THE EIGHT HOUR AND PREVAILING RATE MOVEMENT IN NEW YORK STATE[1]

I

THE history of the eight hour and prevailing rate movement in New York state extends back almost to the middle of the last century. Its beginnings are obscured in the imperfect records of early labor union activity. The first accounts of labor meetings contain references to shorter hours of labor and the subject reappears over and over again in their later records.

In the early fall of 1867 a convention of the National Labor Union was held in New York city. Delegates were present from ten eastern and central states. They are reported to have devoted their time to discussing questions of wages and of strikes. New York was officially represented in this convention and its delegates took a leading part in the discussions. In 1869 a report records the existence of thirty-nine "protective or trade unions" of considerable strength in New York city, while "only a few years ago" the only unions of importance were the Typographical Union and the unions of bricklayers and plasterers. To emphasize the value of efficient organization the report shows that the plasterers worked forty-eight hours a week at $4.50 a day, while bakers, who were not organized, worked 120 hours a week for $5.00 a week. In 1870 the number of organizations was reported to be 350, many of them in a flourishing condition. Mass meetings were frequently held at Cooper Institute and in other halls to promote organization and to agitate the questions of wages and of hours of labor. These meetings were reported in some of the papers of the period as "large and enthusiastic" and as devoted to agitating for an increase of wages and a shortening of the hours of labor. Other contemporary accounts declare that, while they were

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reported with enthusiasm, they were in fact "regular stated meetings of the organizations," and that the agitation was "more apparent than real." A reporter for one paper refers to instances in his own experience. One was a meeting of shoemakers where the attendance was fourteen, and another was a meeting of horseshoers where half an hour after the time advertised for the opening there were nine men in a hall that would seat fifty. Such experiences may have been exceptional, or the reports may have been exaggerated. But whether we take the word of sypathizers or of critics of these early organizations, it is clear that wages and hours of labor were the principal subjects of discussion.

The New York State Workingmen's Assembly was organized in 1865. From its inception its main object has been to secure legislation favorable to the interests of its members. From the outset a special committee has been maintained whose duty it has been to be present at Albany during the sessions of the legislature, to take charge of all bills in which the organization was interested and to exert such influence as it could to secure the enactment of such bills into law. The Workingmen's Assembly has thus been an important factor in shaping the labor legislation of the state. In the very first of their legislative programs appears the demand for an eight-hour day. Soon was added the demand for payment of wages at the prevailing rate, and these two demands have been repeated in every program since.

The first effort to regulate wages in the state appears as early as 1777. In that year a law was passed styled "An act to regulate wages of mechanics and laborers, the prices of goods and commodities and the charges of inn-holders, within this state, and for other purposes therein mentioned." The circumstances connected with the passage of this act were briefly these. A resolution had been passed by the Congress of the United States in accordance with which a convention of New England and middle states met and resolved to regulate "the whole matter" referred to in the title of the act. It was the desire to carry into effect the resolution of the convention that led to the passage of this law. On the ground that the other states repre-

sented in the convention did not enact and enforce similar laws, New York repealed its statute at the next legislative session. This law not only determined the rate of wages but also fixed the prices of a long list of staple commodities. This first effort to regulate wages belongs properly to a former period, of which it stands as a relic. It is an American example of the legislation dating from the days of Elizabeth which was still nominally in force in England at the time of the American Revolution.

The present movement really begins with a statute passed in 1867 which regulated the hours of labor in the following terms: "Eight hours of labor, between the rising and setting of the sun, shall be deemed and held to be a legal day's work, in all cases of labor and service by the day, where there is no contract or agreement to the contrary," but "farm or agricultural labor or service by the year, month or week" was exempted. No person, however, was to be "prevented by anything herein contained from working as many hours over time or extra work, as he or she may see fit, the compensation to be agreed upon between the employer and the employee."

In the later sixties the papers record a large number of strikes in different trades for the purpose of securing the enforcement of the eight-hour law. These strikes, according to a reported statement of one of the early officers, were as a rule not successful. In 1868 the Workingmen's Assembly passed a resolution calling for the repeal of the special contract clause of the law. This demand was complied with by the legislature in 1870. The law then read:

> Eight hours shall constitute a legal day's work for all classes of mechanics, workingmen and laborers, excepting those engaged in farm and domestic labor; but overwork for an extra compensation by agreement between employer and employee is hereby permitted. . . . This act shall apply to all mechanics, workingmen and laborers now or hereafter employed by the state or any municipal corporation therein, through its agents or officers, or in the employ of persons contracting with the state or such corporation for performance of public work.

