CONSTITUTIONAL AMENDMENTS RELATING TO LABOR LEGISLATION AND BRIEF IN THEIR DEFENSE

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PREFACE

Appreciating the importance of the work of the Constitutional Convention to the future progress of labor legislation in this state the American Association for Labor Legislation organized in November, 1914, the Committee on Labor Legislation and the Constitutional Convention of New York State, whose names appear on the opposite page. As a result of numerous meetings and the work of sub-committees, the committee unites in recommending to the Constitutional Convention the four amendments which follow. In determining the phrasing of these amendments the committee received valuable assistance from the Legislative Drafting Research Department of Columbia University, and particularly from Mr. Thomas I. Parkinson, Miss Dorothy Straus, and Mr. J. Craig Peacock. The reasons for our advocacy of these amendments are set forth in the following brief, which is the joint work of Dr. George M. Price, Mr. John A. Fitch, Dr. Howard Woolston, Irene Osgood Andrews, Miss Josephine Goldmark, and Professor Henry R. Seager. Great care has been taken by all of the collaborators to draw statistical and other information only from the most authoritative sources, and to quote the opinions only of those whose high standing or expert knowledge give them peculiar weight.

HENRY R. SEAGER, *Chairman*,
Committee on Labor Legislation and the Constitutional Convention of New York State

PROPOSED CONSTITUTIONAL AMENDMENTS

1. GENERAL AMENDMENT

Nothing contained in this constitution shall limit the power of the legislature to enact laws which the legislature declares to be necessary for the protection of the lives, health, safety, morals or welfare of employees.

NOTE.—Sec. 19, Art. 1, of the New York Constitution now contains the following: "Nothing contained in this constitution shall be construed to limit the power of the legislature to enact laws for the protection of the lives, health or safety of employees." The revision now proposed extends this provision so that it includes protection of the "morals or welfare" of employees. These words are added in order to make the provision more nearly conform to the phraseology of the courts in declaring the police power. The proposed revision also includes the words "which the legislature declares to be necessary." The principal purpose of these words is to leave as the only limitation on labor legislation the due process provision of the fourteenth amendment of the Federal Constitution. This change would leave unimpaired the duty of the courts to pass on the reasonableness or necessity of labor legislation, but would permit appeal to the Supreme Court of the United States and therefore bring about a uniform application of the due process restriction.

2. SOCIAL INSURANCE (INCLUDING WORKMEN'S COMPENSATION)

Nothing contained in this constitution shall limit the power of the legislature to enact laws for the payment or furnishing, either by employers, or by employers and employees, or otherwise, either directly or through a state or other system of insurance or otherwise, of compensation or benefits, without regard to fault, for injuries, illness, invalidity, old age, unemployment or death of employees, or for the adjustment, determination or settlement with or without trial by jury of issues which may arise under such legislation.

NOTE.—This is a revision of the workmen's compensation amendment now forming the principal part of Sec. 19, Art. 1, of the Constitution. The revision omits unnecessary details contained in the original compensation amendment and inserts language intended to authorize the legislature to provide, by insurance or otherwise, for the employee's loss of earnings due to occupational diseases, illness, unemployment and the other causes stated, as well as for industrial accidents.

3. AMENDMENT OF SEC. 18, ART. 1

The right of action now existing to recover damages for injuries resulting in death shall never be abrogated; and the amount recoverable shall not be subject to any statutory limitation. This section shall not affect legislation providing compensation for injuries or occupational diseases of employees or for death resulting from such injuries or diseases.

NOTE.—The underscored words are added to the present constitutional provision. Their purpose is obvious; they take the place of an involved provision intended to accomplish the same purpose now contained in the compensation amendment. They make no change in substance in the present constitution.

4. SWEAT SHOPS

Nothing contained in this constitution shall limit the power of the legislature to enact laws prohibiting, in whole or in part, manufacturing of any kind in structures any portion of which is used for dwelling purposes.

NOTE.—This proposed amendment is intended to give the legislature power to deal with the problem of homework. Special provision is deemed desirable because homeworkers are not necessarily employees, but may be independent contractors. The power herein granted to the legislature may be exercised in the form of regulation or of prohibition. It is deliberately made as broad as possible in order that the legislature may have full power to deal, as circumstances warrant, with this troublesome problem.

PROPOSED AMENDMENTS TO THE CONSTITUTION OF NEW YORK RELATING TO LABOR LEGISLATION

The people of the state look to the Constitutional Convention to accomplish two principal purposes:

(1) A simplification and clarification of the constitution.

