fail, and the parties will not refer to arbitration of any sort, a third course is open to the New York board, viz, a public investigation into the causes and circumstances of the controversy. Thirty-one times altogether such action was commenced, at least, by the board. The greatest number in any one year was 6 in 1899; 4 cases occurred in 1887, the first year that the law provided for public investigation, while in other years from 1 to 3 appear, except in 1893 and 1898, when there were none. Such investigations occurred in later years less frequently than in earlier years and were resorted to in about 1 in 5 of the cases in which the board failed to effect a settlement by conciliation or arbitration, being confined entirely to the largest and most serious disputes.

Of the 31 cases 1 was abandoned at the outset as the result of the withdrawal of one of the parties, and without a settlement of the dispute; in one the hearings were postponed to allow parties to secure counsel, and during the adjournment they came to a settlement independently of the board; in 1 (the only public investigation of a dispute not involving suspension of work) the parties, with the assist-

[a] This was not strictly in accord with the letter of the law which prescribes that the parties shall "continue in business or at work without a strike or lockout" pending the decision. (Cf. supra, p. 599.)

ance of a member of the board, effected an amicable agreement during the investigation;[a] while in 28 cases the investigation was fully carried out. As to the results of these 28 full investigations, in 1 the board's decision at the close was promptly adopted by both parties, but in the other 27 the investigation failed to settle the dispute. In 2 of these it is true the strike was declared off shortly after the conclusion of the investigation, but it appears from the report that in neither was this the effect of the board's findings. On the contrary, in both instances the board's recommendation was definitely refused by one of the parties (in one by the employers, in the other by the work people), and the declaring off of the strike appears simply as the final surrender of the strikers. But while the board's public investigations were thus failures so far as putting an end to the strikes or lockouts is concerned, it is asserted by the board that in some cases such investigations were of service in that they "developed conditions not generally known to exist, and public sentiment has been thereby aroused to such a degree as to cause a change for the better of those conditions which led to the controversy."[b] It must be said, however, that any such service was rendered in most cases late in the course of disputes, the investigations being undertaken only after protracted struggles between employers and employed.

Previous to 1898 the board, as a rule, published no findings or recommendations after an investigation, such not being required by law, and the avowed policy of the board being against their publication.[c] In two cases before that time special reports were made to the State legislature, and in a third case a report was given out to the public, but no report was made in the other 19 cases. After the change of law in 1897 requiring the report,[d] however, a finding of fact, with recommendations to the parties, was made and published in each of the investigations, 6 in all, down to 1901.

Below is a summary of the work of the New York board of mediation and arbitration since its incorporation in the department of labor, made up from the summary statements given in the annual reports. It is to be remembered that these figures are fairly comparable only with those of earlier years which have reference to "positive interventions."

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[a] In this case the board undertook the investigation at the request of the employees without any previous mediatory efforts, as the dispute concerned an alleged infringement of an agreement reached at the conclusion of a strike some time before. In all the other investigations conciliation had been tried and failed, the investigation being a last resort adopted as a rule only after protracted struggle between the parties.

[b] Annual Report, 1897, p. 14.

[c] Cf. Annual Reports, 1890, p. 381; 1891, p. 830.

[d] Cf. supra, p. 602.

DISPUTES ACTED UPON BY THE NEW YORK BOARD OF MEDIATION AND ARBITRATION, BY RESULTS, 1901 TO 1904.

Year.	Positive interventions resulting in—			Total strikes and lockouts recorded.	Intervention per 100 strikes and lockouts.	Settlements per 100 strikes and lockouts.
	Settlement.	No settlement.	Total.			
1901 (a)	6	11	17	126	13.5	4.8
1902	12	20	32	142	22.5	8.5
1903	8	20	28	202	13.9	4.0
1904	3	5	8	129	6.2	2.3
Total	29	56	85	599	14.2	4.8

[a] Nine months January to September, the official year closing September 30.

In connection with the cases classed as resulting in "no settlement," it may be noted that concerning 3 of these in 1902 and 2 in 1903 it is stated that upon intervention the board found matters already on the way to a settlement, so that its services were not required, and that concerning 2 others of these cases in 1903 it is remarked that though the board's efforts "had no perceptible immediate effects" they "may have helped toward a settlement."

All of the above interventions, save one in 1902, were in disputes involving strike or lockout, and in all but one of these (in 1901) intervention did not occur until after stoppage of work. The 1903 report notes one other instance, not included in the summary of work for that year, in which a member of the board assisted other conciliators in the arrangement of a conference which finally prevented a serious strike which was threatened. In all but 16 instances out of the 85 cases summarized above the board intervened upon its own initiative. Twice (once each in 1901 and 1902) employers alone took the first steps for the board's intervention, and 14 times (2 in 1901, 5 in 1902, 6 in 1903, and 1 in 1904) the workers alone.

All of the board's interventions were in the nature of conciliation, as distinguished from arbitration, save one case in 1902. In that case, upon the initiative of the workers, the parties submitted a wage question to the arbitration of a member of the board under a signed agreement, and his decision settled the dispute without a strike or lockout, this being the one case in the summary of interventions above noted for 1901 to 1904 in which no suspension of work occurred. No public investigation of the causes of a dispute has been made by the board since 1900.

MASSACHUSETTS.

But two months later than the New York board, in the summer of 1886, the Massachusetts board of arbitration was organized. Its first four months' work, like the first experience of the New York board, served to demonstrate the futility of establishing a board with no power to intervene in disputes upon its own motion. The original law provided for action only upon application from one or both of

the parties. The action to be taken was chiefly in the nature of arbitration, and it was apparently expected that parties would apply before strike or lockout had occurred, since the law required of those applying that they should promise "to continue on in business or at work," and directed the board, after visiting the locality and inquiring into the cause of the dispute, to advise the parties what they ought to do for a settlement, and render a written decision on the case, which was declared should be binding upon those joining in the application for six months, or until either party gave the other a sixty-day notice of refusal to abide by it. No power was given the board to summon witnesses. They could simply hear all persons who might come before them.

Under this law, during the four months of 1886 the board acted in five cases, settling two, failing in two, with one pending at the close of the year. This four months' experience resulted in an amendment of the law in 1887 giving the board its present powers, including, in addition to its jurisdiction for arbitration, as before, power to intervene of its own motion for conciliation purposes or for public investigations and power to summon witnesses and require the production of books and papers and requiring local city and town authorities to assist the board to prompt intervention by notice to it of threatened or existing strikes and lockouts.

The extent of the Massachusetts board's activities under this larger authority may be seen in the following table:

STRIKES AND LOCKOUTS ACTED UPON BY THE MASSACHUSETTS BOARD OF ARBITRATION BEFORE AND AFTER SUSPENSION OF WORK, 1886 TO 1904.

Year.	Total cases acted upon.	Action taken—			Total interventions in strikes and lockouts.	Total strikes and lockouts in State. (a)	Interventions per 100 strikes and lockouts.
		Before suspension of work.		After strike or lockout.			
		Total.	Followed by strike or lockout.				
1886 (b)	4	3	1	1	2	135	1.5
1887	21	11		10	10	142	7.0
1888	41	11	1	30	31	100	31.0
1889	23	10	2	13	15	130	11.5
1890	34	8	1	26	27	158	17.1
1891	29	9		20	20	145	13.8
1892	40	16	1	24	25	162	15.4
1893	32	9		23	23	175	13.1
1894	38	16	1	22	23	131	17.6
1895	32	13		19	19	74	25.7
1896	29	14		15	15	47	31.9
1897	36	19	1	17	18	65	27.7
1898	19	8	2	11	13	43	30.2
1899	26	5	1	21	22	77	28.6
1900	50	15	4	35	39	79	49.4
1901	94	24	2	70	72	274	26.3
1902	106	49	8	57	65	276	23.6
1903	167	105	8	62	70	217	32.3
1904	122	74	6	48	54	198	27.3
Total	943	419	39	524	563	2,628	21.4

[a] Figures for 1886 to 1900 from Sixteenth Annual Report of United States Commissioner of Labor, pp. 76, 554; for 1901 to 1904, from annual reports of the Massachusetts bureau of labor statistics. The figures for the last four years are made up on a different basis from those of earlier years, and are therefore not comparable with the former.