While the law was made more definite so far as the eight-

hour limit was concerned, it was to be applied only in cases where work was done by or for the state or a municipal corporation. And even here "overwork" by agreement was permitted. The gain in clearness of definition was thus secured at the expense of breadth of application. Yet it was regarded as a substantial gain by the organizations, for it seemed now as though it would be possible to enforce its provisions. Despite all efforts to secure further change the law remained unmodified for twenty-four years. During this time there were, however, repeated calls for amendment in order to provide for enforcement. In 1894 another clause was added in the following terms:

> All such mechanics, workingmen and laborers so employed shall receive not less than the prevailing rate of wages in the respective trades or callings in which such mechanics, workingmen or laborers are employed in said locality. And in all such employment, none but citizens of the United States shall be employed by the state or any municipal corporation thereof, and every contract hereafter made by the state or any municipal corporation for the performance of public work must comply with the requirements of this section.

Five years later an amendment was passed requiring contractors to stipulate in all public contracts that labor shall be performed in accordance with the eight-hour and prevailing rate provision of the law.[1] The particulars of the contract are so fully stated that twelve lines of the original law are expanded in the new law to thirty-seven. It was also made a penal offence to employ laborers except in accordance with the provisions of this law.

The law requiring the payment of wages at the prevailing rate was the final fruit of earlier and more special legislation. In 1888 a bill, known as the Locktenders' bill, was introduced by the representatives of organized labor. It provided for a fixed rate of wages of two dollars a day for the tenders of canal locks. The bill was not passed. After several conferences

[1] Exceptions were made in the following year in cases of "persons regularly employed in state institutions" and of "engineers, electricians and elevator men in the department of public buildings during the annual session of the legislature."

between the legislators and the labor representatives, the latter decided to urge a bill the provisions of which should be extended so as to include all the employees of the state. This revised bill was pushed more vigorously than the former one. In the annual convention of the Workingmen's Assembly the bill was endorsed by resolution and the legislative committee was instructed to use its influence. At the session of 1889 the bill, known as the "Two Dollar a Day bill," was declared by the labor organizations to be "the principal labor bill before the legislature." Mass meetings were held in several large cities and resolutions endorsing the measure were sent to the committee. The committees of both houses and the governor held largely attended hearings on the bill. As a consequence of the agitation it finally became a law. Two years before this a resolution had been adopted by the labor organizations urging a clause in a law forbidding the employment of laborers other than citizens and requiring the prevailing rate of wages. The part giving preference to citizens was incorporated in the bill just referred to. As passed, it provided that wages for day laborers employed by the state should not be less than two dollars a day and "in all cases where laborers are employed on any public work in this state, preference shall be given to citizens of the state of New York." At the session of the legislature in the following year, the section of the law requiring the two dollar a day wage was repealed, leaving in force only the provision in regard to citizenship. The labor leaders attributed the repeal of the act to the influence of "farmers and corporations." They still persisted in their efforts. Their next move was a resolution calling for the substitution of the "day work system" at the prevailing rate of wages for the private contract system in all public work. This they finally succeeded in securing, after bringing various influences to bear on the members of the legislature. The regulation for the payment of wages was revived in 1894 in a somewhat different form, and since that time the law has remained on the statute books until by the decision of the court it was declared void.

In the codification of the labor law, in 1897, both matters were dealt with in the same section. Eight hours were declared to

constitute a legal day's work for all classes of employees except farmers and domestic servants, "unless otherwise provided by law." An agreement would be legal for overwork at an increased compensation except upon work by or for the state or a municipal corporation or by contractors or sub-contractors therewith. Each contract must contain the stipulation that no laborer "shall be permitted or required to work more than eight hours in any one calendar day;" and that wages to be paid for such a day's labor upon public work "or upon any material to be used upon or in connection therewith" must be not less than the rate prevailing in the locality. If these stipulations did not appear in a contract, the contract was to be void. No public official was to pay any money for work done under such a contract, and a violation of this clause was a penal offence.