(2) A reform of the organization and redefinition of the powers of the different branches of government which will make them more efficient and adequate for the promotion of their common interests.

The great majority of the people of the state are either employees or members of the families of employees. As regards their interests there has been one source of confusion and misunderstanding that has had most unfortunate consequences. This is the liability which laws intended for their protection are under to be attacked in the courts as unconstitutional. Wage earners do not as a rule understand the grounds which justify the courts in nullifying legislative acts. To them judges often appear to go out of their way to declare null and void labor laws which seem to them proper and necessary. They, therefore, easily come to the conclusion that courts exist not for the impartial administration of justice, but for defending employers from the justifiable demands of employees. Whether the resulting widespread prejudice against the courts is in any degree warranted or merely the result of ignorance and misunderstanding, it is a fact that must cause grave concern to every right thinking American. If by some change in our fundamental law it can be removed or even substantially lessened, such change merits the sympathetic consideration of the convention. Nothing but the well-grounded fear that it would impair the constitutional protection to our rights to life, liberty and the pursuit of happiness should prevent its adoption.

We believe that there is a way in which our state courts may be relieved from their present responsibility for passing finally upon the constitutionality of proposed labor laws with-

out relaxing in the least the requirement that such statutes must conform to due process of law. Moreover, we are convinced that an incidental result of following this way will be to give us a uniform and authoritative declaration of what constitutes due process of law, which will in time impress wage-earners as well as other citizens as fair and reasonable and gradually win them back to confidence in the impartiality of our courts and the integrity of our judges.

In large part the present hostility and suspicion have been the consequence of the anomalous situation resulting from the addition of the Fourteenth Amendment to the federal Constitution in 1868. The portion of that amendment declaring "nor shall any state deprive any person of life, liberty or property without due process of law" repeats substantially Section 9 of the Bill of Rights of our state constitution which says, "No person shall be deprived of life, liberty or property without due process of law." Although proposed and ratified primarily for the purpose of protecting from oppression the recently emancipated Negroes, the due process provision of the Fourteenth Amendment has been interpreted broadly, until now through it every state is effectually estopped from depriving persons of liberty or property in an arbitrary or unreasonable manner. The result is that there have been since 1868 two due process clauses to which New York legislation must conform—one authoritatively and finally interpreted by the United States Supreme Court, the other finally and authoritatively interpreted by the New York Court of Appeals. If these two tribunals always agreed as to what due process requires in connection with labor legislation, and if the views of the highest court of New York were always identical with the views of the highest courts of other states, which also have due process clauses in their constitutions, no harm would have resulted from this repetition. It would have been needless duplication, but without any special practical significance. But it is notorious that the courts have not agreed. Labor laws have been upheld in some jurisdictions as conforming with the due process requirement only to be condemned in other jurisdictions as not so conforming. In many cases the decision for or against has been by a bare majority of the judges trying the issue. Under these circumstances it is inevitable that wage-earners deprived of the protection which the legislature sought to extend to them,

perhaps by the adverse vote of a single judge, should feel that it is not impartial justice that is being dispensed, but the prejudices and preconceptions of the judges. Since judges are drawn usually from the class in society to which employers and property owners also belong, their inference that in rendering their decisions in labor cases judges are often swayed by class prejudice if not by class interest is at least understandable.

The expedient which we propose for simplifying and clarifying this situation is embodied in the following amendment:

1. General Amendment

"Nothing contained in this constitution shall limit the power of the legislature to enact laws which the legislature declares to be necessary for the protection of the lives, health, safety, morals or welfare of employees."

To appreciate the effect of this amendment emphasis should be put on the phrase, "Nothing in *this* constitution." So far as the state constitution is concerned it would leave the legislature quite free to enact such laws for the protection of employees as it deemed wise. Such laws would need, however, still to conform to the "due process" requirement of the Fourteenth Amendment of the federal Constitution. It would thus still be the duty of the state courts to pass on the question whether this due process requirement had been observed. There would be this important difference, however. If a state law were held not to be in conformity with the federal Constitution by the New York Court of Appeals, request might be addressed in accordance with the federal statute of December 23, 1914, to the United States Supreme Court for a review of the decision. That court might then "by *certiorari* or otherwise" cause the case to be advanced to it for consideration, and its decision for or against the constitutionality of the statute would be binding and final. This would mean that our Court of Appeals would either be fortified in its decision against a labor law by the weighty authority of the United States Supreme Court, or that it would be relieved of the onus of having nullified the action of the legislature by having its adverse decision set aside by a tribunal whose impartiality is much less likely to be called in question.