[b] Four months only.

In its report for the year 1897 ([a]) the board remarked that "the work of the board, taken one year with another, remains about the same in character and extent, without any special enlargement of the sphere of its influence." The above table would seem to bear out this statement very well down to the year 1900. But the years 1900 to 1904 show a much larger amount of intervention, possibly on account of fuller reports, though there is no evidence of this in the reports themselves, and on the whole an increasing activity during the five years.

In 44 per cent of the cases intervention took place before disputes had involved stoppage of work. The proportion of such cases was very much larger in the last five years, and this kind of intervention has increased in recent years much more than interventions in strikes and lockouts. Adding to the cases of action after suspension of work had occurred those instances in which stoppage occurred after intervention gives a total of 563 strikes and lockouts in which the board intervened, or 21.4 per cent of the 2,628 reported for the State. It should be noted that in the percentages for the different years there appears little chance for valid comparison except within the periods 1886 to 1894, 1895 to 1900, and 1901 to 1904, on account of the great variations in number of reported strikes and lockouts.

In connection with the question of early intervention in disputes, it is of interest to note how often the board has been notified of impending or existing strikes by the mayors of cities or town selectmen. As a matter of fact, out of the 943 cases of action reported such notice was received, so far as the reports show, in but 21 (4 in 1893, 3 in 1904, 2 each in 1890, 1901, and 1903, and 1 each in 1888, 1889, 1892, 1894, 1896, 1897, 1898, and 1902), and the notice in each of these instances, save once each in 1902 and 1903, was not given until suspension of work had occurred. That provision of the Massachusetts law has, therefore, been very largely a dead letter.

In almost exactly one-half of the cases it appears from the reports that initiative for the board's intervention was taken by one or both of the parties in dispute, thus:

[a] Page 8.

INITIATIVE IN CASES ACTED UPON BY THE MASSACHUSETTS BOARD OF ARBITRATION, 1886 TO 1904.

Year.	Total cases acted upon.	Number of cases in which action was taken upon initiative of—				
		Employers.	Work people.	Both parties.	Total by parties.	The board.
1886(a)	4	----------	3	1	4	----------
1887	21	2	1	8	11	10
1888	41	9	11	5	25	16
1889	23	7	5	5	17	6
1890	34	6	6	3	15	19
1891	29	----------	5	7	12	17
1892	40	3	9	9	21	19
1893	32	2	8	4	14	18
1894	38	2	7	10	19	19
1895	32	3	4	9	16	16
1896	29	----------	5	12	17	12
1897	36	3	5	15	23	13
1898	19	----------	1	5	6	13
1899	26	2	5	1	8	18
1900	50	5	9	2	16	34
1901	94	2	17	11	30	64
1902	106	7	21	25	53	53
1903	167	12	22	68	102	65
1904	122	4	10	55	69	53
Total	943	69	154	255	478	465

[a] Four months only.

It appears that work people have called upon the board somewhat more than twice as often as employers, but that in a still larger number of cases both parties united in turning to the board for assistance in settling their differences. Partly explaining the above figures is the fact that the boot and shoe industry has furnished a large majority of the cases which have come before the board,(a) and that the labor organizations in that industry are very favorably disposed toward the board. Indicative of that disposition is the statement made by the general secretary-treasurer of the Boot and Shoe Workers' Union to the United States Industrial Commission in 1899, that "in Massachusetts, I think, we have about the best board of arbitration in the country. * * * Still, of course, the decisions of the State board in Massachusetts are not always to our liking. We get the short end of it quite frequently, yet on the whole we have a good deal of respect for that institution, and I should prefer that, in a general way, in Massachusetts, to the local boards that have not had the experience and do not understand the methods of arriving at a right conclusion. The methods employed by the Massachusetts board are excellent."(b) To some degree also the employers in that industry share this attitude, so that some of the principal manufacturers have standing agreements with their employees to refer dis-

[a] Report of United States Industrial Commission, Vol. VII, Testimony, p. 919.
[b] Report of United States Industrial Commission, Vol. VII, Testimony, p. 374.

putes to the State board whenever agreement can not be reached by direct negotiations, and according to the board's report for 1903—

Both employers and employees have manifested in recent years a growing disposition to define their relations by industrial trade agreements, embodying a provision that controversies arising should be submitted to the State board of conciliation and arbitration for settlement.

The results of intervention by the board are set forth in the following table:

DISPUTES ACTED UPON BY THE MASSACHUSETTS BOARD OF ARBITRATION, BY RESULTS, 1886 TO 1904.

Year.	Total cases acted upon.	Preliminary action only.	Positive intervention resulting in—		Disputes settled without strike or lockout.	Strikes and lockouts settled.	Percentage of total strikes and lockouts settled.
			Settlement.	Failure.			
1886(a)	4		2	2	2		
1887	21	1	16	4	9	7	4.9
1888	41	4	24	13	7	17	17.0
1889	23	2	15	6	7	8	6.2
1890	34	8	15	11	3	12	7.6
1891	29	5	16	8	7	9	6.2
1892	40	11	16	13	9	7	4.3
1893	32	5	12	15	6	6	3.4
1894	38	10	15	13	9	6	4.6
1895	32	4	15	13	10	5	6.8
1896	29	4	15	10	12	3	6.4
1897	36	6	18	12	12	6	9.2
1898	19	3	7	9	5	2	4.7
1899	26	7	12	7	3	9	11.7
1900	50	7	17	26	5	12	15.2
1901	94	25	43	26	14	29	10.6
1902	106	18	59	29	31	28	10.1
1903	167	39	77	51	65	12	5.5
1904	122	26	66	30	57	9	4.5
Total	943	185	460	298	273	187	7.1

[a] Four months only.

For the entire period of eighteen and one-third years the board settled 49 per cent of the total cases in which any action was taken, or 61 per cent of the cases of positive intervention. A considerable majority of the disputes settled by the board were terminated without strike or lockout, while the strikes and lockouts settled amounted to a little over 7 per cent of the total number reported.

A comparison of the last four years, in which the amount of intervention has been so largely increased, with the earlier years shows that while in the period from 1886 to 1900 there were settlements in 57 per cent of the cases of positive intervention, of which about one-half were effected without strike or lockout, during the last four years (1901 to 1904), 64 per cent of the positive interventions produced settlements, and two-thirds of these were without strike or lockout. The increased work of later years has, therefore, been especially in the direction of settling controversies with avoidance of stoppage of work.

Examining as to the methods by which disputes have been settled, the following results appear:

DISPUTES SETTLED BY MASSACHUSETTS BOARD OF ARBITRATION, BY METHOD OF SETTLEMENT, 1886 TO 1904.

Year.	Number of disputes settled by—				Total.
	Conciliation.	Arbitration.	Decision on submission by one party.	Public investigation.	
1886 (a)	1	1			2
1887	7	9			16
1888	12	9	1	2	24
1889	9	6			15
1890	8	5	1	1	15
1891	9	7			16
1892	7	8	1		16
1893	8	4			12
1894	7	8			15
1895	5	10			15
1896	4	11			15
1897	5	12	1		18
1898	2	5			7
1899	11	1			12
1900	15	2			17
1901	36	7			43
1902	35	24			59
1903	26	51			77
1904	22	44			66
Total	229	224	4	3	460

(a) Four months only.

One-half of the settlements have been effected by conciliation, leaving, however, a notably large number of arbitrations. In 199 of the 224 successful arbitrations the board acted upon the joint initiative of the two parties in the first instance (joint formal application must ultimately be made in all arbitrations under the law, of course), and in 198 of the 224 there was no strike or lockout. Comparison of these figures with those in previous tables shows that it is these arbitration cases which chiefly explain both the large number of instances in which the Massachusetts board has acted upon application from both parties and the large number of disputes which have been settled without any stoppage of work. An examination of the arbitration cases for the years down to 1900, inclusive, shows that 80 out of the 98 successful arbitrations in that period were in the boot and shoe industry. The same thing appears in later years also. Thus the board's report for 1902(a) notes an "increasing tendency to arbitrate differences rather than strike, as shown by the fact that the board has been called upon to render decisions in more than twice as many cases as in the previous year," and states that "most" of these cases were in the shoe industry and were presented to the board in accordance with agreements to that effect between employers and employed. An examination of the 44 arbitrations of 1904 shows

(a) Page 12.

that all but 1 were in the boot and shoe industry. The notable success of the Massachusetts board in the direction of arbitration has thus been chiefly due to the favorable opinion it has won in the great boot and shoe industry of the State.