II

This formulation of the law was the result of continued agitation and persistent effort on the part of the labor organizations of the state. The law in its early form was ineffective, as there was no means provided for enforcement and as the generality of its provisions made it practically meaningless. The codification of the law in 1897, with its definite statement of the provisions, presented the issue in such a way that it could no longer be evaded. The labor interests had the contractors at bay. The law carried a penalty and any one could concern himself in seeing that the penalty was enforced. The commissioner of labor reported in 1900 that there were numerous complaints of violation of this provision of the law. The complaints were investigated and many of the cases turned over to the local district attorneys for prosecution. The results of these prosecutions were not uniform. Some led to success, others to failure. Roads were being made, reservoirs built, streets paved, sewers constructed and other public improvements carried to completion, and the eight hour and prevailing rate provision was not complied with. The law was clear enough. It now remained for the courts to pass upon it; not as to its meaning, but as to its constitutionality. The struggle, therefore, was shifted to the courts.

A case arose involving payment for overwork done between 1892 and 1894 by the drivers of the street cleaning department in New York city. The case was decided under the old law in favor of the workmen. The law permitted overwork for extra compensation by agreement. The overtime in this case had been done by direction of the head of the department. The city's defense was that no express agreement for extra compensation had been made at the time of employment. The drivers claimed that an agreement was implied. The court interpreted the agreement as an implied contract and binding. The Court of Appeals sustained this decision. As a result 797 drivers were awarded back pay amounting to $1,336,000 for extra work over eight hours. In 1899 a case arose under the new law. A laborer anxious for work was employed on the construction of recreation piers in New York city at $2.25 a day. After working for several months at that rate, he was informed that the union rate for his work was $3.50 a day. He brought suit for the difference in wages and for overtime, a total of $170.50, and was awarded the amount with costs. A case in 1900 brought from the court a statement of the intent and purpose of the law as follows:

> The policy of the law is that laborers . . . employed upon public work shall receive the prevailing rate of wages . . . That policy is just as important with respect to men who are employed by a city . . . The intent is to insure . . . the same amount of wages which it has been found necessary to pay to secure the services of other men at the same sort of work . . . in the same locality.

The provision concerning the prevailing rate was the first to come to a final issue before the Court of Appeals. The substance of the decision may be concisely stated as follows. First, the whole contention must be in regard to the validity of the law. If valid, its insertion in a contract is not necessary, since all contracts are assumed to be made subject to the limitations of existing laws. If not valid, its insertion in a contract does not make it valid. Second, a municipal officer directing a local improvement is not an agent of the state, but of the city alone; and the state legislature cannot limit the right of self-govern-

ment of a city by interfering in its contracts, since this right is protected by constitutional guarantee. Third, public expenditures can be for city purposes only and the legislature cannot require a city to frame its contracts in the interests of individuals or classes. Where that is done, it amounts to depriving a citizen of property without due process of law. The dissenting opinion differed mainly on the question of the relation of the city to the state. It affirmed the right of the state, as a proprietor, to prescribe the conditions of contracts into which its agents may enter; and furthermore asserted that a municipal corporation is, so far as its purely municipal relations are concerned, simply an agent of the state for conducting the affairs of the government.[1] The result of the decision was to anull that part of the law which required payment of wages at the prevailing rate for municipal improvements made for the city by contractors.[2]

These decisions left the eight-hour clause technically undecided. Yet a strong suspicion of its unconstitutionality prevailed. The reason for failure in bringing many contractors to trial was the difficulty in securing a true bill from a grand jury. The theory underlying the two clauses was the same, they insisted, and if one clause was unconstitutional the other must be. Upon request from the grand jury for instructions upon the point the court replied: "That law, I think, when the test comes, will be declared unconstitutional . . . and if such a case comes before you I would advise you to refuse to indict because any indictment here brought would be set aside by this court." Such was the feeling before the matter was brought to final issue, and because of it several indictments were dismissed.

A beginning was made in the contention over the eight-hour clause in an effort to stop the payment of bills due the Munici-

[1] An extended account of this case may be found in the *Bulletin of the Department of Labor*, N. Y., Mar., 1901, pp. 45–61. People *ex rel.* Rodgers *v.* Coler, 166 N. Y., 1.

[2] A previous case (Clarke *v.* State of New York, 142 N. Y., 101) had affirmed the law so far as work done for the state was concerned. In 1904 it was held (Ryan *v.* City of N. Y., 177 N. Y. Rep., 271) that the law was constitutional when applied to workingmen in the direct employment of the city.

pal Gas Company of Albany for gas used in public buildings, on the ground that the gas was made by workmen who worked more than eight hours. The attorney general gave an opinion to the effect that the law was valid. The company appealed to the courts. The decision of the latter was in favor of the gas company on the ground that the law applied to public work which meant virtually construction work. The supplying of gas and electricity cannot be construed as in any sense a contract involving "labor" on "public work." Gas and electricity, incandescent and carbon lamps, declared the court, are marketable commodities, articles of common merchandise, just as are brick or stone. In 1903 the Court of Appeals held unconstitutional the section of the penal code which affixed a penalty for violating the provision of the labor law.[1] Thus one of the most efficient means for enforcing the law was removed. Yet the attorney general gave it as his opinion that the decision did not affect in any way the validity of the labor law itself. The question finally came before the Court of Appeals and was decided squarely on its merits. The principle of the Rodgers case was applied and the eight-hour section declared unconstitutional. It was thought by many that the law might be upheld; for the personnel of the court had changed since the former decision, and the United States Supreme Court had in the meantime upheld the Kansas eight-hour law. Yet the precedent in the former case was followed. In substance the decision set forth the same principle as in the Rodgers case, declaring that the law and constitution of New York assure the municipality a certain degree of independence and this independence may not be infringed by the legislature. Two justices dissented on the ground that there were important distinctions between the two requirements and that the requirement in question was sound, being a valid exercise of the police power in the interest of the public welfare. As in the Rodgers case, the decision applied only to contractors doing work for municipal corporations.[2] This decision was supported by five of the seven justices. Yet

[1] People *v.* Orange County Road Construction Company, 175 N. Y. Rep., 84.

[2] People *ex rel.* Cossey *v.* Grout.

they came to the conclusion by different courses of reasoning, some holding that the rights of municipal corporations were invaded; others that the property of the contractor was confiscated.

III

After the change made in 1870, the statute that remained in force applied only to laborers on public work. Yet many trades were desirous of invoking the law to restrict hours of labor. This effort, however, did not take the form of a general movement. Several trades, well organized and anxious for further advantages, engaged in separate endeavors to secure laws favorable to themselves. The several laws secured in this way constitute a considerable portion of the labor law of the state. Among the special trades that have at various times received consideration at the hands of the legislature are plumbers, railway employees, brick makers, stone cutters, bakers, barbers, horseshoers, engineers and drug clerks. As a rule the laws passed have been in the direction of restricting the number of hours of work in these trades, and in some cases provision has been made for licensing the workmen or granting certificates after an examination by a specially constituted board. The bakers' law provided for inspection of bake shops, in addition to limiting the number of hours of work. The laws in some cases were passed only after ten years of most persistent effort. This was true especially in the case of the law applying to railway employees and to stone cutters. Seldom did the laws enacted include all that was desired. The stone cutters' law, for instance, provided that all stone for state or municipal works should be cut within the state and, when possible, on the grounds where the construction work was being done. This law was passed in 1894. In 1898 the New York Central Railroad was engaged in the construction of a depot at Albany. The Workingmen's Federation backed a bill requiring all stone for that building to be cut in Albany, by union labor and at the union schedule of wages and hours. Although pushed with vigor the bill was not passed.