Almost invariably the board's decisions in cases of arbitration have been accepted and carried out by the parties. Besides the 224 successful cases above mentioned there have been but 2 other arbitrations by the board, both in the boot and shoe industry. In each of these the award was rejected by the work people, who in the first case (in 1889) went on strike again immediately after the award was rendered, and without any notice to the employers, but in the other (in 1894) preceded their rejection by the sixty-day notice of such intention, as required by law. In one other case (in 1898) the sixty-day notice of rejection was given by the work people, but before that period expired they came to an agreement with the employer on substantially the same terms as the award, and in another (in 1887) five months after the board's decision a strike in contravention of it occurred, but upon the board's report, made at the request of the employer, that the strike was illegal under the award, work was promptly resumed. The last two cases must be considered as practically successful, and are included in the total of 224 settlements by arbitration above. The same thing has been done also with one other case in 1904, in which, three weeks after the board's decision was rendered, the representative of the workers advised the board that he had given the employer the sixty-day notice of intention not to be bound by the award, but the board heard nothing further of the controversy.

Of the 27 cases[a] of arbitration in strikes and lockouts, in all but one work was resumed pending the decision, as required by law, and in that one the parties had agreed to resume on a fixed date, although that date fell later than the board's hearing of the case. In but a single instance was an agreement to resume work broken before the award was given, and in that case, the work people having struck, the hearing was continued with the employer's consent, as provided by law, and the decision, when rendered, was accepted by both parties.

Besides the above cases, in which arbitration was fully carried out, there have been a number of others in recent years in which the parties formally agreed to submit the case to the board, but the arbitration procedure was not carried out. There were 2 of these in 1901, 5 in 1902, 14 in 1903, and 9 in 1904, or a total of 30. One of these occurred (in 1901) in connection with a strike in which the board had intervened at the request of the workers and had persuaded the parties to jointly submit to the board's arbitration, work being resumed as required by the law. In all of the other cases the parties applied

[a] Including one of the cases of arbitration, that of 1889, which failed.

jointly, of their own motion, before any stoppage of work. In 12 cases (1 in 1901, 3 in 1902, 2 in 1903, and 6 in 1904) hearings were given by the board in the regular order for arbitration, but these hearings led to an amicable settlement between the parties. In one or two instances an agreement was reached at the hearing, but more frequently the board, seeing possibility of amicable settlement, advised conferences, which resulted in agreements. These 12 cases, which include the one in connection with a strike above noted, are reckoned in the table above as settlements by the board by conciliation. In the other 18 cases the board really took only action preliminary to the regular arbitration, no hearings being held save in one case, and these 18 cases are reckoned above in the class of "preliminary action only." In 13 of these, before the board could proceed to a hearing, the parties jointly announced a settlement and requested that the arbitration proceedings be discontinued; in one a hearing had been given and the case referred to experts when the parties made similar joint announcement; in one case the employer alone announced the settlement and withdrew the application; in the three remaining cases no settlement was announced, but the arbitration proceedings could not be carried out—once because the firm involved went out of business, once because the employer withdrew from the joint submission, and once because a strike by the workers intervened as the result of a dispute with a rival labor organization.

Nearly all of the board's arbitration work has been in disputes concerning wages. Thus out of the 98 cases in which arbitration occurred, down to and including the year 1900, in 89 the board was called upon to determine wages alone, and the same is true for 76 of the 82 arbitrations in the boot and shoe industry during the same period. Similarly 43 of the 44 arbitrations in 1904 concerned wage questions only.

In wage questions especially technical knowledge of the trade is obviously of great importance, and the provisions of the law for expert assistants have been found of great value by the Massachusetts board. Since 1892 such assistants have always been appointed in arbitration, as required by the amendment of that year; but as a matter of fact, before that and before 1890, when they were first provided for by law, the board frequently called in assistants to furnish technical information, so that the law of 1890–1892 was the direct outgrowth of practical experience. Testimony to the value of such assistance is to be found in the board's reports and in its evidence before the United States Industrial Commission in 1900.[a] The aid of such experts has not enabled the board, how-

[a] Cf. Report of United States Industrial Commission, Vol. VII, Testimony, pp. 907, 908; Report of the Board, 1900, p. 13.

ever, to carry out one intention of the law as to arbitration, viz, that the decision of the board should be rendered within three weeks of the date of the filing of an application for arbitration, the section of the law requiring a promise of the parties to continue at work pending the award containing the proviso "if it (the decision) shall be made within three weeks." This has in practice been a dead letter, the board having found it impossible to properly pass upon a long list of wage rates within that time,(a) but this failure has not prevented the observance of the law's requirement of resumption of work, as already noted.

Finally, concerning arbitration it is worthy of note that in some cases the influence of the board's decisions has apparently gone beyond the particular case in hand, and wage rates decided by the board in one instance have been of service in the arrangement of schedules by the parties in other cases. Thus the report for 1890 (b) notes that not infrequently manufacturers or employers had applied to the board for copies of wage lists recommended by the board in cases some time before to be used in settling questions of wages.

Besides the regular arbitration cases above, the board carried out the arbitration procedure in 7 cases (twice in 1888, once each in 1890, 1892, and 1895, and twice in 1897) upon submission by one party only. The applicant in each of these cases was the work people, and reference to the board was made 5 times without any cessation of work and twice after strikes had occurred. In 5 of the disputes the board made its decision public, but in one instance publication was withheld at the request of the work people and in another the board informed the applicants that it did not deem a formal decision necessary. Out of the 7 cases, in 4, including 1 of the strikes, the board's decision was accepted and terminated the dispute, while in one strike and two other differences no settlement was affected.

In the table above three disputes are recorded as terminated through a public investigation made by the board; in all, 11 such investigations have been undertaken, 5 in 1888, 1 each in 1889 and 1890, 2 in 1895, 1 in 1896, and 1 in 1903. Only 1 of these, that of 1903, in the great Lowell cotton-mills strike, was instituted independently of any application from the parties, that being made by the board at the direction of the governor of the State. Of the others, 5 were made at the instance of employers and 5 upon application from employees, and all were begun after strike or lockout had occurred. Public hearings were held in all but 3 cases, and the board's findings were published

a Cf. Report of United States Industrial Commission, Vol. VII, Testimony, p. 909.

b Page 13.

in every instance and were accepted by the parties in 3 (2 in 1888 and 1 in 1890) out of the 11 cases.

Finally, concerning the work of the Massachusetts board it is in order to note the opinion and recommendation concerning it of the legislative committee on relations between employer and employed, appointed in July, 1903, by the governor in accordance with a resolution of the State legislature approved June 5, the committee having made its report in January, 1904. It was made the duty of the committee to examine existing and proposed legislation in the Commonwealth touching the legal relations of employer and employed, and among other things a bill for compulsory arbitration came before it. The committee reported strongly against any such measure and in favor of continuing the present system, as follows:

In Massachusetts the work of arbitration is by statute intrusted to a State board, whose functions, though difficult and delicate, have been increasingly useful. We consider that in the matter of labor difficulties this increasing voluntary use of the principle of arbitration is of great promise for the future and that the State, in providing efficient machinery for the carrying out of the wishes of the parties to a controversy who may desire to arbitrate their differences, is performing invaluable service. Everything should be done to maintain and increase the efficiency of the board provided by the State for the purposes of arbitration and to encourage and make easy the submission of industrial differences to it. Whether substitution of the form of an industrial court for the board as at present constituted would lead to a larger and a more general use of the opportunity afforded is purely a practical question and may admit of doubt. The committee sees no reason to suppose that the change to judicial form would increase the confidence now felt by the public in the present board of arbitration or increase the number of cases submitted for adjudication. We recommend rather the continuance of the present board, with such modifications in the statutes relating thereto as may seem directly to increase its dignity and usefulness as well as the simplicity and ease of method in the submission of matters brought before it.