The attitude of the courts toward this line of legislation, as

indicated by recent decisions, has tended to check the zeal with which the bills have been urged. In 1904 the law pertaining to horseshoers was held to be unconstitutional. As a type of some of the special trade legislation of the state, it may be explained somewhat in detail. The law required that all journeymen or master horseshoers should be examined by a state board. This board consisted of one veterinarian, two master horseshoers and two journeymen horseshoers, all to be citizens of the state and residents of the cities of the state, to be appointed by the governor for a term of five years. A person was qualified to take the examination provided he had served an apprenticeship for at least three years. The board then was empowered, if the candidate passed the examination, to issue a certificate which served as evidence of fitness. This certificate was then to be registered in the office of the clerk of the county in which the applicant intended to ply his trade. A fee of five dollars was to be paid at the time of the application for the examination and a fee of twenty-five cents on filing the certificate in the county clerk's office. This law was annulled by the unanimous vote of the appellate division of the Supreme Court. Two arguments were advanced in favor of the law. One held that the regulation of the trade was properly a matter for state supervision and came within the police power; the other, that the law was in support of the effort to prevent cruelty to animals. The decision did not recognize the validity of either argument.

> It does not seem that this regulation tends to promote the public weal along any of the lines upon which the exercise of the police power in various cases which have arisen has been made to rest. * * * It is difficult indeed to see how the regulation of shoeing horses has any tendency to promote the health, comfort, safety and welfare of society.

Touching cruelty to animals, the court said: "Laws prohibiting cruelty to animals and providing in considerable detail for the exercise of power necessary to secure that result have found a place upon the statute books and been enforced by the courts for many years, and numerous convictions have been had under such statutes."

The plumbers have fared better at the hands of the courts than have the horseshoers. Their law provided for a board of examiners from whom certificates must be secured. The board was to work in coöperation with boards of health and with engineers of sewers. The main points of this law have been upheld by the Court of Appeals.

The bake shop law has recently attracted the greatest amount of attention. This law provided for inspection of bake shops and made regulations intended to improve sanitary conditions. It also provided that no employee should be "required or permitted" to work more than ten hours a day. From the outset the fight to secure these regulations was a determined one on both sides. The commissioner of labor earnestly recommended it. Both state and national labor organizations used all their influence in support of it. Finally, in 1895, the law was passed. It was the first state law of its kind and attracted attention as "pioneer legislation." The law almost immediately became the subject of litigation. The clause upon which the legal battle centered was that which declared that an employer should neither require nor permit an employee to work longer than ten hours a day. From one court to another in the state system the case was carried, and the decisions were in support of the provision of the law on the ground that it was a proper exercise of the police power. When finally the Court of Appeals sustained the decision of the lower courts, the issue was looked upon as closed. But an appeal was taken to the United States Supreme Court on the ground that there was an interference with the liberties granted to citizens of the United States by the fourteenth amendment. It will be noticed that in framing the law an effort was made to prevent overtime work performed in accordance with special agreements. The opportunity afforded for overtime work by special agreement between employer and employee had been the loop hole in many of the former laws. The employer could nearly always succeed in inducing his employees to work overtime. To make such an arrangement impossible, an employer was not only not to require overtime work but he was not to permit it. By a vote of five to four the judges of the Supreme Court of the United States decided that

this provision was an infringement on the right of a citizen to contract for any length of day that seemed to him best, and that such infringement was not of sufficient importance to bring it within the police power of the state. This appears in the words of the decision as follows:

> Statutes of the nature of that under review, limiting the hours in which grown and intelligent men may labor to earn their living, are mere meddlesome interferences with the rights of the individual, and they are not saved from condemnation by the claim that they are passed in the exercise of the police power and upon the subject of the health of the individual whose rights are interfered with, unless there be some fair ground, reasonable in and of itself, to say that there is material danger to the public health or to the health of the employee if the hours of labor are not curtailed. If this be not clearly the case, the individuals whose rights are thus made the subject of legislative interference are under the protection of the federal constitution regarding their liberty of contract as well as of person; and the legislature of the state has no power to limit their right as proposed in the statute.

In the matter of providing for clean and healthful conditions of labor, it was the opinion of the court that the provisions made for inspection were quite sufficient.

Looking at this decision from the view-point of existing conditions rather than legal theory, workmen reason about it as follows: When applying for work a workman is informed that the work day is more than ten hours. If he insists that ten hours is all he can work he is informed that there is no place for him. If he is already employed and insists on cutting his time down to ten hours, he is informed that his services are no longer needed. Thus he finds himself helpless when he endeavors by individual action to secure a ten-hour day. By uniting their efforts workmen invoke the aid of the law to deprive the employer of the advantage he has in consequence of the large supply of labor. To secure just what they all want, namely the ability to resist the employer in his effort to maintain a longer work day, they induce the legislature to enjoin the employer from permitting his workmen to labor more than ten hours. This was the legal phraseology by which the employer was to be deprived of the ability to "induce" his workmen to

favor a longer day. The state courts appreciated the practical features of the situation. But the federal court seems to the workmen of the state to have brushed these practical considerations aside, to have listened only to the arguments of the employers and to have been convinced that the employee was suffering a grievous wrong in being deprived of his constitutional right of freedom of contract. Thus they feel that in sustaining them in their abstract right, the court has actually deprived them of the power to secure what they really most desire. Had they themselves appealed to the court, the court might reasonably have held that their rights were in danger of infringement. But they did not make the appeal, they were satisfied and had no feeling that their rights were invaded by the law. They consequently conclude that the court has failed to give fair consideration to the practical exigencies of the situation. They were, therefore, both surprised and chagrined at the outcome of the appeal.[1]

While these various efforts have been made to restrict by law the number of hours that shall constitute a day's work, the leaders of the movement have been making every effort to accomplish the same result by inducing all laborers to refuse to work longer than eight hours. This has proved to be rather a difficult task. It is a comparatively easy matter to induce an organization at its regular meeting to adopt resolutions against a longer day and to enjoin its members from working longer than the prescribed time. Yet to hold the individual members to the agreement after the meeting has adjourned is a task usually beyond the powers of the labor leaders. The seriousness of the matter, in the minds of the leaders, may be inferred from the following statement, in the form of a resolution adopted by the American Federation of Labor:

We advise strongly against the practice which now exists in some industries of working overtime, beyond the established hours of labor.

[1] The New York State *Bulletin* has pointed out in connection with the decisions on the law by the various courts that twenty-two judges have voted at one time or another on this case, and that twelve of these have cast their votes in favor of the validity of the law.

. . . It is an instigator to the basest selfishness, a radical violation of union principles, and . . . it tends to set back the general movement for an eight-hour day.

The eight-hour day is one of the most important articles in the creed of organized labor. No opportunity for applying it either in a locality or in a special trade is ever lost. As one reads the reports of conventions, the addresses of leaders and the articles in the labor press, it becomes obvious that the policy will be pushed to the end, by trade agreements when possible, by legislation when practicable and by strikes when necessary.

IV

The agitation for the eight-hour day in special trades was for the time completely discouraged by the decision of the court in regard to the law dealing with contract labor on public work. With such a decision on record no progress could be made. The only way out of the difficulty was to change the fundamental law of the state in such a way as to overcome the objections of the court against the law. The machinery of the state organizations was accordingly at once set in operation to accomplish this result. Other important measures were for the time laid aside. All organizations were interested. The state federation became the champion of the cause, and all its various departments were set in operation. Resolutions were adopted. Legislators were interviewed. Local organizations sent resolutions to their respective representatives at Albany. Finally the resolution for amendment of the constitution was adopted. As the prescribed process of amendment of the state constitution requires that a resolution shall pass the legislature twice before it may be submitted to popular vote, the first vote of the legislature adopting the resolution was only a beginning. The men immediately interested kept busily at work in the interval. When the time for the second legislative action came, they were on hand. The second vote was favorable, and at the last general election the matter was submitted to the voters of the state. As voting on amendments goes in the state, the advocates of the measure had everything in their favor. While the vote on the amendment fell far short of that cast for the candidates, yet

the amendment was adopted by the safe margin of two to one of the votes cast,[1] and is now a part of the constitution of the state. The amendment is inserted in that part of the constitution which confers upon the legislature the power to provide for the organization of cities. It adds to the other powers of the legislature in the matter the following:

> . . . and the legislature may regulate and fix the wages or salaries, the hours of work or labor, and make provision for the protection, welfare and safety of persons employed by the state or by any county, city, town, village or other civil division of the state, or by any contractor or subcontractor performing work, labor or services for the state or for any county, city, town, village or other civil division thereof.