* * * * * * *

It is obvious that controversies do from time to time arise whose effect upon the public interest is so momentous as to make the public to all intents and purposes a third party to the controversy. This is especially true where the difficulties in question involve the production or distribution of the necessaries of life or the transportation of the people. In such instances we are far from believing that the State should be precluded from some form of intervention by a reluctance, however justifiable in principle, to interfere in private disputes. We are of the opinion, however, that compulsory investigation on the part of the State, supplemented by a public finding as to the merits of the case, will accomplish the object, through its appeal to the public, fully as effectively and without the objectionable interference with private rights and the often futile attempt at arbitration under compulsion. Such investigation in cases where

the controversy is such as to threaten the public interest is already provided for by the statutes of Massachusetts, and furnishes an important part of the duties of the State board of conciliation and arbitration.[a]

In accordance with these recommendations the committee proposed certain minor changes in the law, which resulted in the amendments of 1904, the most important of which have already been noted in connection with the analysis of laws in the preceding chapter.

NEW JERSEY.

New Jersey was the third State to establish a State board of arbitration, which was done by act of March 24, 1892. How much was accomplished by the first board appointed under this law does not appear.[b] That its record was not entirely blank is evidenced by two cases of action by it mentioned in the report of the New York board for 1893.[c] In one the New Jersey board acted alone, in the other (a railroad dispute) jointly with the New York board, the strike in each case being terminated by the boards. But whatever its record, this first board of three members, appointed for five-year terms at a per diem compensation, were after three years legislated out of office by the supplementary act of March 25, 1895, and a new board of five members, named in that law, with three-year terms and annual salaries, were legislated into office.

Since 1895 there is a continuous record in annual reports of the work of the New Jersey board. Only for the years prior to 1901, however, do the reports describe each case of action by the board, the information in later reports consisting only of general statements as to its work. The period to 1901, therefore, may be considered by itself with advantage. An analysis of the reports for these earlier years shows that the board's work consisted for the most part of services offered, with but few cases of actual intervention or results accomplished. The plan pursued by the board was to divide the State into five sections, each member having charge of a section and offering the board's services in every dispute coming to his notice, the entire board being called together only in case of special need, though meeting once monthly to receive reports from each member.

From March, 1895, when the board was organized, to October 31, 1899,[d] the number of disputes in which action by the board is specifically reported was as follows:

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[a] Report, pp. 12, 13.

[b] No report of this first board appears in the legislative documents of the State, although annual reports were required by the law.

[c] Report of New York Board of Mediation and Arbitration, 1893, pp. 184, 236.

[d] The year 1900 is not included here for the reason that the annual report for that year is now out of print.

DISPUTES ACTED UPON BY THE NEW JERSEY BOARD OF ARBITRATION, 1895 TO 1899.

Year ended October 31.	Cases acted upon.
1895 (7 months)	3
1896	9
1897	60
1898	21
1899	30
Total	123

These figures do not include every case of action, to judge by general remarks made in introductions to the reports. Thus the board says, in 1895, that "about a score" of minor troubles were inquired into, but it was found the board's services were not needed. Likewise the board reports, in 1897, that 68 strikes came to its attention and its services were offered in every case, and in 1899 that 40 strikes came to its notice. But of the 123 cases in the table above some particulars are given showing the nature of action taken and its results.

It is found that out of the 123 cases, most of which were strikes or lockouts, all that was done in the case of 5 was to make inquiry concerning the facts, such inquiry being reported as made by a member in person in but two instances. In 104 cases all the action reported consisted of a formal offer of the board's services, made as a rule by mail, only 3 cases, in fact, being reported as made by one or more members in person. Out of these 104 offers the employers in 4 expressed a willingness to have the board act, and the laborers responded favorably in 7, but in none did both accept. In 14 disputes—1 in 1895, 2 in 1896, 4 in 1897, and 7 in 1899—something more than simple offer of services is reported. In all of these the board's action was of the nature of conciliation, no dispute ever having been submitted to the board for arbitration and no public investigation of a dispute ever having been made, though the latter was once requested by employees. In 3 intervention was by the full board upon its own motion, its efforts resulting in a settlement of the strike in one case. In the other 11 disputes action was taken by one member alone and upon his own initiative in all but three, request for action in those 3 cases coming from the work people. In 4 instances the mediation was conducted by correspondence with the employer after the laborers had accepted the member's intervention, but in all these was unsuccessful. In 6 the member personally intervened and settled 4 of the disputes, in one case thereby preventing a strike. In the eleventh case a member of the board materially assisted in the adjustment of a general dispute in the glass industry without strike or lockout. Altogether, therefore, the reports show a total of 4 strikes and 2 other dis-

putes settled in four years and a half. During the five years 1895 to 1899, 250 strikes and lockouts occurred in the State.[a]

In part, at least, explaining the above record of the New Jersey board are two facts. In the first place, as pointed out in the board's first report,[b] under the supplemental law of 1895 the members receive only their salaries, with no allowance for traveling expenses. It was supposed that they would receive free transportation from the railroads, but the contrary proved true, so that the members have had to pay any traveling expenses out of their $1,200 salaries, a condition of things not calculated to stimulate personal intervention outside of their places of residence. The same lack of any fund for expenses is complained of by the board in 1898[c] as standing in the way of formal investigations of the causes of disputes, although it was at the same time claimed that no case had arisen in which such investigation was necessary.

In the second place, and more important, is the narrow construction the board has put upon its powers of independent intervention in disputes. It is repeatedly asserted in the reports[d] that the board has no power to go further upon its own initiative than a simple offer of services, and that "if either does not wish to accept the offer, we have no authority to go any further." This, it must be said, hardly seems to correspond with the plain meaning and intent of the law, which directs that "whenever a strike or lockout shall occur or is seriously threatened in any part of the State, and shall come to the knowledge of the board, it shall be its duty to proceed, as soon as practicable, to the locality of such strike or lockout and put itself in communication with the parties to the controversy, and endeavor by mediation to effect an amicable settlement of such controversy."[e]

In March, 1901, there was a reorganization of the New Jersey board with appointment of 4 new members out of the 5 on the board. But the annual reports of this board for 1901, 1902, and 1903 (year ended October 31) show no larger results accomplished than in earlier years. The three reports give lists of industrial disputes which came to the notice of the board (with brief details of each, without reference, however, to the board's action in any case), which show a total of 379 for the three years—47 in 1901 (seven months for the new board), 95 in 1902, and 237 in 1903. Of the action taken in these cases, the 1901 report states:

The board has attended a number of meetings of the strikers and individual members of the board have addressed such meetings. The

[a] See Sixteenth Annual Report of United States Commmissioner of Labor, pp. 88, 558.

[b] Report, 1895, p. 5. [c] Report, 1898, p. 6.

[d] See, for example, Reports, 1897, p. 3; 1898, p. 6.

[e] Act of 1892, sec. 10.

board has also conferred with the manufacturers and their counsel and has offered its services for the purpose of mediation or arbitration to those interested in the various local labor disturbances occurring in this State. * * * In no case was the assistance of the board requested, and where its good offices were offered the usual reply on the part of the employers was declination because there was nothing to arbitrate. The employees also were generally disinclined to accept the proffered aid until further developments had occurred. In none of the controversies was there any inclination by both parties to allow the board to mediate.

The 1902 report states only that—

The board has held its periodical meetings during the year, and in the strikes which have come to its notice * * * it has endeavored, as far as was practicable and advisable, to offer its good services in the spirit of mediation to both parties concerned.

Similarly the report for 1903:

While none (of the disputes) has been arbitrated or investigated, on its own initiative the board has offered its mediatory services wherever practicable, and it is believed in some cases with good results.