Such a provision seems to overcome all the objections of the courts. The amendment was evidently attached to the clause regulating the relations of cities to the state in order to overcome the objection that the law was an infringement upon the rights of local self-government. Whether the amendment will stand the test of scrutiny by the federal Supreme Court in the light of the fourteenth amendment is, of course, a question that cannot be answered. It is certainly not beyond the bounds of possibility that a case may be referred to that court for a decision, since an important part of the reasoning by which the state court annulled the law rested on the proposition that the law was not only an infringement of the rights of cities but that it was also an infringement of the individual right of the contractor, and that it was legislation in favor of a class.

As soon as the last session of the state legislature opened bills were brought forward to meet the requirement, of the new situation. After many amendments and much discussion the old law, so far as it had been repealed, was reënacted. Some attempts were made to obviate the defects which practice had revealed in the previous measure. They were abandoned, however, when confusion threatened to delay the bill, and no important amendments were made. Some dissatisfaction has arisen among labor leaders since the law was passed because, as they say, it is not properly enforced. It seems to have been

[1] The entire vote on the amendment fell a little short of 500,000.

overlooked by them that contracts made in the old régime must hold during the period for which they were drawn. No one can, therefore, undertake to pass judgment on the new law until it has had a fair trial.

V

The movement which has culminated in the amendment of the constitution of the state is seen from the preceding sketch to have advanced by a series of distinct stages. Each new change has been made because of legal difficulties which have been suggested by experience. In its first form the law was of no practical use. It reads as if a bit of the spirit of the seventeenth century had invaded the legislative halls of the nineteenth and induced the legislators to believe that a statement could have binding force when it carried no penalty for its enforcement, but instead a clause opening the way for evasion. More practically, it may be assumed that the agitators looked upon the enactment as a first gain, of no importance in itself but of considerable importance as a beginning, and that the legislators considered it a harmless concession to a very active and determined group of electors.

Any further limitation on the rights of employers and employees to determine for themselves the length of the working day and the compensation therefor could of course be made to apply most easily to those who work for the state or a municipality or on public work being done by contractors. This provision of the law being added, the hope doubtless was that with the state as a model employer setting the example of an eight-hour day other employers could the more easily be induced to follow. Apparently the leaders of the movement were surprised to find that the law was not enforced, that it needed a sting in order to inspire respect. Renewed agitation secured the sting in the form of an amendment to the penal code making it a crime to fail to comply with the form of contract described. Then there was no more evasion. The matter was brought to an open issue in the courts.

The decisions of the courts have revealed only one important difference between the prevailing and dissenting opinions. This

difference touches the relation of the city to the state. There seemed to be no thought of compelling all employers to adopt an eight-hour day with the prevailing rate of wages. On the other hand it was early and positively decided that the state could prescribe any conditions it deemed best in regard to work done for the state. This is a matter of expediency in reference to which the decision rests entirely in the hands of the legislature. But could the state compel a city to have its work done after a certain prescribed manner, and further, could it dictate a contract to be adopted by the city and its contractors? That was the point in contention before the courts. The prevailing decision declared that by virtue of the constitutional relation established between the state and the cities thereof, a city was more than an agent of the state. It had powers and rights which were not subject to the control of the state legislature. The rights of a city to contract for its public improvements after any manner that seems best to its officials is included in the rights that lie beyond the control of the state legislature. Yet the dissenting opinion held with strong logic that the city was in all respects an agent of the state government. Its charter emanated from the legislature. It had no powers beyond its charter. Therefore it had no powers not granted by and consequently not revocable or limitable or modifiable by the legislature. Such being the relation, the legislature clearly had a right to prescribe the conditions of contract.

Here was a fine point of law. Moreover, much of the decision was *obiter*, and a change in the personnel of the court or a technicality of procedure might reverse the substance of the decision. The matter would, consequently, be always in doubt. An amendment to the constitution appeared to be the only way in which the question might be finally settled.

While the principal question discussed in the leading cases was that of the relation of cities to the state, the economic phase was not entirely overlooked. In one of the decisions a justice dissented for the reason, in part, that "prevailing rate" is an indefinite term and therefore unsatisfactory in the law. Others saw in the provision that if a contractor paid more for labor than was "necessary," it was in substance an appropria-

tion of public funds for the benefit of a class. It was also an interference with free competition. These prove upon careful examination to be hasty conclusions. It is true that fair and open competition is the most satisfactory means of adjusting wages and that wages so adjusted will in the end be most nearly equitable, from an economic as well as from a general social point of view. Now what is the "prevailing wage?" It is a wage rate that has been established by competition: competition between organized capital on the one side and organized labor on the other. It may be true that one side or the other has had some temporary advantage and has succeeded in affecting wages accordingly. But in what does the wage rate consist when *not* the "prevailing" wage? In that case it is an adjustment between organized capital on the one hand and unorganized labor on the other. In such competition there can generally be nothing fair and open. The advantage of one side is too great. The prevailing rate is probably the nearest practical approach attainable in our present industrial organization to a rate fixed by fair and open competition. The state can never enter into a competition that will not be one-sided. It therefore will do best to accept the result of competition that has been working in circumstances that are most nearly fair. What is true of the prevailing wage is also true in the adjustment of hours.

There will still stand against this method of adjustment the objections that are so often raised against any particular application of a union scale of wages. The laborers all receive the same pay while all are not equal in skill, strength or endurance. Each man ought to be paid for the work he does, and not in accordance with a scale which he does not fit. The best workmen are not encouraged to do their best and indolent workmen are carried along by their fellows. It should be the privilege of each man employing labor to bargain with each individual laborer. Such claims have undoubtedly much force, and they serve as an indictment from which the organized upholders of a wage scale will have some difficulty in securing a verdict of not guilty. Yet this difference of opinion as to the advantages and disadvantages of an established union wage scale is one to be

adjusted by experiment and observation in the industrial world. In the meantime, work for the state and city must continue and wages must be paid. The law as expressed by the amendment recognized that organization among employers is an accomplished fact, and that such organization gives the employer a decided advantage in "higgling" for wages. It decrees that wherever organizations of labor and organized employers have reached a satisfactory working scale of wages, such scale shall be adopted in cases of work done for city or state. It is the most practical working arrangement feasible in our industrial world as at present organized.

Those who have been concerned in a practical way with the working out of this problem have been confronted with a difficult task. There is the economic side, with the attempt to adjust wages in such a way that those performing the labor shall be treated fairly; that those for whom the labor is performed shall not be unjustly treated, especially in the case of contract work; and that public funds shall be expended with the same care as would be exercised in private enterprises. While these points are to be observed, at the same time the economic principles which fundamentally control the fixing of wages must not be violated. In addition to this, there is also the constitutional side of the problem. Here arises the delicate matter of adjustment between the authority of the legislature from which all charters for municipal corporations emanate; the principles of local self-government; and the general principles of the common law either expressed or implied in the federal constitution—as well as in the state constitution—which overlooks the relation between cities and states but which takes all citizens under its protection. To accomplish this task in a practical way is the purpose of the amendment. Whether it conforms to all the principles of law will be a matter for the judiciary to decide. Whether it conforms to all the principles of economic and social science can only be determined by experience.

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MUNICIPAL CODES IN THE MIDDLE WEST.

IN every country the organization and power of municipal corporations have at first been regulated by special laws or charters for each community. But in the course of time the tendency has been to establish a general and more or less uniform system within each organized government. Thus in ancient history the early self-constituted city governments in the Italian peninsula were reorganized after the extension of the Roman dominion, about the time of Sulla; and the main features of this municipal system were later extended throughout the Roman Empire. After the breakdown of that empire special charters again appeared throughout western Europe. But since the end of the eighteenth century these have been replaced in practically all the European countries by general municipal codes. France led the way in this movement, at the time of the Revolution. Prussia followed this example in 1808 and England in 1835. Other countries have one after another adopted the same method of procedure.

Special charters and special acts of the legislatures were the only methods of organizing municipal government in the United States until the middle of the nineteenth century. In 1851 the second constitution of the state of Ohio began the attempt to secure general laws by prohibiting special legislation. Other states adopted similar provisions in their constitutions, at first slowly, but more rapidly since 1870. And now most of the states attempt in one way or another to prohibit or restrict special legislation on municipal government. A few, however, such as Massachusetts and Michigan have no constitutional restrictions; and special charters are still openly and freely enacted.

But even in most of the states where special legislation is prohibited, there have been no comprehensive systems of municipal organization established. By the device of classification, laws general in form have been enacted, which in fact applied only