The board's comment on its work in all three of these latest reports show plainly that the explanation of the meager record of results accomplished is precisely the same for the years since 1900 as before, namely, disinclination to intervene aggressively on its own motion for conciliation purposes and the handicap of no means of paying expenses for purposes either of such intervention or for independent investigation of disputes. The latter—lack of means to make formal investigations—the board declared both in 1902 and 1903 to be a serious obstacle in its work, and legislative action was urged to remedy the defect. "This defect," says the 1902 report, "virtually has reduced the board to one of mediation or to a tribunal taking cognizance of cases voluntarily submitted to it. Experience has proved that such cases are rare and that mere mediation generally is of little efficacy in bringing industrial disputes to a close."

OHIO.

The first State board in Ohio was organized for work on May 29, 1893. As may be seen by the table below, which covers all the cases set forth in the published reports,[a] the board's work—144 out of 160 cases for the ten and one-half years—has been for the most part with strikes or lockouts. Small disposition on the part of employ-

[a] From general statements made in the reports (1898, pp. 10, 14; 1903, p. 7 and elsewhere) it appears that the board has dealt with some minor cases not described in the reports. Apparently, however, all the more important cases of action are reported and here included.

ers and employees to appeal to the board is shown in the figures, such as there is appearing chiefly among the work people. Further, the table shows that while the board has had to depend upon its own initiative for intervention in disputes, the provision of law similar to that in Massachusetts, requiring mayors of cities and judges of probate courts to inform the board of existing or threatened strikes or lockouts, has not been of any considerable assistance. The cases of notice from such officials, given in but a single instance before stoppage of work had occurred, have been so few as to call forth repeated complaints from the board, but with little effect, apparently, toward increased cooperation on the part of local authorities.

INITIATIVE IN CASES ACTED UPON BY THE OHIO BOARD OF ARBITRATION, 1893 TO 1903.

Year.	Cases in which action was taken upon initiative of—					Interventions.		Notices received from mayor or probate judge.
	Board.	Employers.	Work people.	Both parties.	Total.	Before strike or lockout.	After strike or lockout.	
1893 (a)	2		2	2	6	[b]3	3	2
1894	6	1	2		9	1	8	4
1895	11		1		12	2	10	3
1896	9		1	1	11	2	9	3
1897	14		2		16	[b]2	14	3
1898	15		2		17		17	1
1899	18	1	1		20	3	17	3
1900	11		1		12	1	11	2
1901	15	1	1		17	[b]3	14	3
1902	18		1	1	20	[c]3	17	1
1903	18	1	1		20	[b]1	19	4
Total	137	4	15	4	160	21	139	29

[a] Seven months.
[b] Strike or lockout occurred later in 1.
[c] Strike or lockout occurred later in 2.

During the eight years a little over one-third of the cases of intervention by the board were successful, all but 6 of the 59 such terminating disputes after stoppage of work had occurred. The number of strikes and lockouts settled by the board down to 1901 was as 1 to 25 of the total number which occurred in the State.

DISPUTES SETTLED BY THE OHIO BOARD OF ARBITRATION, 1893 TO 1903.

Year.	Disputes settled without strike or lockout.	Strikes and lockouts settled.	Total strikes and lockouts in State.(a)	Year.	Disputes settled without strike or lockout.	Strikes and lockouts settled.	Total strikes and lockouts in State.(a)
1893	1	2	102	1900	1	3	134
1894	1	3	107	1901	1	4	(b)
1895		4	110	1902	1	7	(b)
1896	1	5	109	1903		7	(b)
1897		7	71				
1898		4	91	Total	6	53	
1899		7	154				

[a] See Sixteenth Annual Report of United States Commissioner of Labor, pp. 96, 562.
[b] Not reported.

The action taken by the Ohio board has from the first been almost entirely that of conciliation, and since 1896, with but a single exception, no other procedure appears in its practice, as shown below.

STRIKES AND LOCKOUTS ACTED UPON BY THE OHIO BOARD OF ARBITRATION, BY METHODS AND RESULTS, 1893 TO 1903.

Year.	Total cases acted upon.	Preliminary action only.	Cases of conciliation.			Arbitration (all successful).	Decision on submission by one party.		Public investigations (successful).
			Successful.	Unsuccessful.	Total.		Successful.	Unsuccessful.	
1893	6	----------	1	2	3	2	----------	1	----------
1894	9	1	[a]2	4	6	----------	1	1	----------
1895	12	5	4	3	7	----------	----------	----------	----------
1896	11	2	3	3	6	1	----------	----------	2
1897	16	3	[a]7	6	13	----------	----------	----------	----------
1898	17	7	4	6	10	----------	----------	----------	----------
1899	20	9	7	4	11	----------	----------	----------	----------
1900	12	3	4	5	9	----------	----------	----------	----------
1901	17	3	5	9	14	----------	----------	----------	----------
1902	20	3	8	9	17	----------	----------	----------	----------
1903	20	2	6	11	17	----------	1	----------	----------
Total	160	38	[b]51	62	113	3	2	2	2

[a] One case settled by local arbitration on recommendation of the State board.
[b] Two cases settled by local arbitration on recommendation of the State board.

The board succeeded along conciliation lines in nearly one-half the disputes where positive negotiations of that character were instituted. Three times only were differences brought to the board for arbitration by joint agreement of the parties, the board's award terminating the dispute in each case. In two of these the arbitration occurred after a suspension of work, while in the other there was no interruption of employment. In four instances (once in 1893, twice in 1894, and once in 1903) the board investigated and rendered a decision as in arbitration, but with submission of the case by one party only, twice by work people after strikes had occurred, once by employers in a controversy not involving strike or lockout, and once by employers in a strike, there being in this last instance an existing agreement of the parties to submit differences to arbitration. In two of the strike cases both parties attended the hearing; in the other the men only, but in the latter and one of the former the proceedings failed to terminate the dispute, once because the employers refused to accept the board's recommendation and once because both declined it, the last being the only case of procedure of this sort in which publication of the board's decision is mentioned in the reports. In both the differences (one strike and one other) submitted by the employers the board's findings were accepted by the employees, and the controversy so ended.

Twice only in the ten and one-half years did the Ohio board undertake formal investigation to determine causes and fix responsibility for disputes. Both were in cases of strike, and both were requested by the work people. In both instances, also, the hearings were never

completed, because the parties came to an amicable agreement in the course thereof. In this connection it is worth noting that although the Ohio board has never undertaken an authoritative investigation independently of the parties, its report for 1895(a) mentions two cases which in its judgment called for such action, but the board found itself at the time without means for paying the expenses thereof.

WISCONSIN.

Pursuant to the law approved April 19, 1895, the Wisconsin State board of arbitration and conciliation was organized on July 1, 1895. The first biennial report of the board, made in January, 1897, shows very meager results accomplished for the first eighteen months of the board's existence. This was due to the board's uncertainty as to its power of intervention upon its own initiative. "While the law seems to give the board," says the first report,(b) "the privilege of offering their services wherever and whenever it is known that there is trouble impending, yet it has seemed to be the opinion of some that it would be something of an impertinence to offer our services in advance of their being called for." The direction of the law in the matter was that the board should "endeavor by mediation to effect an amicable settlement" upon receipt of knowledge from any source of a threatened or existing strike or lockout "which threatens to or does involve the business interests of any city, village, or town." The indefiniteness of this last clause may have raised doubt as to what would otherwise be a very definite direction to intervene independently. But whether so or not the board, as a matter of fact, kept on the conservative side and took action only upon notice from the parties or from town or city officials, the latter being required, as in Massachusetts and Ohio, to notify the board of threatened or existing strikes or lockouts. Inasmuch as during the first eighteen months but four notices were received by the board, all from mayors of cities, that interpretation of the statute opened the way for but very limited activity.

Accordingly, the board in its first report recommended that the law be amended, first, so as to make its power of initiative perfectly clear, and, second, so that notices to the board might be addressed to the governor and by him communicated to the board to avoid the difficulty of reaching the board owing to the fact that its members were "employed daily in their chosen occupations, and their respective addresses have not been known to the public generally."(c) By an amendment of April, 1897, these two suggestions were incorporated in the law.

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a Pages 88, 89. b Page 3. c First Biennial Report, p. 4.

The result of this amendment was a very much larger activity on the part of the board, not, however, because of more frequent notice from city officials or applications from parties in dispute, but due entirely to the initiative of the board. Aside from the four cases in the first report (one in 1895 and three in 1896), but one other instance (in 1898) of notice from city or town officials is mentioned in the reports, and only one instance (in 1898) is reported in which one of the parties (an employer) called upon the board to act.

The work of the Wisconsin board, down to June 30, 1904, as revealed by the cases set forth in its biennial reports, may be thus summarized:

DISPUTES ACTED UPON BY THE WISCONSIN BOARD OF CONCILIATION AND ARBITRATION, 1895 TO 1904.

Year ended—	Cases acted upon by board—			Preliminary action only.	Positive interventions.				Total strikes and lockouts in State. (a)
	Before strike or lockout.	After strike or lockout.	Total.		Unsuccessful.	Successful in—			
						Strikes or lockouts.	Other disputes.	Total.	
December 31, 1895[b]		1	1	1					32
December 31, 1896		3	3		1	2		2	13
December 31, 1897	[c] 5	4	9		1	5	3	8	28
December 31, 1898	[c] 1	13	14	3	3	8		8	29
December 31, 1899		11	11	2	5	4		4	53
December 31, 1900		15	15	1	9	5		5	40
September 30, 1901[d]	[e] 2	7	9	1	5	3		3	(f)
September 30, 1902		10	10		9	1		1	(f)
June 30, 1903	1	13	14	1	6	6	1	7	(f)
June 30, 1904		9	9	3	4	2		2	(f)
Total	9	86	95	12	43	36	4	40	

[a] Sixteenth Annual Report of the United States Commissioner of Labor, pp. 116, 574.
[b] Six months.
[c] Strike occurred later in 1 case.
[d] Nine months.
[e] Strike occurred later in 2 cases.
[f] Not reported.

The work has been entirely that of concilation, no case of arbitration or formal investigation of the causes of disputes being reported. It has dealt almost exclusively in the reported cases with strikes or lockouts, with very few cases reported of disputes settled before that stage. (a)

ILLINOIS.

The establishment of the Illinois board of arbitration was inspired chiefly by the great Chicago strike of 1894, which led to the introduction of numerous bills for the settlement of industrial disputes in the

[a] From a general remark in the introduction to the second report (p. 4) it would appear that some work in the way of settling disputes before suspension of work may have been done which is not reported in full. Evidently such cases were of very minor importance, however, and the reported cases as above seem to fairly represent the board's work.

State legislature of 1895, and finally to the inclusion of that subject in a call for a special session of the legislature which passed the law of August 2, 1895. Under this a board was promptly appointed and organized on August 14.

Not the least interesting of the results in practice in Illinois are the changes which were made in the law by the amendments of April 12, 1899, and May 11, 1901. The amendment of 1899 touched four points—(1) jurisdiction of the board; (2) prompt information of disputes; (3) power to secure evidence; and (4) enforcement of awards. Concerning the first of these, the original law had restricted the board's jurisdiction to disputes involving establishments with not less than 25 employees. It was found in practice, however, that some important disputes involved no one establishment with as many as 25 hands, though involving several smaller firms. At the board's instance, therefore, the limitation was altered so as to exclude only disputes involving less than 25 work people altogether, whether in one or several firms.

After experiencing the same difficulty as other State boards in securing early information of disputes the Illinois board secured the incorporation into its law not only of the provision found in other States requiring mayors of cities and presidents of towns and villages to notify the board of impending or existing strikes and lockouts, but also of a requirement, found nowhere else, that presidents of labor organizations shall notify the board of actual or threatened strikes or lockouts involving any of their members. It does not appear, however, that this amendment was of any considerable benefit. The annual reports for the next three years mention seven cases of such notice received (all in 1901-2), four times from local authorities, twice from union officers, and once from both sources, and all given after stoppage of work had occurred.

The original law of 1895 gave the board power to issue subpœnas to secure the presence of witnesses or the production of books containing records of wages paid, but specified no means of making such subpœnas effective in case anyone saw fit to ignore them. In their report for the year ended March 1, 1898, the board pointed out this fact and suggested that although no such difficulty had actually arisen in their experience, nevertheless it would be well if the law were so amended as to enable the board to invoke the aid of the courts should such a contingency arise. Before the close of the year added force was given to this recommendation by the employers in a serious dispute refusing to testify before the board and completely ignoring its subpœnas. Accordingly the governor of the State in his next annual message (1899) recommended legislation in line with the board's suggestion, the result being the amendment of 1899,

which requires circuit or county courts when applied to by the board to compel obedience to the board's subpœnas.[a] The amendment also permits the board to require the production, not only of record books of wages, but any other books and papers deemed necessary. The report of the board made in March, 1900, stated that no occasion for appeal to the courts had arisen up to that time, all witnesses desired having responded promptly, and no such appeal is mentioned in the reports down to 1903.

Another subject to which the board called attention in 1898 was the question of power to enforce its awards, the matter being brought up by a case during the preceding year in which one party to a joint application refused to abide by the board's decision. The law simply declared that such decisions should be binding for six months, or until one party withdrew from it after sixty days' notice. In response to an inquiry by the board the State's attorney-general gave an interesting opinion to the effect that—

> The decision of the board upon application joined in by both parties would be in the nature of an award made by arbitrators chosen by the parties, and usually such awards are enforced by suits at law in the courts of the county in which the parties reside * * *. Each case, so far as the remedy is concerned, must depend upon its own peculiar facts and circumstances and resort be had for enforcement either to a court of law or to a court of equity, as such facts or circumstances may warrant; but usually I think the remedy must be found in a court of law in the courts of the county where the parties reside.[b]

The board, however, was of the opinion that resort to such judicial process for the enforcing of a decision was usually unnecessary. Cases of refusal to abide by arbitrator's decisions both in Illinois and in other States were rare and they could find no case in other States where enforcements of awards by judicial process had been attempted. "At the present time," concludes the board,[c] "we are not prepared to recommend legislation which would give this board specific power to enforce its decisions through the medium of the courts. We doubt both the practicability and the wisdom of the exercise of such power." Three months after this report was made, however, the board was called upon to render a decision on joint application of the parties in the famous Virden coal dispute. The board's award was disregarded by the operators, which action was followed by a continuance of the dispute and ultimately rioting and bloodshed. This startling exception to the general experience quoted by the board in its recommendation, led the governor of the State to urge in his message to

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[a] Cf. supra, p. 595.

[b] Report of the Board of Arbitration, 1898, p. 12.

[c] Idem., p. 13.

the legislature of 1899 that some provision be made for enforcing awards, the result being the most important portion of the amending act of 1899, whereby provision is made for the punishment of parties infringing the board's awards by circuit or county courts.[a] Up to July, 1902, no case is reported in which this power of enforcement was invoked.

The amendment of 1901 first gave the Illinois board power of formal investigation into disputes. Such authority was recommended by the board in its 1899 report, but general considerations rather than any special experience appear to have inspired the amendment. Prior to 1901 the board could carry out the arbitration procedure, involving investigation and rendering of a decision, if either party so requested, but under the amendment the board may proceed independently of the parties and formally investigate and publish findings. One restriction was put upon this power of independent investigation in Illinois, however, which does not appear in other States, in that it may be exercised only when in the majority opinion of the board "the general public shall appear to suffer injury or inconvenience" from the dispute.

The reports of the Illinois board for 1900 and 1901 differ from those of other years in that they set forth, with a single exception (an unsuccessful conciliation case in 1900), only the cases of formal arbitration or decision rendered on application of one party. The following table, therefore, summarizes the work only for 1896 to 1899, and for 1902,[b] for which years the action taken is more fully described. The reports for these years, it is to be noted, do not set forth more or less informal work done by individual members, but they apparently contain all the more important cases of action, and those included are expressly stated to be representative of the board's work.

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[a] Cf. supra, p. 601.

[b] Requests for reports of later years addressed to the board have not been answered.

DISPUTES ACTED UPON BY THE ILLINOIS BOARD OF ARBITRATION, 1896 TO 1899 AND 1902.

	Year ending March 1—					Total.
	1896. (a)	1897.	1898.	1899.	1902. (b)	
Interventions by board:						
On its own initiative	5	5	7	14	23	54
At request of—						
Employers	1	------	------	------	------	1
Work people	7	2	1	------	6	16
Both parties	------	------	3	1	1	5
Total interventions	13	7	11	15	30	76
Interventions:						
Before strike or lockout	2	------	4	1	c 1	8
After strike or lockout	11	7	7	14	29	68
Total strikes and lockouts in State (d)	124	291	154	168	(e)	------
Preliminary action only	2	1	3	2	4	12
Cases of conciliation:						
Successful	4	3	4	4	14	29
Unsuccessful	6	1	2	6	9	24
Total	10	4	6	10	23	53
Cases of arbitration:						
Successful	1	2	1	1	f 1	6
Unsuccessful	------	------	1	1	------	2
Total	1	2	2	2	1	8
Decisions upon submission by one party resulting in—						
Settlement	------	------	------	------	1	1
No settlement	------	------	------	1	1	2
Total	------	------	------	1	2	3
Differences settled before strike or lockout	------	------	1	1	------	2
Strikes and lockouts settled	5	5	4	4	16	34
Total disputes settled by board	5	5	5	5	16	36

[a] Six months.
[b] Seventeen months—March, 1901, to July, 1902.
[c] Strike occurred later.
[d] See Sixteenth Annual Report of United States Commissioner of Labor, pp. 60, 546. Figures are for the calendar years 1895–1899.
[e] Not reported.
[f] Chairman of State board acted as umpire on local board of arbitration in demarcation dispute between two unions.

In addition to the 8 arbitration cases above, there were 3 others in 1900 and 2 in 1901, making a total of 13 for the seven years 1896 to 1902. All of these were successful, save 1 each in 1898 and 1899. In 4 of these successful arbitrations no stoppage of work occurred, while in the 7 others the submission to arbitration was not made until after strike or lockout. Of the 2 cases of arbitration which resulted in failure, in that of 1898 the board's decision was rejected by the working people, and they immediately went on strike, the application in this case having been made by the parties before stoppage of work had occurred. Within a few hours, however, the strikers reconsidered their action and returned for work, only to find their places filled by new hands, and the best they could secure was the promise of preferment in case of vacancies. The case of 1899 was the famous Virden dispute already alluded to. Although mining operations had been resumed pending the board's decision, as re-

quired by law, that decision when rendered was rejected by the employers, and the lockout was resumed.

Three cases of arbitration procedure on application by one side only are reported for 1900 and 1901, making a total of 6 for the entire seven years. In the two 1900 cases no settlement of the dispute was effected, while the decision rendered in 1901 settled the controversy, so that in 2 out of the total of 6 cases such procedure resulted in settlements. The submission of the dispute to this procedure was made five times by work people after suspension of work, and once by employers in a difference not involving strike or lockout. The two cases settled were both strikes. Of the others, in three instances the decision was rejected by the party not making application, though the applicants were ready to abide by it, while in one case the employers who had refused to join in the application accepted the award, but the work people who had applied for it rejected it.

One feature of the work of the Illinois board since 1901 is quite unique and worthy of particular mention. In the year just mentioned there was a general reorganization of the board, and the new board adopted the plan of holding frequent meetings with employers and work people in Chicago, the chief seat of labor controversies in the State, in the absence of any disputes, and simply for the purpose of bringing the board into touch with the two industrial classes, so as to pave the way for more efficient service when differences should arise. The 1902 report,[a] which notes the adoption of this plan, records it as having proved of benefit to the board in its work.

INDIANA.

The Indiana labor commission was organized for work on June 17, 1897, three months after the act establishing it became a law. Four biennial reports of the commission set forth quite fully the work done to the end of September, 1904. Interventions in 148 disputes during the seven and a quarter years are set forth in detail. In addition to these, the first report mentions that the commission during 1897–98 had succeeded in having two boycotts declared off and in five other instances had prevented strikes by early intervention, no accounts of which were published, in accordance with the expressed wish of the parties in most of the cases. The second report also notes two widespread controversies in the State during 1899–1900, one between different branches of the organized window-glass workers and one between union and nonunion glass-bottle blowers, in both of which, although not disputes between capital and labor, the commission made repeated efforts at mediation, but without success. The third report (for 1901–2) explains that the recital is incomplete " for the

[a] Page 7.

reason that many employers, and workmen as well, prefer to have their business affairs adjusted without what they regard as the unpleasant notoriety which publication would give them. This is especially true where, as a board of arbitration, the commission's services have been invoked to fix wage contracts at times when no strike or lockout was contemplated, but to establish conditions precedent to starting new enterprises or at the beginning of a working season, so as to make such settlements matters of official record, and thereby give to them the legal status provided for in section 9 of the act creating and governing the labor commission. An additional reason for the incompleteness of this report is that in a number of instances negotiations are still in progress and no complete statement of them can be made until they will have been consummated."[a] Notwithstanding these statements, however, it would seem only reasonable, from the nature of the cases that are reported, to infer that the 148 disputes described in the four reports include all the more important cases of action by the commission, a view to which support is given by the fourth report (1903–4), which makes no mention of other cases dealt with by the commission, but explains that "all the industrial troubles that have occurred in the State during the two years" are not reviewed because "there are still times when two or three prevail simultaneously in different localities, often remotely situated," in which case "it is the aim to render official aid where it seems most imperative."[b]

An analysis of the 148 detailed cases shows that in the great majority the commission took the initiative for intervention, and that so far as the parties in dispute did so the work people were the most frequent applicants to the board. In every instance but four the commission's intervention occurred after work had been interrupted by strike or lockout. In 45 cases the reports show nothing done by the commission save to inform itself of the facts in the dispute.

The action taken in all the other cases save two was in the nature of conciliation, those two being the sole instances of arbitration (so far as reported) by the commission during the period. In one of these arbitrations submission was made by the work people only; in the other by both sides jointly. In one other dispute the parties had agreed to arbitration, and the judge of the local court had been summoned to sit with the commission, as required by law, but upon the board's assembling to begin the hearing it was found that the employers had reconsidered and refused to proceed, wherefore the arbitration had to be abandoned. No special investigation for the purpose of authoritative determination of the facts for publication, as provided for in the law, was undertaken.

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[a] Report 1901–2, p. 5. [b] Report 1903–4, p. 5.

In 63 per cent of the cases in which positive efforts for a settlement are reported the commission was successful. Both the arbitrations were among these successful cases. Of the 4 cases in which the intervention occurred before stoppage of work, in 2 the differences were adjusted without strike or lockout—1 in 1898 by arbitration, and 1 in 1901 by conciliation; in 1 instance, in 1901, the commission's efforts were unsuccessful, and a strike occurred later; while in the fourth case no strike or lockout occurred, but the dispute was in the nature of a boycott, in which the commission was unable to bring about a settlement.

The work of the Indiana commission is set forth by years in the following summary:

STATISTICS OF WORK DONE BY THE INDIANA LABOR COMMISSION, 1897 TO 1904.

Year ended—	Interventions in disputes on initiative of—					Interventions—		Total strikes and lockouts in State. [a]
	Commission.	Employers.	Work people.	Both parties.	Total.	Before strike or lockout.	After strike or lockout.	
October 31, 1897 [b]	8	1			9		9	38
October 31, 1898	18	1	6		25	2	23	42
October 31, 1899	19		3	1	23		23	37
October 31, 1900	21	1	3		25		25	66
September 30, 1901 [c]	18	1	3	1	23	[d] 2	21	[e]
September 30, 1902	15			1	16		16	[e]
September 30, 1903	16		1		17		17	[e]
September 30, 1904	9		1		10		10	[e]
Total	124	4	17	3	148	4	144	

Year ended—	Cases of informal investigation only.	Conciliation cases.			Arbitrations (successful).
		Successful.	Unsuccessful.	Total.	
October 31, 1897 [b]	4	4	1	5	
October 31, 1898	2	17	5	22	1
October 31, 1899	5	14	4	18	
October 31, 1900	5	7	13	20	
September 30, 1901 [c]	7	10	5	15	[f] 1
September 30, 1902	6	6	4	10	
September 30, 1903	8	4	5	9	
September 30, 1904	8	1	1	2	
Total	45	63	38	101	2

[a] Sixteenth Annual Report of United States Commissioner of Labor, pp. 69, 550. Figures are for calendar years.
[b] Four and one-half months.
[c] Eleven months.
[d] Strike occurred later in one case.
[e] Not reported.
[f] Arbitration procedure on submission by workers alone.

Not a little of the time of the Indiana labor commission during the years 1899 to 1903 was consumed in the fulfillment of duties outside of its chief function of State conciliator and arbitrator in industrial disputes. By an act of 1899[a] weekly payment of wages was required of all employers in Indiana. The enforcement of this law lay with the State factory inspector, but one clause provided that the

[a] Laws of 1899, chap. 124.

labor commission might, after notice and hearing, exempt from the requirement of weekly payments any employer whose employees preferred a less frequent payment of wages if in the commission's opinion the interest of the public and the employees would not suffer thereby. This law was finally declared unconstitutional by the supreme court of Indiana, but during the years 1899 to 1903, while it was in force, 84 cases under it came before the labor commission, whose report for 1899 and 1900 noted that the investigation and decision of such cases had involved for the commission many miles of travel and many conferences with employers and employed.

MISSOURI.

Under the Missouri law of 1901 a board of mediation and arbitration was appointed in May of that year. Two biennial reports of this board set forth its work up to the close of 1904, and therefrom the following summary of the various cases acted upon, by years, has been compiled:

STATISTICS OF WORK DONE BY MISSOURI BOARD OF MEDIATION AND ARBITRATION, 1901 TO 1904.

Year ended November 30—	Total cases reported.	Number of interventions—					
		Before strike or lockout.	After strike or lockout.	On initiative of—			
				Board.	Employers.	Work people.	Both parties.
1901 (a)	8	----------	8	7	1	----------	----------
1902	14	(b) 1	13	11	1	2	----------
1903	30	(b) 1	29	26	3	----------	1
1904	5	----------	5	4	----------	1	----------
Total	57	(b) 2	55	48	5	3	1

Year.	Number of cases of—								Total settlements.
	Preliminary action only.	Conciliation.		Arbitration (successful).	Decision on submission by one side, resulting in—		Independent investigation and decision by board, resulting in—		
		Successful.	Unsuccessful.		Settlement.	No settlement.	Settlement.	No settlement.	
1901 (a)	----------	1	3	2	1	1	----------	----------	4
1902	1	5	3	3	1	1	----------	----------	9
1903	11	4	7	2	1	3	2	----------	9
1904	----------	----------	3	----------	1	1	----------	----------	1
Total	12	10	16	7	4	6	2	----------	23

(a) Seven months. (b) Settled by conciliation without strike or lockout.

In addition to the above, mention should be made of one case of intervention—in May, 1903—not described in detail in the report. The board's statement is simply that in view of the fact that the labor situation in St. Louis appeared to be threatening a meeting was held there and conferences had with a number of labor leaders and employers, with the result that " we believe some troubles which threat-

ened were amicably adjusted by the men and their employers as the result of these conferences." Except for this one instance it would appear that the cases summarized above include all the work done by the board.

The most notable feature of the work of the Missouri board is the frequent use of the method of formal hearing of evidence and rendering of a decision or opinion as a means of inducing settlements, such procedure in one form or another having been adopted in one-third of the total number of interventions reported. In seven such cases the procedure was arbitration in regular form with submission by both parties, all of the seven cases being strikes, in but one of which was work resumed pending the decision, though all seven disputes were terminated by the decisions when rendered.

In 10 cases the board conducted hearings and rendered decisions when only one of the parties was willing to submit to the board's arbitration. In three of these it was the employers and in seven the work people who expressed their willingness to submit the case to decision by the board, but both parties submitted evidence at the hearings in all of these cases save twice, when the employers refused to give testimony, and possibly one other instance in which this point is not clear from the report, though apparently both sides gave evidence in this case also. Four of these one-sided arbitrations resulted in a settlement of the dispute, twice as the result of immediate acceptance of the board's findings by the employers who had declined arbitration and twice by agreement of the parties following the rendering of the decision, once explicitly with the board's findings as the basis of agreement and once apparently as direct result of the decision, though the parties made their own terms. In the other six cases of submission by one side only no settlement was effected, three times through rejection of the decision by the party which declined arbitration, once because both parties rejected the findings, and twice because the procedure was blocked as result of the refusal of the employers to testify.

Twice it appears that the board investigated disputes and rendered a decision or finding independently of any submission by the parties, and in both instances such decision led to an immediate settlement by the parties, once through prompt acceptance by the employer of a finding favorable to the employees and once by a conference of parties, as recommended by the board. Not less notable than the two cases in which the investigation was carried out to a decision is another case (in 1903), in which the expressed intention of the board to make such an investigation definitely caused the parties to get together and settle their dispute, for which purpose they asked a postponement of the first hearing by the board. This case is counted in the summary above as settled by conciliation.

The inclination of the Missouri board to use freely its authority for purposes of arbitration or investigation makes all the more significant the decision of the supreme court of the State in 1904 (noted in the analysis of State laws, supra, p. 596), which deprived the board of its power to compel the presence and testimony of witnesses. The special power for this purpose in the amendment of 1903 was given the board upon its own recommendation made in its first report, the special occasion therefor having been apparently the board's experience in the very first dispute in which it intervened in 1901. The work people had agreed to arbitration by the board, but the employers refused on the ground that the law creating the board was unconstitutional. When the board attempted to proceed without the employers' submission, the latter's witness refused to testify and was committed for contempt. Upon habeas corpus proceedings the case was taken to the circuit court in Kansas City, where the law was upheld, but with doubts expressed as to the constitutionality thereof, and the decision was given against the employers expressly in order that the case might be taken to the supreme court for decision. The employers thereupon appealed to the supreme court, but withdrew the case before a decision could be rendered, as a result of the settlement of the strike. This is the only instance reported by the board in which its powers to compel testimony was invoked until 1904, after its authority in that direction had been amplified by the 1903 amendment. Then again the board attempted to proceed after the workers alone had expressed willingness to arbitrate, and again with an appeal by the employers to the supreme court against the board's effort to compel their testimony, this time with the result that, to quote the board's second report, [a] "these amendments, conferring upon the board the power which seemed so necessary to its efficiency, were declared unconstitutional by that tribunal." "The effect of that decision," continues the report, "has been to practically end the usefulness of this board unless it was possible for the board to induce both sides to a controversy to submit their differences to it for arbitration. Knowing how difficult it is to secure such an agreement in any case where misunderstandings have been aggravated by unwise action and unreasoning prejudice, this board has in the past six months (the balance of the official year 1904 after the supreme court decision) refrained from exercising the functions to which it was appointed." Still believing, however, in the value of such functions, the board recommended that the State constitution be so amended as to make it possible to give the board power to compel the attendance and testimony of witnesses.

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VITA

The author prepared for college in the Oberlin High School and Oberin Academy; graduated from Oberlin College in 1892 with the degree of B. A.; during the academic year 1892-3 was a resident student in the School of Economics and Political Science of the University of Wisconsin, from which he received the degree of A. M. in 1893; spent the two years 1893 to 1895 in the study of economics and sociology—during the first year (1893-4) at Berlin University, Germany, and during the second (1894-5) at Columbia University, New York City, where in 1895 he passed the oral examination for the degree of doctor of philosophy before the Faculty of Political Science; in 1895-6 lectured at Columbia University on the financial history of the United States; in 1896-7 was instructor in economics and sociology in Bowdoin College during leave of absence of the regular professor; and in the autumn of 1897 on civil service examination was appointed to his present position as statistician in the then New York State Bureau of Labor Statistics, since 1900 the Bureau of Statistics of the Department of Labor.